

“appointed a jury as the proper tribunal for trial of injuries to the person by libel or defamation; and that the liberty of the press consisted in the unrestricted right of publishing, subject to the responsibilities attached to the publication of libels, public or private.” The principle that the publication of a libel was a crime, and that the Court of Chancery had no jurisdiction to prevent the commission of crimes, except in such cases as those relating to the protection of infants, was laid down in the most express terms by Lord Eldon so long ago as the year 1818 (a), and Equity judges have since that time repeatedly recognised that it is not within the proper scope of their authority to restrain the publication of libels (b).

Where, however, a right of property is injured by reason of the improper use of another's name, the Court has jurisdiction to protect that right of property; and the same is the case where an act injurious to property is threatened (c). For the interference of the Court to be successfully invoked there must, indeed, be a certainty or probability that some pecuniary loss or damage will be sustained from the wrongful act (d), but there must be not only loss sustained, but a right of property also to be

Where right of property injured.

and the Lord Chancellor was speaking in reference to the Scotch Libel Act, but his remarks are equally applicable to cases arising in England.

(a) *Gee v. Pritchard*, 2 Swanst. 413.

(b) *Martin v. Wright*, 6 Sim. 297; *Seeley v. Fisher*, 11 Sim. 581; *Clark v. Freeman*, 11 Beav. 112; *Emperor of Austria v. Day*, 2 Giff. 628, 3 De G. F. & J. 217 (in particular, per L. J. Turner); *Mulkern v. Ward*, L. R. 13 Eq. 619; *Browne v. Freeman*, W. N. 1873, p. 178; *Prudential Assurance Co. v. Knott*, L. R. 10 Ch. 142; *Fisher v. Apollinaris Co.*, *ib.* 297. In *Thorley's Cattle Food Co. v. Massam*, W. N. 1877, p. 174, the plaintiffs, who had been previously held by the Vice-

Chancellor to be in possession of, and entitled to use the same secret recipe as the defendants, sought to restrain the defendants from publicly advertising that they, the defendants, were alone acquainted with the secret. Vice-Chancellor Malins refused the motion, considering himself bound by *Prudential Assurance Co. v. Knott*, L. R. 10 Ch. 142, but indicated an opinion that an injunction might have been granted under the extended powers conferred upon the Court by the Judicature Act, 1873, § 25, sub-s. 8.

(c) *Emperor of Austria v. Day*, 3 De G. F. & J. 217.

(d) Per Lord Westbury, C., in the *Leather Cloth Cos.' case*, 33 L. J. Ch. 200.

protected. "The first question is 'is there a right, or is there property, on the part of the plaintiff to be protected?'" (a).

Where articles are produced under a certain name.

Where a person produces certain articles, and a representation is made by another that articles not the production of that person are in fact produced by him, there is an injury to the right of property in the name, which has in fact, though not used as a trade mark, yet come to be the producer's means of selling the articles produced.

Poet.

Thus, a poet is entitled to protection for the name which sells his poems for him. In *Lord Byron v. Johnston* (b), the defendant, who had advertised for sale poems which he represented to be by the plaintiff, but as to which he declined to swear to his belief in their genuineness, was restrained by injunction.

Legal author.

So, again, a legal author is entitled to prevent the issue as his of works or editions not of his production. In *Archbold v. Sweet* (c), the plaintiff was the author of a book on a legal subject, of which he had sold the copyright to the defendant. The plaintiff refusing to re-edit the book, the defendant had it edited by another, and the plaintiff thereupon came forward to complain of the inaccuracies which he alleged to be contained in the new edition. Lord Tenterden, C.J., after remarking on the close analogy between that case and those in which an inferior article was sold in the name of a well-known manufacturer, the injury being in the latter case to the sale of the goods, in the former to the character of the author, laid down to the jury that if the new edition, in the form in which it was put forth, would be understood by purchasers who paid reasonable attention to its con-

(a) Per Sir H. M. Cairns, L. J., in *Maxwell v. Hogg*, L. R. 2 Ch. 307. "The first principle which applies, not only to this case, but to every case in this Court, is that the plaintiff must show some property right or interest in the subject-

matter of his complaint." Expenditure gives no exclusive right, nor do advertisements. Per Sir G. Turner, L. J. *ib.*

(b) 2 Mer. 29.

(c) 1 M. & Rob. 162.

tents to be by the plaintiff, their verdict must be in his favour.

So, again, a painter will be protected from having exhibited as his a picture which he has not painted (a), and a medical man who compounds medicines from having spurious medicines sold as his (b). Painter.  
Medical man.

In all such cases the plaintiff must, of course, show that deception is probable, or he cannot succeed in obtaining the relief he seeks. Thus, where an artist painted a picture, and another person exhibited a diorama imitated from it, it was held that there could be no deception or injury, though if the plaintiff's picture had been a diorama the case would have been different (c). So where a person who wrote songs under the name of Claribel sought to restrain the publication of a song described as "written by Claribel," no mention being made of the composer's name, though the music given was not that of Claribel, it was decided that the words "written by" did not imply that the music was also composed by Claribel, and the injunction was refused (d). Deception  
must be  
probable.

The decision in *Clark v. Freeman* (e) has been much discussed with respect to the right a man has in his name. In that case the plaintiff, Sir James Clark, was an eminent physician, who filed a bill to restrain the advertisement and sale by the defendant of certain pills termed by him "Sir J. Clarke's Consumption Pills," the advertisements being so framed as to be calculated to induce the public to buy the pills as being of the plaintiff's invention. Lord Langdale, M.R., refused to grant the injunction, on the ground that there was no injury to property, but apparently not without some doubt, since he gave leave for the case to be mentioned again to him if cases in support of *Clark v.  
Freeman.*

(a) *Martin v. Wright*, 6 Sim. 297. 1868, p. 94; and see *Seeley v. Fisher*,  
 (b) *Clark v. Freeman*, 11 Beav. 112. 11 Sim. 581; and *Archbold v. Sweet*, 1 M. & Rob. 162.  
 (c) *Martin v. Wright*, 6 Sim. 297. (e) 11 Beav. 112.  
 (d) *Barnard v. Pillow*, W. N.

the bill could be produced. He did not, however, think the cases mentioned to him (a) sufficient to warrant him in granting the injunction, but at the same time he remarked that "if Sir James Clark had been in the habit of manufacturing and selling pills, it would have been very like the other cases in which the Court had interfered for the protection of property." The principle on which Lord Langdale's decision was based was that the Court would not interfere where the name pirated by the defendant had not become known to the public in connexion with a manufactured article, but was merely a name under which an individual had acquired a certain reputation (b). It is evident, however, that the sale of quack medicines under the name of an eminent physician would tend to destroy his reputation and the confidence of his patients in him, and thereby to cause him a far more severe pecuniary loss than would be incurred by the sale of a few boxes of pills or copies of a book being lost to him. Later judges have, therefore, been of opinion that the case in question "might have been decided in favour of the plaintiff, on the ground that he had a property in his own name" (c).

Contracts in respect of names.

Whatever rights a man may, irrespective of contract, have in his own name, so as to be able to prevent the unauthorized use of it by another, it is always open to him to modify those rights by contract, whether by way of permitting others to use his name in a certain manner (d), or by way of restraining his own use of it to a certain extent (e). Thus, where a publisher had sold to the de-

(a) *Lord Byron v. Johnston*, 2 Mer. 29; and *Routh v. Webster*, 10 Beav. 561.

(b) See *Delondre v. Shaw*, 2 Sim. 287.

(c) Per Sir H. M. Cairns, L.J., in *Maxwell v. Hogg*, L. R. 2 Ch. 307. In *Springhead Spinning Co. v. Riley*, L. R. 6 Eq. 561, Sir R. Malins, V.-C., went even farther.

Lord Westbury, C., however, spoke of the decision at all events without disapprobation: *Leather Cloth Cos.' case*, 33 L. J., Ch. 199.

(d) *Ward v. Beeton*, L. R. 19 Eq. 207. See *Mitchell v. Condy*, W. N. 1877, p. 153.

(e) *Ainsworth v. Bentley*, 14 W. R. 630; *Ward v. Beeton*, *ubi supra*.

defendants the copyright of an annual, entitled "Beeton's Christmas Annual," he himself entering into their service, it was held that the defendants were entitled to continue the annual publication under that same name, even after the plaintiff had ceased to remain in their employ, and had become unwilling for his name to be used by them in connexion with a work not of his production (a). The name of the editor of a publication, appearing upon the title page, forms no part of the title. Vice-Chancellor Wood refused, therefore, to restrain the proprietors of a paper, who had agreed with their editor not to alter the title of their paper without mutual consent, from omitting the publication on the title-page of the editor's name as such (b).

It is clear that a man has a right to prevent the unauthorized use of his name by another person, apart from any special manufacture, at all events, where such use of it might involve him in legal or other difficulties, though this does not extend to the prohibition of a mere libel. Where name is used so as to injure.

In *Routh v. Webster* (c), a bill was filed to restrain the provisional directors of a joint-stock company, called "The Economic Conveyance Company," from using the plaintiff's name in their prospectuses as a trustee of the company without his authority. The defendants setting up by way of defence that what had been done had been done inadvertently, and stating their intention of discontinuing their misrepresentations, the Master of the Rolls granted the injunction, holding that the defendants were not entitled "to use the name of any person they pleased, representing him as responsible in their speculations, and to involve him in all sorts of liabilities, and then to be allowed to escape the consequences by saying they had done it by inadvertence," and also that the plaintiff was in nowise bound to surrender his right to the injunction. *Routh v. Webster.*

(a) *Ward v. Beeton, ubi supra.*

1131.

(b) *Crookes v. Petter*, 6 Jur. N. S.

(c) 10 Beav. 561.

trusting to the assurances of the defendants as to their intentions for the future. This decision has been generally approved as an "authority for preventing the improper use of a man's name against his will; not for the restraint of a libel, for no libel was involved" (a).

Other instances.

*Bullock v. Chapman* (b) was a somewhat similar case, the question concerning the return to the Stamp Office, under 7 & 8 Vict. c. 113, by a banking company, of the name of a person as one of its shareholders who alleged that he had ceased to be such. Sir J. L. Knight-Bruce, V.-C., refused the injunction, but it seems that if the plaintiff's case had been clear, or the apprehended damage irreparable, the decision would have been different (c). In *Dixon v. Holden* (d), Sir R. Malins, V.-C., restrained the insertion of the plaintiff's name in an advertisement, which stated him to be a member of a bankrupt firm (e).

Trade union.

In *Springhead Spinning Co. v. Riley* (f), an injunction was granted to restrain a somewhat unusual form of injury to property. The defendants there were officers of a trade union, who had given notice to workmen not to enter into the employment of the plaintiffs during a certain dispute between the plaintiffs and the union, thus interrupting the plaintiff's business, and materially diminishing the value of their property. In an American case (g), the Court of Appeals of New York rescinded an injunction which had been granted to restrain the defendants from interfering with the plaintiffs' business by threatening them with legal proceedings in respect of an alleged infringement of trade mark.

(a) Per Lord Cairns, C., in *Prudential Assurance Co. v. Knott*, L. R. 10 Ch. 142.

(b) 2 De G. & Sm. 211.

(c) In *Webster v. Webster*, 3 Swanst. 490 n, the injunction was refused because there was no injury to be apprehended. In *Tudor v. Tudor*, W. N. 1873, p. 72, there was an express contract.

(d) L. R. 7 Eq. 488. See the observations in *Prudential Assurance Co. v. Knott*, L. R. 10 Ch. 142; and *Fisher v. Apollinaris Co.*, *ib.* 297.

(e) See, too, *Clover v. Royden*, L. R. 17 Eq. 190; and *Brook v. Evans*, 2 L. T. N. S. 740.

(f) L. R. 6 Eq. 561.

(g) *Wolfe v. Burke*, 11 Sickels, 115.

The rights which are possessed by the owners of a <sup>Literary</sup> magazine, newspaper, or other literary publication, are of <sup>production.</sup> a very similar character to those which a person has in the goodwill of a business carried on by him. Just as a name affixed to a shop conveys to customers the idea of a certain degree of excellence, with which the articles sold by the person using that name are associated in their minds; so the title prefixed to a periodical, or its general appearance, conveys to those who take it up the impression that the contents of that publication will be found to be up to the standard to which former editions of the simulated publication have attained. Like goods bearing a trade mark, literary publications carry with them wherever they go the guarantee for their quality, and the representations conveyed by their titles are made to all into whose hands they may come, not merely to the original purchaser. With the doctrine of trade marks that of the titles of literary works has also progressed, so that in this case also that which was formerly protected on the general ground of repression of fraud is now protected as property.

The earliest of the cases with respect to the titles of *Hogg v. Kirby.* publications was *Hogg v. Kirby* (a), before Lord Eldon, C., in 1803. The plaintiff was the proprietor of a monthly magazine, called "The Wonderful Magazine," which was in fact edited by the plaintiff, though the defendant's name was used as that of the publisher. At the completion of the fifth number, the defendant refused to allow the longer use of his name, and the arrangement was accordingly discontinued, and the accounts between the parties finally settled. The plaintiff then put out a notice stating that he would publish the sixth number, which he did, but on the following day a new magazine was published by the defendant, under the same title as the old one, but with the addition of "New Series Improved,

(a) 8 Ves. 215.

printed for Kirby & Scott," and it was announced that it was intended to issue this monthly. The plaintiff then instituted a suit to check the piracy, and was able to point to several circumstances, in addition to the title, which indicated an intention of inducing the belief that the work was in fact a continuation of the plaintiff's. Lord Eldon, in his judgment, after alluding to the circumstance that the plaintiff's counsel had argued the case on the several grounds of copyright, fraud, and contract, said that he should state the question to be, "not whether the defendant's work was the same as the plaintiff's, but, in a question between those parties, whether the defendant had not represented it to be the same," in fact, resting the case upon fraud on the part of the defendant. His Lordship held that the defendant's intention did appear to be to represent his work as a continuation of the plaintiff's, "taking the credit which had been acquired by that to his own" (a), and the injunction was accordingly granted, but in such terms as to extend only to the pretence of the defendant's work being a continuation of the plaintiff's (b).

*Spottiswoode v. Clarke.*

In *Spottiswoode v. Clarke* (c), where the plaintiff published "The Pictorial Almanack," the defendant, "Old Moore's Pictorial Almanack," there being certain similarities between the wrappers of the two works, Lord Cottenham, denying that trade marks had anything to do with the case, said that it was difficult to believe that no fraud was intended, but that if such were the case, the attempt was very clumsy. And he felt so much doubt as to the

(a) See *Longman v. Winchester*, 16 Ves. 269, in which Lord Eldon explained his decision in the present case.

(b) In *Strahan v. King*, V.-C. M., Feb. 22, 1877, the proprietors of the "Contemporary Review" sought to restrain their publishers and a former assistant editor from issuing the "Nineteenth Century," alleging

among other things that the defendants were representing the latter to be the plaintiff's Review; the Vice-Chancellor, however, held that the charges failed, and refused to grant an injunction. And see *Clowes v. Hogg*, W. N. 1870, p. 268; *ib.* 1871, p. 40.

(c) 2 Ph. 154.



legal right that, on the balance of convenience, he dissolved the injunction which had been granted by the Vice-Chancellor of England, giving the plaintiff leave to bring an action, and ordering the defendant to keep an account.

In both of the above cases fraud was the *ratio decidendi*, the actions of the defendants being examined with a view to the discovery of their motives and intentions. But at the present date the rule is that even though one person may have adopted in ignorance and *bond fide* a name coincident or nearly coincident with that employed by another person, yet he is bound to discontinue the use of that name so assumed as soon as he is made acquainted with the fact of its earlier employment, and the previous employer of the name is entitled to obtain an injunction against him, unless by his own laches or other default he has lost the rights which he otherwise would have had. The principle enunciated by Sir W. P. Wood, V.-C., in *McAndrew v. Bassett* (a), would be equally applicable to the case of a title of a periodical, that is to say, that although A. may have innocently used the title employed by B., yet if he continues to trade upon B.'s reputation after being made aware of his error, he does so fraudulently.

Title of periodical.

The modern doctrine was thus stated by the L. JJ. in the "Sporting Life" case (b): "It appears to us that there is nothing analogous to copyright in the name of a newspaper, but that the proprietor has a right to prevent any other person from adopting the same name for any other similar publication." And in *Clement v. Maddick* (c), the principle was even more plainly stated by Sir J. Stuart, V.-C. The plaintiffs were the publishers of "Bell's Life," the defendants the originators of a "Penny Bell's Life." The Vice-Chancellor said: "This is an application in support of the right to property. It has been argued on behalf of the

Fraudulent intention need not be proved.

(a) 33 L. J. Ch. 561. And see *Williams v. Osborne*, 13 L. T. N. S. 498.

(b) *Kelly v. Hutton*, L. R. 3 Ch. 708.

(c) 1 Giff. 98.

defendants that, unless a fraudulent intention is made out, the plaintiffs are not entitled to an injunction. That is a view of the law to which I cannot accede. Lord Cottenham, in the case of *Millington v. Fox* (a), has declared that where a trade mark has been innocently and even unconsciously made use of to the injury of another, the owner of the trade mark is entitled to the protection of this Court.—“The defendants’ whole case appears to rest on the fact that they intended to commit no fraud; that they had no fraudulent intention in adopting the words ‘Bell’s Life,’ and thought that by prefixing the word ‘Penny’ to the title they had sufficiently warned the public that they were not purchasing the plaintiffs’ paper. But the absence of fraudulent intention is no defence against an application to the Court for an injunction by the person whose property has been injured” (b).

But deception must be probable.

While, however, the fact that the defendant has adopted a title calculated to deceive is sufficient to entitle the plaintiff to his remedy, without it being necessary for him to go into the defendant’s motives, he must prove the probability of deception, and if he cannot do this, he will fail, even though there may be circumstances pointing to a fraudulent intention. Thus, where the proprietors of the “Era,” one of the principal writers in which paper used the pseudonym of “Touchstone,” sought to restrain the publication of “Touchstone, or the New Era,” and alleged certain further resemblances between the two papers, the Court of Appeal rescinded the injunction which had been granted, on the ground that no deception could occur (c).

Titles of literary works protected generally.

Although the title of a periodical publication as a newspaper, magazine, or almanack, most closely resembles a trade

(a) 3 My. & Cr. 338.

(b) And see *Edmonds v. Benbow*, Seton, 3rd ed. p. 905; *Keene v. Harris*, 17 Ves. 338; *Prowett v. Mortimer*, 2 Jur. N. S. 414; *Ingram v. Stiff*, 5 Jur. N. S. 947; *Corns v. Griffiths*, W. N. 1873, p. 93; *Matsell v. Flanagan*, 2 Abb. Pr. R. N. S.

459; R. Cox, 367.

(c) *Ledger v. Ray*, Ct. of Appeal, May 3, 1877. And see *Bradbury v. Beeton*, 39 L. J. Ch. 57; *Snowden v. Noah*, Hopk. 347; R. Cox, 1; *Bell v. Locke*, 8 Paige, 75; R. Cox, 11; *Stephens v. De Conto*, 7 Robertson, 343; R. Cox, 442.

mark, on account of its repeated and continued use from time to time upon articles of a certain class, the protection afforded by the Court is extended to the title of any kind of literary production. Thus, the publishers of "The Birthday Scripture Text Book" succeeded in obtaining an injunction against persons who had brought out "The Children's Birthday Text Book," Lord Romilly, M.R., remarking that the defendants were not entitled to publish a work "with such a title, or in such form as to binding or general appearance as to be a colourable imitation of that of the plaintiffs (a)." And so, where the title of a song was imitated in such a manner as to be calculated to induce the public to buy the spurious publication in mistake for the genuine, the continuance of the fraud was restrained (b).

The right which exists in the title of a publication is a right of property (c), a chattel interest (d), capable of assignment (e) or bequest (f), passing, in the event of its proprietor's bankruptcy, to his trustee, but incapable of seizure by a sheriff (g), and which, in the event of a dissolution of partnership between joint proprietors, must be sold for the purpose of the proceeds of the sale being included in the assets of the partnership (h).

Although the term copyright has been inadvertently applied to the right in the title of a publication (i), there is no copyright therein (k), and registration under the

(a) *Mack v. Petter*, L. R. 14, Eq. 431.

(b) *Chappell v. Sheard*, 2 K. & J. 117; *Chappell v. Davidson*, *ib.* 123.

(c) *Clement v. Maddick*, 1 Giff. 98; *Kelly v. Hutton*, L. R. 3 Ch. 708.

(d) Per Wood, L. J., in *Kelly v. Hutton*, *ubi supra*.

(e) *Longman v. Tripp*, 2 Bos. & P. N. R. 67; *Ex parte Foss*, 2 De G. & J. 230; *Kelly v. Hutton*, L. R. 3 Ch. 708; *Cloves v. Hogg*, W. N. 1870, p. 268; *ib.* 1871, p. 40; *Ward*

*v. Beeton*, L. R. 19 Eq. 207; *Snowden v. Noah*, Hopk. 347; R. Cox, 1.

(f) *Keene v. Harris*, 17 Ves. 338.

(g) *Ex parte Foss*, 2 De G. & J. 230.

(h) *Bradbury v. Dickens*, 27 Beav. 53; *Dayton v. Wilkes*, 17 How. Pr. R. 510; R. Cox, 224.

(i) *E.g.* per Lord Romilly, M. R., in *Mack v. Petter*, L. R. 14 Eq. 431.

(k) *Kelly v. Hutton*, L. R. 3 Ch. 708; *Correspondent Newspaper Co. v. Saunders*, 11 Jur. N. S. 540.

Copyright Acts gives no further right to protection than exists independently of such registration (a).

Must be  
actual user.

Just as a trade mark must, in order to be entitled to protection, be affixed to a vendible article in the market (b), so a title of a publication must be actually used. The mere intention, previous to publication, of using a particular name as the title of a literary work, even if followed by the registration of the proposed title as copyright, the advertisement of the forthcoming work, or the actual preparation of its contents, confers no right to protection, for, "in the case of advertisement, followed by publication, the party publishing has given something to the world, and there is some consideration for the world's giving him a right; but in the case of mere advertisement, he has neither given, nor come under any obligation to give anything to the world, so that there is a total want of consideration for the right which he claims" (c).

Misrepresentations as to genuineness.

While it is open to any one to manufacture an unpatented article with the process of manufacture of which he has become acquainted, and also to describe it by the name applied to it by the original inventor, so soon as that name shall have become *publici juris*, that is to say, descriptive of a specific article, but not of a specific maker, yet at the same time such subsequent manufacturer is not entitled to carry on an unfair competition in trade with the original maker or his successors in business, by means of assertions or representations that his own article is the genuine one, or that the article of the original maker or his successors is spurious (d).

"Original."

And where such an assertion or representation is embodied in the title of the later manufacturer's article

(a) *Maxwell v. Hogg*, L. R. 2 Ch. 307.

(b) Or registered, since the Trade Mark Act of 1875.

(c) Per Sir G. J. Turner, L. J.,

in *Maxwell v. Hogg*, L. R. 2 Ch. 307. And see *Correspondent Newspaper Co. v. Saunders*, 11 Jur. N. S. 540.

(d) *James v. James*, L. R. 13 Eq. 421.

by its being styled the "original," an appellation which would naturally suggest the idea of the article in question being the make of the original manufacturer, such fraudulent representation will usually be restrained (a). But in the entire absence of evidence as to deception, Sir W. P. Wood, V.-C., refused to grant an injunction in a similar case (b), and from the result of later litigation between the same parties (c), it is clear that the presumption against a person who styles an article of his own manufacture, but not of his invention, "the original," may be rebutted.

In an early case (d) the defendant attempted to attract to himself the custom intended for the plaintiffs by an ingenious variation of their labels, his own labels being facsimiles of those of the plaintiffs, with only the difference that whereas theirs contained the sentence "Manufactured by Day and Martin," his bore the words "Equal to Day and Martin's," the "Equal to" being in very small type. So, in an American case (e), a dentist formerly employed by the Colton Dental Association, on setting up in business for himself, described himself in his notice as "formerly operator at the Colton Dental Rooms," "formerly operator at the" being printed very small.

Again, in *Franks v. Weaver* (f), the plaintiff sold a medicine which he had invented, and which he termed "Franks' Specific Solution of Copaiba," in bottles enclosed in wrappers, on which were printed directions for use, and testimonials. The defendant, an agent of the plaintiff, sold a preparation of his own, labelled "Chemical Solution of Copaiba." The label went on to state that the plaintiff had invented the "Specific Solution," and then gave the testimonials printed by the plaintiff as commendatory

(a) *Cocks v. Chandler*, L. R. 11 Eq. 446; *Lazenby v. White*, *ib.*

(b) *Browne v. Freeman*, 12 W. R. 305.

(c) *Browne v. Freeman*, W. N. 1873, p. 178.

(d) *Day v. Binning*, C. P. Cooper, 489; 1 Leg. Obs. 205.

(e) *Colton v. Thomas*, 2 Brewster, 308; R. Cox, 507.

(f) 10 Beav. 297.

Deceptive labels and notices.

*Franks v. Weaver.*

of the plaintiff's medicine, and also the same directions for use as those given by the plaintiff. In *Sedon v. Senate* (a), a person who had sold a medicine to another, set up a new medicine under a similar description, and in his advertisement adopted verses which had been attached to the original medicine. In all these cases injunctions were granted.

The question of representation.

Cases in which the defendant, without putting any trade mark at all on his goods, or putting a trade mark admittedly different from the trade mark, if any, of the plaintiff on his goods, has represented the goods as being goods manufactured by the plaintiff, are always cases of fraud, and the Court has to try the question of representation. What the defendant has said or done must amount to a representation that the goods to be sold are the goods of the plaintiff, or that they are manufactured by the plaintiff. It is strongly in favour of the defendant if he has put a distinct and obvious trade mark on the goods, showing them to be of his own make; or, again, if he states fairly and in plain English that he is the manufacturer (b). And describing articles formerly patent by the name of the former patentee is not necessarily fraudulent, since the name may be used as indicative of a principle of construction (c).

Mode of packing.

The imitation of a peculiar manner of making up and packing goods may, in combination with other circumstances, be held to prove a fraudulent intention, and it seems that, even in the absence of other circumstances of fraud, if the imitation is very significant, and the evidence very conclusive, an injunction will be awarded (d).

(a) 2 V. & B. 220.

(b) *Singer Manufacturing Co. v. Wilson*, L. R. 2 Ch. D. 434 (see in particular, pp. 443—52—55). The observations there made on the last point were repeated in the Court of Appeal in *Cheavin v. Walker*, L. R. 5 Ch. D. 850.

(c) *Ib.* And see *Wheeler & Wilson*

*Manufacturing Co. v. Shakespear*, 39 L. J. Ch. 36.

(d) See *Edelsten v. Vick*, 11 Hare, 78; *Woollam v. Ratcliff*, 1 H. & M. 259; *Anglo-Swiss Condensed Milk Co. v. Swiss Condensed Milk Co.*, W. N. 1871, p. 163. See also *Orr v. Diaper*, L. R. 4 Ch. D. 92.

The manner in which the Court interferes by way of injunction to prevent unfair competition in trade is well illustrated by a case which has always attracted a good deal of attention, that of the omnibus companies (a). In that case the plaintiffs were the proprietors of a line of omnibuses painted in a particular manner, with the words "Conveyance Company" and "London Conveyance Company" upon them. The defendant ran omnibuses similarly painted, and dressed his servants in a livery imitated from that of the plaintiffs' employés. On his being required to alter this, he made some mere colourable alterations, but really left the matter as it stood at first. Lord Langdale, M.R., on the case coming before him on motion to dissolve an interlocutory injunction, said that he had not the least doubt that the defendant intended to represent his omnibuses to the public as those of the plaintiffs. He said, "it was not to be said that the plaintiffs had any exclusive right to the words "Conveyance Company" or "London Conveyance Company," or any other words, but they had a right to call upon that Court to restrain the defendant from fraudulently using precisely the same words and devices which they had taken for the purpose of distinguishing their property, and thereby depriving them of the fair profits of their business by attracting custom on the false representation that carriages, really the defendant's, belonged to and were under the management of the plaintiffs." This case was not at all a case of trade mark, though reference has been made to it as such, the Master of Rolls expressly denied any exclusive right in the words painted on the vehicles, and personally altered the terms of the injunction so as to avoid creating such a right. In the language of Sir W. P. Wood, V.-C. (b), "the defendant might have had those

Imitation of  
line of omni-  
buses.

(a) *Knott v. Morgan*, 2 Keen, 213. See also *Stone v. Carlan*, 13 Mo. L. R. 360; *R. Cox*, 115; *Marsh v. Billings* 7 Cush. 322; R.

*Cox*, 118.

(b) *Woollam v. Ratcliff*, 1 H. & M. 259.

words painted on a yellow omnibus without objection, and so of the other resemblances; the wrong lay in their accumulation, not in any one of them alone." The value of the case really consists in the example it affords of the way in which the aggregation of a number of circumstances, individually comparatively harmless, may produce a result injurious to an individual and obnoxious to the law; and also of the manner in which the law will interfere to protect the interests of honest trade.

**Bank notes.** In *Emperor of Austria v. Day* (a), the issue of spurious bank notes was restrained on the ground that "damage would thereby be done to the property of the Austrian sovereign as King of Hungary, and to the property of his subjects, whom he had a right to represent in an English Court of Justice" (b).

**Etchings.** Where A. had surreptitiously obtained possession of some etchings by B., and had advertised them for exhibition, and a catalogue of them, Lord Cottenham, C., held that there was a title to relief alike on the ground of injury to property and on that of breach of trust (c).

**Singer.** Again, where A. had agreed to sing at B.'s theatre during a certain period, and during that period to sing at no other without B.'s authority, Lord St. Leonards, C., decided that even though the Court of Chancery had no means of enforcing the positive branch of the agreement by A., viz., for her to sing at B.'s theatre, yet it would enforce the negative branch of the agreement, and restrain A. from singing at a place unauthorized by B. (d).

**Trade secrets.** As to the cases which have been decided in respect of trade secrets, the general rule may be stated as being that any person who has, without the use of unfair means, become acquainted with the mode of compounding a secret unpatented preparation, may make and sell the compound,

(a) 3 De G. F. & J. 217.

(b) Per Lord Campbell, C.

(c) *Prince Albert v. Strange*, 1

Mac. & G. 25.

(d) *Lumley v. Wagner*, 1 De G.

M. & G. 604.



provided he does not lead the public to suppose that his preparation is the manufacture of the original discoverer or of his successors in business, and he may even call the compound made by himself by the same name as that given by the original discoverer to his, so long as he does not sell his own goods as and for those of another (a). On the other hand, where the knowledge of the secret process has been acquired by means of a breach of trust, neither the person who has committed the breach of trust, nor anyone to whom he has imparted his discovery, will be allowed to make use of the information so surreptitiously acquired (b).

If, again, one person has entered into a contract, express or implied (c), with another person, to keep that other person's secret, and not to divulge it, nor to use it for his own advantage, he will be restrained by injunction from so divulging or using the secret in question (d); and a contract by which one person who has sold to another a trade secret has bound himself not to use that secret is not invalid as being in restraint of trade (e).

Contract not to use or divulge another's secret.

Where the defendant is availing himself of a breach of faith or of contract by means of the use of a certain designation for his goods, in such a case the defendant will be restrained from the use of such designation,

Name of secret manufacture.

(a) *James v. James*, L. R. 13 Eq. 421; *Singleton v. Bolton*, 3 Doug. 293; *Williams v. Williams*, 3 Mer. 157; *Canham v. Jones*, 2 V. & B. 218. And see the comments on that case, in *Morison v. Moat*, 9 Hare, 241. In *Massam v. J. W. Thorley's Cattle Food Co.*, W. N. 1877, p. 152, Sir R. Malins, V.-C., decided in the same way.

(b) *Williams v. Williams*, 3 Mer. 157; *Yovatt v. Winyard*, 1 Jac. & W. 394; *Tipping v. Clarke*, 2 Hare, 383; *Morison v. Moat*, 9 Hare, 241; *Estcourt v. Estcourt Hop Essence Co.*, L. R. 10 Ch. 276.

(c) See *Tipping v. Clarke*, 2 Hare, 383.

(d) *Sedon v. Senate*, 2 V. & B. 220; *Bryson v. Whitehead*, 1 S. & S. 74; *Green v. Folgham*, *ib.* 398; *Tipping v. Clarke*, 2 Hare, 383; *Morison v. Moat*, 9 Hare, 241. But see *Newbery v. James*, 2 Mer. 446, in which Lord Eldon declined to issue an injunction, on the ground that the Court could have no means of judging as to its infringement.

(e) *Bryson v. Whitehead*, 1 S. & S. 74. And see *Leather Cloth Co. v. Lonsont*, L. R. 9 Eq. 352; and *Allsopp v. Wheatcroft*, L. R. 15 Eq. 59.

although the plaintiff may have no exclusive right in the same, apart from such special circumstances (a).

Cannot be used in ignorance of true recipe.

No one will be allowed to use the name of a well-known article, with the secret recipe of which he is unacquainted, upon goods of his own make, so as to represent the spurious goods to be genuine (b).

*Green v. Folgham.*

The manner in which the Court deals with a secret process is well exemplified by the case of *Green v. Folgham* (c). There the grandfather of the plaintiffs and defendant possessed the secret of a recipe for an ointment called "Dr. Johnson's Ointment for the Eyes." This secret he settled on his daughter at her marriage, and directed that at the death of the survivor of her and her husband it should be sold for the benefit of the children. The daughter communicated the secret to her eldest son and destroyed the recipe. On a bill being filed against the eldest son by the younger children, Sir J. Leach, V.-C., decreed an account of the profits made by the defendant since his mother's death by the sale of the ointment, a reasonable allowance being made him for his time and trouble in preparing and vending the same. And the Vice-Chancellor went on to remark that if the secret could be made a subject of sale, the plaintiffs would be next entitled to ask from the Court that a sale should be directed accordingly. But inasmuch as the Court had no possible means either to communicate the secret to a purchaser with certainty, or to protect him in the enjoyment of it, a sale was, he said, impracticable (d). But, he continued, although the Court could not direct a sale, it had the power of taking a course which, in point

(a) *Morison v. Moat*, 9 Hare, 241. And see *Green v. Folgham*, 1 S. & S. 398; *James v. James*, L. R. 13 Eq. 421; *Estcourt v. Estcourt Hop Essence Co.*, L. R. 10 Ch. 276. In *Canham v. Jones*, 2 V. & B. 218, and *Green v. Rooke*, W. N. 1872, p. 49, L. J. Notes of Cases, 1872, p.

54, no fraud was proved.

(b) *Cotton v. Gillard*, 44 L. J. Ch. 90; *Ansell v. Gaubert*, Seton, 4th ed. 235.

(c) 1 S. & S. 398.

(d) See *Newbery v. James*, 2 Mer. 446.

of advantage, would be equivalent to the plaintiffs'. It could enquire what would be the value of the secret to sell, provided it could be made the subject of sale; and the annual profits which had actually been made by the sale of the ointment from the death of the mother would be a fair criterion by which that value might be estimated. And the Vice-Chancellor accordingly decreed the value to be ascertained at law, as at the date of the decree.

In connexion with this subject it should be mentioned that when, as is frequently the case, the article manufactured by the secret process is a quack medicine, or an article intended to deceive the public, the Court will not struggle to protect the secret or to punish those who invade it (a). Fraudulent  
secret.

(a) *Williams v. Williams*, 3 Mer. 157; *Estcourt v Estcourt Hop* *Essence Co.*, L. R. 10 Ch. 276.

## CHAPTER IX.

### GOODWILL.

Value of goodwill.

So early as the time of Lord Hardwicke (*a*) it was fully recognised that the goodwill of a trade might be of considerable value, and by the beginning of the present century it was said at the bar (*b*) to be a matter of common experience that contracts for the sale of a goodwill were enforced by actions at Law at every sittings.

Connexion between goodwill and trade marks.

The connexion between goodwill and trade marks is very intimate. Thus, where in a suit for specific performance of a contract for sale of a business (*c*), one of the subjects of the contract was "goodwill, &c.," Sir J. Romilly, M.R., said that those words united such things as were necessarily connected with and belonged to the goodwill, many of which were easily pointed out; for instance, the use of trade marks. Such things would be included in the words "et cætera," and would be included in the conveyance.

In *Shipwright v. Clements* (*d*), it was held by Sir R. Malins, V.-C., that the sale of a business carried with it the goodwill and trade marks (*e*). Again, a trade mark

(*a*) *Giblett v. Read*, 9 Mod. 459.

(*b*) *Bunn v. Guy*, 4 East, 190.

(*c*) *Cooper v. Hood*, 26 Beav. 293.

(*d*) 19 W. R. 599.

(*e*) And see *Hall v. Barrows*, 33 L. J. Ch. 204. In *Churton v. Douglas*, Johns. 174, V.-C. Wood went so far as to say that the question of trade mark was in fact the same as

the question of firm name, which, it was obvious, was an important part of the goodwill. See, too, *Congress & Empire Spring Co. v. High Rock Congress Spring Co.*, 57 Barb. 526, R. Cox, 599; and *Dixon Crucible Co. v. Guggenheim* 2 Brewster, 321, R. Cox, 559.

cannot exist in gross and apart from the goodwill of the business with which it has been connected (a).

This close connexion is fully recognised in the Trade Marks Registration Act, 1875 (b), by the second section of which it is provided that a registered trade mark shall be assigned and transmitted only in connexion with the goodwill of the business concerned in such particular goods or classes of goods, and shall be determinable with such goodwill. In the third section the right of the registered proprietor to the exclusive use of the trade mark is made subject to the provisions in respect of its connexion with the goodwill. Again, by the 27th rule, every declaration made by an assignee or transmittee of a registered trade mark must state that he is entitled to the goodwill of the business concerned in the goods with respect to which the trade mark is registered, or to some part of such goodwill (c).

“Goodwill, I apprehend,” said Sir W. P. Wood, V.-C., in the important case of *Churton v. Douglas* (d), “must mean every advantage, every positive advantage, if I may so express it, as contrasted with the negative advantage of the late partner not carrying on the business himself, that has been acquired by the old firm in carrying on its business, whether connected with the premises in which the business was previously carried on, or with the name of the late firm, or with any other matter carrying with it the benefit of the business.”—“Very frequently the goodwill of a business or profession, without any interest in land connected with it, is made the subject of sale, though there is nothing tangible in it” (e).

Connexion  
recognised by  
Registration  
Act of 1875.

What consti-  
tutes goodwill.

(a) *Cotton v. Gillard*, 44 L. J. Ch. 90; *Dixon Crucible Co. v. Guggenheim*, 2 Brewster 321, R. Cox, 559; *Derringer v. Plate*, 29 Cal. 292, R. Cox, 325.

(b) 38 & 39 Vict. c. 91.

(c) And see Forms E and F, ap-

ended to the Rules; also that given in the Instructions, p. 266.

(d) Johns. 174.

(e) Per Pollock, C. B., in *Potter v. The Commissioners of Inland Revenue*, 10 Ex. 147.

Formerly  
treated as  
always local.

Previously to the case of *Churton v. Douglas* (a), the language of various eminent judges as to what constituted "goodwill" had rather tended to connect the goodwill with the premises on which the business was carried on, than with the business carried on there, probably because that language, though in general terms, was directed to the circumstances of the case then in course of decision (b). Thus, Lord Eldon, C., in *Cruttwell v. Lye* (c), describes goodwill as "nothing more than the probability that the old customers will resort to the old place" (d). Sir J. Leach, M.R., describes it (e) as "an advantage attaching to the possession of the house" in which the business had been carried on; and Lord Langdale, M.R. (f), as "the chance or probability that custom will be had at a certain place of business in consequence of the way in which that business has been previously carried on" (g).

Not so now.

The judgment in *Churton v. Douglas* has now established that the dictum of Lord Eldon in *Cruttwell v. Lye* (h) must be read as meaning that goodwill is the probability that the old customers will buy the old goods from the old firm or their successors in business, whether the means of identification be the place of business or otherwise (i). The customers of a large wholesale house cannot be supposed to pay much attention to the exact site of the establishment, and "there may even be a species of goodwill which may be the subject of bargain and sale, although not dependent on the business being carried on in any particular place; for instance, in the case of what are called quack medicines" (k).

(a) Johns. 174.

(b) See *Churton v. Douglas*, *ubi supra*.

(c) 17 Ves. 335.

(d) In this case Sir A. Piggott, in the course of his argument, said that "goodwill" was "the advantage belonging to a house long accustomed to carry on a particular trade." See, too, Sir T. Plumer, V.-C., in *Harrison v. Gardner*, 2

Madd. 198.

(e) In *Chissum v. Dewes*, 5 Russ. 29.

(f) In *England v. Downs*, 6 Beav. 269.

(g) Johns. 174.

(h) 17 Ves. 335.

(i) And compare *Labouchere v. Dawson*, L. R. 13 Eq. 322.

(k) Brett, J., in *Llewellyn v. Rutherford*, L. R. 10 C. P. 456. The

While, however, there may be a species of goodwill not intimately connected with a particular spot, where, as is usually the case, there is such a connexion, it will be of great consequence, and a house of little value in itself, at a rack rent, may have a peculiar value attached to it from the fact of a long-established business having been carried on there (a).

Local connexion important.

Looked at from another point of view, the goodwill may be said to be the money value of what has just been described as the goodwill (b).

Another view of goodwill.

While the value of most businesses is determined partly by the personal qualifications of the proprietor, partly by those of his subordinates, partly (sometimes principally) by local situation, partly, it may be, by yet other considerations, there is one class of business in which the personal character and ability of the head of the establishment are of paramount and almost exclusive importance. That class comprehends the medical and legal, or "learned" professions.

Goodwill in learned professions.

Adverting to this distinction, Sir J. Cross, in *Ex parte Thomas* (c), divided goodwill into personal and local, adding that there might be a goodwill partly personal and partly local (d). But the employment of the word "local" as descriptive of one of the two principal heads under which goodwill falls seems open to objection, on the ground that it tends to produce the misconception exposed and removed by Vice-Chancellor Wood, in *Churton v. Douglas* (e), and to unduly narrow the meaning to be assigned to "goodwill," which, as has been seen, comprehends, not merely

Division into personal and local.

goodwill of a newspaper is suggested by Lindley, J., in his work on Partnership. See, too, *Potter v. The Commissioners of Inland Revenue*, 10 Ex. 147.

(a) *Parsons v. Hayward*, 31 L. J. Ch. 666; *Llewellyn v. Rutherford*, L. R. 10 C. P. 456.

(b) *Austen v. Boys*, 27 L. J. Ch. 714; *Llewellyn v. Rutherford*

(Brett, J.), *ubi supra*.

(c) 2 Ment. D. & De G. 294.

(d) This division corresponds to that of trade marks into personal and local, made by Sir J. Romilly, M.R., in *Hall v. Barrows*, 32 L. J. Ch. 548, which, however, was not indorsed by Lord Westbury, C. See 33 L. J. Ch. 204.

(e) Johns. 174.

the advantage of local situation, but every positive advantage connected with an established trade.

Division into goodwill of profession and of trade.

The two classes of goodwill may more satisfactorily be distinguished, from the classes of pursuit to which they respectively relate, as the goodwill of a profession on the one hand, and that of a trade on the other. It is, indeed, true that the goodwill of a trade, the more usual kind, possesses so many characteristics which that of a profession has not, that the latter has been thought to be hardly entitled to the name of goodwill at all (a); but, on the other hand, there are points of resemblance in which both classes are governed by the same general rule, and there is a convenience in following an established phraseology.

Contract by attorney to transfer goodwill enforced.

In *Bunn v. Guy* (b), the Lord Chancellor was impressed by the difference between the goodwill of a profession and that of a trade, and caused the opinion of the Court of King's Bench to be taken as to whether a contract by a practising attorney (among other things) to relinquish his business and recommend his clients to two other attorneys for valuable consideration, and not to practise within certain limits, and to permit them to use his name for a certain time, was good at Law, so that the vendor could recover in an action. The answer was that the contract was good in Law.

Decision doubted.

This decision did not long remain uncriticized. In *Bozon v. Farlow* (c) Sir W. Grant, M. R., refused to grant specific performance of an agreement for the sale of an attorney's business, the terms of the agreement not being sufficiently specified to enable the Court to give the purchaser the proper return for his money, and he took the opportunity of questioning the propriety of a sale of an attorney's business, which depended so much on the incumbent's own character. And in *Farr v. Pearce* (d), Sir J. Leach, V.-C., strongly supported the personal cha-

(a) See *Austen v. Boys*, 27 L. J. Ch. 714.

(b) 4 East, 190, in 1803.

(c) 1 Mer. 459.

(d) 3 Madd. 74.



racter of a profession as contrasted with a commercial business.

Where, however, a solicitor had actually sold his practice for valuable consideration, and undertaken not to practise as a solicitor in Great Britain for twenty years, Lord Langdale, M. R., granted an injunction to restrain him from so practising, and from endeavouring to induce any persons who were the clients of the former and then present firm to cease to employ that firm (a).

Sale of  
solicitor's  
practice.

In a case (b) which was "not quite a case of dissolution of partnership, but something between a dissolution of the partnership and a purchase of an attorney's business and firm name," Sir J. L. Knight-Bruce, V.-C., having refused specific performance of the alleged contract, on the ground of non-acceptance by the plaintiff, said that, "notwithstanding the case of *Bunn v. Guy* (c), from which he did not mean to express dissent, decided as it was by judges of high authority, he was not prepared to say that it was fit that a Court of Equity should enforce an agreement between two solicitors that one on retiring from the business should permit the other to carry on the business in his name. Whether such an agreement were or were not within the strict policy of the law, it might be doubtful whether the Court of Chancery ought to assist it."

*Thornbury v. Bevill.*

But where, on a dissolution by two solicitors of a *bonâ fide* partnership between them, it was agreed that one should carry on the business under the old firm name, paying the other certain annuities, it was held by Sir W. P. Wood, V.-C., that the agreement contained nothing illegal or contrary to public policy (d).

Partnership  
between  
solicitors  
dissolved.

Again, on a dissolution of a professional partnership, a retiring partner is not entitled to compensation in respect

(a) *Whittaker v. Howe*, 3 Beav. C. Ch. 554.  
383.

(c) 4 East, 190.

(b) *Thornbury v. Bevill*, 1 Y. & (d) *Aubin v. Holt*, 2 K. & J. 66.

of his share in the goodwill (a), and a surviving partner may continue the business (b).

*Spicer v. James.*

In *Spicer v. James* (c), a country attorney having died intestate, his administrator carried on the business until his son came of age, when he handed over the business to the son. The son becoming insolvent, a bill for an account of profits, and insisting that a sum was due to the intestate's estate in respect of the goodwill, was filed against the administrator by a creditor of the son, but was dismissed by Sir J. Leach, M. R., on the ground that the goodwill of an attorney's business was not a subject of administration.

Estate of professional man interested in proceeds of goodwill.

Where, however, the widow of a surgeon-dentist, being one of his executors, sold the goodwill of his business with an introduction to patients, Vice-Chancellor Knight-Bruce held that either the whole, or, at all events, some part of the price paid belonged to the testator's estate (d).

Goodwill of professional business. Recapitulation.

The goodwill of a professional business may, in short, be sold, and a breach of a contract to sell may be a ground for damages, but the authorities are against the enforcement of the specific performance of such a contract, though when the sale is complete, the terms of the sale will be carried into execution. Such a goodwill, in the case of a partnership, survives to the surviving partner, and is not a subject of compensation to an outgoing partner. Special stipulations will, however, be enforced. Such a goodwill will not be considered in the administration of the proprietor's estate unless actually sold; but if that has been done, the price paid or some part of it will be attributed to the estate.

Goodwill of a trade.

"The goodwill of a trade," said Tindal, C. J. (e), "is a subject of value and price. It may be sold (f), be-

(a) *Austen v. Boys*, 27 L. J. Ch. 714; *Farr v. Pearce*, 3 Madd. 74.  
 (b) *Farr v. Pearce*, 3 Madd. 74.  
 (c) *Collyer on Partnership*, 104.  
 (d) *Smale v. Graves*, 3 De G. & S.

706.

(e) In *Hitchcock v. Coker*, 6 Ad. & E. 438—54.

(f) See *Darbey v. Whitaker*, 4 Dr. 139; *Churton v. Douglas*, Johns.

queathed (a), or become assets in the hands of the personal representatives of a trader" (b). Though incapable, by reason of its incorporeal nature, of seizure by a sheriff (c), it is "goods and chattels within the Bankruptcy Acts (d), and may be dealt with by the trustee in bankruptcy just as the bankrupt's other property" (e). It is also "property" within the Stamp Acts (f).

The valuable character of goodwill is not confined to a few trades, but is recognised throughout the commercial world. Thus, among the cases on this subject which have come before the Courts, instances are to be found in which the traders were public-house keepers (g), brewers (h), bankers (i), tailors (j), mercers (k), dyers (l), milliners (m), upholsterers (n), pencil-makers (o), tobacco-brokers (p), snuff-makers (q), paper-makers (r), provision-merchants (s), cheese-mongers (t), glass-blowers (u), glass-stainers (x), manufacturing chemists (y), commission agents (z), iron

Universally  
valuable.

174; *Cooper v. Hood*, 26 Beav. 293; *Hudson v. Osborne*, 39 L. J. Ch. 79; *Shipwright v. Clements*, 19 W. R. 599; *Howe v. Searing*, 10 Abb. Pr. R. 264; *R. Cox*, 244.

(a) See *Keene v. Harris*, 17 Ves. 338; *Robertson v. Quiddington*, 28 Beav. 529.

(b) See *Worrall v. Hand*, Peake, 74; *Dakin v. Cope*, 2 Russ. 170; *Chissum v. Dewes*, 5 Russ. 29.

(c) *Ex parte Foss*, 2 De G. & J. 230.

(d) *Longman v. Tripp*, 2 Bos. & P. N. R. 67; *Ex parte Foss*, *ubi supra*.

(e) See *Hudson v. Osborne*, 39 L. J. Ch. 79.

(f) *Potter v. The Commissioners of Inland Revenue*, 10 Ex. 147.

(g) *Coslake v. Till*, 1 Russ. 376; *Spratt v. Jeffery*, 10 B. & C. 249; *Ex parte Thomas*, 2 Mont. D. & De G. 294; *Tweed v. Mills*, L. R. 1 C. P. 39; *Llewellyn v. Rutherford*, L. R. 10 C. P. 456.

(h) *Cooper v. Watson*, 3 Doug. 414; *Wade v. Jenkins*, 2 Giff. 509; *Hall v. Hall*, 20 Beav. 139.

(i) *Smith v. Everitt*, 27 Beav. 446.

(j) *Newling v. Dobell*, 38 L. J. Ch. 111; *Parsons v. Hayward*, 31 L. J. Ch. 666.

(k) *Morris v. Moss*, 25 L. J. Ch. 194.

(l) *Bryson v. Whitehead*, 1 S. & S. 74.

(m) *Shackle v. Baker*, 14 Ves. 468.

(n) *Chissum v. Dewes*, 5 Russ. 29.

(o) *Banks v. Gibson*, 34 Beav. 566.

(p) *Davies v. Hodgson*, 25 Beav. 177.

(q) *Hammond v. Douglas*, 5 Ves. 539.

(r) *Potter v. The Commissioners of Inland Revenue*, 10 Ex. 147.

(s) *Scott v. Mackintosh*, 1 V. & B. 503.

(t) *Hudson v. Osborne* 39 L. J. Ch. 79.

(u) *Featherstonhaugh v. Fenwick*, 17 Ves. 298.

(x) *Scott v. Rowland*, 20 W. R. 508.

(y) *Turner v. Major*, 3 Giff. 442.

(z) *Macdonald v. Richardson*, 1 Giff. 81.

masters (a), carriers (b). The goodwill of a newspaper or magazine, consisting of the right to use the title under which reputation has been acquired by a publication, is another instance of valuable goodwill (c).

Firm name  
part of good-  
will.

"The name of a firm," said Sir W. P. Wood, V.-C., in *Churton v. Douglas* (d), "is a very important part of the goodwill of the business carried on by the firm. A person says, "I have always bought good articles at such a house of business ; I know it by that name, and I send to the house of business identified by that name for that purpose. There are cases every day in this Court with reference to the use of the name of a particular firm, connected generally, no doubt, with the question of trade mark. But the question of trade mark is in fact the same question. The firm stamps its name on the articles. It stamps the name of the firm which is carrying on the business on each article, as a proof that they emanate from the firm ; and it becomes the known firm to which applications are made, just as much as when a man enters a shop in a particular locality. And when you are parting with the goodwill of a business, you mean to part with all that good disposition which customers entertain towards the house of business identified by the particular name or firm, and which may induce them to continue giving their custom to it. You cannot put it anything short of that. That the name is an important part of the goodwill of a business is obvious, when we consider that there are at this moment large banking firms, and brewing firms, and others, in this metropolis, which do not contain a single member of the individual name exposed in the firm " (e).

(a) *Cooper v. Hood*, 26 Beav. 293 ;  
*Hall v. Barrows*, 33 L. J. Ch. 204.

(b) *Cruttwell v. Lye*, 17 Ves. 335.

(c) *Giblett v. Read*, 9 Mod. 459 ;  
*Keene v. Harris*, 17 Ves. 338 ; *Long-*  
*man v. Tripp*, 2 Bos. & P. N. R.  
67 ; *Ex parte Foss*, 2 De G. & J.  
230 ; *Marshall v. Watson*, 25 Beav.

501 ; *Bradbury v. Dickens*, 27 Beav.  
53 ; *Snowden v. Noah*, Hopk. 347 ;  
R. Cox, 1 ; *Dayton v. Wilkes*, 17  
How. Pr. R. 510 ; R. Cox, 224.

(d) *Johns*. 174.

(e) And see *Lewis v. Langdon*, 7  
Sim. 421 ; *Banks v. Gibson*, 34 Beav.  
566 ; *Bond v. Milbourn*, 20 W. R.

Goodwill is a subject of sale (a), and may fetch a considerable price. There was formerly a doubt whether a contract for the sale of a goodwill would be specifically enforced in Equity (b), but this question was set at rest by Sir R. T. Kindersley, V.-C., in *Darbey v. Whitaker* (c). "It is said there can be no specific performance of a contract to purchase a goodwill. No doubt you cannot have a specific performance of a contract to purchase a goodwill alone, unconnected with business premises, by reason of the uncertainty of the subject-matter. But when a goodwill is entirely or mainly annexed to the premises, and the contract is for the sale of the premises and goodwill, there is not the slightest ground for doubt that such a contract is a fit matter for a decree in a suit for specific performance." It seems, however, that there may be cases in which a contract for sale of a goodwill would be specifically enforced, the business and goodwill being included together, though there was no such dependence on the business premises (d). Such would be the case with the goodwill of a quack medicine or a newspaper, which is practically independent of locality (e). The connexion between the business and the goodwill is

197; *Scott v. Rowland*, 20 W. R. 508; *Peterson v. Humphrey*, 4 Abb. Pr. R. 394; R. Cox, 212; and *Howe v. Searing*, 10 Abb. Pr. R. 264; R. Cox, 244.

(a) See, among other cases, *Bunn v. Guy*, 4 East, 190; *Smale v. Graves*, 3 De G. & S. 706; *Cooper v. Hood*, 26 Beav. 293; *Bradbury v. Dickens*, 27 Beav. 53; *Churton v. Douglas*, Johns. 174.

(b) *Baxter v. Connolly*, 1 Jac. & W. 580. And see *Coslake v. Till*, 1 Russ 376; *Bozon v. Parlow*, 1 Mer. 459.

(c) 4 Dr. 139.

(d) Thus, Sir J. Romilly, M. R., says, in *Robertson v. Quiddington*, 28 Beav. 529: "Goodwill is never a tangible thing unless it is connected

with the business itself, from which it cannot be separated. I never knew a case in which it has been so treated." In *England v. Downs*, 6 Beav. 269, and *Morris v. Moss*, 25 L. J. Ch. 194, the goodwill of a business was held, under the circumstances, to pass with the stock, and not with the premises. And see *Woodward v. Lazar*, 21 Cal. 448; R. Cox, 300. In *Llewellyn v. Rutherford*, L. R. 10 C. P. 456, the price of the goodwill was held to belong to the previous lessee, under the contract between him and the lessor.

(e) See *Bryson v. Whitehead*, 1 S. & S. 74; *Llewellyn v. Rutherford*, L. R. 10 C. P. 456 (per Brett, J.); *Snowden v. Noah*, Hopk. 347; R. Cox, 1.

such that the sale of the business (a), or of a share in the business (b), as a going concern, carries with it the goodwill, or the corresponding share in the goodwill, even without its being specifically mentioned. And if the goodwill is sold, the trade name goes with it (c).

Rights of  
vendor of  
goodwill.  
After sale may  
set up new  
business.

As to the rights of the vendor after the sale of his business and goodwill, "it has been settled that there is no implied covenant of any kind" (d), and, in the absence of any express restrictive covenant, the vendor is at liberty to set up a business of precisely the same description as that of which he has sold the goodwill, and that next door to the place where his former business was carried on; but he is not entitled to represent that he is carrying on the same identical business, either by direct representations, or by assuming the trade name under which the business he has sold acquired its reputation, or the trade marks by which its goods have become known in the market (e). If the trade name consisted simply of the vendor's own name, the restraint upon his continuing to use that name will have to depend upon the evidence of that user being fraudulent (f), but in the absence of such evidence, the *bonâ fide* use by a man of his own name will not be prohibited (g). But where the trade name in question consisted of the name of the defendant, John Douglas, with the addition "and Co.," it was held that the use of that was an important ingredient in the case, as proving fraudulent intention (h).

(a) *Shipwright v. Clements*, 19 W. R. 599.

(b) *Churton v. Douglas, Johns*. 174.

(c) *Banks v. Gibson*, 34 Beav. 586; *Churton v. Douglas, ubi suprâ*.

(d) *Hudson v. Osborne*, 39 L. J. Ch. 79. And see *Harrison v. Gardner*, 2 Madd. 198; *Churton v. Douglas, Johns*. 174.

(e) *Shackle v. Baker*, 14 Ves. 468; *Cruttwell v. Lyc*, 17 Ves. 335; *Kennedy v. Lee*, 3 Mer. 441-52; *Sedon v. Senate*, 2 V & B. 220;

*Harrison v. Gardner*, 2 Madd. 198; *Churton v. Douglas, Johns*. 174; *Hudson v. Osborne*, 39 L. J. 79; *Labouchere v. Dawson*, L. R. 13 Eq. 322.

(f) *Churton v. Douglas, Johns*. 174; *Holloway v. Holloway*, 13 Beav. 209.

(g) *Burgess v. Burgess*, 3 De G. M. & G. 89; *Bond v. Milbourn*, 20 W. R. 197.

(h) *Churton v. Douglas, ubi suprâ*. In *Bond v. Milbourn*, 20 W. R. 197 (very shortly reported), it seems

When the vendor of a goodwill has established a new firm for the purpose of carrying on a business similar to that which has been sold, "the new firm," says Lord Romilly, M.R. (a), "is entitled to publish any advertisement he pleases in the papers, stating that he is carrying on such business. He is entitled to publish any circulars to all the world to say that he is carrying on such a business, but he is not entitled, either by private letter, or by a visit, or by his traveller or agent, to go to any person who was a customer of the old firm, and solicit him not to continue his business with the old firm, but to transfer it to him, the new firm (b)." In short, the new firm may set up a new business, just as any one else may, but he is not at liberty to resume the advantages connected with the old firm, which he has sold, although it is perfectly allowable for him to state his connexion with the former business (c).

But must not interfere unfairly with purchaser.

Although there is no implied covenant on the sale of a goodwill, without more, that the vendor will not set up a similar business in the same neighbourhood, yet where a vendor had received in payment for his share of a goodwill a sum calculated by arbitrators upon the understanding (to which he had assented) that he would not carry on business in the same street, it was held to be contrary to Equity that he should carry on business in that street, and he was accordingly enjoined (d).

Vendor restrained, though no express covenant.

In the sale of a business and goodwill, it is customary to insert an express restrictive covenant, which will be binding on the vendor, restraining him from setting up the same trade within a certain limit of time or space, or

Express restrictive covenant usual.

that the plaintiff would have been entitled to an injunction at all events against the use of the words "and Co." by the defendant, if that had been the relief prayed.

(a) *Labouchere v. Dawson*, L. R. 13 Eq. 322. See *Selby v. Anchor Tube Co.*, W. N. 1877, p. 191.

(b) As to the surrender of a busi-

ness by A. "for the benefit" of B., see *Clark v. Leach*, 32 Beav. 14; and also *Harrison v. Gardner*, 2 Madd. 198; and *Churton v. Douglas*, Johns. 174.

(c) *Clark v. Leach*, 32 Beav. 14; *Hookham v. Pottage*, L. R. 8 Ch. 91.

(d) *Harrison v. Gardner*, 2 Madd. 198.

using his name or allowing it to be used for that purpose (a); and this has become so usual that, where (b) in a contract for sale one of the items was "goodwill, &c.," Sir J. Romilly, M.R., held that in the "&c." would be included, amongst other things, a covenant by the vendor not to carry on a similar business in Great Britain, for a reasonable time, to be limited in the conveyance, having regard to the nature of such undertakings. Such a covenant may even have the effect of compelling the vendor to quit his trade altogether for the period specified, as was held by Lord Mansfield, C. J., and the Court of King's Bench, in *Cooper v. Watson* (c); and it has been held that a breach of a covenant "not to carry on or be concerned or interested in" a certain business, was committed by the vendor entering into the service of a nephew, who carried on the same trade, under the same name, within the proscribed limits (d). Again, a covenant not to carry on a certain business directly or indirectly within the counties of C., A., and M., was broken by soliciting orders on three occasions within C., though the offices of the new business were outside the limits (e).

Covenant to make profitable.

"Where a man sells the goodwill of a trade, and covenants to make it as profitable as he can, the actual profit made is not that which the vendee is bound to take; but he will have an action of covenant, if he can establish his title to more, through the default of the vendor" (f).

Rights of purchaser of goodwill.

The purchaser of a business and goodwill is entitled to all the advantages of the reputation and connexion of the business as previously conducted, except such benefit as the vendor, on setting up a *bonâ fide* new business, as he

(a) *Cooper v. Watson*, 3 Doug. 414; *Bryson v. Whitehead*, 1 S. & S. 74; *Williams v. Williams*, 2 Swanst. 253; *Whittaker v. Howe*, 3 Beav. 383; *Turner v. Evans*, 2 De G. M. & G. 740; *Newling v. Dobell*, 38 L. J. Ch. 111; *Wolmershausen v. O'Connor*, W. N. 1877, p. 113; *Gillis v. Hall*, 2 Brewster, 342; R. Cox,

580.

(b) *Cooper v. Hood*, 26 Beav. 293.

(c) 3 Doug. 414.

(d) *Newling v. Dobell*, 38 L. J. Ch. 111.

(e) *Turner v. Evans*, 2 De G. M. & G. 740.

(f) Per Lord Eldon, C., in *Scott v. Mackintosh*, 1 V. & B. 503.



is at liberty to do if there is no covenant to the contrary, may derive from the fact of his being known to have belonged to the former business; and the purchaser is entitled to restrain the vendor by injunction from interfering with what he has sold. As to the trade name, if that were the name of the vendor, "inconvenience might naturally result to him from having his name so exposed" (a), *i.e.* in the name of the new business. In *Scott v. Rowland* (b), on a dissolution of partnership, in which the defendant bought the plaintiff's interest at a valuation, and then continued to trade as "John Scott & Co.," a bill was filed to restrain the use of the name of the plaintiff in the business, and the question was considered by Sir J. Wickens, V.-C. He said, "even assuming the goodwill to have been effectually assigned to the defendant, it would be a question whether that would give him the right of using the plaintiff's name; as expressed in *Churton v. Douglas* (c), there is a liability attached to an outgoing partner who leaves his name in the style of a firm. He would *primâ facie* be liable on bills of exchange. In *Banks v. Gibson* (d) Mr. Banks was dead, and the case may be referred to the principle that, inasmuch as no liability attaches in the case of an outgoing partner who is dead or a bankrupt, there is no reason why the name should not be retained; but, if living, he is entitled to say he is not a member of the firm," and the Vice-Chancellor accordingly granted the injunction (e). The purchaser is, however, entitled to represent himself as continuing the old business; thus, where the business of John Douglas & Co. was sold,

(a) *Churton v. Douglas*, Johns. 174.

(b) 20 W. R. 508.

(c) *Ubi suprâ.*

(d) 34 Beav. 566.

(e) And see *Webster v. Webster*, 3 Swanst. 490 n.; *Lewis v. Langdon*, 7 Sim. 421; *Routh v. Webster*, 10 Beav. 561; *Bullock v. Chapman*, 2 De G. & Sm. 211; *Turner v. Major*, 3

Giff. 442; *Clark v. Leach*, 32 Beav. 14; *Bond v. Milbourn*, 20 W. R. 197; *Dence v. Mason*, W. N. 1877, p. 23; *Mitchell v. Condy*, *ib.* 153; *Howe v. Scaring*, 10 Abb. Pr. R. 264; R. Cox, 244; *Peterson v. Humphrey*, 4 Abb. Pr. R. 394; R. Cox, 212; *Lindley on Partnership*, 3rd ed. 887.

it was held that the purchasers alone had the right to describe themselves as "late John Douglas & Co.," and the vendor was restrained from calling his new firm "John Douglas & Co.," that being an interference with that right (a).

Implied contract to keep up business.

Where, in a purchase of a business and goodwill, it was agreed that the purchaser should pay the vendor at the end of each of the first ten years a certain proportion of the profits, but there was no special agreement by the purchaser to keep up the business; it was held by Erle, C. J., and the Court of Common Pleas, that the purchaser had entered into an implied contract to keep up the business, at all events for the ten years over which the instalments were to extend (b). It seems that while such an implied contract would give a right to damages, if broken, it could not be specifically enforced in Equity (c), though carrying on a similar business under a different style could be restrained (d).

Goodwill is partnership assets.

In a case of partnership, the goodwill of a business, newspaper, &c., including the firm name, is partnership assets, and, on a sale of the partnership business, must be sold with it, for the benefit of the partners or their creditors (e).

Disposal on dissolution.

On a dissolution of partnership the business and goodwill may be disposed of in three different ways: by sale, for the benefit of the partners or their creditors; by the whole concern, including the trade name, being taken by one partner at a valuation; or by a simple division of the tangible assets of the partnership, in which case each is at liberty to use the trade name just as the partnership did

(a) *Churton v. Douglas, Johns*. 174. But see *Howe v. Searing*, 10 Abb. Pr. R. 264; R. Cox, 244.

(b) *McIntyre v. Belcher*, 32 L. J. C. P. 254. Compare *Harrison v. Gardner*, 2 Madd. 198.

(c) *Lewis v. Langdon*, 7 Sim. 421.

(d) *Evans v. Hughes*, 18 Jur. 691.

And see *Turner v. Major*, 3 Giff. 442.

(e) *Bradbury v. Dickens*, 27 Beav. 58; *Banks v. Gibson*, 34 Beav. 566; *Hall v. Barrows*, 33 L. J. Ch. 204; *Dayton v. Wilkes*, 17 How. Pr. R. 510; R. Cox, 224.

previously (a), provided no ex-partner will thereby be exposed to liability through his name constituting the trade name of the old firm (b), or at all events to state his connexion with the old firm (c).

On a dissolution of a partnership governed by articles, the retiring partner will not be entitled to compensation for his share in the goodwill, except in accordance with the articles (d). Thus, in a case where provision was not made for such compensation, it was held that the premises on which the business had been carried on for many years, and which the continuing partner was entitled on dissolution to take at a valuation, were to be valued without regard to the fact of previous occupation, as, if that were taken into account, it would have the effect of making the partner in question pay for the goodwill (e).

Where articles of partnership provided that the goodwill should belong to the partners in the proportion of their shares in the business, but should not be taken into account in the accounts of the partnership, and that on the determination of the partnership a general account and valuation of the property and effects of the partnership should be taken, the partnership being dissolved by the death of one of the partners, it was held by Sir J. Stuart, V.-C., that the goodwill must be included in the valuation of the partnership property (f).

In *Featherstonhaugh v. Fenwick* (g), it was decided that on a dissolution of a partnership, not provided for by articles, one partner could not secure to himself the whole benefit of the goodwill by claiming to take the share of the other at a valuation, or requiring him to remove his pro-

(a) *Banks v. Gibson*, 34 Beav. 566.

(b) *Scott v. Rowland*, 20 W. R. 508; *Peterson v. Humphrey*, 4 Abb. Pr. R. 394; R. Cox, 212.

(c) *Clark v. Leach*, 32 Beav. 14; *Hookham v. Pottage*, L. R. 8 Ch. 91; *Peterson v. Humphrey*, *ubi supra*.

(d) *Hall v. Hall*, 20 Beav. 139; *Kennedy v. Lee*, 3 Mer. 441-52; *Farr v. Pearce*, 3 Mad. 74.

(e) *Burfield v. Rouch*, 13 Beav. 241.

(f) *Wade v. Jenkins*, 2 Giff. 509.

(g) 17 Ves. 298.

portion from the premises, or clandestinely obtaining a renewal to himself of the lease of the premises occupied by the partnership.

Estate of dead partner shares in partnership profits until settlement.

If, after a dissolution of partnership by the death of a partner, "the surviving partners think proper to make that which is in Equity the joint property of the deceased and them the foundation and plant of increased profit, if they do not think proper to settle with the executors and put an end to the concern, they must be understood to proceed upon the principle which regulated the property before the death of their partner" (a); that is to say, capital belonging to the estate of the deceased partner having been risked, such a proportion of the total profits as are attributable to that capital will belong to that estate.

Subject to circumstances.

But in the computation of what profits are attributable to that capital a variety of circumstances have to be taken into consideration: thus, "the nature of the trade, the manner of carrying it on, the capital employed, the state of the account between the partnership and the deceased partner at the time of his death, the conduct of parties after his death, all of which may materially affect the rights of the parties" (b).

Similarly with goodwill.

In the same manner, on the death of a partner, the goodwill ought, if there is no provision regulating its destination in such an event, to be sold for the benefit of the partnership, and if that is not done, the continuing partners will have to account to the estate of the deceased partner for his share in the goodwill.

Goodwill does not survive.

There is, indeed, a distinct decision (c) by Lord Lough-

(a) Per Lord Eldon, C., in *Crawshay v. Collins*, 15 Ves. 227. And see *Featherstonhaugh v. Fenwick*, 17 Ves. 298; *Heathcote v. Hulme*, 1 Jac. & W. 122; *Brown v. De Tastet*, Jac. 284; *Cook v. Collingridge*, Jac. 607; *Macdonald v. Richardson*, 1 Giff. 81; and *Parsons v. Hayward*, 31 L. J. Ch. 666.

(b) Sir Per J. Wigram, V.-C., in

*Willett v. Blanford*, 1 Hare, 258. And see *Simpson v. Chapman*, 4 De G. M. & G. 154, where these remarks were highly approved by Sir G. Turner, L.J., and it was held that, under the circumstances of the case, nothing was due to the estate of the deceased partner.

(c) *Hammond v. Douglas*, 5 Ves. 539. And see *Lewis v. Langdon*, 7

borough, C., that upon a dissolution of a partnership without articles the goodwill survives to the surviving partner. This position was, however, doubted by Lord Eldon, C., in *Crawshay v. Collins* (a); and it is now thoroughly established that the goodwill is partnership assets. "The goodwill of a trade, although inseparable from the business, is an appreciable part of the assets of a concern, both in fact and in the estimation of a Court of Equity. Accordingly, in reported cases, Lord Eldon held that a share of it properly and as of right belonged to the estate of the deceased partner. It does not survive to the remaining partners, unless by express agreement; but it may by agreement, as it may be agreed that any particular portion of the partnership assets shall so survive. Goodwill manifestly forms a portion of the subject-matter which produces profits, which constitutes partnership property, and which is to be divided between the surviving partners and the estate of the deceased partner, according to the terms of the contract, and when that is silent, according to their shares in the concern." (b). The share of the deceased partner in the concern is not, however, the sole guide to the interest of his estate in the goodwill. The various circumstances alluded to by Vice-Chancellor Wigram, in *Willett v. Blandford* (c) must be considered. Thus, where at the time of the death of one of two partners the partnership was insolvent and the deceased partner indebted to the partnership, and the surviving partner subsequently carried on the business with such energy and success that he was able at a later period to sell the goodwill for £1700, it was held by Sir G. Jessel, M.R., that the surviving partner

Sim. 421; and *Robertson v. Quid-*  
*dington*, 28 Beav. 529.

(a) 15 Ves. 227.

(b) Per Sir J. Romilly, M.R., in  
*Wedderburn v. Wedderburn*, 22  
Beav. 124. And see *Macdonald v.*  
*Richardson*, 1 Giff. 81; *Bradbury v.*

*Dickens*, 27 Beav. 53; *Smith v.*  
*Everett*, 27 Beav. 446; *Hall v.*  
*Barrows*, 33 L. J. Ch. 204; *Dayton*  
*v. Wilkes*, 17 How. Pr. R. 510;  
R. Cox, 224.

(c) 1 Hare, 253.

was only liable to account to the estate of his deceased partner for the value of a moiety of the goodwill at the time of the latter's death (a).

Firm name.

With respect to the trade name, Sir L. Shadwell, V.-C., in *Lewis v. Langdon* (b), expressed an opinion that it survived, but the decision in that case only amounted to this: that one of three executors of a deceased partner in the firm of "Brookman & Langdon" had no right to set up business as "Brookman & Langdon," and that the surviving partner, who was carrying on business as "James Lewis & Co., successors to Brookman & Langdon," had sufficient interest in the name of the old firm to restrain an unauthorised use of it (c), and it seems clear that one member of a firm cannot, on the death of his partner, monopolise all the benefit to be derived from the use of the firm name (d).

Firm continued by certain partners.

When, on a dissolution of partnership, the goodwill of the business becomes the property of some of the former partners, with it they acquire the right of representing their remodelled business as being the continuation of the old one; and they are at liberty to express this by styling themselves "B. & C., late A. & B.," or "B. & C., successors to A. & B.," or any similar words (e). If they continue to use the style of the old business, "A. & B.," as before, then, as regards the public, this alone constitutes no false representation, the only statement being that the new firm is carrying on the business of the old one (f). Such continued user, however, will not be per-

(a) *Broughton v. Broughton*, 44 L.J. Ch. 526. And compare *Simpson v. Chapman*, 4 De G. M. & G. 154.

(b) 7 Sim. 421.

(c) In this respect, *Hine v. Lart*, 10 Jur. 106, and *Dent v. Turpin*, 2 J. & H. 139, seem to be in point, as in those cases the plaintiff had a certain right, but not an exclusive right, in the trade marks. See *Scott v. Scott*, 16 L. T. N. S. 143.

(d) A decided opinion to this effect

is expressed in Lindley on Partnership, 3rd ed. 887.

(e) *Churton v. Douglas*, Johns. 174; *Lewis v. Langdon*, 7 Sim. 421; *Hookham v. Pottage*, L. R. 8 Ch. 91; *Peterson v. Humphrey*, 4 Abb. Pr. R. 394, R. Cox, 212.

(f) *Banks v. Gibson*, 34 Beav. 566; *Aubin v. Holt*, 2 K. & J. 66. And see *Leather Cloth Co. v. American Leather Cloth Co.*, 1 H. & M. 271; 33 L. J. Ch. 199; 11 H. L. C. 523.

mitted where it can be only for an improper and fraudulent purpose, and in order to deceive the public (a); nor where the partnership has been only contrived with a view to giving the purchaser of a professional business the means of appropriating to himself the personal reputation of the vendor (b). As regards the partner by whose retirement or death the dissolution has been brought about, his right or that of his representatives to complain must depend upon whether he or his estate will be exposed to any loss or inconvenience by the continued user of the old name (c).

When a partner has retired from a business, his share and interest therein being taken over by the continuing partners, or when, on the death of a partner, the partnership business has been sold, the retiring or surviving partner, as the case may be, has full liberty to set up a precisely similar business to that which the partnership carried on, but he must not represent it to be the same business (d). In the valuation, therefore, of the share of a retiring or dead partner, which is to be taken over by the surviving partner, this fact should be taken into consideration, as it may materially affect and even destroy the value of the share (e); and when the business is to be sold, that fact should be stated in the particulars of sale, in order that the purchaser may be able to buy with a full knowledge of the facts (f). In *Smith v. Everett* (g), the survivor of two partners in a banking business sold

Rights on dissolution by retirement or by death and sale of goodwill.

(a) *Dence v. Mason*, W. N. 1877, p. 23.

(b) *Thornburg v. Bevil*, 1 Y. & C. Ch. 554.

(c) *Banks v. Gibson*, 34 Beav. 566; *Scott v. Rowland*, 20 W. R. 508; *Webster v. Webster*, 3 Swanst. 490 n; and other cases cited at p. 193, note (e).

(d) *Kennedy v. Lee*, 3 Mer. 441-52; *Harvison v. Gardner*, 2 Madd. 198; *Churton v. Douglas*, Johns. 174; *Hall v. Burrows*, 33 L. J. Ch. 204; *Clark v. Leach*, 32 Beav. 14;

*Bond v. Milbourn*, 20 W. R. 197; *Hookham v. Pottage*, L. R. 8 Ch. 91; *Selby v. Anchor Tube Co.*, W. N. 1877, p. 191.

(e) *Mellersh v. Keen*, 28 Beav. 453; *Davies v. Hodyson*, 25 Beav. 177.

(f) *Cook v. Collingridge*, Jac. 607; *Hall v. Burrows*, 33 L. J. Ch. 204. And see the form settled by the L. J. in *Johnson v. Helleley*, 2 De G. J. & S. 446.

(g) 27 Beav. 446.

the business, and it was held that the estate of the deceased partner was entitled to a share of so much of the purchase-money as was attributable to the goodwill. Sir J. Romilly, M. R., directed that this value should be ascertained, regard being had to the facts that: 1st, the partnership premises belonged to the survivor; 2ndly, the survivor had the right to carry on the business of a banker on the same premises after the sale of the goodwill; 3rdly, the sole right of issuing bank notes survived to him.

Retiring or surviving partner may state former connexion.

A retiring or surviving partner may advertise generally the facts that he was connected with the former business, and that he is establishing a new business, but he must not address any special solicitations to the customers of his former firm (*a*).

And the termination of that connexion.

A retiring partner may advertise the discontinuance of his participation in a periodical issued by the partnership, but he is not at liberty to advertise its discontinuance generally, any more than he might represent the partnership to have ceased to carry on business, upon his own retirement (*b*).

Necessary announcements may be made.

While, however, a retiring partner is not at liberty to depreciate the property, his share in which has passed to others (*c*), a partner who has bought the share of his partner may, even before the purchase is in all respects completed, publish statements which are necessary to induce others to join him, and to enable him to carry on the business, though, in the opinion of the selling partner, that may have a prejudicial effect on what is still in a sense the partnership property (*d*).

Business carried on in separate districts.

Where two partners, having been in the habit of carrying on the partnership business, each in a separate

(*a*) *Bradbury v. Dickens*, 27 Beav. 63; *Clark v. Leach*, 32 Beav. 14; *Labouchere v. Dawson*, L. R. 13 Eq. 322; *Graveley v. Winchester*, Seton, 4th ed. 257; *Burrows v. Foster*, *ib.*; *Selby v. Anchor Tube Co.*, W. N. 1877, p. 191.

(*b*) *Bradbury v. Dickens*, 27 Beav. 53.

(*c*) *Bradbury v. Dickens*, *ubi supra*.

(*d*) *Marshall v. Watson*, 25 Beav. 501.



district, agreed to dissolve partnership, the premises, stock, and goodwill to be sold, or until sale to vest in a receiver, Sir J. Stuart, V.-C., restrained one partner from carrying on the business on his own account in one district, and directed him to account for the profits (*a*).

Again, where it was provided by the partnership articles that, on the death of one of the partners, his personal representative should have the right to elect, within three months, to take the deceased partner's share in the business, Sir W. P. Wood, V.-C., restrained the surviving partner from carrying on the business under any other firm or style than that used in the lifetime of the deceased partner, for three months, or until election by his representative (*b*). But it seems that though the Court can restrain the surviving partner from carrying on the business in any other name, it has no means of compelling him to carry it on in the original name (*c*).

The value of a goodwill, or share of a goodwill, is usually estimated at so many years' purchase upon the amount of the profits (*d*); thus, in *Mellersh v. Keen* (*e*), it was fixed at one year's purchase of the net annual profits, calculated on an average of three years (*f*).

(*a*) *Turner v. Major*, 3 Giff. 442.

(*b*) *Evans v. Hughes*, 18 Jur. 691.

(*c*) *Lewis v. Langdon*, 7 Sim. 421.

(*d*) *Austen v. Boys*, 27 L. J. Ch. 714.

(*e*) 28 Beav. 453.

(*f*) As to other circumstances to be considered, see *Smith v. Everett*, 27 Beav. 446; *Johnson v. Helleley*, 34 Beav. 63; 2 De G. J. & S. 446.

Right of election protected.

Valuation of goodwill.

## APPENDIX A.

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### PRECEDENTS OF INJUNCTIONS, &c.

#### 1. CROFT *v.* DAY, 7 Beav. 84—90.

##### *Label on Blacking Bottles—Trade Cards—Injunction.*

INJUNCTION to restrain the defendant, his servants, &c., “from selling, or exposing for sale, or procuring to be sold, any composition or blacking described as, or purporting to be, blacking manufactured by Day and Martin, in bottles having affixed thereto such labels as in the complainant’s bill mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by John Weston (the manager), for the benefit of the estate of Charles Day, the testator; and from using trade cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by John Weston” (a).

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#### 2. SEIXO *v.* PROVEZENDE, L. R. 1 Ch. 192—194.

##### *Brand on Casks of Wine—Injunction.*

Injunction to restrain the defendants, &c., “from affixing or causing to be affixed to any casks of wine shipped to their orders the brand or marks of a crown and the word *Seixo*, or any other combination of marks or words so contrived as, by colourable imitation or otherwise, to represent the marks or brands of the plaintiff, and from employing any marks or words which should be so contrived as to represent, or induce the belief, that such wines were Crown *Seixo*, or the produce of the *Quinta do Seixo*, or otherwise using the word *Seixo* without clearly distinguishing the same from the wine produced by the *Quinta do Seixo*” (b).

(a) Lord Langdale, M. R.

(b) Wood, V.-C.

3. STEPHENS *v.* PEEL, 16 L. T. N. S. 145.*Labels on Bottles of Ink—Injunction.*

Injunction restraining the defendant, &c., “from selling, or exposing, or advertising for sale, or procuring to be sold, any ink or writing fluid in bottles bearing thereon such labels as after mentioned, and from using any labels, or stamps, or advertisements so contrived or expressed as by colourable imitation or otherwise to represent or lead to the belief that the ink sold by the defendant is the ink or writing fluid manufactured by the plaintiffs, and sold by them under the name of ‘Stephens’ Blue Black Writing Fluid’ ” (a).

4. WOTHERSPOON *v.* CURRIE, L. R. 5 H. L. 508—523.*Glenfield Starch—Injunction.*

Injunction restraining the respondent, &c., “from using the word ‘Glenfield’ in or upon any labels affixed to packets of starch manufactured by or for him, and from in any other way representing the starch manufactured by or for him to be ‘Glenfield Starch,’ and from selling or causing the same to be sold as ‘Glenfield Starch,’ and from doing any act or thing to induce the belief that starch manufactured by or for him, the respondent, is ‘Glenfield Starch,’ or starch manufactured by the appellant ” (b).

5. BROADHURST *v.* BARLOW, L. J. Notes of Cases, 1872, p. 183.*Stamps on Shirtings—Injunction.*

Injunction restraining the defendants, &c., “from stamping, impressing, or affixing, or causing to be stamped, impressed, or affixed on or to any Spanish shirtings or pieces of white calico manufactured or sold by them, any mark consisting of words in the Turkish, Armenian, and Greek languages, meaning ‘exactly 12 yards,’ and placed between a figure or crest and the words ‘Spanish Shirtings’ enclosed in a scroll in the same manner as those were respectively placed in the plaintiff’s trade mark, or in any manner only colourably differing therefrom ” (c).

6. FORD *v.* FOSTER, L. R. 7 Ch. 611—634.*Eureka Shirts—Injunction.*

Injunction restraining the defendants, &c., “from applying the mark or title ‘Eureka’ to any shirts manufactured by them, or to any shirts sold by

(a) Wood, V.-C.

(b) House of Lords.

(c) Wickens, V.-C.

them, unless manufactured by the plaintiffs, and from selling any shirts already marked with the mark and title 'Eureka,' unless such mark or title has been applied with the sanction of the plaintiffs; and from issuing any boxes or packages on which the mark or title of 'Eureka' shall be applied to shirts not of the plaintiffs' manufacture; and from affixing or using any label, or card, or other mark containing the word 'Eureka' to or upon any shirts not of the plaintiffs' manufacture" (a).

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7. APOLLINARIS Co. v. NORRISH, 33 L. T. N. S. 242.

*Apollinaris Water—Injunction.*

Injunction restraining the defendants, &c., "from selling, &c., any mineral or other waters, not being the genuine Apollinaris water, under the name of 'Apollinaris Water,' or 'London Apollinaris Water,' or under any other name of which the word 'Apollinaris' so forms part as to be calculated to deceive the public" (b).

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8. EDELSTEN v. EDELSTEN, 1 De G. J. & S. 185—189.

*Wire—Prayer of Bill—Injunction—Account—Delivery up.*

Prayer of Bill: "that an account might be taken of the gains and profits made and obtained by the defendants by the sale of wire having tallies or labels attached thereto with the plaintiff's trade mark, or a trade mark in imitation of, or only colourably differing from that of the plaintiff, stamped or impressed thereon; and that the defendants might be ordered to pay to the plaintiff the amount of such gains and profits. That the defendants might be restrained by injunction from attaching to wire, not the manufacture of the plaintiff, any tally or label with the plaintiff's trade mark, or any mark in imitation thereof, or only colourably differing therefrom, stamped or impressed thereon, and from otherwise using the plaintiff's trade mark, or any mark in imitation thereof, so as to denote or represent that the said wire was the 'Anchor Brand Wire,' or was the manufacture of the plaintiff; and from selling, or offering for sale, or procuring to be sold, any wire not being of the

(a) James, L. J.

(b) Bacon, V.-C. And see also forms of injunctions in *Apollinaris Co. v. Edwards*, Seton, 4th ed. 237; *Millington v. Fox*, 3 My. & Cr. 338; and *Pemberton*, 2nd ed. 391; *Edelsten v. Vick*, 11 Hare, 78; *Collins Co. v. Walker*, 7 W. R. 222, and Seton, 4th ed. 235; *Harrison v.*

*Taylor*, 11 Jur. N. S. 408, and *Pemberton*, 2nd ed. 391; *Braham v. Bustard*, 1 H. & M. 447; *McAndrew v. Bassett*, 33 L. J. Ch. 561, and *Pemberton*, 2nd ed. 392; *Sparagnapane v. Coombs*, Seton, 4th ed. 246; *Mickle v. Emery*, Seton, 4th ed. 234 (a case of a registered mark).

plaintiff's manufacture, having a tally or label attached thereto with the plaintiff's trade mark, or a mark in imitation thereof, or only colourably differing therefrom, stamped or impressed thereon, or otherwise in any manner having the said trade mark, or a mark in imitation thereof, or only colourably differing therefrom, attached thereto. That the defendants might deliver up to be cancelled all tallies, labels, and papers in their possession, or in the possession of their servants or agents, having the said trade mark so in colourable imitation of the plaintiff's as thereinbefore mentioned; and also all tallies, labels, and papers in their possession, or in the possession of their servants or agents, having the plaintiff's trade mark, or any mark in imitation thereof, or only colourably differing therefrom, stamped or impressed thereon, and also all dies for stamping or impressing the same; and that the defendants might pay all the costs of the suit" (a).

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9. GUINNESS *v.* ULLMER, 10 L. T. (Old Series), 127.

*Engraving Blocks for Printing Forged Labels—Injunction.*

Injunction restraining the defendants, &c., "from cutting, engraving, casting, or making, and from causing to be cut, engraved, cast, or made, and also from using or permitting to be used, and from selling, or otherwise disposing of or parting with any blocks or plates adapted for printing labels or sheets of labels in imitation of the label furnished by Sparkes Moline to and used by the agents appointed by him for sale of the plaintiffs' stout, as in the plaintiffs' bill mentioned, or any of them, or differing only colourably therefrom. And also from selling, or otherwise disposing of, and from delivering over or parting with any of such blocks or plates as were then in their possession, custody, or power, to any person other than the plaintiffs or such person as they should appoint to receive the same" (b).

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10. FARINA *v.* SILVERLOCK, 1 K. & J. 509.

*Printing Forged Labels—Injunction.*

Injunction restraining the defendant, &c., "from printing or selling, or exposing for sale, or procuring to be printed or sold, any labels similar to those in

(a) Wood, V.-C., made a decree in the terms of the prayer of the Bill. See 1 De G. J. & S. 196; Lord Westbury, C., affirmed the decree. As to the account, see also *Foster v. Megevand*, Pemberton, 2nd ed. 393; and the full decree in *Ford v. Foster*, Seton, 4th ed. 236. As to order restraining exportation of goods with forged trade marks, see *Hen-*

*derson v. Jorss*, Seton, 4th ed. 236. As to order restraining the bringing into the market of imported goods with forged trade marks, see *Upmann v. Elkan*, L. R. 12 Eq. 140; 7 Ch. 130; *Rivero v. Norris*, Seton, 4th ed. 236; *Del Valle v. Mayer*, *ib.*

(b) Shadwell, V.-C. of Eng.

use by the plaintiff, as in the bill in this cause mentioned, or containing copies of the signature, or address, or flourish, seal, or stamp, or other marks invented and used by the plaintiff as therein mentioned, or any signature, address, flourish, seal, stamp, or other mark merely colourably differing therefrom, or any other papers or labels so printed or contrived as, by colourable imitation or otherwise, to represent or lead to the belief that Eau de Cologne prepared by other parties was Eau de Cologne prepared by the plaintiff" (a).

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11. CLEMENT *v.* MADDICK, 1 Giff. 98—101.

*Name of Newspaper—Injunction.*

Injunction restraining the defendants, &c., "from printing, publishing, or continuing to print or publish, any newspaper or other periodical paper with or under the name or style of 'The Penny Bell's Life and Sporting News,' or with or under any name or style of which the name, style, or words of 'Bell's Life' shall form a part, or in any way occur [therein]; and from using the said name, style, or title of 'Bell's Life' by way of name, style, or title to any newspaper or periodical without the licence or consent of the plaintiff" (b).

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12. INGRAM *v.* STIFF, 5 Jur. N. S. 947.

*Name of Newspaper—Injuring Plaintiff's Paper—Injunction.*

Injunction restraining the defendant, &c., "from printing, publishing, or selling any newspaper or other periodical under the name of 'The Daily London Journal,' or under any other name or style of which the words 'London Journal' form part, and from doing or committing any act or default which may tend to lessen or diminish the sale or circulation of the plaintiff's periodical, called 'The London Journal'" (c).

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13. PROWETT *v.* MORTIMER, 2 Jur. N. S. 414.

*Name of Newspaper—Soliciting Customers—Injunction.*

Injunction restraining the defendant, &c., "from printing, or publishing, or exposing for sale, or procuring to be printed or sold the newspaper

(a) Wood, V.-C.

(b) Stuart V.-C. And see *Edmonds v. Benbow*, Seton, 3rd ed. 905; and *Cornus v.*

*Griffiths*, Pemberton, 2nd ed. 308.

(c) Wood, V.-C.

publication called 'The True Britannia,' or any other newspaper or publication, as a continuation of the plaintiff's newspaper 'The Britannia,' in the bill mentioned, and from soliciting custom in the name of the plaintiff's trade and business as for 'The Britannia' newspaper" (a).

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14. HOGG v. KIRBY, 8 Ves. 215—226.

*Publication of a Magazine as a Continuation of Plaintiff's Magazine—Injunction.*

Injunction restraining the defendant, &c., "from publishing or exposing to sale any copy or copies of the defendant's said work, and from printing, publishing, or exposing to sale, any other work or publication as or being a continuation of the plaintiff's work, or of the defendant's work, which had been so published as such continuation as aforesaid; and from printing all or any part or parts of the plaintiff's said work;" and Ordered "that the injunction should be continued as to any letters, &c., admitted by the Answer to have been received from correspondents by the defendant, while publishing for the plaintiff" (b).

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15. AINSWORTH v. BENTLEY, 14 W. R. 630.

*Publication of Magazine in Breach of Contract—Order—Injunction.*

Ordered, "That the defendant, &c., be restrained from carrying on, &c., the said 'Temple Bar Magazine,' but the order to be without prejudice to the publication of the said magazine until the hearing of the cause, so as the name of Bentley do not appear either in the title-page, or in any other part of the said publication, or in any advertisement of the said publication, and this order to be without prejudice to the right (if any) of the plaintiff to damages or profits in respect of any publication of the work" (c).

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16. PRINCE ALBERT v. STRANGE, 2 De G. & Sm. 652—717.

*Etchings Improperly Obtained and Published—Catalogues Improperly Published—Decree—Delivery up—Injunction.*

Decree, by which—"Declared that the plaintiff was entitled to have delivered to him the impressions (by the Answer of defendant J. admitted to be in his possession) of such of the several etchings in the pleadings

(a) Stuart, V.-C.

(b) Lord Eldon, C.

(c) Wood, V.-C.

mentioned as in the catalogue and in the pleadings were stated to have been etched by the plaintiff; that is to say (description by reference to Nos. in the catalogue); Ordered, that J. should, within four days after the service of the decree, deliver up the impressions above specified on oath, and leave them with the Clerk of Records and Writs at the Record Office. Ordered, that the defendant S. should, within four days after the service of the decree, deliver to the Clerk of Records and Writs, at the said office, the twenty-five copies of the catalogue, being the same as were mentioned in the decree in the other suit of even date. Similar directions as to six copies of the catalogue admitted by J. to be in his possession. Ordered, that the Clerk of Records and Writs should destroy those copies of the catalogue, giving notice to the solicitors of the several parties of the time and place at which he intended to do so. Injunction, restraining the defendants, &c., from making or permitting to be made any engraving or copy of such etchings, or any of them, and from publishing the same; and from parting with or disposing of them or any of them, except in obedience to the decree; and from selling, or in any manner publishing the catalogue, or any work being or purporting to be a catalogue of the etchings made by the plaintiff. Provision made for costs. Liberty to apply reserved" (a).

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17. CHAPPELL *v.* SHEARD, 2 K. & J. 117—122.

*Name and Title-page of Song—Injunction.*

Injunction restraining the defendants, &c., "from printing, publishing, selling, exposing for sale, or otherwise disposing of the song "Minnie Dale," or any copy or copies thereof, or any other publication containing a colourable imitation of the name, title, or title-page of the plaintiff's said song" (b).

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18. MORISON *v.* MOAT, 9 Hare, 241—267.

*Name of Patent Medicine—Secret Recipe—Injunction.*

Injunction restraining the defendant, &c., "from selling, or causing or procuring to be sold, under the title or designation of 'Morison's Universal Medicine,' or 'Morison's Vegetable Universal Medicine,' any medicine made or manufactured by the defendant, or by or under his order or direction;" and restraining the defendant, &c., "from making or compounding any medicines according to the secret in, &c., and from in any manner using the secret of compounding the said medicines, or any part thereof" (c).

(a) Knight-Bruce, V.-C.

(b) Wood, V.-C. And see *Emperor of Austria v. Day* (V.-C. Stuart, 2 Giff. 628—631; Court of Appeal, 3 De G. F. & J. 217—219), for injunction against

printing spurious Hungarian notes, and order for delivery up of plates used in such printing.

(c) Turner, V.-C. And see *Ansell v. Gaubert*, Seton, 4th ed. 235.



19. FRANKS *v.* WEAVER, 8 L. T. (Old Series), 510.*Fraudulently Using Another's Testimonials—Injunction.*

Injunction restraining the defendant, &c., "from making, vending, or offering for sale, or in any manner disposing of any preparation, mixture, compound, or nostrum, having around, or upon, or in connexion with the same, or the bottles or other vessels containing the same, any cover, wrapper, envelope, label, bill, circular, notice, advertisement, or other formula, in the terms or to the purport or effect of the cover, wrapper, envelope, label, bill, circular, notice, advertisement, or other formula in the plaintiff's bill stated to have been used by the said defendant, or any other cover, &c., containing any testimonial in favour of the plaintiff's medicine or medical preparation in the said bill described as 'Franks' Specific Solution of Copaiba,' or in which any statement or representation is made or contained indicating, or implying, or tending to induce the public or purchasers to suppose that such preparation, mixture, compound, or nostrum made, vended, or disposed of by the said defendant, or in which any use is made of the character and reputation of the plaintiff, or his said specific solution of copaiba, and from publishing, or circulating, or causing to be published, or circulated, or in any manner using such cover, &c., as aforesaid" (a).

20. KNOTT *v.* MORGAN, 2 Keen, 213—219.*Imitating a Rival Line of Omnibuses—Injunction.*

Injunction restraining the defendant, &c., "from running, or in any manner using, or causing to be used, for the conveyance of passengers, his omnibus in the bill mentioned, or any other omnibus, having painted, stamped, printed, or written thereon the words or names 'London Conveyance,' or 'Original Conveyance Company,' or any other names, words, or devices painted, stamped, printed, or written thereon, in such manner as to form or be a colourable imitation of the names, words, and devices painted, stamped, printed, or written on the omnibuses of the plaintiffs" (b).

21. GLENNY *v.* SMITH, 2 Dr. & Sm. 476.*Trade Name—Injunction.*

Injunction restraining the defendant, &c., "from continuing to use, or from exhibiting or using the words 'Thresher and Glenny,' or the name of

(a) Lord Langdale, M. R. use of the words "London Conveyance  
 (b) Lord Langdale, M. R. The M. R. Company."  
 altered the form so as not to restrain all

the plaintiffs' said firm in any form in or about his said shop in such a way as to deceive the public, or to lead to the belief that his shop is a shop of the plaintiffs, or that the business carried on there is carried on by the plaintiffs, or is in any way connected with the business of the plaintiffs" (a).

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22. LEE v. HALEY, L. R. 5 Ch. 155.

*Name of Company—Injunction against User within a certain Locality.*

Injunction restraining the defendant, &c., "from continuing to use, and from exhibiting or using the words 'The Pall Mall Guinea Coal Company,' in Pall Mall, or any other name or style so framed as to be a colourable imitation of the name or style in which the plaintiffs' branch business mentioned in the bill is carried on, or so as to deceive the public, or to lead to the belief that the business carried on by the defendant is the same as the business carried on by the plaintiffs under the name or style of 'The Guinea Coal Company,' or is in any way connected therewith" (b).

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23. SCOTT v. SCOTT, 16 L. T. N. S. 143.

*False Representation of Continuation of Business—Injunction.*

Injunction restraining the defendants, &c., "from allowing or permitting the brass plate affixed by the defendants to the door of the premises in Regent Street to remain affixed, with any inscription thereon representing, or holding out to the customers of the late partnership of 'R. & W. Scott,' or to any other persons whatsoever, that they are carrying on business in continuation of, or in succession to, the business carried on by the late firm of 'R. & W. Scott'" (c).

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24. LABOUCHERE v. DAWSON, L. R. 13 Eq. 322—327.

*Soliciting former Customers, after Sale of Business—Injunction.*

Injunction restraining the defendant, &c., "from applying to any person who was a customer of the firm of B. Dawson & Co. prior to the 12th of

(a) Kindersley, V.-C. And see *Hudson v. Osborne*, 39 L. J. Ch. 79; *Hookham v. Pottage*, L. R. 8 Ch. 92; *James v. James*, Seton, 4th ed. 237; *Montague v. Moore*, *ib.* 231; and *Cave v. Myers*, *ib.* 238.

(b) Malins, V.-C.

(c) Wood, V.-C. And see *Burrows v. Foster*, Seton, 4th ed. 256; *Hoffman v. Duncan*, *ib.* 256; *Witt v. Corcoran*, *ib.* 257; *Graveley v. Winchester*, *ib.* 257.

June, 1871, privately, by letter, personally, or by a traveller, asking such customer to continue to deal with the defendant, or not to deal with the plaintiffs, the Kirkstall Brewery Co., Limited" (a).

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25. **WHEELER & WILSON MANUFACTURING CO. v. SHAKESPEAR**, 39 L. J. Ch. 36—38—41.

*False Representation of Agency—Injunction.*

Injunction restraining the defendant, &c., "from, in manner aforesaid, or in any other manner, calling, or describing, or representing, his said shop or place of business, No. 32, Union Street, Birmingham, or any other shop, warehouse, or place, not belonging to the plaintiffs, as 'The Original Wheeler & Wilson Sewing Machine Depôt,' or 'Wheeler & Wilson Sewing Machine Depôt, established in 1860,' or as a place of business of the plaintiffs, or of 'Wheeler and Wilson,' manufacturers of sewing machines; and from in manner aforesaid, or in any other manner, calling, or describing, or representing, himself or his said firm of T. Shakespear & Co., as the agent or agents for the American 'Wheeler & Wilson' sewing machines, in the same manner in which he has been since 1860, or as the agent of the 'Wheeler & Wilson' sewing machines; and from in any other manner representing himself as the agent of the plaintiffs, and from permitting the names 'Wheeler & Wilson' to remain over the door of his shop or business premises, at 32, Union Street, Birmingham, or on the brass plate under the window, or on the brass plate on the door jamb, or on any other part of his said shop or place of business, or on any placard in his said shop, or on the door, or in the window thereof; and from causing the names 'Wheeler & Wilson' to be inserted in any railway time table, or directory, or other book or publication, under the head of, or described as sewing machine manufacturers, as residing or carrying on business at No. 32, Union Street, Birmingham, or as in any other manner connected with that or any other shop or place of business of the said defendant, and from doing any other act, matter, or thing representing, or whereby the trade or the public may be led to believe that the defendant has any connexion whatever in business with the plaintiffs" (b).

(a) Lord Romilly, M.R. And see *Burrows v. Foster*, Seton, 4th ed. 256; and *Selby v. Anchor Tube Co.*, W. N. 1877, p. 191. As to opening letters containing orders intended for another firm, see

*Scheile v. Brakell*, 11 W. R. 796; and *Seton*, 4th ed. 253; and *Witt v. Corcoran*, Seton, 4th ed. 257.

(b) James, V.-C.

26. ROUTH *v.* WEBSTER, 10 Beav. 561—563.

*Unauthorized and Injurious Use of a Person's Name—Injunction.*

Injunction restraining the defendants, &c., “from printing, publishing, or circulating, any prospectus or other document of, or relating to, a certain company called ‘The Economic Conveyance Company,’ mentioned and referred to in the plaintiff’s bill in this cause, with the plaintiff’s name thereto, and from in any manner using the name of the plaintiff so as to identify him as a party interested in, or associated with, the said company” (a).

(a) Lord Langdale, M.R.

## APPENDIX B.

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### THE TRADE MARKS REGISTRATION ACTS AND RULES.

THE TRADE MARKS REGISTRATION ACT, 1875.

38 & 39 VICT. c. 91.

A.D. 1875.

*An Act to establish a Register of Trade Marks.*

[13th August, 1875.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Registration  
of trade  
marks.

1. A register of trade marks (*a*) as defined by this Act, and of the proprietors thereof shall be established under the superintendence of the Commissioners of Patents (*b*), and from and after the first day of July one thousand eight hundred and seventy-six, a person shall not be entitled to institute any proceeding to prevent the infringement of any trade mark as defined by this Act until and unless such trade mark is registered in pursuance of this Act.

The latter part of this section is repealed by the first section of the Amendment Act of 1876 (see *post*, p. 222). By that, the 1st of July, 1877, is substituted, and an alternative for registration, in the case of marks used before the passing of this Act, is provided. For textile industries the 1st of January, 1878, is fixed by the Act of 1877.

(*a*) As to what constitutes a trade mark, see § 10 of this Act ; also Ch. 2, p. 14.

(*b*) The Commissioners of Patents are the Lord Chancellor, the Master of the Rolls, and the law officers of the Crown for England, Scotland and Ireland. See Rule 68 ; and *In re Meikle*, 24 W. R. 1067 ; and *In re Barrows*, L. R. 5 Ch. D. 353—61.

Charac-  
teristics of  
registered  
trade marks.

2. A trade mark must be registered as belonging to particular goods, or classes of goods (*a*) ; and when registered shall be assigned and transmitted (*b*) only in connexion with the goodwill (*c*) of the business concerned in such particular goods, or classes of goods,

and shall be determinable with such goodwill, but subject as aforesaid, registration of a trade mark shall be deemed to be equivalent to public use (d) of such mark.

(a) The appropriation of a trade mark to particular goods or classes of goods is not new. See *Hall v. Barrows*, 83 L. J. Ch. 204; *Ainsworth v. Walsley*, L. R. 1 Eq. 518. See also Rules 1 to 4. The First Schedule to the Rules contains a classification of goods into fifty classes. An old trade mark may be registered for part of a class: *Ex parte Barrows*, W. N. 1877, p. 119; L. J. Notes of Cases, 1877, p. 110.

(b) As to assignment and transmission of trade marks, see Rules 23 to 29, and Instructions, p. 268. Also Forms E and F in the Third Schedule to the Rules. See, too, Ch. 3, p. 47.

(c) As to the connexion of trade marks with the goodwill of the business, see *Cooper v. Hood*, 26 Beav. 293; *Churton v. Douglas*, Johns. 174; *Shipwright v. Clements*, 19 W. R. 599; and *Cotton v. Giliard*, 44 L. J. Ch. 90. As to goodwill, see Ch. 9, p. 180.

(d) It is settled that for "public use" it is not sufficient for the marked goods to be advertised; they must be actually in the market. But so long as they are there, length of user is not necessary. See *McAndrew v. Bassett*, 33 L. J. Ch. 561; *Maxwell v. Hogg*, L. R. 2 Ch. 307.

3. The registration of a person as first proprietor of a trade mark shall be *prima facie* evidence (a) of his right to the exclusive use (b) of such trade mark, and shall, after the expiration of five years from the date of such registration, be conclusive evidence (a) of his right to the exclusive use of such trade mark, subject to the provisions of this Act as to its connexion with the goodwill of a business (c). Title of first proprietor of a trade mark.

(a) The effect of this section seems to be that during the first five years after registration the title of the registered proprietor to the mark is good, unless a better title is shown by another person, which may, however, be done during that period; after the five years the title of the registered proprietor is secure against such claims, and is subject only to inherent defects in the mark itself, e.g., that, being a mark invented since this Act, it contains no one of the essential particulars specified in § 10.

(b) The right to the exclusive use of a trade mark, first asserted in *Gout v. Aleploglu*, 5 Leg. Obs. 496, and *Millington v. Fox*, 3 My. & Cr. 338, and after much discussion settled by the Chancery judges (see p. 101), is now given by statute upon registration.

(c) See § 2, and the notes thereunder. By Rule 34, if at the end of the five years the registered proprietor is not engaged in any business concerned in the goods with respect to which the mark is registered, the mark may be removed from the register by the Court, on application by a person aggrieved.

4. Every proprietor registered in respect to a trade mark subsequently to the first registered proprietor shall, as respects his title to that trade mark, stand in the same position as if his title were a continuation of the title of the first registered proprietor. Title of proprietor claiming by transmitted proprietorship.

See Rules 23 to 29. See, too, the American case of *Walton v. Crowley*, 8 Bl. C. C. 440; R. Cox, 166.

Rectification  
of register.

5. If the name of any person who is not for the time being entitled to the exclusive use of a trade mark in accordance with this Act, or otherwise in accordance with law, is entered on the register of trade marks as a proprietor of such trade mark, or if the registrar refuses to enter on the register as proprietor of a trade mark the name of any person who is for the time being entitled to the exclusive use of such trade mark in accordance with this Act, or otherwise in accordance with law, or if any mark is registered as a trade mark which is not authorized to be so registered under this Act (a), any person aggrieved may apply in the prescribed manner (b) for an order of the Court (c) that the register may be rectified; and the Court may either refuse such application, or it may, if satisfied of the justice of the case, make an order for the rectification of the register (d), and may award damages to the party aggrieved.

Where each of several persons claims to be registered as proprietor of the same trade mark, the registrar may refuse to comply with the claims of any of such persons until their rights have been determined by the Court (e), and the registrar may himself submit or require the claimants to submit in the prescribed manner (f) their rights to the Court.

The Court may, in any proceeding under this section, decide any question as to whether a mark is or is not such a trade mark as is authorized to be registered under this Act (g), also any question relating to the right of any person who is party to such proceeding to have his name entered on the register of trade marks, or to have the name of some other person removed from such register (h), also any other question that it may be necessary or expedient to decide for the rectification of the register (i).

The Court may direct an issue to be tried for the decision of any question of fact which may require to be decided for the purposes of this section.

Whenever any order has been made rectifying the register, the Court shall by its order direct that due notice of such rectification be given to the registrar (k).

(a) Three cases for remedy are here stated, viz. :

1. Where the name of a proprietor which ought not to have been registered has been registered.
2. Where the name of a proprietor which ought to have been registered has not been registered.
3. Where a mark which ought not to have been registered has been registered.

(b) *I.e.*, by motion, or by application in chambers, or in such other manner as the Court may direct. See Rule 43, and *Ex parte Stephens*, 24 W. R. 819.

(c) The Court is the Chancery Division of the High Court of Justice. See Rule 42.

(d) See Rule 36.

(e) See Rule 18.

(f) By special case, unless the Court shall otherwise order: Rules 44 and 45. In *Ex parte Grimshaw*, W. N. 1877, p. 24, Sir C. Hall, V.-C., refused to order otherwise.

(g) See § 10, and Ch. 2, p. 14, as to what is a trade mark.

(h) See Rule 34.

(i) As to alteration and rectification of the register, see Rules 35 to 39.

(k) See Rule 36, by which, on notification of the order and payment of the prescribed fee, the registrar is forthwith to make the rectification.

6. The registrar shall not, without the special leave of the Court, to be given in the prescribed manner (a), register in respect of the same goods or classes of goods (b) a trade mark identical with one which is already registered with respect to such goods or classes of goods, and the registrar shall not register with respect to the same goods or classes of goods a trade mark so nearly resembling a trade mark already on the register with respect to such goods or classes of goods as to be calculated to deceive (c).

Restrictions  
on registry  
of trade  
marks.

It shall not be lawful to register as part of or in combination with a trade mark any words the exclusive use of which would not, by reason of their being calculated to deceive or otherwise, be deemed entitled to protection in a Court of Equity (d); or any scandalous designs.

(a) On motion, &c., under Rule 43.

(b) See § 2, as to classes of goods.

(c) See Rule 19, and the former Rule 19, now cancelled. As to what will be considered calculated to deceive, see Ch. 4, p. 67, on Infringement. Thus in *Allsopp v. Walker*, M. R., April 10, 1877, a female hand pointed horizontally was held to be too similar to a man's hand held upwards, to be entitled to registration. And see *Ex parte Barrows*, W. N. 1877, p. 119; L. J. Notes of Cases, 1877, p. 110; and *In re Barrows*, L. R. 5 Ch. D. 353. In *Re Walkden Aerated Waters Co.*, M. R. June 8, 1877, the M. R. stated that "the Lord Chancellor was of opinion that the number of times which a new device or emblem might be registered as a trade mark for articles of the same class ought, for the sake of distinctiveness, in no case to exceed three," so that leave will in no case be given for the registration of similar new marks in excess of that number.

(d) As to what will be held to disentitle to protection in Equity, see p. 127.

7. Subject as aforesaid, a register office (a) shall be established from and after such time (not being later than the first day of January one thousand eight hundred and seventy-six), in such manner and with such officers, and at such salaries, to be paid out of moneys provided by Parliament, as the Lord Chancellor may, with the consent of the Treasury, direct; and the Lord Chancellor may from time to time, with the assent of the Treasury as to fees, make, and, when made, alter, annul, or vary, such general rules as to the registry of trade marks (b), and as to notices to be given by advertisement before the registration of trade marks (c), and as to the classification of goods for the purposes of this Act (d), and as to the registration of first and subsequent proprietors of trade

Establishment  
of registry  
and general  
rules.



marks (*c*), and as to the fees to be charged for registration (*f*), and also for the continuance of a trade mark on the register or otherwise (*g*), and as to the removal from the register of any trade mark (*h*), as to notices (*i*), and as to the persons entitled to inspect the register (*k*), and as to any proceedings to be taken to obtain the judgment or leave of the Court in any manner in which the judgment or leave of the Court is required to be obtained under this Act (*l*), and generally for the purpose of carrying into effect this Act, as he may deem expedient (*m*).

Any rules made in pursuance of this section shall be laid before both Houses of Parliament if Parliament be then sitting, or if not then sitting, then within ten days from the then next assembling of Parliament, and shall be of the same validity as if they had been enacted by Parliament; provided that if either House of Parliament resolve, within one month after such rules have been laid before such House, that any of such rules ought not to continue in force, any rule in respect of which such resolution has been passed shall, after the date of such resolution, cease to be of any force, without prejudice, nevertheless, to the making of any other rule in its place, or to anything done in pursuance of any such rules before the date of such resolution.

(*a*) The Register Office in London is at No. 4, Quality Court, Chancery Lane. The office established at Manchester for cotton marks, under Rule 57, is at No. 48, Royal Exchange, Manchester.

(*b*) i. See p. 224.

(*c*) ii. See Rules 13 to 15.

(*d*) iii. See First Schedule to Rules.

(*e*) iv. See Rules 17 to 29.

(*f*) v. See Second Schedule to Rules and Instructions, pp. 261-2, 271-2.

(*g*) vi. See Rules 30 to 34.

(*h*) vii. See Rules 30 to 34.

(*i*) viii. See Rules 69 and 70.

(*k*) ix. See Rule 40.

(*l*) x. See Rules 42 to 45.

(*m*) xi.

Certificate of registrar to be evidence.

8. The certificate of the registrar as to any entry, matter, or thing which he is authorized by this Act, or any general rules made thereunder, to make or do, shall be evidence of such entry having been made, and of the contents thereof, and of such matters and things having been done or left undone.

By Rule 41 the registrar, when required so to do for the purpose of any legal proceeding or other special purpose, *may* give a certificate, and on so doing *shall* specify on the face of it the purpose for which it has been granted.

By § 2 of the Amendment Act of 1876 the registrar is, on request and payment of the fee, (see p. 251), to give an applicant for registration of a mark used before the passing of this Act, which has been refused, a certificate of such refusal, which certificate is to be conclusive evidence of the refusal.

9. With respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers, in Hallamshire, in the county of York (in this Act called "the Cutlers' Company"), and the marks or devices (in this Act called "Sheffield corporate marks") assigned or to be assigned by the master, wardens, searchers, and assistants of that company (*a*), be it enacted as follows:

Provision as to Cutlers' Company and Sheffield corporate marks.

- (1.) Within the prescribed time (*b*) and in the prescribed manner (*c*) the Cutlers' Company shall at their own expense deliver to the registrar under this Act copies (*d*) of all Sheffield corporate marks in force at the time of such delivery:
- (2.) When any person, after the passing of this Act, applies to the said master, wardens, searchers, and assistants to assign to him any mark or device, notice of such application, with a copy of such mark or device, shall, within the prescribed time (*e*) and in the prescribed manner (*f*) be delivered to the registrar under this Act; and such mark or device shall not be assigned until after the expiration of the prescribed period (*g*) from the giving of such notice. In like manner, when any person applies for the registration under this Act of a trade mark as belonging to any goods or class of goods specified in section two of the Cutlers' Company's Act of 1860 (*h*), notice of such application, with a copy of such trade mark, shall, within the prescribed time (*i*) and in the prescribed manner (*k*), be delivered to the Cutlers' Company; and such trade mark shall not be registered until after the expiration of the prescribed period (*l*) from the giving of the last-mentioned notice:
- (3.) Upon the assigning of any such mark or device, or the registration of any such trade mark as aforesaid, notice of the assignment or registration shall, within the prescribed time (*m*) and in the prescribed manner (*n*), be given to the registrar under this Act, or to the Cutlers' Company, as the case may be:
- (4.) The registrar under this Act, without the special leave of the Court (*o*), to be given only in cases where the applicant proves his right, shall not in respect of any goods or classes of goods with respect to which a Sheffield corporate mark shall have been assigned and actually used, and of which mark a copy or description or notice of the assigning whereof shall have been delivered or given to the registrar as aforesaid, register a trade mark identical with such Sheffield corporate mark, or so nearly resembling the same as to be calculated to deceive:
- (5.) The master, wardens, searchers, and assistants of the

Cutlers' Company shall not assign to any person a mark or device identical with any trade mark registered under this Act, and notice of the registration whereof shall have been given to the Cutlers' Company as aforesaid, or so nearly resembling the same as to be calculated to deceive :

- (6.) Any person to whom a Sheffield corporate mark legally belongs shall be entitled to have the same mark registered also as a trade mark under this Act, in respect of any particular goods or classes of goods, in the same manner and upon the same terms and conditions in and upon which he might have registered the same if it were not a Sheffield corporate mark (*p*) :
- (7.) Nothing in this Act shall prejudice or affect the rights and privileges of the Cutlers' Company, nor, save as is otherwise in this Act expressly provided, shall any of the provisions of this Act apply to or in the case of any Sheffield corporate mark.

(a) As to the Cutlers' Company and the Sheffield corporate marks, see the Cutlers' Company's Acts 1623 to 1860, Appendix D, *post*.

(b) By Rule 46, May 1, 1876, or such later day as the Lord Chancellor may fix.

(c) The manner in which this is to be done is specified by Rule 47.

(d) As to what is a "copy" of a Sheffield mark for the purpose of the Rules, see Rule 56.

(e) As soon as possible after the mark or device has been selected. See Rule 48.

(f) As to the prescribed manner, see Rule 49.

(g) The prescribed period is six weeks from the notice being sent to the registrar : Rule 50.

(h) See Appendix D, *post*.

(i) By Rule 51, as soon as practicable after the receipt of the application by the registrar.

(k) By sending a copy of the *Trade Marks Journal*, with a note distinguishing the mark : Rule 52.

(l) Six weeks, by Rule 53.

(m) By Rule 54, within fourteen days after the assignment or registration.

(n) See Rule 55.

(o) Obtained on motion and under Rule 43. Compare § 6.

(p) See Rule 4.

#### Definitions.

10. For the purposes of this Act :

A trade mark consists of one or more of the following essential particulars (*a*) ; that is to say,

A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner (*b*) ; or

A written signature or copy of a written signature of an individual or firm (*c*) ; or

A distinctive device, mark, heading, label, or ticket (*d*) ;

and there may be added to any one or more of the said particulars any letters, words, or figures, or combination of letters, words, or figures (e); also

Any special and distinctive word or words, or combination of figures or letters used as a trade mark before the passing of this Act (f), may be registered as such under this Act.

“Prescribed” means prescribed by general rules made in pursuance of this Act; and

“Court” means any of her Majesty’s superior courts of law or equity at Westminster, or any court to which the jurisdiction of such courts may be transferred, or any one or more of such courts which may be declared to be the court for the purposes of this Act by such general rules as aforesaid (g); but the provisions of this Act conferring a special jurisdiction on the court as above defined shall not, excepting so far as such jurisdiction extends, affect the jurisdiction of any court in Scotland or Ireland in causes, actions, suits, or proceedings relating to trades marks; and if the register requires to be rectified in consequence of any proceedings in any such court in Scotland or Ireland, due notice of such requirements shall be given to the registrar, and he shall rectify the register accordingly.

(a) By Rule 35, though immaterial parts of the registered mark may be altered, the essential particular or particulars may not be. As to essential particulars, see *In re Barrows* L.R. 5 Ch. D. 353, and the order made by the Court of Appeal in that case.

(b) i. See p. 18.

(c) ii. See p. 25.

(d) iii. See p. 26. This does not include a fancy name or combination of letters. See *Ex parte Stephens*, L. R. 3 Ch. D. 659.

(e) “Figures” mean numerals. See *Ex parte Stephens*, L. R. 3 Ch. D. 659; and see p. 46. But there will not be registered as new marks or parts of new marks :

Representations of the Queen, or any member of the Royal Family, or Foreign Sovereign.

Royal or national arms, crests, or mottoes.

Representations of the royal crown, or national flags.

Arms of counties, cities, and boroughs in the United Kingdom.

Prize or exhibition medals. See *Batty v. Hill*, 1 H. & M. 264; *Taylor v. Gillies*, 14 Sickels, 331.

The words “trade mark,” “patent,” “warranted,” “guaranteed.”

Words implying a guarantee of the special quality of the goods to which the mark is applied, such as “best,” “pure,” “genuine,” “excellent.” See Instructions, p. 261, and note (f), *infra*.

(f) See p. 30. The words “Registered” (see *Ex parte Meikle*, 24 W. R. 1067), “Copyright,” “Entered at Stationers’ Hall,” “To counterfeit this is forgery,” will not be registered. See Instructions, p. 260. A single letter does not come within this definition: *In re Mitchell*, V.-C. H. Aug. 2, 1877.

(g) By Rule 42, the Chancery Division of the High Court of Justice is designated.

Short title of Act.

11. This Act may be cited for all purposes as the Trade Marks Registration Act, 1875.

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THE TRADE MARKS REGISTRATION AMENDMENT ACT, 1876.

39 & 40 VICT. c. 33.

A.D. 1876. *An Act for the Amendment of the Trade Marks Registration Act, 1875.* [24th July, 1876.]

Whereas by the Trade Marks Registration Act, 1875, in this Act referred to as the principal Act, it is provided that from and after the first day of July one thousand eight hundred and seventy-six, a person shall not be entitled to prevent the infringement of any trade mark as defined by the principal Act until and unless such trade mark is registered in pursuance of that Act :

And whereas by reason of the number of trade marks, and especially by reason of the difficulties attending the registration of trade marks in relation to textile fabrics,\* it has been found impossible to complete the registration of existing trade marks within the time specified by the said section ; and it is therefore expedient to prolong the time for the completion of such registration as aforesaid, and otherwise to amend the principal Act :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Amendment of s. 1 of the principal Act.

1. There shall be repealed so much of section one of the principal Act as provides that from and after the first day of July one thousand eight hundred and seventy-six, a person shall not be entitled to institute any proceeding to prevent the infringement of any trade mark as defined by that Act until and unless such trade mark is registered in pursuance of that Act, and in place thereof be it enacted that—

*From and after the first day of July one thousand eight hundred and seventy-seven (a), a person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement (b) of any trade mark as defined by the principal Act until and unless such trade mark is registered in pursuance of that Act, or until and unless, with respect to any device, mark, name, combination of words, or other matter or thing in use as a trade mark before the passing of the principal Act, registration thereof*

\* See Rules 57 to 63, by which this difficulty is dealt with.

as a trade mark under the principal Act shall have been refused as hereinafter is mentioned (c).

(a) For these words are now to be substituted, in so far as relates to the registration of trade marks used in the textile industries only, the words "From and after the first day of January one thousand eight hundred and seventy-eight, or such further time as her Majesty may by Order in Council determine." Act of 1877, § 1. See the Order in Council of Dec. 12, 1877, p. 223b *infra*.

(b) As to what is infringement, see Ch. 4, p. 67.

(c) By § 1 of the original Act failure to register was fatal to the owner of the trade mark, whether old or new. By this section, where his mark was used before the original Act, he is, in default of registration, only remitted to his rights as they stood before the Acts. See per Sir R. Malins, V.-C., in *In Re Barrows*, L. R. 5 Ch. D. 353—59.

The different language of this section does not carry the definition contained in § 10 of the Act of 1875 any farther, *In re Mitchell*, L. R. 7 Ch. D. 36.

2. When an application by any person to register as a trade mark a device, mark, name, word, combination of words, or other matter or thing proposed for registration as a trade mark, which has been in use as a trade mark before the passing of the recited Act, has been refused, it shall be the duty of the registrar, on request, and on payment of the prescribed fee, to give to the applicant a certificate of such refusal (a), and a certificate so granted shall be conclusive evidence of such refusal (b)

Saving of marks and devices not capable of being registered under Act.

(a) For the form of certificate which will be given, see p. 269, *infra*.

(b) See § 8 of the principal Act, and Rule 41.

3. This Act may be cited for all purposes as the Trade Marks Short title. Registration Amendment Act, 1876.

## THE TRADE MARKS REGISTRATION EXTENSION ACT, 1877.

40 &amp; 41 VICT. C. 37.

A.D. 1877.

*An Act for extending the Time for the Registration of Trade Marks, in so far as relates to Trade Marks used in Textile Industries.*  
[6th August, 1877.]

39 & 40 Vict.  
c. 33.

Whereas by section one of the Trade Marks Registration Amendment Act, 1876, it is provided that from and after the first day of July one thousand eight hundred and seventy-seven, a person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of any trade mark as defined by the Trade Marks Registration Act, 1875 (referred to in such Amendment Act and in this Act as the principal Act), until and unless such trade mark is registered in pursuance of the principal Act, or until and unless, with respect to any device, mark, name, combination of words, or other matter or thing in use as a trade mark before the passing of the principal Act, registration thereof as a trade mark under the principal Act shall have been refused, as is in the said Act thereafter mentioned :

38 & 39 Vict.  
c. 91.

And whereas by reason of the difficulties attending the registration of trade marks used in the textile industries it has been found impossible to complete the registration of such trade marks within the time specified by the said section, and it is therefore expedient to prolong such time as aforesaid :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Extension of  
time for  
registration of  
trade marks  
used in textile  
industries.

1. In so far as relates to the registration of trade marks used in the textile industries, but not further or otherwise, section one of the Trade Marks Registration Amendment Act, 1876, shall be construed as if for the words "from and after the first day of July one thousand eight hundred and seventy-seven" there were substituted

the words "from and after the first day of January one thousand eight hundred and seventy-eight, or such further time as her Majesty may by Order in Council determine." (a)

(a) Where an action in respect of a mark on calico goods was begun in July, 1877, after the expiration of the time allowed for registration by the Act of 1876, and before the Act of 1877, prolonging the time, relief was nevertheless given, *Twentsche Stoom Bleekery Goor v. Ellinger & Co.*, 26 W. R. 70.

The time is now extended by the Order in Council of Dec. 12th, 1877, to June 30th, 1878. See *infra*.

2. The expression in this Act "Trade marks used in the textile industries" means the trade marks relating to goods comprised in Classes 23 to 35, both inclusive, of the First Schedule to the Rules under the Trade Marks Registration Acts, 1875—76, dated September, 1876. Definition of "trade marks used in the textile industries."

3. This Act may be cited for all purposes as the Trade Marks Registration Extension Act, 1877; and this Act and the Trade Marks Registration Amendment Act, 1876, and the Trade Marks Registration Act, 1875, may be cited together as the Trade Marks Registration Acts, 1875—77. Short title of Act.

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## ORDER IN COUNCIL.

AT THE COURT AT WINDSOR, THE 12TH DAY OF DECEMBER,  
1877.

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Present :

The Queen's Most Excellent Majesty in Council.

Whereas by section 1 of "The Trade Marks Registration Extension Act, 1877," 40 & 41 Vict., cap. 37, it is enacted that



“In so far as relates to the registration of trade marks used in the textile industries, but not further or otherwise, section one of the Trade Marks Registration Amendment Act, 1876, shall be construed as if for the words “from and after the first day of July one thousand eight hundred and seventy-seven” there were substituted the words “from and after the first day of January, one thousand eight hundred and seventy-eight, or such further time as Her Majesty may by Order in Council determine:”

And whereas it is deemed expedient that the time for the registration of trade marks used in the textile industries should be extended beyond the first day of January one thousand eight hundred and seventy-eight :

Now, therefore, Her Majesty by and with the advice of Her Privy Council is pleased in accordance with the above recited enactment to prolong, till the 30th of June, 1878, the time for the registration of trade marks used in the textile industries.

C. L. PEEL.

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## RULES

### UNDER THE TRADE MARKS REGISTRATION ACTS, 1875—7.\*

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Whereas by the Trade Marks Registration Act, 1875, the Lord Chancellor is authorised from time to time, with the assent of the Treasury as to fees, to make general rules as to the registry of trade marks, and other matters connected therewith, and also when made to alter, annul, or vary such rules, as is in the said Act mentioned :

Now, therefore, I, the Right Honourable Hugh MacCalmont Baron Cairns, of Garmoyle in the county of Antrim, Lord High Chancellor of Great Britain, in pursuance of the said Act, and of all other powers enabling me in this behalf, do hereby, without prejudice to any proceedings that may have been taken under any

\* For Additional Rules, see pp. 240a to 241.

former Rules as to the registry of trade marks before made by me, annul all such Rules, and do hereby make the following Rules:—\*

*Preliminary.*

1. For the purposes of these Rules goods are classified in the manner appearing in the First Schedule hereto. Classification of goods in schedule.

See § 2 of the Act of 1875; note (a), p. 215; and § 7.

2. The fees to be charged in pursuance of these Rules are the fees specified in the Second Schedule hereto. Fees.

See § 7 of the Act; and Instructions, pp. 261-2, 271-2.

3. If any doubt arises as to what class any particular description of goods belongs to, the doubt shall be determined by the registrar. Determination of doubt as to classes.

4. A trade mark or trade marks may be registered in pursuance of the same application by the same person in respect of all or any goods, subject to the payment of the additional fees specified in the Second Schedule in respect of the registration of different trade marks or the extension of the same trade marks to goods in different classes. Registration of different trade marks, or trade marks in different classes.

*Application for Registry.*

5. A person (a), whether a British subject or an alien (b), desiring to register a trade mark shall apply to the registrar by sending to him a statement (c) accompanied by such declaration (d) as is hereinafter mentioned and the prescribed fee (e). Proceedings on application.

(a) This will include a corporate body or firm. See Rules 10 and 11. This is so for the purposes of the Merchandise Marks Act, 1862. See § 1 of that Act.

(b) The rights of aliens are thus recognised. See *Collins Co. v. Cowen; Same v. Brown*; also *Taylor v. Carpenter*, in *America*, p. 48, note (a).

(c) See the Forms of Statement, A and B in the Third Schedule.

(d) See the Forms of Declaration, C and D, in the Third Schedule; also Rule 9.

(e) See Schedule 2.

6. The statement shall contain the following particulars: Contents of statement on application.

A. The name and address and calling of the applicant: and

B. The description (a) of the trade mark to be registered: and

C. The class or classes of goods (being some one or more of the classes mentioned in the First Schedule): (b) and

\* The variations from the original Rules are noted as they occur. Those variations are not considerable, but the Rules in regard to cotton marks are all new.

D. In the case of a trade mark used before the passing of this Act, a description of the goods in respect of which it has been used and the length of time during which it has been so used.

(a) In the original Rules, here followed the words, "*or reference to a description.*"

(b) Here followed the words, "*and the particular description or descriptions of goods in such class or classes, with respect to which he desires the trade mark to be registered : and*"—

All applications are to be made in the English language. See Instructions, p. 256.

Communications relating to different applications have to be made in separate letters. See Instructions, p. 256.

As to address of applications, see Instructions, p. 256.

Requisites  
of statement.

7. The above statement must bear a date and be signed by the applicant. Subject to any other directions that may be given by the registrar, the statement sent to the registrar shall be upon foolscap paper of a size of thirteen inches by eight inches, and shall have on the left-hand part thereof a margin of not less than one inch and a half.

See Forms A and B, in Schedule 3 ; and Instructions, p. 258.

Nature and  
size of repre-  
sentation of  
trade mark.

8. Subject to any other directions that may be given by the registrar, a description of a trade mark shall be given in writing, and shall be accompanied, when practicable, by a drawing or other representation (a) in duplicate not less than three inches square, on foolscap paper of the size aforesaid, or by pasting or otherwise fastening on such paper a specimen of the trade mark.

Where a drawing or other representation or specimen cannot be given in manner aforesaid, a specimen or copy of the trade mark may be sent either of full size or on a reduced scale, and in such form as may be thought most convenient.

The registrar may, if dissatisfied with the representation of a trade mark, require a fresh representation either before he proceeds with the application or before he registers the trade mark.

The registrar may also, in exceptional cases, deposit in the Patent Museum a specimen or copy of a trade mark which cannot conveniently be placed on his register, and may refer thereto in his register in such manner as he thinks advisable.

(a) See Instructions, p. 260, as to representations.

Declaration to  
accompany  
application.

9. The declaration must be on foolscap paper of the above-mentioned size, and must verify the statement, and declare that, to the best of the applicant's knowledge and belief, he is lawfully entitled to use the trade mark, and must be made and subscribed as hereinafter mentioned.

See Rule 5 ; also Forms C and D, in the Third Schedule ; and Instructions, p. 257.

Application  
by company.

10. Where an application for the registry of a trade mark is made by or on behalf of a corporate body of persons, the statement

and declaration shall be made by the secretary or other principal officer of the body of persons; and the registrar may require such proof as he thinks fit that the application made is duly authorized by such body of persons.

The Statement, but not the Declaration, has to be made as "on behalf of" the body, and the capacity in which the person signing is acting should be stated. See Instructions, pp. 257-8; also next Rule.

11. Where an application for the registry of a trade mark is made by or on behalf of any firm or partnership, the statement and declaration may be made by any one member of such firm or partnership, or by any person duly authorized by such firm or partnership; and the registrar may require such proof as he thinks fit that the application made is duly authorized by such firm or partnership.

This is a new Rule.

The person signing should use his ordinary signature, and state the trading name under which the business is carried on. See Instructions, p. 257; also last Rule.

12. On receipt of the application the registrar shall send to the applicant an acknowledgment thereof.

Acknowledgment of application by registrar.

Originally Rule 11.

*Advertisement of Application and Notice of Opposition.*

13. As soon as may be after the receipt of an application made as provided by these Rules, the registrar shall require the applicant to insert an advertisement of the application in the official paper, during such time, and in such form, and generally in such manner as the registrar may think desirable, and distinguishing whether the mark has or has not been used before the thirteenth day of August one thousand eight hundred and seventy-five.

Advertisement of application.

Originally Rule 12.

See Additional Rule 1, p. 241. This Rule is not applicable to cotton marks.

See *In re Meikle*, 24 W. R. 1067.

14. The official paper (a) for the purposes of these Rules shall be some paper published under the direction of the Commissioners of Patents, or such other paper as such Commissioners, or any one of them, may from time to time direct.

Definition of official paper.

Originally Rule 13.

(a) The official paper is *The Trade Marks Journal*, published frequently, at present once a week. It contains illustrations of all the trade marks applied for under the Trade Marks Registration Acts, as well as the name and calling of each applicant, the description of goods, and the length of time for which such mark has been used, thus affording all persons interested in the use of trade marks authentic information as to the nature of the marks applied for in their respective trades. Each number of the Journal consists of 24 pages quarto, and may be obtained, at 1s. per number, from the publishers mentioned at pp. 268-9. Copies of the Journal are open to inspection at the Patent Office Library, Southampton Buildings, Chancery Lane, and also at the Patent Office Museum, South Kensington.

Means of advertising trade mark to be supplied to official paper.

15. For the purposes of such advertisement the applicant may be required to furnish the printer of the official paper with a wood-block or electrotype (*a*) of the trade mark, of such dimensions as may from time to time be directed by the registrar, or with such other information or means of advertising the trade mark as may be allowed by the registrar (*b*).

Originally Rule 14. This Rule does not apply to cotton marks ; as to which, see Additional Rules.

(*a*) For particulars respecting these wood-blocks or electrotypes, see Instructions, p. 263.

(*b*) Specimens of marks incapable of advertisement in the ordinary way (other than cotton marks in Classes 23-4-5) are deposited and may be seen at the Patent Office Museum, South Kensington. For instance, there are so deposited specimens of certain marks for worsted stuffs in Class 34, numbered 5844 to 5850, and consisting of selvages containing certain distinctive coloured threads. See *Trade Marks Journal*, vol. 2, No. 51, p. 88.

Notice and proceedings for opposition.

16. A notice of opposition (*a*) may be given by sending to the registrar, together with the prescribed fee, a written notice in duplicate, on foolscap paper of such size as aforesaid, stating the grounds of the opposition. The registrar shall acknowledge the receipt of such notice of opposition, and shall send one copy of such notice to the applicant.

Within three weeks after the receipt of such notice, or such further time as the registrar may allow, the applicant may send to the registrar, on foolscap paper of such size as aforesaid (*b*), a counter statement (*c*) of the grounds on which he relies for his application, and if he does not do so shall be deemed to have withdrawn his application.

If the applicant sends such counter-statement the registrar shall require the person who gave notice of opposition to give security, in such manner and to such amount as the registrar may require, for such costs as may be awarded in respect of such opposition (*d*) ; and if such security is not given within fourteen days after such requirement was made, or such further time as the registrar may allow, the opposition shall be deemed to be withdrawn.

If the person who gave notice of opposition duly gives such security as aforesaid, the registrar shall send him one copy of the counter-statement sent by the applicant, and thereupon the case shall be deemed to stand for the determination of the Court (*e*).

Originally Rule 15. The last clause is new.

(*a*) As to oppositions and notices thereof, see Instructions, pp. 263-4.

(*b*) See Rule 7.

(*c*) For Form of Counter-statement, see Instructions, p. 265.

(*d*) For Form of Bond suggested by the registrar, see Instructions, p. 265.

(*e*) See Rule 43.

#### *Registration of Trade Marks.*

Time of registration of trade mark.

17. On the expiration of three months from the date of the first appearance of the advertisement in the official paper, the registrar may, if he is satisfied that the applicant is entitled to registration,

register the trade mark in respect of the description of goods for which he may be entitled to be registered (a), and the applicant as the proprietor thereof, on payment of the prescribed fee (b).

Originally Rule 16. This Rule does not apply to cotton marks; as to which, see Additional Rules.

(a) As to the classification of goods, see First Schedule. By Rule 3 the registrar is empowered to decide questions as to the class to which goods belong.

(b) As to the fees, see Second Schedule, and Instructions, pp. 261-2, 271-2.

In *Re Meikle*, 24 W. R. 1067, V.-C. Hall held that he could not order a mark to be registered, so as to dispense with the three months' advertisement.

18. Where each of several persons claims to be registered as proprietor of the same or a nearly identical trade mark, in respect of the same goods or goods belonging to the same class (a), the registrar shall use his discretion as to registering all or any of such trade marks, either unconditionally or on the condition of the introduction of such variations (if any) (b) or otherwise as he thinks fit, or the registrar may, if in any case he thinks it expedient, submit or require the claimants to submit their rights to the Court (c).

Duty of registrar in case of disputed claim.

Originally Rule 17.

(a) See § 5 of the Act of 1875.

(b) See Instructions, p. 259, as to terms or symbols common to a trade.

(c) *I.e.* to the Chancery Division, by special case. See Rules 42, 44, and 45; and *Ex parte Grimshaw*, W. N. 1877, p. 24.

19. Where a trade mark has been already registered in respect of any goods or description of goods belonging to one particular class, a trade mark identical with such trade mark, or so nearly resembling the same as to be calculated to deceive (a), shall not, without leave of the Court (b), be registered in the name of another person as proprietor thereof with respect to any goods in that class.

Prohibition of registration of identical trade marks.

Originally Rule 18.

(a) See § 6 of the Act of 1875.

(b) *I.e.* on motion, or application in chambers, or otherwise as the Court shall direct, under Rule 43. Thus, in *Allsopp v. Walker* (April 10, 1877), the Master of the Rolls held that the defendants were not entitled to have registered as their trade mark a female hand pointing horizontally, the plaintiff's mark being a man's hand pointing upwards. And see note (c) to § 6 of the Act of 1875, *ante*, p. 217. An old trade mark may be registered for part of a class only: *Ex parte Barrows*, W. N. 1877, p. 119; L. J. Notes of Cases, 1877, p. 110.

The original Rule 19 is now cancelled; it was as follows:

19. Where goods may be considered as belonging to two or more classes, and the trade mark has been already registered in respect of such goods as belonging to one particular class, a trade mark identical with such trade mark, or so nearly resembling the same as to be calculated to deceive, shall not, without leave of the Court, be registered in the name of another person as proprietor

Similar trade mark for similar goods not to be registered in two classes.

*thereof with respect to the same or similar goods as belonging to another class.*

Entries to be made in register.

20. Upon registering any trade mark the registrar shall enter in the register the date on which the statement relating to the application for registry was received by the registrar (which day shall be deemed to be the date of the registry) (a) and such other particulars as he may think necessary, including the name and address of the proprietor.

(a) In cases in which a proposed new mark is refused registration, as being outside of § 10 of the Act of 1875, and another design is substituted for that rejected, the practice is to date the registration from the renewed application.

Notice of registration.

21. The registrar shall send notice to the applicant of the registration of his trade mark, together with a reference, where practicable, to the advertisement of such trade mark in the official paper.

The latter part of this Rule is new.

Trust not to be entered in register.

22. There shall not be entered in the register, or be receivable by the registrar, any notice of any trust, expressed, implied, or constructive.

#### *Registration of subsequent Proprietors.*

Registration of assignee or transferee.

23. The person to whom any registered trade mark has been assigned or transmitted may apply to be registered as proprietor thereof.

See § 2 of the Act of 1875, as to the connexion of the trade mark with the goodwill; and see § 4, as to the position of registered proprietors subsequent to the first.

Production of assignment, &c., by assignee.

24. Where the trade mark has been assigned the person claiming as assignee to be registered shall send to the registrar, with his application (a), an assignment by deed executed both by the assignor and assignee (b), or a certified copy of such assignment, and a declaration verifying the fact of such assignment having been made (c).

The provision in respect to the "certified copy of an assignment" is new.

(a) As to the application, see Instructions, p. 268.

(b) See Form E, in the Third Schedule.

(c) The Declaration is to be in Form D, varying paragraphs 2 and 3. See Instructions, p. 268.

Right of transferee or his assignee.

25. Where a trade mark has been transmitted by the death of the registered proprietor, the legal personal representative of such proprietor shall be recognised as having the title to the mark.

Where the trade mark has been transmitted by marriage, bankruptcy, or otherwise by operation of law, the person applying as

the transmittee to be registered shall send to the registrar, together with his application, a statement of the manner in which such trade mark has been transmitted, and a declaration (a) verifying such statement.

Any transmittee may assign his interest in the mark, notwithstanding that he has not been registered as proprietor thereof (b).

(a) See Form F, in the Third Schedule.

(b) But see § 2 of the Act of 1875, as to connexion with goodwill.

26. Where the person applying to be registered claims as the transmittee of any registered proprietor, or as the assignee of a transmittee, there shall be produced to the registrar the following evidence: Evidence to be produced on transmission.

(1.) If the business concerned in the goods with respect to which the trade mark is registered is carried on in England or Ireland, then

A. If such transmission has taken place by the death of any person, there shall be produced the probate of the will of such deceased person, or the letters of administration to his estate, or an official extract therefrom; and

B. If such transmission has taken place by the marriage of the female proprietor, there shall be produced a certified copy of the register of such marriage, or other legal evidence of the celebration thereof, and a declaration of the identity of such female proprietor; and

C. If such transmission has taken place by the bankruptcy of the registered proprietor, or otherwise by operation of law, there shall be produced to the registrar such evidence as may, for the time being, be receivable as proof of the title of the applicant; and

(2.) Where the said business is not carried on in England or Ireland,—

There shall be produced similar evidence to that hereinbefore prescribed, or such evidence as would be received as sufficient evidence in the courts of justice of the country or place at which the proprietor carries on business.

27. Every declaration made by an assignee or transmittee shall state his name and address, and that he is entitled to the goodwill of the business concerned in the goods with respect to which the trade mark is registered, or to some part of such goodwill. Declaration by assignee and transmittee.

See § 2 of the Act of 1875; and Form F, in the Third Schedule.



Assignee, &c.,  
of joint  
owners.

28. Where two or more persons are registered as joint proprietors of the same registered trade mark, those proprietors, or the survivors or survivor of them, or their or his assignee or transmittee, shall alone be recognised by the registrar as having any title to the mark.

Registration  
of joint  
owners as  
separate  
owners of  
separate trade  
marks.

29. Where divers persons claim to be severally entitled to the goodwill of a business concerned in the goods with respect to which a trade mark has been registered, such persons, or any of them, may, if they all consent thereto, and on the production of the proper evidence, and on payment of the prescribed fee, be registered separately as separate proprietors of such trade mark.

If all of such persons so entitled do not so consent, the registrar shall not, without leave of the Court (a), register any of them as separate proprietors of such trade mark.

(a) This would be obtained on an application to rectify the register (§ 5 the Act of 1875), made as prescribed by Rule 43.

*Continuance of a Trade Mark on the Register.*

Removal of  
trade mark  
after fourteen  
years, unless  
fee paid.

30. At a time not being less than two months nor more than three months before the expiration of fourteen years from the date of the registration of a trade mark, the registrar shall send a notice to the registered proprietor that the trade mark will be removed from the register unless the proprietor pays to the registrar, before the expiration of such fourteen years (naming the date at which the same will expire), the prescribed fee (a), and if such fee be not previously paid, he shall at the expiration of one month from the date of the giving of the first notice send a second notice to the same effect, and if such fee be not paid before the expiration of such fourteen years, the registrar may, after the end of three months from the expiration of such fourteen years, remove the mark from the register, and so from time to time at the expiration of every period of fourteen years.

(a) *I.e.* £2. See Second Schedule.

Payment of  
additional fee  
after expira-  
tion of four-  
teen years.

31. If before the expiration of the said three months the registered proprietor pays the said fee, together with the additional prescribed fee (a), the registrar may, without removing such trade mark from the register, accept the said fee as if it had been paid before the expiration of the said fourteen years.

(a) *I.e.* £1. See Second Schedule.

Power of  
Commission-  
ers to restore  
trade mark.

32. Where after the said three months a trade mark has been removed from the register for non-payment of the prescribed fee, the Commissioners of Patents, or one of them, may, if they are

satisfied that it is just so to do, restore such trade mark to the register on payment of the prescribed additional fee (a) and compliance with such conditions as they may think just.

(a) *I.e.* £2. See Second Schedule.

33. Where a trade mark has been removed from the register for non-payment of the fee or otherwise, such trade mark shall nevertheless for five years after the date of such removal be deemed for the purpose of section six of the Act (a), and not for any other purpose, to be a trade mark which is already registered.

Trade mark like one removed not to be registered for five years.

(a) *I.e.* for the purpose of preventing the registration of similar marks.

34. The Court may, on the application of any person aggrieved (a), remove any trade mark from the register on the ground, after the expiration of five years from the date of the registry thereof, that the registered proprietor is not engaged in any business concerned in the goods within the same class as the goods with respect to which a trade mark is registered (b).

Removal of trade mark where no business in goods.

The words "within—goods" are new.

(a) Under Rule 43.

(b) See § 5 of the Act of 1875.

#### *Alteration and Rectification of Register.*

35. The registered proprietor of any registered trade mark may, by leave of the Court, alter such trade mark, so that he do not alter any one or more of the particulars in such mark which are declared by section ten of the Act to be the essential particulars of a trade mark, and the registrar shall, on payment of the prescribed fee (a) and compliance with the requisitions of the registrar as to the deposit of representations of the trade mark as altered, alter the register accordingly.

Alteration of non-essential parts of trade mark.

(a) See Second Schedule.

36. Where due notice of an order of any Court rectifying the register has been given to the registrar, the registrar shall forthwith, upon a copy of so much of the order as relates to such rectification being left with the registrar, and payment of the prescribed fee (a), rectify the register in accordance with the order.

Entry of rectification in register.

(a) See Second Schedule.

37. Wherever the register is rectified or altered in any particular in respect to any trade mark, the registrar shall, if he thinks that such rectification or alteration should be made public, at the expense of any person interested publish, by advertisement or otherwise, and

Publication of rectification or alteration of register.

in such manner as he thinks just, the circumstances attending the rectification or alteration of the register.

Notice to registrar of opposition in any matter.

38. Any person may send, with the prescribed fee, notice to the registrar of his desire to oppose the registration of any assignee or transmittor, or any alteration of the register. The registrar shall give to the applicant for such registration or alteration the like notice (a), and may require security for costs (b) in like manner as in the case of a notice of opposition to the original registration of a trade mark.

The registrar in such case may, if he think fit, require the parties interested to submit their claims to the Court (c).

(a) See Instructions, p. 264.

(b) See Instructions, p. 265, as to form of Bond.

(c) Under Rule 44. Thus, *Allsopp v. Walker*, M. R. April 10, 1877.

Alteration of address, &c., in register.

39. If the registered proprietor of a trade mark send to the registrar, together with the prescribed fee (a), notice of an alteration in his address, the registrar shall alter the register accordingly.

(a) See Second Schedule.

#### *Inspection of Register.*

Inspection and copies of register.

40. On such days and during such hours as the registrar may from time to time determine, not being less than three hours on three separate days in a week, any person may, on paying the prescribed fee (a), inspect the register of trade marks; and any person may, on paying the prescribed fee (a), obtain an office copy of any entry in the register.

(a) See Second Schedule.

Certificate by registrar.

41. The registrar when required for the purpose of any legal proceeding or other special purpose to give a certificate (a) as to any entry, matter, or thing which he is authorized by this Act, or any of these Rules to make or do, may, on payment of the prescribed fee (b), give such certificate, and shall specify on the face of it the legal proceeding or other purpose for which such certificate is granted.

(a) See § 8 of the Act of 1875; and § 2 of the Amendment Act of 1876.

(b) See Second Schedule.

#### *Application to the Court.*

Definition of Court.

42. The Court for the purposes of this Act is hereby declared to be the Chancery Division of Her Majesty's High Court of Justice.

See § 10 of the Act of 1875.

43. An application to the Court under the Act and these Rules may, subject to Rules of Court under the Supreme Court of Judicature Act, 1875, be made by motion or by application in chambers, or in such other manner as the Court may direct. Application to Court.

See § 5 of the Act of 1875.

In *Ex parte Stephens*, 24 W. R. 819, the registrar having refused to register a trade mark, Sir G. Jessel, M.-R., said that the unsuccessful applicant might apply by motion to rectify the register by inserting his name as proprietor of the trade mark, two clear days' notice being given to the registrar. As to evidence, the application might be supported by applicant's own affidavit stating the facts of the case. See, too, *In re Meikle*, 24 W. R. 1067; and *In re Barrows*, L. R. 5 Ch. D. 358.

44. Where the registrar refuses to comply with the claims of any persons until their rights have been determined by the Court, the manner in which the rights of such claimants may be submitted by the registrar, or, if the registrar so require, by the claimants, to the Court shall, unless the Court otherwise order, be by a special case; and such special case shall be filed and proceeded with in like manner as any other special case submitted to the Court, or in such other manner as the Court may direct. Submission to Court of conflicting claims.

See § 6 of the Act of 1875. In *Ex parte Grimshaw*, W. N. 1877, p. 24, Vice-Chancellor Hall refused to adopt another mode of proceeding.

45. The special case may be agreed to by the parties, or, if they differ, may be settled by the registrar. Settlement of special case.

See Instructions, p. 266, for notice to have case stated by registrar. By the Second Schedule the fee is £2.

#### *Cutlers' Company.\**

46. The time within which the Cutlers' Company are in pursuance of the Act to deliver to the registrar copies of all Sheffield corporate marks in force at the time of such delivery, shall be the first day of March one thousand eight hundred and seventy-six, or such later day as the Lord Chancellor may fix. Time for delivery of old Sheffield marks.

47. Subject to any other directions that may be given by the registrar, the manner in which such copies are to be delivered shall be the sending to the registrar of copies as hereinafter defined of such marks, accompanied by a statement of the names, addresses, and callings of the persons to whom such trade marks have been assigned. Manner of delivery of old Sheffield marks.

48. The time within which the Cutlers' Company are to deliver to the registrar notice of an application to them for assigning any mark or device, with a copy of such mark or device, shall be as Time for delivery of new Sheffield marks.

\* See § 9 of the Act of 1875.

soon as practicable after the date at which such Company have determined on the mark or device to be assigned.

Manner of delivery of new Sheffield marks.

49. The manner in which such notice and copy shall be delivered to the registrar shall be the sending to the registrar a notice of the application, accompanied by a statement comprising the like particulars as a statement required to be made by an applicant for the registration of a trade mark by the registrar under the Act, so far as such particulars are known to the Cutlers' Company.

Period between notice to registrar and assignment of new Sheffield marks.

50. The period before the expiration of which such mark or device shall not be assigned by the Cutlers' Company, shall be six weeks from the date of sending the said notice to the registrar.

Time for notice of application to register new trade marks to Cutlers' Company.

51. The time within which notice of an application for the registration under the Act of a trade mark as belonging to any particular goods or class of goods specified in section two of the Cutlers' Company's Act, 1860, together with a copy of the trade mark, is to be delivered to the Cutlers' Company, shall be as soon as practicable after the receipt of the application by the registrar.

Manner of giving notice to Cutlers' Company of application.

52. The manner in which such notice is to be given shall be the sending to the Cutlers' Company a copy of the official journal containing the mark of which notice is required to be given, with a note distinguishing such mark.

Time between notice to Cutlers' Company and registration of trade mark.

53. The period from the giving of such notice, before the expiration of which the trade mark is not to be registered, shall be six weeks from the date of sending such notice to the Cutlers' Company.

Time for notice of assignment of mark or registration of mark.

54. The time within which notice of the assignment of any trade mark or device, or the registration of any trade mark, is to be given to the registrar or to the Cutlers' Company (as the case may be), shall be fourteen days after such assignment or registration.

Manner of giving notice of assignment or registration of mark.

55. The manner in which such notice shall be given shall be the sending a notice of such assignment or registration, with sufficient particulars to identify the mark, or device, or trade mark, to the registrar or Cutlers' Company, as the case may be.

Description of copies for purpose of Cutlers' Company.

56. A copy of a trade mark for the purpose of these Rules, when sent by the Cutlers' Company, shall be a drawing or representation of the trade mark, and, subject to any other directions that may be given by the registrar, shall be of a size of not less than three inches square, and shall be upon foolscap paper of such size as aforesaid.

*Cotton Goods.\**

57. For the purpose of facilitating the granting of trade marks in respect of cotton goods in Classes 23 (a), 24 and 25 (a), there shall be established by the Commissioners of Patents, and subject to their control, an office at Manchester (b) for the exhibition of all devices, marks, headings, labels, tickets, letters, words, or figures, or combinations of letters, words, or figures used in the cotton trade, and in these Rules included under the expression "cotton marks."

Establishment of office for exhibition of cotton trade marks at Manchester.

(a) See the Instructions in respect of applications for registration in Classes 23 and 25, at pp. 267a and 269.

(b) This was opened at 48, Royal Exchange, Manchester.

58. (a)

(a) This rule, which required representations of old cotton marks to be sent to the Manchester office on or before Dec. 1st, 1876, is now annulled, and the time for sending in such representations is regulated by the new rule 58. See p. 240b, *infra*.

59. A committee (a) of persons versed in the usages of the cotton trade shall be appointed by the Commissioners of Patents, consisting of such number of persons as may from time to time be determined by them; and it shall be the duty of such committee, on or before a time to be named by the Commissioners of Patents, to divide the cotton marks, representations of which have been so sent in to the Manchester office, into two classes, the first class consisting of such of the said cotton marks as are, in the opinion of the committee, trade marks within the meaning of the Act, and the second class, consisting of such of the said cotton marks as are not, in the opinion of the committee, trade marks within the meaning of the Act (b).

Committee of experts to be appointed, and to divide cotton marks into two classes.

(a) As to the members of the committee, see Instructions, pp. 266-7.

(b) In *Ex parte Orr Ewing & Co.*, 26 W. R. 259, V.-C. Hall decided that certain cotton marks which had been placed by the Committee of Experts in the second class, were true trade marks within the Acts, and directed the registrar to proceed with the application to register as if the committee had placed the marks in the first class, and that if and when the applicants would have been entitled to register, had the committee so done, an order for the registrar to register the marks in question might be drawn up in accordance with Rule 62.

60. The said committee shall form a list of the cotton marks sent to the Manchester office in each of the aforesaid classes, and shall transmit such lists to the Commissioners of Patents, accompanied by two representations of each of the marks specified in the second class in-such list.

Committee to form list of marks sent in to Manchester office.

\* These Rules with respect to cotton goods and marks are all new. And see the Additional Rules. These regulations only apply to cotton marks used before the passing of the Act of 1875. See Instructions, p. 267.

\*

The third representation of each of the marks in the second class in such list shall be retained for reference in the Manchester office.

Marks may be added to list.

61. The Commissioners of Patents may from time to time add to the aforesaid list any cotton marks as they may think just, and such addition shall be deemed to be part of the original list.

Any person claiming to be the proprietor of a cotton mark in Class 1 may apply to be registered.

62. Any proprietor of a cotton mark not specified in the second class in such list (a) may apply to be registered as proprietor of such cotton mark in manner and subject to the conditions in which he may apply to be registered as proprietor of any other trade mark, but it shall not be lawful for the registrar to register any person as proprietor of any cotton mark in the second class of the aforesaid list except in pursuance of an order of the Court (b).

(a) But see *Ex parte Orr Ewing & Co.*, 26 W. R. 259.

(b) But a certificate of refusal to register may be obtained under § 2 of the Amendment Act, 1876.

Cotton mark not to be registered except in manner herein prescribed.

63. A cotton mark shall not be registered except in manner and subject to the conditions prescribed by these Rules with respect to the registry of cotton marks.

#### *Declaration and Evidence.*

Dispensing with declaration, evidence, &c.

64. In any case in which any person is required under this Act to make a declaration on behalf of himself, or any body corporate, or any evidence is required to be produced to the registrar, the registrar, if satisfied that from any reasonable cause such person is unable to make the declaration, or that such evidence may be dispensed with, may, upon the production of such other declaration or evidence, and subject to such terms as he may think fit, dispense with any such declaration or evidence.

Originally Rule 57.

Manner in which and persons before whom declaration is to be taken.

65. The declarations required by these Rules shall be made and subscribed in the United Kingdom under the authority of the Act of the fifth and sixth years of the reign of King William the Fourth, chapter sixty-two, "to repeal an Act of the present session of Parliament, intituled 'An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits,' and to make other provisions for the abolition of unnecessary oaths," and may be made and subscribed before any justice of the peace, or any commissioner or other officer authorized by law in any part of the United Kingdom to administer an oath for the purpose of any legal proceeding (a).

The declaration, when taken out of the United Kingdom, shall (a.) If made in any part of her Majesty's dominions be made and subscribed before some court, justice, or officer authorized by law in such part of her Majesty's dominions to

administer an oath for the purpose of a legal proceeding (b); and,

- (b.) If made out of her Majesty's dominions, be made and subscribed before a British consul, vice-consul, or other consular officer (b).

Originally Rule 58.

(a) See Forms C and F, in the Third Schedule; and Instructions, pp. 257, 270.

(b) See Form D; and Instructions, pp. 257, 270.

66. Any document purporting to have affixed, impressed, or subscribed thereto or thereon the seal or signature of any person hereby authorized to take such declaration, in testimony of such declaration having been made and subscribed before him, may be admitted by the registrar without proof of the genuineness of any such seal or signature, or of the official character of such person or his authority to take such declaration.

Notice of seal of officer taking declaration to prove itself.

Originally Rule 59.

67. If any person is, by reason of infancy, lunacy, or other inability, incapable of making any declaration or doing anything required or permitted by the Act or these Rules to be made or done by such incapable person, then the guardian or committee, if any, of such incapable person, or if there be none, any person appointed by any Court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration, or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purpose of the Act and these Rules be as effectual as if done by the person for whom he is substituted.

Declaration by infant, lunatic, &c.

Originally Rule 60.

#### *Commissioners of Patents.*

68. The registrar, in the exercise of his powers, duties, and discretion under the Act and these Rules, shall be subject to the superintendence of the Commissioners of Patents (a), and shall conform in every case to any instructions, directions, orders, or rules (general or special) that may be issued, given, or made by such Commissioners, or any one of them; and he shall in all cases of doubt be entitled to refer to the said Commissioners, or any of them, for instructions.

Registrar subject to Commissioners of Patents.

Originally Rule 61.

(a) *I. e.* the Lord Chancellor, the Master of the Rolls, the Attorney-General and the Solicitor-General for England, the Lord Advocate and the Solicitor-General for Scotland, and the Attorney-General and Solicitor-General for Ireland.

In *In re Meikle*, 24 W. R. 1067, Vice-Chancellor Hall refused to interfere with the instructions of the Commissioners; but see *In re Barrows*, L. R. 5 Ch. D. 353—61.



*Notices.*

Notices to be  
in writing and  
served by post.

69. Applications, statements, notices, and documents required by the Act or by these Rules to be served or sent shall be in writing or print, or partly in writing and partly in print, and may be delivered personally, or served and sent by post, and if sent by post shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notice was prepaid and put into the post properly addressed.

Originally Rule 62.

Mode of  
addressing  
notices.

70. Any application, statement, notice, and document to be served or sent on or to the registrar shall be deemed to be properly addressed if addressed to the Registrar of Trade Marks, at his office; and if required to be served on or sent to the proprietor of any trade mark shall be deemed to be properly addressed if addressed to the registered proprietor at his registered address.

Originally Rule 63.

Construction  
of Rules.

71. These Rules shall be construed as if they were part of the Trade Marks Registration Act, 1875, as amended by the Trade Marks Registration Amendment Act, 1876, and the said Trade Marks Registration Act, 1875, amended as aforesaid, is in these Rules referred to as "the Act."

Originally Rule 64.

Forms.

72. The Forms in the Third Schedule to these Rules, or such other forms as the registrar may direct, may be used in all cases to which they are applicable.

Originally Rule 65.

CAIRNS, C.

*August, 1876.*

We, the Commissioners of Her Majesty's Treasury, do hereby assent to the above Rules so far as they relate to fees.

CRICHTON.  
R. WINN.

*September, 1876.*

**RULE**  
**AS TO CANCELLING OF AN ENTRY UPON THE**  
**REGISTER UPON APPLICATION OF PROPRIETOR.**

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Whereas by the Trade Marks Registration Act, 1875, the Lord Chancellor is authorized from time to time, with the assent of the Treasury as to fees, to make general rules as to the registry of trade marks, and other matters connected therewith, and also when made, to alter, annul, or vary such rules as in the said Act mentioned :

Now, therefore, I, the Right Honourable Hugh MacCalmont, Baron Cairns, of Garmoyle, in the County of Antrim, Lord High Chancellor of Great Britain, in pursuance of the said Act, and of all other powers enabling me in this behalf, do hereby, in addition to the rules as to the registry of trade marks before made by me, make the following rule :—

The registered proprietor of a trade mark may at any time send to the registrar an application to cancel the entry of such trade mark upon the register ; such application to be accompanied by the prescribed fee and by a declaration made by the applicant, stating his name and address, and that he is the person whose name appears upon the register as the proprietor of the said trade mark ; and thereupon the registrar may, if satisfied of the truth of the statement made by the applicant, cancel the entry of such trade mark.

CAIRNS.

C.

*4th February, 1878.*

ADDITIONAL RULE WITH RESPECT TO  
COTTON GOODS.

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Whereas by the fifty-eighth rule of the Trade Marks Rules it is provided as follows :—

“ Every person who at the date of the passing of the Act used any cotton mark shall, on or before the first day of December one thousand eight hundred and seventy six, send to the Manchester office three representations of such cotton mark, in such form and with such a description as may be from time to time required by the Commissioners of Patents.”

And whereas it is expedient to extend the time for sending into the Manchester office the representations of cotton marks in the said rule mentioned :

Now, therefore, I, the Right Honourable Hugh MacCalmont, Baron Cairns, of Garmoyle in the County of Antrim, Lord High Chancellor of Great Britain, in pursuance of the Trade Marks Registration Act, 1875, and of all powers enabling me in that behalf, do hereby annul the said rule, and direct that there be substituted therefor the following rule ; that is to say,

Representations of cotton marks to be sent by owners resident in the United Kingdom on or before Jan. 1, 1877 ; by owners resident abroad on or before March 1, 1877.

58. Every person who at the date of the passing of the Act used any cotton mark shall, if resident in the United Kingdom, on or before the first day of January one thousand eight hundred and seventy-seven, and if resident elsewhere, on or before the first day of March one thousand eight hundred and seventy-seven, send to the Manchester office (a) three representations of such cotton mark, in such form and with such a description as may be from time to time required by the Commissioners of Patents.

CAIRNS.

C.

*1st December, 1876.*

(a) It should be noted that in all cases of old cotton marks application must be made at Manchester.

ADDITIONAL RULES WITH RESPECT TO  
COTTON GOODS.

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Whereas by the thirteenth, fifteenth, and seventeenth Rules of the Trade Marks Rules provision is made respecting the advertisement in the official paper of facsimiles of trade marks : And whereas such provisions cannot conveniently be applied to cotton goods (*a*) in Classes 23, 24, and 25, referred to in the said Rules.

Now, therefore, I, the Right Honourable Hugh MacCalmont, Baron Cairns, of Garmoyle, in the county of Antrim, Lord High Chancellor of Great Britain, in pursuance of the Trade Marks Registration Act, 1875, and all powers enabling me in that behalf, do hereby direct that the above-mentioned Rules 13, 15, and 17 shall not apply to trade marks in respect of cotton goods in the said classes, and that instead of such Rules there shall apply to the goods aforesaid the Rules following :

1. As soon as may be after the receipt of an application, made as provided by the Trade Marks Rules, for the registration of a mark in Classes 23, 24, 25 aforesaid, or in any one or more of such classes, the registrar shall insert in the official paper an advertisement of such application, showing the name and address of the applicant, the class in which he applies, the number given to the mark by the registrar, the places in London and Manchester respectively where a specimen of such mark is deposited for exhibition, and distinguishing whether the mark has or has not been used prior to the thirteenth day of August one thousand eight hundred and seventy-five (*b*).

Advertisement of cotton marks.

2. On the expiration of three weeks from the date of the first appearance of the advertisement of a mark in Classes 23, 24, 25, or in any one or more of such classes, in the official paper, the registrar may, if he is satisfied that the applicant is entitled to registration, register such mark in respect of the description of goods for which he may be entitled to be registered, and the applicant as the proprietor thereof, on payment of the prescribed fee.

Time of registration of cotton marks.

26th February, 1877.

CAIRNS,  
C.

(*a*) See Rules 57 to 63 ; and Instructions, pp. 266 and 269.

(*b*) Marks in Class 23 were first advertised in No. 105 of the *Trade Marks Journal* ; marks in Class 25, in No. 113. Marks in Class 24 have not yet been advertised.

## SCHEDULES.

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### FIRST SCHEDULE.

#### CLASSIFICATION OF GOODS.\*

##### *Illustrations.*

*Note.*—Goods are mentioned in this column by way of illustration, and not as an exhaustive list of the contents of a class.

##### *Class 1.*

Chemical substances used in manufactures, photography, or philosophical research, and anti-corrosives.

Such as—

Acids, including vegetable acids.  
Alkalies.  
Artists' colours.  
Pigments.  
Mineral dyes.  
Varnish.

##### *Class 2.*

Chemical substances used for agricultural, horticultural, veterinary, and sanitary purposes.

Such as—

Artificial manure.  
Sheep washes.  
Deodorizers.

##### *Class 3.*

Chemical substances not included in Class 1, used in medicine and pharmacy.

Such as—

Tinctures.  
Extracts.  
Barks.  
Patent medicines.  
Cod-liver oil.  
Plaisters.  
Lozenges.

##### *Class 4.*

Raw or partly prepared vegetable, animal, and mineral substances used in manufactures, not included in other classes.

Such as—

Resins.  
Oils, not included in other classes.  
Dyes, other than mineral.  
Tanning substances.  
Fibrous substances (*e. g.* cotton, hemp, flax, jute).

\* See Act of 1875, § 2, and Rules 1 to 4.

*Class 4 (continued).**Illustrations.*

Wool.  
 Silk.  
 Bristles.  
 Hair.  
 Feathers.  
 Cork.  
 Seeds.  
 Bone.  
 Sponge.

*Class 5.*

Unwrought and partly wrought metals  
 used in manufacture.

Such as—

Iron and steel, pig or cast.  
 „ rough.  
 „ bar and rail, including rails for  
 railways.  
 „ bolt and rod.  
 „ sheets, and boiler and armour  
 plates.  
 „ hoops.  
 „ wire.  
 Lead, pig.  
 „ rolled.  
 „ sheet.  
 Copper.  
 Zinc.  
 Gold, in ingots.

*Class 6.*

Machinery of all kinds, and parts of  
 machinery, except agricultural ma-  
 chines included in Class 7.

Such as—

Steam engines.  
 Boilers.  
 Pneumatic machines.  
 Hydraulic machines.  
 Locomotives.  
 Sewing machines.  
 Weighing machines.  
 Machine tools.  
 Mining machinery.  
 Fire engines.

*Class 7.*

Agricultural and horticultural machi-  
 nery, and parts of such machinery (a).

Such as—  
 Ploughs.

(a) This class is only to include the larger implements and machines. See Instructions, p. 259.

*Class 7 (continued).**Illustrations.*

Drilling machines.  
Reaping machines.  
Thrashing machines.  
Churns.  
Cyder presses.  
Chaff cutters.

*Class 8.*

Philosophical instruments, instruments and apparatus for useful purposes, or for teaching.

Such as—  
Gauges.  
School desks.  
Logs.

*Class 9.*

Musical instruments.

*Class 10.*

Horological instruments.

*Class 11.*

Instruments, apparatus, and contrivances for surgical or curative purposes, or in relation to health.

Such as—  
Bandages.  
Friction gloves.  
Lancets.

*Class 12.*

Cutlery and edge tools.

Such as—  
Knives.  
Forks.  
Scissors.  
Shears.  
Files.  
Saws.

*Class 13.*

Metal goods not included in other classes (*a*).

(*a*) This includes small agricultural and horticultural implements. See Instructions, p. 259.

*Class 14.*

Goods of precious metals (including aluminium, nickel, Britannia metal, &c.), and jewellery, and imitations of such goods and jewellery.

Such as—  
Plate.  
Clock cases and pencil cases of such metals.

*Class 14 (continued).**Illustrations.*

Sheffield and other plated goods.  
Gilt and ormolu work.

*Class 15.*

Glass.

Such as—

Window and plate glass.  
Painted glass.  
Glass mosaic.  
Glass for optical purposes.

*Class 16.*

Porcelain and earthenware.

Such as—

China.  
Stoneware.  
Terra-cotta.  
Statuary porcelain.  
Tiles.  
Bricks.

*Class 17.*

Manufactures from mineral and other substances for building or decoration.

Such as—

Cement.  
Plaster.  
Imitation marble.

*Class 18.*

Engineering, architectural, and building contrivances.

Such as—

Diving apparatus.  
Warming apparatus.  
Ventilating apparatus.  
Filtering apparatus.  
Lighting contrivances.  
Drainage contrivances.  
Electric and pneumatic bells.

*Class 19.*

Arms, ammunition, and stores not included in Class 20.

Such as—

Cannon.  
Small-arms.  
Fowling-pieces.  
Swords.  
Shot and other projectiles.  
Camp equipage.  
Equipments.



<i>Class 20.</i>	<i>Illustrations.</i>
Explosive substances.	Such as— Gunpowder. Gun cotton. Dynamite. Fog signals. Percussion caps. Fireworks. Cartridges.
<i>Class 21.</i>	
Naval architectural contrivances and naval equipments not included in Classes 19 and 20.	Such as— Boats. Anchors. Chain cables. Rigging.
<i>Class 22.</i>	
Carriages.	Such as— Railway carriages. Waggons. Railway trucks. Velocipedes. Bath chairs.
<i>Class 23.</i>	
Cotton yarn and thread. See the special Instructions, p. 269.	
<i>Class 24.</i>	
Cotton piece goods of all kinds. See special Instructions, p. 269.	
<i>Class 25.</i>	
Cotton goods not included in Classes 23, 24, or 38. See special Instructions, p. 269.	
<i>Class 26.</i>	
Linen and hemp yarn and thread.	
<i>Class 27.</i>	
Linen and hemp piece goods.	

*Class 28.**Illustrations.*

Linen and hemp goods not included in  
Classes 26, 27, and 50.

*Class 29.*

Jute yarns and tissues, and other  
articles made of jute not included in  
Class 50.

*Class 30.*

Silk, spun, thrown, or sewing.

*Class 31.*

Silk piece goods.

*Class 32.*

Other silk goods not included in  
Classes 30 and 31.

*Class 33.*

Yarns of wool worsted, or hair.

*Class 34.*

Cloths and stuffs of wool, worsted, or  
hair.

*Class 35.*

Woollen and worsted and hair goods  
not included in Classes 33 and 34.

*Class 36.*

Carpets, floor-cloth, and oil-cloth.

Such as—  
Drugget.  
Mats and matting.  
Rugs.

*Class 37.*

Leather and skins, unwrought and  
wrought.

Such as—  
Saddlery.  
Harness.  
Whips.  
Portmanteaus.  
Furs.

<i>Class 38.</i>	<i>Illustrations.</i>
Articles of clothing.	Such as— Hats of all kinds. Caps and bonnets. Hosiery. Gloves. Boots and shoes. Other ready-made clothing.
<i>Class 39.</i>	
Paper (except paper hangings), stationery, printing, and bookbinding.	Such as— Envelopes. Sealing wax. Pens (except gold pens). Ink. Playing cards. Blotting cases. Copying presses.
<i>Class 40.</i>	
Goods manufactured from indiarubber and gutta-percha not included in other classes.	
<i>Class 41.</i>	
Furniture and upholstery.	Such as— Paper hangings. Papier-mâché. Mirrors. Mattresses.
<i>Class 42.</i>	
Substances used as food, or as ingredients in food.	Such as— Cereals. Pulses. Olive oil. Hops. Malt. Dried fruits. Tea. Sago. Salt. Sugar. Preserved meats. Confectionery. Oil cakes.

*Class 42 (continued).**Illustrations.*

Pickles.  
 Vinegar.  
 Beer clarifiers.

*Class 43.*

Fermented liquors and spirits.

Such as—  
 Beer.  
 Cyder.  
 Wine.  
 Whisky.  
 Liqueurs.

*Class 44.*

Mineral and aerated waters, natural and artificial, including ginger beer.

*Class 45.*

Tobacco, whether manufactured or unmanufactured.

*Class 46.*

Seeds for agricultural and horticultural purposes.

*Class 47.*

Candles, common soap, detergents, illuminating, heating, or lubricating oils, matches, and starch, blue, and other preparations for laundry purposes.

Such as—  
 Washing powders.  
 Benzine collas.

*Class 48.*

Perfumery (including toilet articles, preparations for the teeth and hair, and perfumed soap).

*Class 49.*

Games of all kinds.  
 Archery.  
 Fishing tackle.  
 Toys.

Such as—  
 Billiard tables.  
 Roller skates.  
 Fishing nets and lines.

<i>Class 50.</i>	<i>Illustrations.</i>
Miscellaneous, including—	Such as—
(1.) Goods manufactured from ivory, bone, wood, not included in other classes.	. Coopers' wares (a).
(2.) Goods manufactured from straw or grass, not included in other classes.	(a) And also—
(3.) Goods manufactured from animal and vegetable substances, not included in other classes.	Bags, sacks, tarpaulins, rick-cloths, cart-covers, tents, brattice-cloths.
(4.) Tobacco pipes.	Brushes (except artists' brushes) and combs.
(5.) Umbrellas, walking sticks, brushes, and combs.	Buttons of all kinds, other than of precious metals or imitations thereof.
(6.) Furniture cream, plate powder.	Cordage, rope, twine.
(7.) Tarpaulins, tents, rick-cloths, rope, twine.	Drinking-flasks, not of precious metals or imitations thereof.
(8.) Buttons of all kinds, other than of precious metal or imitations thereof.	Fuel (patent and artificial).
(9.) Packing and hose of all kinds.	Furniture cream, plate powder, diamond cement, polishing paste.
(10.) Goods not included in the foregoing classes.	Grindstones, oilstones, hones, emery.
	Hose.
	Knapsacks.
	Preparations for softening leather.
	Rugs (described in the Statement as "not included in Class 36").
	Steam packing.
	See Instructions, p. 259.

#### GENERAL NOTE.

Any wares made of mixed materials (for example, of both cotton and silk) shall be included in such one of the classes appropriated to those materials as the registrar may decide.

### SECOND SCHEDULE.

#### FEES.

The following fees shall be payable to the registrar on or for the following occasions or purposes :

	£	s.	d.
1. On application to register one trade mark for one or more articles included in one class - - - - -	1	0	0
2. On application to register more than one trade mark for one or more articles included in one class, for each additional trade mark after the first - - - - -	0	10	0
3. On application to register a trade mark in respect of goods in different classes, for every class after the first to which such trade mark is extended, an additional fee of - - - - -	0	2	0
4. For registration of one trade mark - - - - -	1	0	0
5. Where the same person is registered at the same time for more than one trade mark, for registration of each additional mark after the first - - - - -	0	10	0

	£	s.	d.
6. Where the same person is registered at the same time for the same trade mark in respect of goods in different classes, for the registration of one mark in each class after the first an additional fee of	0	2	0
7.(b) For entering notice of opposition, for each trade mark, whether in one or more classes	2	0	0
8.(a) For registering subsequent proprietor in cases of assignment or transmission, the first mark	1	0	0
And for every additional mark assigned or transmitted at the same time	0	2	0
9. For altering address on the register	0	5	0
10. For every entry in the register of a rectification thereof or an alteration therein, not otherwise charged	0	10	0
11. For continuance of mark at expiration of fourteen years	2	0	0
12. Additional fee where fee is paid within three months after expiration of fourteen years	1	0	0
13. Additional fee for restoration of trade mark when removed for non-payment of fee	2	0	0
14.(a) For certificate of registration to be used in legal proceedings	1	0	0
15. For inspecting register, for every quarter of an hour	0	1	0
16. For office copy of documents, 2 <i>d.</i> per folio, but never less than	0	1	0
17. Settling a special case by registrar	2	0	0
18.(a) For certificate of registration to be used for the purpose of obtaining registration in foreign countries	0	5	0
19.(a) For copy of notification of registration	0	2	0
20.(a) In cases where a trade mark requires a greater space than two inches of the depth of the page of the <i>Trade Marks Journal</i> , for each additional inch or part of an inch	0	2	6
21.(b) For certificate of refusal to register a trade mark under section 2 of 39 & 40 Vict. c. 33	1	0	0
22.(b) For certificate of refusal, at the same time, for more than one trade mark, for each additional mark after the first	0	10	0
23.(c) For cancelling the entry of a trade mark upon the register, on the application of the owner of such trade mark	0	5	0

*Note.*—If a copy of a trade mark is required for any purpose, such copy shall be supplied by or at the expense of the applicant.

Approved

CRICHTON.

R. WINN.

CAIRNS.

C.

4th February, 1878.

(a) 14th March, 1877. (b) 25th June, 1877. (c) 4th February, 1878.  
The remaining items were sanctioned by the Treasury in September, 1876.

## THIRD SCHEDULE.

## FORM A.

## FORM OF STATEMENT ON APPLICATION FOR REGISTRATION OF ONE TRADE MARK.

\* Here insert name, address, and calling of the applicant.  
† Here insert in writing description of trade mark.

I \* [*John Jones, of Moon Street, in the town of Birmingham, pharmaceutical chemist*], apply to be registered as proprietor of a trade mark † [*being a goat's head and neck with a gold collar attached thereto*], and which is represented in the paper annexed hereto.

‡ Here insert description of the goods, and the class or classes under which the applicant desires to have them registered.

I desire that the said trade mark may be registered in respect of the description of goods following, contained in [*Class 1, that is to say, ‡ acids, including pigments, mineral dyes*].

I have used the said trade mark in respect of the said goods for [*ten*] years before the 13th of August, 1875. §

|| The                      day of                      187 .

(Signed)                      *John Jones.* ¶

§ This paragraph may be omitted if the trade mark was not used before the 13th of August, 1875.

|| Here insert date.

¶ Here insert signature.

## FORM.

## FORM OF STATEMENT ON APPLICATION FOR REGISTRATION OF MORE THAN ONE TRADE MARK.

\* Here insert name, address, and calling of the applicant.

I \* [*John Jones, of Moon Street, in the town of Birmingham, pharmaceutical chemist*], apply to be registered as proprietor of the following trade marks, numbered from "1" to .

The trade marks are described as follows; that is to say,

No. 1 is †

and is represented on paper 1, annexed hereto.

No. 2 is †

and is represented on paper 2, annexed hereto [*and so forth*].

I desire that the said trade marks may be registered in respect of the descriptions of goods following; that is to say,

As to No. 1, in respect of the following goods contained in

Class †

As to No. 2, in respect of the following goods contained in Class † [*and so forth*].

§ I have used the trade marks numbered [*respectively*] and in respect of the goods for which I desire them to be registered for                      years before the 13th of August, 1875:

|| The                      day of                      187 .

(Signed)                      *John Jones.* ¶

† Here insert in writing description of trade mark.

‡ Here insert description of the goods and the class or classes under which the applicant desires to have them registered.

§ This paragraph may be omitted if the trade marks were not used before the 13th of August, 1875.

|| Here insert date.

¶ Here insert signature.

## FORM C.

## FORM OF DECLARATION TO ACCOMPANY STATEMENT ON APPLICATION FOR REGISTRATION OF ONE TRADE MARK.

I *A.B.* of  
do hereby solemnly and sincerely declare, to the best of my knowledge and belief, as follows :

- (1.) The statement signed by me and dated the \_\_\_\_\_ day of \_\_\_\_\_, and marked with the letter "A," and shown to me at the time of making this declaration is true :
- (2.) The description of the trade mark in such statement is a true description of the trade mark for the registration of which I apply :
- (3.) I am lawfully entitled to the use of the trade mark of which the said description is a true description.

And I make this declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the session of Parliament held in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled, "An Act to repeal an Act of the present session of Parliament, intituled 'An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.'"

(Signed) *A.B.*

Declared before me

NOTE.—*The above Form will require to be altered so as to suit an application for the registration of more than one trade mark.*

## FORM D.

## FORM OF DECLARATION\* TO ACCOMPANY STATEMENT ON APPLICATION FOR REGISTRATION OF ONE TRADE MARK.

\* This form is to be used when the declaration is made out of the United Kingdom.

I *A.B.* of  
do hereby solemnly and sincerely declare, to the best of my knowledge and belief, as follows :

- (1.) The statement signed by me, and dated the \_\_\_\_\_ day of \_\_\_\_\_, and marked with the letter "A," and shown to me at the time of making this declaration is true :
- (2.) The description of the trade mark in such statement is a true description of the trade mark for the registration of which I apply :



(3.) I am lawfully entitled to the use of the trade mark, of which the said description is a true description.

(Signed) *A.B.*

Declared before me

NOTE.—*The above Form will require to be altered so as to suit an application for the registration of more than one trade mark.*

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### FORM E.

#### FORM OF ASSIGNMENT OF TRADE MARK.

\* Here enter number or other means of identifying trade mark in register.

† Alter as necessary if there be more than one proprietor.

Trade mark, Class\*  
 Name  
 Place of business  
 I † *A.B.* of \_\_\_\_\_ in the county of \_\_\_\_\_  
 being registered proprietor of the trade mark  
 above particularly described, in consideration of  
 pounds paid to me by *E.F.*, carrying on business at  
 \_\_\_\_\_ in the county of \_\_\_\_\_ under  
 the firm of *F. & Co.*, hereby assign the said trade mark to the said  
*E.F.*, together with the goodwill of the business concerned in the  
 goods with respect to which the trade mark is registered.

In witness whereof I have hereunto subscribed my name and  
 affixed my seal, this \_\_\_\_\_ day of \_\_\_\_\_  
 18 .

(Signed)

Executed by the above-named *A.B.*,  
 in the presence of

[*insert description and place of residence*].

Executed by the above-named *E.F.*,  
 in the presence of

---

### FORM F.

#### DECLARATION BY TRANSMITTEE APPLYING TO BE REGISTERED AS PROPRIETOR.

\* Here enter number or other means of identifying trade mark in register.

Trade mark, Class \_\_\_\_\_, No. \_\_\_\_\_\*  
 Name of owner  
 Firm  
 Place of business

(1.) I,\* the undersigned *A.B.* of \_\_\_\_\_ in the county \_\_\_\_\_ declare as follows :

I declare that *A.B.*, the registered proprietor of the trade mark above described † [died at \_\_\_\_\_ in the county of \_\_\_\_\_, having first made his will, dated the \_\_\_\_\_ day of \_\_\_\_\_ whereby he appointed me executor, and I proved [*or confirmed*] his said will on the \_\_\_\_\_ day of \_\_\_\_\_ in the Court of \_\_\_\_\_ ], *or* [died at \_\_\_\_\_ in the county of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, intestate, and letters of administration of his estate and effects were [confirmation as executor of the said \_\_\_\_\_ was] on the \_\_\_\_\_ day of \_\_\_\_\_ duly granted to me by the Court of \_\_\_\_\_ ]:

\* Alter accordingly if more than one person makes the declaration.  
† Alter according to circumstances.

*Or,*

I declare that [the estate of] *C.D.*, the registered proprietor of the trade mark above described, was, on the \_\_\_\_\_ day of \_\_\_\_\_ duly ‡ [adjudged a bankrupt] [sequestrated], and that I was on the \_\_\_\_\_ day of \_\_\_\_\_ appointed trustee of the [sequestrated] estate of the said *C.D.*, and I am by law entitled to be registered as proprietor of the said trade mark in place of the said *C.D.* :

‡ Alter according to circumstances.

*Or,*

I declare, that on the \_\_\_\_\_ day of \_\_\_\_\_ I intermarried with and am now the husband of *C.D.*, the registered proprietor of the trade mark above described; and § I declare that on such marriage the interest of the said *C.D.* in the said trade mark and in the goodwill of the business concerned in the goods with respect to which the trade mark is registered, became by law vested in me, and that I am entitled to be registered as owner of the said trade mark in place of the said *C.D.*, and I declare that *C.D.* is the person referred to in the annexed certificate.

§ Alter according to circumstances

(2.) I am lawfully entitled to the goodwill || of the business concerned in the goods with respect to which the trade mark so transmitted to me is registered.

|| If the declarant is entitled only to some share in the goodwill, the share must be specified.

And I make this declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the session of Parliament held in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present session of Parliament, in-

intituled, 'An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.'"

(Signed)

Dated at                                the  
              day of                                18  
 Made and subscribed by the above-named  
              *A.B.*, in the presence of me  
    (Signed)

---

## INSTRUCTIONS TO PERSONS APPLYING FOR THE REGISTRATION OF TRADE MARKS.

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### APPLICATIONS.

Applications may be made either on printed forms or altogether in writing, and may be delivered by hand, or sent, prepaid, by post. If by post, they should be addressed to

The Registrar,  
 Trade Marks Registry Office,  
 4, Quality Court,  
 Chancery Lane,  
 London, W.C.

The attention of applicants is called to the following points :

1. The papers necessary for the preparation of an Application to the Trade Marks Registry Office are :
  - (a.) The Statutory Declaration.
  - (b.) The Statement on Application.
  - (c.) Two Representations of each trade mark.

Specimen forms of Statement on Application and of the Declaration will be found at pages 25-6 (a) of the Rules under the Trade Marks Registration Acts, 1875-6. The applicant should carefully read over Nos. 3-11 of those Rules, and should attend to the notes attached to the forms above referred to.

2. *All applications must be made in the English language.*

3. Agents and other persons who may be interested in several applications should note that communications relating to different applications must be made in separate letters.

Persons acting as agents should write their name and address on the back of the Application papers.

(a) See pp. 252-3, *supra*.





spaces as "to be filled according to the quality or description of the goods with printed matter," or "to be filled with other words, referring to the goods to which the mark is applied," as above.

17. Terms or symbols common to a trade, such as, in the iron trade, the words "best," "best, best," "charcoal," "coke," "plating," "scrap," and representations of a crown or horse-shoe, or, in the wine and spirit trade, representations of vine leaves, grape clusters, stars, or diamonds, are not trade marks or parts of trade marks within the meaning of the Trade Marks Registration Act, 1875, and must not be shown upon representations of new marks; and where such terms or symbols have been used in combination with trade marks before the passing of that Act, they must be disclaimed in the Statement on Application as being "terms" or "symbols," as the case may be, "common to the trade concerned in the goods."

18. It is not intended to place upon the register under the Trade Marks Registration Act, 1875, a series of trade marks which differ from one another only in respect of indications of quality or quantity commonly used in a trade. Protection for the whole of such a series of marks will be obtained by the registration of *one* of the series, the description of which mark in the Statement on Application should be so worded as to include a reference to the common elements in combination with which it is used by the applicant.

For instance, if a manufacturer of iron is in the habit of using a number of combinations of a certain device together with a crown, a horse-shoe, the words "best," "best, best," "charcoal," or any other common indications of quality, he should include them in one description by the addition, after the description of the device which is private property, of words such as the following: "used in combination with a crown, a horse-shoe, a crown and a horse-shoe, or other mark, device, or word or words, commonly used by the trade to signify quality" (a).

19. Applications for the registration of trade marks in Class 7 should only be made in respect of the larger kinds of agricultural and horticultural implements and machines and parts of the same; for all the smaller descriptions of metal implements, such as gardening, draining, excavating, and mining tools, other than with a cutting edge, application should be made in Class 13.

20. Marks for the under-mentioned goods should be claimed in Class 50:

Bags, sacks, tarpaulins, rick-cloths, cart-covers, tents, brattice cloth.

Brushes (except artists' brushes) and combs.

Buttons of all kinds, other than of precious metals or imitations thereof.

(a) See *In re Barrows*, L. R. 5 Ch. D. 353.

Cordage, rope, twine.  
 Coopers' wares.  
 Drinking flasks, not of precious metals or imitations thereof.  
 Fuel (patent and artificial).  
 Furniture cream, plate powder, diamond cement, polishing paste.  
 Grindstones, oilstones, hones, emery.  
 Hose.  
 Knapsacks.  
 Preparations for softening leather.  
 Rugs (described in the Statement as "not included in Class 36").  
 Steam packing.

NOTE.—*All alterations or erasures in the Statement on Application must be initialled by the Authority before whom the Declaration is made.*

#### *The Representations.*

21. The Representations accompanying an application must be sent *in duplicate*, each Representation of each mark upon a separate half sheet of foolscap paper, and with a margin of not less than one inch and a half on the left-hand side of the page. The two Representations of each mark must in all cases be *exactly* similar.

22. Representations of a larger size than foolscap may be folded, but all such Representations must be mounted on linen.

23. Representations should be not only of a durable nature, but of such a kind as will admit of their being preserved, and bound together in volumes, as records of the property of the applicants.

24. No Representation or part of a Representation supplied for the purposes of registration should be in pencil.

25. The words "Registered," "Copyright," "Entered at Stationers' Hall," "To counterfeit this is forgery," will not be registered under the Trade Marks Registration Act, 1875, and should, therefore, not appear upon the Representations annexed to the Application, nor should any reference to such words be made in the description of a mark given in the Statement on Application.

#### MARKS NOT USED BEFORE THE PASSING OF THE TRADE MARKS REGISTRATION ACT, 1875 (13th August, 1875).

26. The definition of a trade mark not used prior to the passing of the Trade Marks Registration Act, 1875, is given in the 10th section of that Act, as follows:

- "A trade mark consists of one or more of the following essential particulars; that is to say,
- "A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or
  - "A written signature or copy of a written signature of an individual or firm; or
  - "A distinctive device, mark, heading, label, or ticket."

All marks, therefore, which it is desired to register, and which were not used prior to the 13th August, 1875, *must include one or more of the above essential particulars.*

The 10th section goes on—"and there may be added to any one or more of the said particulars any letters, words, or figures, or combination of letters, words, or figures."

27. The following devices and words will not be registered as new marks or parts of new marks:

Representations of her Majesty the Queen, or of any member of the Royal Family, or of foreign sovereigns.

Royal or national arms, crests, or mottoes.

Representations of the Royal crown or of national flags.

Arms of counties, cities, and boroughs in the United Kingdom.

Prize or exhibition medals.

The words "trade mark," "patent," "warranted," "guaranteed."

Words implying a guarantee of the special quality of the goods to which the mark is applied, such as "best," "pure," "genuine," "excellent."

*Notice.*—Considerable disappointment and expense arise from applications to register as new trade marks, marks which, though distinctive in themselves, nearly resemble marks already registered. It is desirable, therefore, that persons wishing to adopt new marks should, before engraving blocks and circulating impressions of such marks among their customers, make a search at the Trade Marks Registry Office with the view of ascertaining whether their proposed mark is already registered, or whether, from its being calculated to deceive by a resemblance to other marks already in use, it would be refused registration under the 6th section of the Trade Marks Registration Act, 1875 (38 & 39 Vict. cap. 91). The fee for inspecting the register is one shilling per quarter of an hour.

Persons resident in the country may cause a search to be made for them at the Trade Marks Registry Office, as to any trade mark, or proposed trade mark, by forwarding to the Office a copy of the mark, accompanied by a Post-office order for the fee of one shilling, and a statement of the class or classes of goods to which the mark is applied.

#### FEEs.

28. Fees will not be received in cash. They may be paid by a Post-office order payable to H. Reader Lack, at the General Post-office, London, and *crossed*; or, if they exceed five pounds, may be paid by a cheque drawn to the "Registrar of Trade Marks, or Bearer," and *crossed* "Bank of England."

29. The following are extracts from the Schedule of Fees annexed to the Rules under the Trade Marks Registration Acts, 1875-77:

(i.) On application to register one trade mark for £ s. d.  
one or more articles included in one class - 1 0 0



	£	s.	d.
(ii.) On application to register more than one trade mark for one or more articles included in one class, for each additional trade mark after the first - - - - -	0	10	0
(iii.) On application to register a trade mark in respect of goods in different classes, for every class after the first to which such trade mark is extended, an additional fee of - - - - -	0	2	0
(iv.) For registration of one trade mark - - - - -	1	0	0
(v.) Where the same person is registered at the same time for more than one trade mark, for registration of each additional mark after the first - - - - -	0	10	0
(vi.) Where the same person is registered at the same time for the same trade mark in respect of goods in different classes, for the registration of one mark in each class after the first an additional fee of - - - - -	0	2	0

The fees referred to in the above paragraphs, iv., v., and vi., viz., the fees for final *registration*, as distinct from the fees payable *on application*, should *not* be paid at the time of making the application. Notice will be sent when the fees for registration are required.

30. Each application should be accompanied by a memorandum upon paper of foolscap size (to which the Post-office order or cheque should be fastened), setting forth the name, address, and business of the applicant, and the amount of fees remitted; for example,—

*Messrs. John Jones & Co.,  
Moon Street,  
Birmingham,  
Chemists.*

*Fees on Application.*

	£	s.	d.
One trade mark in Class 4 - - - - -	1	0	0
<i>or</i>			
Two trade marks in Class 4 - - - - -	1	10	0
<i>or</i>			
Twenty trade marks in Class 47 - - - - -	10	10	0
<i>or</i>			
One trade mark in Classes 5, 6, and 7 - - - - -	1	4	0
<i>or</i>			
Two trade marks, both to be registered in Classes 5, 6, and 7 - - - - -	1	18	0
<i>or</i>			
Two trade marks, one to be registered in Class 12, the other in Class 13 - - - - -	2	0	0

An application will not be attended to unless it be accompanied by the proper fees.

## ADVERTISEMENTS IN THE TRADE MARKS JOURNAL.

31. A wood-block or electrotype must be furnished for each mark in each class (except in the case of cotton marks, classes 23, 24, 25), even though the mark consists only of a word or of words.

32. Great inconvenience and delay arise from neglect of the requirement that the wood-blocks or electrotypes furnished must correspond *exactly* with the representations annexed to the application, one of which latter is returned for the guidance of the applicant along with the instructions for advertisement. The blocks must also afford distinct impressions of the marks. Worn, battered, or mutilated blocks cannot be accepted.

33. The blocks and electrotypes need not be larger than is required to show the mark in a distinct manner; and, provided the mark is clearly represented, it is not necessary that it should be on a block two inches square.

The largest space available for the representation of any single mark is eight and a half inches broad by ten inches deep.

When a block or electrotype exceeds two inches in depth, a charge for additional space is made, at the rate of two shillings and sixpence for every inch or part of an inch beyond the two inches.

No block should exceed two inches in *breadth*, unless a larger size is necessary in order to show the mark distinctly.

34. The number given by the registrar should *not* be cut on the face of the block or electrotype, but should only be marked upon the side in such a manner as to secure its identification.

A description of the manner in which the mark is applied should not be cut upon the block.

35. All blocks or electrotypes should be sent to the office of the registrar, together with the papers marked "Form 2" (a), and with the copy of the Representation sent for the guidance of the applicant in preparing the blocks.

It would greatly facilitate the compilation of the *Trade Marks Journal* if each applicant would affix an impression of the mark from the block, as cut for the Journal, to the "Form 2," before forwarding it to the Trade Marks Registry Office.

## OPPOSITIONS.

36. Any person who claims as his own, or as part of his own, a trade mark for which application has been made by another person, should, on seeing such application advertised in the *Trade Marks Journal*, send to the registrar a notice (*in duplicate*) of opposition under Rule 16, setting out the particulars indicated in the form given below.

A separate notice of opposition is necessary in respect of *each* trade mark opposed.

(a) Form 2 is a form filled up at the Registry Office with the particulars intended to be inserted in the advertisement of a mark, and issued to the applicant for registration, by whom it has to be initialled and returned to the Office, together with the block or electrotype properly prepared.

Each notice of opposition should be accompanied by the prescribed fee, viz., £2.

Upon receipt of a notice of opposition, the registrar suspends the registration of the trade mark in question, and transmits one copy of the notice to the applicant, who is required within three weeks to deliver a counter statement (*in duplicate*) of the grounds on which he relies for his application.

A separate counter statement is necessary in respect of *each* trade mark opposed.

Upon delivery of the counter statement, the registrar requires the opponent to give security for such costs as may be awarded in respect of the opposition; and the applicant is afforded an opportunity of objecting to the solvency of the security.

If no objection is made to the security given, the registrar requires the opponent, within a period of six weeks, to take the necessary steps to bring the matters in dispute before the Chancery Division of the High Court of Justice, and to give him notice that such steps have been taken.

37. The manner in which the opponent should give the registrar notice that an opposition matter has been duly brought before the Court is by delivering at the Trade Marks Registry Office a copy of the notice of motion or of the summons which has been, within the six weeks referred to above, served upon the applicant, which copy of notice of motion or of summons must bear an indorsement of service, signed by the opponent's solicitor.

38. The registrar is empowered under Rule 45, on receiving a notice from the parties in an opposition matter that they wish to have a finding from him on certain matters of fact before taking the opinion of the Court on certain questions of law, and on payment of 1*l.* each by the parties, to examine the facts alleged in the presence of both parties or their agents, and to state a case on which to obtain the opinion of the Court.

39. The following forms indicate the particulars which the registrar requires to be furnished in the case of oppositions under Rule 16:

*Form of Notice of Opposition.*

Trade Marks Registration Act, 1875.

In the Matter of an Application, No. \_\_\_\_\_  
by \_\_\_\_\_ of \_\_\_\_\_  
To the Registrar of Trade Marks.

I, \_\_\_\_\_, of \_\_\_\_\_, hereby give notice that I oppose the registration of the trade mark advertised under the above number for Class \_\_\_\_\_, in the *Trade Marks Journal* of the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, No. \_\_\_\_\_, page \_\_\_\_\_.

The grounds of opposition are as follows:

*(To be dated and signed by the opponent or his solicitor.)*

*Form of Counter Statement.*

Trade Marks Registration Act, 1875.

In the Matter of an Application, No. \_\_\_\_\_,  
and of the opposition thereto, No. \_\_\_\_\_,  
To the Registrar of Trade Marks.

In reply to the notice of opposition in this matter by  
of \_\_\_\_\_, I give notice by way of  
counter statement that I rely for my application on the following  
grounds :

*(To be dated and signed by the applicant or his solicitor.)*

*Form of Bond.*

The following is suggested as a Form of Bond such as the  
registrar would be able to accept from persons opposing applica-  
tions, and who have been required to give security for costs :

Trade Marks Registration Act, 1875.

In the Matter of an Application, No. \_\_\_\_\_,  
and of the opposition thereto, No. \_\_\_\_\_.

Know all men by these presents that we \_\_\_\_\_ of  
and \_\_\_\_\_ of  
are jointly and severally held and firmly bound to Henry  
Reader Lack the Registrar of Trade Marks in the penal sum  
of \_\_\_\_\_ pounds of good and lawful money of Great  
Britain to be paid to the said Henry Reader Lack or to other the  
Registrar of Trade Marks for the time being for which payment to  
be well and faithfully made we bind ourselves and each of us our  
and each of our heirs executors and administrators firmly by these  
presents Sealed with our seals.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

Whereas pursuant to the provisions of the Trade Marks Registra-  
tion Act 1875 and the General Rules made thereunder by the  
Lord Chancellor an application (No. \_\_\_\_\_) has been made by  
of \_\_\_\_\_ to the  
Registrar of Trade Marks for the registration of a certain trade mark  
in such application particularly described And whereas the above-  
bounden \_\_\_\_\_ have delivered a notice of opposition  
to such registration and the said \_\_\_\_\_ have sent to  
the said registrar a counter statement of the grounds on which they  
rely for their application And whereas the said registrar pursuant  
to the said General Rules hath required the said  
to enter into the above-written obligation (subject to the condition  
hereinafter contained) as security for such costs as may be awarded  
in respect of such opposition.

Now the condition of the above-written obligation is such that if  
the said \_\_\_\_\_ or either of them their or either of

their heirs executors or administrators do and shall well and truly pay or cause to be paid to all such costs as the High Court of Justice shall think fit to award to the said in respect of the said opposition then the above-written obligation is to be void or else to remain in full force and virtue.

Signed sealed and delivered by the above-  
 bounden and  
 in the presence of . }

*Notice to have Case stated by Registrar under Rule 45.*

In the Matter of the Opposition, No. to the Application,  
 No. .

Sir,

Notice is hereby given that I , the  
 opponent in this matter, and I , the applicant, are  
 unable to agree upon the facts on which the opinion of the Court  
 is to be taken in pursuance of Rule 44, and that we request you  
 to fix a day on which we can attend before you and obtain your  
 finding on the matters of fact to be submitted to the Court as  
 settled.

*(To be dated and signed by the parties or their solicitors.)*

To the Registrar of Trade Marks,  
 Trade Marks Registry Office,  
 4, Quality Court, Chancery Lane,  
 London, W.C.

**THE MANCHESTER BRANCH OF THE TRADE MARKS  
 REGISTRY OFFICE.**

40. For the convenience of merchants and manufacturers engaged in the cotton trade, a Branch of the Trade Marks Registry Office was opened at 48, Royal Exchange, Manchester, on the 24th October, 1876.

Mr. Joseph Fry has been appointed by the Commissioners of Patents as keeper of the Manchester Office.

41. The following gentlemen have been appointed by the Commissioners of Patents to form the Committee of Experts under Rule 59 of the Rules under the Trade Marks Registration Acts:—

Edmund Ashworth, Esq., President of the Chamber of  
 Commerce, Manchester.

John Cheetham, Esq., Vice-President of the Chamber of Commerce, Manchester.

A. Bernus, Esq.

Chas. S. Carlisle, Esq.

James Chapman, Esq.

W. F. Danson, Esq.

B. Davies, Esq.

George R. Davies, Esq.

S. A. Fulda, Esq.

F. Goldschmidt, Esq.

C. P. Henderson, jun., Esq.

A. J. Hunter, Esq.

H. J. Leppoc, Esq.

G. Lord, Esq.

J. W. D. Mather, Esq.

E. Crompton Potter, Esq.

E. Reiss, Esq.

S. P. Schilizzi, Esq.

H. M. Steinthal, Esq.

E. H. Sykes, Esq.

A. Wallace, Esq.

42. The following Rules have been issued, under date the 26th February, 1877, with respect to the advertisement and time of registration of trade marks in Classes 23, 24, and 25 :

(1.) As soon as may be after the receipt of an application, made as provided by the Trade Marks Rules, for the registration of a mark in Classes 23, 24, 25 aforesaid, or in any one or more of such classes, the registrar shall insert in the official paper an advertisement of such application, showing the name and address of the applicant, the class in which he applies, the number given to the mark by the registrar, the places in London and Manchester respectively where a specimen of such mark is deposited for exhibition, and distinguishing whether the mark has or has not been used prior to the thirteenth day of August one thousand eight hundred and seventy-five. Advertisement of cotton marks.

(2.) On the expiration of three weeks from the date of the first appearance of the advertisement of a mark in Classes 23, 24, 25, or in any one or more of such classes in the official paper, the registrar may, if he is satisfied that the applicant is entitled to registration, register such mark in respect of the description of goods for which he may be entitled to be registered, and the applicant as the proprietor thereof, on payment of the prescribed fee. Time of registration of cotton marks.

43. Pending the conclusion of the labours of the Manchester Committee of Experts in regard to *old* cotton trade marks, and with the object of sparing to the inventors of *new* cotton marks—that is to say, marks designed since the 13th August, 1875 and intended to be applied to goods in classes 23, 24, or 25—the

expense of making formal application to the Registrar's Office in London for marks which it may be subsequently found are not entitled to registration, the Commissioners of Patents have given their consent to the following arrangement:—

Persons having designs for *new* cotton marks shall be allowed to deposit at the Manchester branch duplicate copies of such marks *under cover*, to remain unopened until the Committee of Experts shall have completed the examination of *old* trade marks applied for in the cotton classes.

Each of the two copies of each mark deposited should be mounted upon a separate half sheet of foolscap paper.

Every packet containing such designs should be *sealed* and addressed to

The Keeper,  
Trade Marks Registry Office,  
(Manchester Branch)  
48, Royal Exchange,  
Manchester.

The name and address of the depositor, and the words "Designs for New Cotton Trade Marks," should be written conspicuously upon the packet.

It will nevertheless be open to inventors of new cotton marks, if they prefer it, to make formal application for the registration of such marks to the Registrar's Office in London, but such application must in every case be accompanied by the proper fees.

#### APPLICATIONS FOR COTTON MARKS.

44. The statement on application for the registration of trade marks in the cotton classes (classes 23, 24 and 25), may be prepared according to a form which differs slightly from the Forms A and B as given in the Third Schedule to the Rules, and which requires no description of the marks.

The following is an example:—

#### FORM B (a).

I, *John Jones, of and on behalf of the firm of John Jones & Co., of 55, Moon Street, in the City of Manchester, Merchants,* apply that the said firm may be registered as proprietors of the following trade marks, which are represented respectively on the several papers annexed hereto; that is to say,—

No. 1, on papers "1;"

No. 2, on papers "2;"

No. 3, on papers "3."

I desire that the said trade marks may be registered in respect of the description of goods following; that is to say,

(a) Almost all applications being made in respect of more marks than one, Form A, which would be for one mark only, has not been printed. See Form A in Third Schedule.

As to No. 1, in respect of the following goods contained in Class 23—namely, cotton yarn [*or* cotton thread.]

As to No. 2, in respect of the following goods contained in Class 24—namely, cotton piece goods.

As to No. 3, in respect of the following goods contained in Class 25—namely, cotton goods not included in Classes 23, 24, or 38.

The said firm have used the said trade marks respectively in respect of the goods for which I desire them to be registered for the several respective periods, before the date of this statement, as hereinafter respectively set out; that is to say,

No. 1, for 3 months;

No. 2, for 1 month;

No. 3, for 2 weeks.

The                    day of                    , 187 .

(Signed)

*John Jones.*

When an application is prepared according to the above example, each of the two representations of each mark should, for the purposes of identification, *bear the signature of the applicant.*

The statutory declaration accompanying an application prepared according to the above example, should run as follows:—

#### FORM C.

I, *John Jones*, one of the firm of *John Jones & Co.*, of 55, *Moon Street*, in the *City of Manchester*, Merchants, do hereby solemnly and sincerely declare, to the best of my knowledge and belief, as follows:

(1.) The statement signed by me, and dated the                    day of                    187 , and marked with the letter "B," and shown to me at the time of making this declaration, is true:

(2.) The representations of the trade marks in such statement referred to are correct representations of the trade marks for the registration of which I apply:

(3.) My said firm are lawfully entitled to the use of the said trade marks:

(4.) And I make, &c.

Declared at

this                    day of

187 .

Before me,

(Signed)

*John Jones.*

45. Borders are not recognized as distinctive parts of trade marks or labels in the cotton classes; it is necessary, therefore, *when any border appears in connexion with a proposed new cotton trade mark*, that the following note (signed by the applicant) should be written upon the face or back of each of the papers to which the representations of the mark are affixed:—



“The border of this mark is not in itself claimed as the property of the applicant.”

#### CERTIFICATES OF REFUSAL.

46. Owners desirous of obtaining the registrar's certificate of refusal under section 2 of the Trade Marks Registration Amendment Act, 1876, should forward a written application for the same to

The Registrar,  
Trade Marks Registry Office,  
4, Quality Court,  
Chancery Lane, London, W.C.

The letter of application should be accompanied by two unmounted copies of each mark for which a certificate is required, and the registrar's number (or numbers) should be quoted.

A post office order (made payable to H. Reader Lack, at the General Post Office, London, and *crossed*) should be forwarded in payment of the proper fees, which are calculated at the rate of £1 for the first mark refused, and 10s. for each subsequent mark for which a certificate is required for the same owner at the same time.

When the certificate required relates to a mark placed by the Manchester Committee of Experts in the second class of cotton marks, the number given to the mark at the Manchester branch office should be quoted in the letter of application.

Certificates of refusal relating to marks placed in the second class of cotton marks will be in due course advertised in the *Trade Marks Journal* (a).

#### ASSIGNMENT OF REGISTERED MARKS.

47. If the assignee resides within the United Kingdom the deed of assignment or a certified copy of such deed should be sent to or left at the Trade Marks Registry Office, and application should at the same time be made by the assignee to be registered as proprietor.

The following form gives the particulars the registrar requires :

*Form of Application by Assignee of registered Trade Mark applying to be registered as Proprietor.*

\* Here enter number or other means of identifying trade mark on register.

(A) Trade Mark No.\* , Class  
Advertised *Trade Marks Journal*, No. p. .  
Name of owner  
Firm  
Place of business

I, the undersigned *A. B.* of . . . , in the county

(a) See form of certificate of refusal, p. 269, *infra*.

of \_\_\_\_\_, carrying on business at \_\_\_\_\_, apply to be + Here state  
 in the county of \_\_\_\_\_, † registered as proprietor of the trade mark above mentioned in suc- calling.  
 cession to the said \_\_\_\_\_

The said \_\_\_\_\_, by deed dated the \_\_\_\_\_ day  
 of \_\_\_\_\_ 18 \_\_\_\_\_, and made between \_\_\_\_\_  
 assigned to me the said \_\_\_\_\_ the said trade  
 mark, together with the goodwill of the business concerned in the  
 goods with respect to which the said trade mark is registered.

The \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.  
 (Signed) A. B.

This form of application should be verified by a Declaration as in Form C given in the Third Schedule to the Rules (a), substituting for paragraphs (2) and (3) in that form the words, "And I am lawfully entitled to the goodwill of the business concerned in the goods with respect to which the trade mark referred to in the said statement marked with the letter "A" is registered. And I make, &c."

The Application Form and the Declaration should be accompanied by the fee for registering a subsequent proprietor, as prescribed in the Second Schedule to the Rules under the Trade Marks Registration Acts, 1875-7, item 8 (b).

#### RECTIFICATION OF REGISTER.

48. Where an order of court has been obtained to rectify the register, the person interested or his agent should send the Registrar an office copy of the order or of the material part thereof, with a Post Office Order for the amount of 10s.

The following is suggested as a convenient form:—

To the Registrar of Trade Marks.

Sir, Mark No. \_\_\_\_\_

Enclosed is an office copy of an order of court to rectify the entry of the Trade Mark No. \_\_\_\_\_ on the Register of Trade Marks as to the particulars in the said order specified, together with a Post Office Order for 10s., the fee prescribed by the Second Schedule to the Rules published under the Trade Marks Registration Acts, 1875-7.

(Signed) John Jones.

#### NOTICE.

49. Copies of the Rules under the Trade Marks Registration Acts, 1875-7, and of each number of the *Trade Marks Journal*, may be obtained, on payment of a shilling for each copy, of the following publishers:—

Knight and Co., 90, Fleet Street;  
 Stevens and Sons, 119, Chancery Lane;

(a) See p. 253, *suprà*.  
 (b) See p. 251, *suprà*.

E. Stanford, 55, Charing Cross ;  
 Shaw and Sons, Fetter Lane ;  
 Butterworths, 7, Fleet Street ;  
 G. Downing, 8, Quality Court, Chancery Lane ;  
 Trübner and Co., 57 and 59, Ludgate Hill ;  
 Waterlow and Sons, Limited, 25, 26 & 27, Great Winchester  
 Street ; 60 and 61, London Wall ; and 49, Parliament  
 Street ;  
 J. M. Johnson and Sons, Limited, 3, Castle Street,  
 Holborn, and 56, Hatton Garden ;  
 Palmer and Howe, 1, 3, and 5, Bond Street, Manchester ;  
 Alex. Thom, 87 and 88, Abbey Street, Dublin ;  
 A. and C. Black, Edinburgh.

Copies will also be sent by post by any of the above publishers on a prepaid application, containing the name and address of the sender, and accompanied with a Post-office order for the amount due in respect of the copies required.

Printed Forms of Declaration and of Statement on Application, for the use of persons wishing to register trade marks, are not sold at the Registry Office, but they may be obtained from several of the firms named above.

Trade Marks Registry Office,  
 4, Quality Court,  
 Chancery Lane, London, W.C.  
 13th February, 1878.

H. READER LACK,  
 Registrar.

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FORMS IN USE IN RESPECT OF TRADE MARKS.  
 Trade Marks Registration Acts, 1875-6-7.

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FORM OF NOTIFICATION OF REGISTRATION OF A TRADE MARK.  
 Trade Marks Registry Office, London.

Sir,—I have to inform you that, pursuant to Rule 21 under the Trade Marks Registration Act, 1875, the trade mark applied for by you in Application No. \_\_\_\_\_, and duly advertised in No. \_\_\_\_\_ of the *Trade Marks Journal*, has been registered in your name in Class \_\_\_\_\_

I am, Sir, your obedient servant,

H. READER LACK, Registrar.

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FORM OF CERTIFICATE OF REGISTRATION OF A TRADE MARK.  
 Trade Marks Registration Acts, 1875-6.

38 & 39 Vict. c. 91, s. 8, and 39 & 40 Vict. c. 33.

Certificate.

In the matter of an application to register

Trade Mark \_\_\_\_\_ in class \_\_\_\_\_

I, HENRY READER LACK, Clerk to the Commissioners of Patents, Registrar of Trade Marks, hereby certify that

of \_\_\_\_\_ is entered on the register of trade marks as proprietor of a trade mark for \_\_\_\_\_ in class \_\_\_\_\_ for the registration of which mark application was made on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

The user claimed for the said mark is \_\_\_\_\_ before the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

A representation of the said mark, advertised in the Trade Marks Journal, is annexed hereto.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.  
Trade Marks Registry Office, London.

#### FORM OF CERTIFICATE OF REFUSAL TO REGISTER A TRADE MARK.

Trade Marks Registration Acts, 1875-6.

38 & 39 Vict. c. 91, and 39 & 40 Vict. c. 33.

##### Certificate of Refusal.

I, HENRY READER LACK, Clerk to the Commissioners of Patents and Registrar of Trade Marks, hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_, of \_\_\_\_\_ duly applied to register the trade mark of which a representation is annexed, stating that the said trade mark had been in use as a trade mark before the 13th day of August, 1875; and that such application has been refused.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.  
Trade Marks Registry Office.

#### INSTRUCTIONS TO PERSONS APPLYING FOR THE REGISTRATION OF TRADE MARKS FOR COTTON YARN AND THREAD IN CLASS 23 (a).

I. All applications should be addressed, prepaid, to  
The Registrar,

Trade Marks Registry Office,  
4, Quality Court, London, W.C.

Agents and other persons who may be interested in several applications should note that communications relating to different applications must be made in separate letters.

(a) These special Instructions and the forms on pp. 273—5 are applicable to *old* cotton marks, and are forwarded from the Registry Office to applicants for the registration of such marks, after their applications have been considered by the Committee of Experts, at Manchester. It will be seen that much of the matter contained in the General Instructions is embodied in these. The same Instructions are made applicable to Class 25, by the substitution of "Class 25" for "Class 23," *passim*, and the elision of the words in the heading "for Cotton Yarn and Thread." See, too, note on page 271. With respect to Class 24, special Instructions will probably be issued when the Committee of Experts have completed their labours with regard to that class.

S \*

Persons acting as agents should write their name and address on the back of the application papers.

II. The papers necessary for the preparation of an application to the Trade Marks Registry Office in London are :

1. The statutory Declaration.
2. The Statement on Application.
3. Two Representations of each trade mark.

Specimens of the Declaration and Statement (a) are sent with these Instructions to all applicants whose cotton marks in Class 23 have been pronounced by the Manchester Committee of Experts to be trade marks within the meaning of the Trade Marks Registration Act, 1875.

The two representations of each trade mark should be *the same which are received with these Instructions*.

III. The Declaration must be made before a justice of the peace or before a commissioner for administering oaths. If made before a commissioner it should bear a 2s. 6d. Inland Revenue *impressed* stamp.

Declarations made out of the United Kingdom are not made under the authority of the Act 5 & 6 Will. IV. cap. 62, and, therefore, should not conclude with the statutory termination beginning "And I make, &c.," but should be made strictly in accordance with Form D of the Third Schedule of the Rules under the Trade Marks Registration Acts, 1875-6; such declarations do not require an Inland Revenue stamp.

Declarations made out of her Majesty's dominions may, in cases where it is impracticable to make them before a British consular officer, be subscribed before a mayor or other public official, whose signature or official seal must, however, be certified by a British consular officer, or by the consul of the respective foreign nation in London.

In filling up the first paragraph of the Declaration, the date in full of the Statement on Application should be accurately quoted.

The blank spaces of the jurat clause at the foot of the Declaration should also be carefully filled up.

IV. The Statement on Application should be certified as an exhibit to the Declaration by the authority before whom the latter document is declared.

The name of the person making the Declaration should be inserted in the certifying clause at the foot of the Statement, and the other blank spaces of this clause should also be carefully filled up.

V. Special attention should also be paid to the following points in connexion with the Declaration and the Statement on Application:

1. Both papers should commence with the name, address, and calling of the applicant.

2. When the trade marks to which an application relates are the

(a) See *infra*, p. 274.

property of a *firm*, the Declaration and the Statement should be made by *one member* of the firm, and should be signed by him *alone*.

The Declaration should in such a case commence as follows :

" I of the firm of ,  
 of ,  
 and the first words of the third paragraph should be altered from " I am lawfully, &c.," to " My said firm are lawfully, &c."  
 " I am lawfully, &c.," to " My said firm are lawfully, &c."

\* Here insert trade or business.

The Statement on Application should commence as follows :

" I of and on behalf of the firm of  
 of ,  
 apply that the said firm may be registered as proprietors of the following trade marks, &c.,"  
 † Here insert trade or business.

and the words at the foot of the Statement, " I have used the said trade marks, &c.," should then be altered to " My said firm have used the said trade marks, &c."

3. When the trade marks are the property of a *company*, the Declaration and the Statement should be made by the managing director or by the secretary of the company, and should be signed by him *alone*. The Declaration and Statement on Application in such cases should be worded in a manner similar to that set out above for a firm, except that the words "Managing Director [or Secretary] of" should be used at the head of the Declaration, and the words "Managing Director [or Secretary] of and on behalf of" at the head of the Statement.

4. The following specification of goods for Class 23 will be accepted by the registrar in the Statement on Application :

Class 23. " Cotton Yarn and Thread," or " Sewing Thread" (a).

VI. No description of the marks should be given in the Statement on Application beyond a reference to the representations; but in cases where a mark consists partly of what is private property and partly of what is commonly used in the cotton trade, a note, signed by the applicant, should be written upon each of the two papers bearing the representations of the mark (or upon the back of the same), setting forth distinctly what portion of the mark is common to the trade.

VII. The words "Registered," "Copyright," "Entered at Stationers' Hall," "To counterfeit this is forgery," will not be placed upon the register under the Trade Marks Registration Act, 1875, and should therefore be struck out of the two representations of each mark annexed to the Statement on Application, wherever they occur.

VIII. Fees will not be received in cash. They may be paid by a Post-office order, made payable to H. Reader Lack, at the General Post-office, London, and *crossed*; or, if they exceed five pounds, may

(a) For Class 25 substitute:—Class 25. "Cotton goods not included in Classes 23, 24, or 38."

be paid by a cheque drawn to the "Registrar of Trade Marks, or Bearer," and *crossed* "Bank of England."

The following are extracts from the Schedule of Fees annexed to the Rules under the Trade Marks Registration Acts, 1875-6 :

- |  |   |    |        |
|--|---|----|--------|
| 1. On application to register one trade mark for one | £ | s. | d.     |
| or more articles included in one class               | - | -  | 1 0 0  |
| 2. On application to register more than one trade    |   |    |        |
| mark for one or more articles included in one        |   |    |        |
| class, for each additional trade mark after the      |   |    |        |
| first  | - | -  | 0 10 0 |
| 3. For registration of one trade mark                | - | -  | 1 0 0  |
| 4. Where the same person is registered at the same   |   |    |        |
| time for more than one trade mark, for               |   |    |        |
| registration of each additional mark after the       |   |    |        |
| first  | - | -  | 0 10 0 |

The fees referred to in the above paragraphs (3) and (4), viz., the fees for final *registration*, as distinct from the fees payable *on application*, should *not* be paid at the time of making the application.

Each application should be accompanied by a memorandum, upon paper of foolscap size (to which the Post-office order or cheque should be pinned), setting forth the name of the applicant and the amount of fees remitted ; for example—

*Messrs. John Jones & Co.*

\* Here quote number or numbers given by Registrar.

	<i>Fees on Application, No.</i>	*	£	s.	d.
One trade mark in Class 23	-	-	-	1	0 0
<i>or</i>					
Two trade marks in Class 23	-	-	-	1	10 0
<i>or</i>					
Twenty trade marks in Class 23	-	-	-	10	10 0

Trade Marks Registry Office,  
4, Quality Court,  
Chancery Lane,  
London, W.C.

H. READER LACK,  
Registrar.

1st August, 1877.

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## FORMS IN USE IN RESPECT OF COTTON MARKS.

Trade Marks Registration Acts, 1875-6-7.

## NOTICES TO APPLICANTS FOR REGISTRATION.

## FORM A.

*Notice that a Mark has been passed for Registration by the  
Committee of Experts.*

Trade Marks Registry Office,  
4, Quality Court, Chancery Lane,  
London, W.C.,  
1877.

I have to inform you that the Committee of Experts appointed by the Commissioners of Patents under Rule 59 of the Rules published in pursuance of the Trade Marks Registration Acts, 1875-6, have placed your mark sent into the Manchester Branch of this office, and numbered and claimed in Class of the classes mentioned in the First Schedule to the Trade Marks Rules, in the first class of cotton marks, consisting of those marks which in the opinion of the said committee are trade marks within the meaning of the Trade Marks Registration Acts, 1875-6.

You are therefore requested, if you desire to take advantage of the provisions of the said Acts, *to apply to me without delay* at this office, in pursuance of Rules 5-11, for the registration of your said mark.

A paper of Instructions is herewith enclosed.

I am,

Your obedient servant,  
H. READER LACK,  
Registrar.

A note is usually appended to the effect that, with regard to marks having borders, it should be understood that only the centres of such marks will be passed as private, borders not being considered distinctive parts of marks in the cotton trade.



## FORM B.

*Notice that a Mark has not been passed for Registration by the Committee of Experts.*

Trade Marks Registry Office,  
4, Quality Court, Chancery Lane,  
London, W.C.  
1877.

I have to inform you that the Committee of Experts appointed by the Commissioners of Patents under Rule 59 of the Rules published in pursuance of the Trade Marks Registration Acts, 1875-6, have placed your mark sent into the Manchester Office, and numbered and claimed in Class of the classes mentioned in the First Schedule to the Trade Marks Rules, in the second class of cotton marks, consisting of those marks which are not in the opinion of the said committee trade marks within the meaning of the Trade Marks Registration Acts, 1875-6.

Representations of the said mark under the above No. will be retained for future reference at the Trade Marks Registry Office in London, and at the Manchester Office, No. 48, Royal Exchange.

A certificate of refusal to register the above mark will be furnished by the registrar (under section 2 of 39 & 40 Vict. c. 33) at any time you may require such certificate, on your applying for same and paying the prescribed fee.

I am,

Your obedient servant,  
H. READER LACK,  
Registrar.

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SPECIAL FORMS ISSUED WITH THE INSTRUCTIONS FOR MARKS PASSED IN THE FIRST CLASS.

## FORM B (a).

*Form of Statement on Application for Registration of more than one Trade Mark in Class 23, 24, or 25.*

\* Here insert name, address, and calling of the applicant.

I,\*

apply to be registered as proprietor of the following trade marks, which are represented respectively on the several papers annexed hereto and numbered as follows :

(a) Almost all applications being made in respect of more marks than one, Form A, which would be for

one mark only, has not been printed. See Form A in Third Schedule.

I desire that the said trade marks may be registered in respect of the descriptions of goods following: that is to say,

As to Nos.\*

\* Here insert respective numbers given by the registrar.

in respect of the following goods contained in Class  
is to say, †

: that

† Here insert description of goods.

I have used the said trade marks respectively, in respect of the goods for which I desire them to be registered for the several respective periods, before the 13th August, 1875, as hereinafter respectively set out; that is to say,

No. ‡ , years.

‡ Here insert registrar's numbers and length of user.

§ The day of 187 .

§ Here insert date.

||

|| Here insert signature.

This is the Statement marked "B," referred to in the Declaration of made before me, this day of 187 .

FORM C.

*Form of Declaration to accompany Statement on Application for Registration of more than one Trade Mark in Class 23, 24, or 25.*

I, of do hereby solemnly and sincerely declare, to the best of my knowledge and belief, as follows:

- (1.) The Statement signed by me and dated the day of , and marked with the letter "B," and shown to me at the time of making this declaration, is true:
- (2.) The representations of the trade marks in such Statement referred to are correct representations of the trade marks for the registration of which the said apply:
- (3.) I am lawfully entitled to the use of the said trade marks:
- (4.) And I make this declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the session of Parliament held in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled "An Act to repeal

an Act of the present session of Parliament, intituled ' An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.' ”

Declared at

this

day of

187

Before me

---

N.B.—As the Rules have already been altered once, and the Instructions more frequently, it will be well for intending applicants for registration to ascertain whether any further modifications have been introduced into the Rules and Instructions as printed here.

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## APPENDIX C.

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### STATUTORY ENACTMENTS WITH RESPECT TO MARKS ON GOODS, &c.

#### THE MERCHANDISE MARKS ACT, 1862.

25 & 26 VICT. c. 88 (a).

*An Act to amend the Law relating to the Fraudulent Marking of Merchandise.*  
[7th August, 1862.]

WHEREAS it is expedient to amend the laws relating to the fraudulent marking of merchandise, and to the sale of merchandise falsely marked for the purpose of fraud: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In the construction of this Act, the word "person" shall include any person, whether a subject of her Majesty or not, and any body corporate, or body of the like nature, whether constituted according to the law of this country or of any of her Majesty's colonies or dominions, or according to the law of any foreign country, and also any company, association, or society of persons, whether the members thereof be subjects of her Majesty or not, or some of such persons subjects of her Majesty, and some of them not, and whether such body corporate, body of the like nature, company, association, or society, be established or carry on business within her Majesty's dominions or elsewhere, or partly within her Majesty's dominions, and partly elsewhere; the word "mark" shall include any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark of any other description; and the expression "trade mark" shall include any and every such name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark as aforesaid, lawfully used by any person to denote any chattel, or (in Scotland) any article of trade, manufacture, or merchandise, to be an article or thing of

(a) It is not against the policy of the law for proceedings taken under this Act to be compromised: *Fisher v. Apollinaris Co.*, L. R. 10 Ch. 297.

the manufacture, workmanship, production, or merchandise of such person, or to be an article or thing of any peculiar or particular description made or sold by such person, and shall also include any name, signature, word, letter, number, figure, mark, or sign, which in pursuance of any statute or statutes for the time being in force relating to registered designs (a) is to be put or placed upon or attached to any chattel or article during the existence or continuance of any copyright or other sole right acquired under the provisions of such statutes, or any of them (b); the word "misdemeanor" shall include crime and offence in Scotland; and the word "court" shall include any sheriff or sheriff-substitute in Scotland.

2. Every person who, with intent to defraud, or to enable another to defraud any person, shall forge or counterfeit, or cause or procure to be forged or counterfeited any trade mark, or shall apply, or cause or procure to be applied, any trade mark, or any forged or counterfeited trade mark, to any chattel or article not being the manufacture, workmanship, production, or merchandise of any person denoted or intended to be denoted by such trade mark, or denoted or intended to be denoted by such forged or counterfeited trade mark, or not being the manufacture, workmanship, production, or merchandise of any person whose trade mark shall be so forged or counterfeited, or shall apply, or cause or procure to be applied, any trade mark or any forged or counterfeited trade mark to any chattel or article, not being the particular or peculiar description of manufacture, workmanship, production, or merchandise, denoted or intended to be denoted by such trade mark, or by such forged or counterfeited trade mark, shall be guilty of a misdemeanor, and every person so committing a misdemeanor shall also forfeit to her Majesty every chattel and article belonging to such person, to which he shall have so unlawfully applied, or caused or procured to be applied, any such trade mark or forged or counterfeited trade mark as aforesaid, and every instrument in the possession or power of such person, and by means of which any such trade mark, or forged or counterfeited trade mark as aforesaid, shall have been so applied, and every instrument in the possession or power of such person for applying any such trade mark or forged or counterfeit trade mark as aforesaid, shall be forfeited to her Majesty; and the Court before which any such misdemeanor shall be tried may order such forfeited articles as aforesaid to be destroyed or otherwise disposed of, as such Court shall think fit.

3. Every person who, with intent to defraud, or to enable another to defraud any person, shall apply or cause or procure to be applied any trade mark or any forged or counterfeited trade mark to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, on, or with which any chattel or article shall be intended to be sold, or shall be sold or uttered or exposed for sale, or intended for any purpose of trade or manufacture, or shall enclose or place any chattel or article, or cause or

(a) The statutes now in force relating to registered designs are : 5 & 6 Vict. c. 100 ; 6 & 7 Vict. c. 65 ; 13 & 14 Vict. c. 104 ; 21 & 22 Vict. c. 70 ; 24 & 25 Vict.

c. 73 ; 38 & 39 Vict. c. 93.

(b) As to this definition of "trade mark," see per Sir J. Bacon, V.-C., in *Ford v. Poster*, L. R. 7 Ch. 611.

procure any chattel or article to be enclosed or placed in, upon, under, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeited trade mark shall have been applied, or shall apply or attach, or cause or procure to be applied or attached to any chattel or article, any case, cover, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeited trade mark shall have been applied, or shall enclose, place, or attach any chattel or article, or cause or procure any chattel or article to be enclosed, placed, or attached in, upon, under, with, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing having thereon any trade mark of any other person, shall be guilty of a misdemeanor, and every person so committing a misdemeanor shall also forfeit to her Majesty every such chattel and article, and also every such cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing as aforesaid, in the possession or power of such person; and every other similar cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing made to be used in like manner as aforesaid, and every instrument in the possession or power of such person, and by means of which any such trade mark or forged or counterfeited trade mark as aforesaid shall have been applied; and also every instrument in the possession or power of such person for applying any such trade mark or forged or counterfeit trade mark as aforesaid, shall be forfeited to her Majesty; and the Court before which any such misdemeanor shall be tried may order such forfeited articles as aforesaid to be destroyed or otherwise disposed of as such Court shall think fit.

4. Every person who, after the 31st day of December one thousand eight hundred and sixty-three, shall sell, utter, or expose either for sale or for any purpose of trade or manufacture, or cause or procure to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel or article, together with any forged or counterfeited trade mark, which he shall know to be forged or counterfeited, or together with the trade mark of any other person applied or used falsely or wrongfully or without lawful authority or excuse, knowing such trade mark of another person to have been so applied or used as aforesaid, and that whether any such trade mark or forged or counterfeited trade mark as aforesaid, together with which any such chattel or article shall be sold, uttered, or exposed for sale or other purpose as aforesaid, shall be in, upon, about, or with such chattel or article, or in, upon, about, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, upon, about, or with which such chattel or article shall be so sold or uttered or exposed for sale or other purpose as aforesaid, shall for every such offence forfeit and pay to her Majesty a sum of money equal to the value of the chattel or article so sold, uttered, offered, or exposed for sale or other purpose as aforesaid, and a further sum not exceeding five pounds and not less than ten shillings.

5. Every addition to and every alteration of, and also every imitation of any trade mark which shall be made, applied, or used, with intent to defraud,

or to enable any other person to defraud, or which shall cause a trade mark with such alteration or addition, or shall cause such imitation of a trade mark to resemble any genuine trade mark, so or in such manner as to be calculated or likely to deceive, shall be and be deemed to be a false, forged, and counterfeited trade mark within the meaning of this Act; and every act of making, applying, or otherwise using any such addition to or alteration of a trade mark, or any such imitation of a trade mark as aforesaid done by any person with intent to defraud, or to enable any other person to defraud, shall be and be deemed to be forging and counterfeiting a trade mark within the meaning of this Act.

6. Where any person who, at any time after the thirty-first day of December one thousand eight hundred and sixty-three, shall have sold, uttered, or exposed for sale or other purpose as aforesaid, or shall have caused or procured to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel or article, together with any forged or counterfeited trade mark, or together with the trade mark of any other person used without lawful authority or excuse as aforesaid, and that whether any such trade mark, or such forged or counterfeited trade mark as aforesaid, be in, upon, about, or with such chattel or article, or in, upon, about, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, upon, about, or with which such chattel or article shall have been sold or exposed for sale, such person shall be bound, upon demand in writing delivered to him or left for him at his last known dwelling-house, or at the place of sale or exposure for sale by or on the behalf of any person whose trade mark shall have been so forged or counterfeited, or used without lawful authority or excuse as aforesaid, to give to the person requiring the same, or his attorney or agent, within forty-eight hours after such demand, full information in writing of the name and address of the person from whom he shall have purchased or obtained such chattel or article, and of the time when he obtained the same: and it shall be lawful for any justice of the peace, on information on oath of such demand and refusal, to summon before him the party refusing, and, on being satisfied that such demand ought to be complied with, to order such information to be given within a certain time to be appointed by him; and any such party who shall refuse or neglect to comply with such order shall for every such offence forfeit and pay to her Majesty the sum of five pounds, and such refusal or neglect shall be *prima facie* evidence that the person so refusing or neglecting had full knowledge that the trade mark, together with which such chattel or article was sold, uttered, or exposed for sale, or other purpose as aforesaid, at the time of such selling, uttering, or exposing was a forged, counterfeited, and false trade mark, or was the trade mark of a person which had been used without lawful authority or excuse, as the case may be.

7. Every person who, with intent to defraud or to enable another to defraud, shall put or cause or procure to be put upon any chattel or article, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, together with which any chattel or article shall be intended to be or shall be sold or uttered or exposed for sale, or for

any purpose of trade or manufacture, or upon any case, frame, or other thing in or by means of which any chattel or article shall be intended to be or shall be exposed for sale, any false description, statement, or other indication of, or respecting the number, quantity, measure, or weight of such chattel or article, or any part thereof, or of the place or country in which such chattel or article shall have been made, manufactured, or produced, or shall put or cause or procure to be put upon any such chattel or article, cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or thing as aforesaid, any word, letter, figure, signature, or mark for the purpose of falsely indicating such chattel or article, or the mode of manufacturing or producing the same, or the ornamentation, shape, or configuration thereof, to be the subject of any existing patent (*a*), privilege, or copyright, shall for every such offence forfeit and pay to her Majesty a sum of money equal to the value of the chattel or article so sold or uttered or exposed for sale, and a further sum not exceeding five pounds and not less than ten shillings.

8. Every person who, after the thirty-first day of December one thousand eight hundred and sixty-three, shall sell, utter, or expose for sale or for any purpose of trade or manufacture, or shall cause or procure to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel or article upon which shall have been, to his knowledge, put, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing together with which such chattel or article shall be sold or uttered or exposed for sale or other purpose as aforesaid, shall have been so put, or upon any case, frame, or other thing used or employed to expose or exhibit such chattel or article for sale, shall have been so put, any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such chattel or article or any part thereof, or the place or country in which such chattel or article shall have been made, manufactured, or produced, shall for every such offence forfeit and pay to her Majesty a sum not exceeding five pounds and not less than five shillings.

9. Provided always, that the provisions of this Act shall not be construed so as to make it any offence for any person to apply to any chattel or article, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing with which such chattel or article shall be sold or intended to be sold, any name, word, or expression generally used for indicating such chattel or article to be of some particular class or description of manufacture only, or so as to make it any offence for any person to sell, utter, or offer or expose for sale any chattel or article to which, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing sold therewith, any such generally used name, word, or expression as aforesaid shall have been applied.

10. In every indictment, pleading, proceeding, and document whatsoever in which any trade mark shall be intended to be mentioned, it shall be suffi-

(*a*) A person who himself wrongfully inserts or retains the word "patent" in his trade mark cannot avail himself

the benefits of this Act: *Morgan v. Mc-Adam*, 36 L. J. Ch. 228.



cient to mention or state the same to be a trade mark, without further or otherwise describing such trade mark, or setting forth any copy or facsimile thereof; and in every indictment, pleading, proceeding, and document whatsoever in which it shall be intended to mention any forged or counterfeit trade mark it shall be sufficient to mention or state the same to be a forged or counterfeit trade mark, without further or otherwise describing such forged or counterfeit trade mark, or setting forth any copy or facsimile thereof.

11. The provisions in this Act contained of or concerning any act, or any proceeding, judgment, or conviction for any act hereby declared to be a misdemeanor or offence, shall not nor shall any of them take away, diminish, or prejudicially affect any suit, process, proceeding, right, or remedy which any person aggrieved by such act may be entitled to at law, in equity, or otherwise, and shall not nor shall any of them exempt or excuse any person from answering or making discovery upon examination as a witness or upon interrogatories, or otherwise, in any suit or other civil proceeding: Provided always, that no evidence, statement, or discovery which any person shall be compelled to give or make shall be admissible in evidence against such person in support of any indictment for a misdemeanor at common law or otherwise, or of any proceeding under the provisions of this Act.

12. In every indictment, information, conviction, pleading, and proceeding against any person for any misdemeanor or other offence against the provisions of this Act in which it shall be necessary to allege or mention an intent to defraud, or to enable another to defraud, it shall be sufficient to allege or mention that the person accused of having done any act which is hereby made a misdemeanor or other offence, did such act with intent to defraud, or with intent to enable some other person to defraud, without alleging or mentioning an intent to defraud any particular person; and on the trial of any such indictment or information for any such misdemeanor, and on the hearing of any information or charge of or for any such other offence as aforesaid, and on the trial of any action against any person to recover a penalty for any such other offence as aforesaid, it shall not be necessary to prove an intent to defraud any particular person, or an intent to enable any particular person to defraud any particular person, but it shall be sufficient to prove with respect to every such misdemeanor and offence that the person accused did the act charged with intent to defraud, or with intent to enable some other person to defraud, or with the intent that any other person might be enabled to defraud.

13. Every person who shall aid, abet, counsel, or procure the commission of any offence which is by this Act made a misdemeanor shall also be guilty of a misdemeanor.

14. Every person who shall be convicted or found guilty of any offence which is by this Act made a misdemeanor shall be liable, at the discretion of the Court and as the Court shall award, to suffer such punishment by imprisonment for not more than two years, with or without hard labour, or by fine, or both by imprisonment, with or without hard labour, and fine, and also by imprisonment until the fine (if any) shall have been paid and satisfied.

15. In every case in which any person shall have committed or done any offence or act whereby he shall have forfeited or become liable to pay to her Majesty any of the penalties or sums of money mentioned in the provisions of this Act, every such penalty or sum of money shall or may be recovered in England, Wales, or Ireland in an action of debt, which any person may as plaintiff for and on behalf of her Majesty commence and prosecute to judgment in any Court of Record, and the amount of every such penalty or sum of money to be recovered in any such action shall or may be determined by the jury (if any), sworn to try any issue in such action, and if there shall be no such jury then by the Court or some other jury, as the Court shall think fit, or instead of any such action being commenced, such penalty or sum of money shall or may in England or Wales be recovered by a summary proceeding before two justices of the peace having jurisdiction in the county or place where the party offending shall reside or have any place of business, or in the county or place in which the offence shall have been committed; and shall or may in Ireland be recovered in like manner by civil bill in the Civil Bill Court of the county or place in which the offence was committed, or in which the offender shall reside or have any place of business; and shall or may in Scotland be recovered by action before the Court of Session in ordinary form, or by summary action before the sheriff of the county where the offence shall have been committed or the offender may reside or have any place of business, which sheriff, upon proof of the offence, either by the confession of the person offending or by the oath or affirmation of one or more credible witnesses, shall convict the offender, and find him liable in the penalty or penalties aforesaid, as also in expenses; and it shall be lawful for the sheriff, in pronouncing such judgment for the penalty or penalties and costs, to insert in such judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by poinding: Provided always, that it shall be lawful to the sheriff, in the event of his dismissing the action and assoilizing the defender, to find the complainer liable in expenses; and any judgment so to be pronounced by the sheriff in such summary action shall be final and conclusive, and not subject to review by advocacy, suspension, reduction, or otherwise.

16. In every case in which any such penalty or sum of money forfeited to her Majesty as hereinbefore mentioned shall be sought to be recovered by a summary proceeding before two justices of the peace, the offence or act by the committing or doing of which such penalty or sum of money shall have been so forfeited shall be and be deemed to be an offence and act within the meaning of a statute passed in the twelfth year of the reign of her present Majesty, intituled *An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders*; and the information, conviction of the offender, and other proceedings for the recovery of the penalty or sum so forfeited shall be had according to the provisions of the said Act.

17. In every case in which judgment shall be obtained in any such action as aforesaid for the amount of any such penalty or sum of money forfeited to her Majesty, the amount thereof shall be paid by the defendant to the sheriff

or the officer of the Court, who shall account for the same in like manner as other moneys payable to her Majesty, and if it be not paid, may be recovered, or the amount thereof levied, or the payment thereof enforced, by execution or other proper proceeding, as money due to her Majesty; and the plaintiff suing on behalf of her Majesty, upon obtaining judgment, shall be entitled to recover and have execution for all his costs of suit, which shall include a full indemnity for all costs and charges which he shall or may have expended or incurred in, about, or for the purposes of the action, unless the Court or a judge thereof shall direct that costs of the ordinary amount only shall be allowed.

18. No person shall commence any action or proceeding for the recovery of any penalty, or procuring the conviction of any offender in manner hereinbefore provided, after the expiration of three years next after the committing of the offence, or one year next after the first discovery thereof by the person proceeding.

19. In every case in which at any time after the thirty-first day of December one thousand eight hundred and sixty-three, any person shall sell or contract to sell (whether by writing or not) to any other person any chattel or article with any trade mark thereon, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing together with which such chattel or article shall be sold or contracted to be sold, the sale or contract to sell shall in every such case be deemed to have been made with a warranty or contract by the vendor to or with the vendee that every trade mark upon such chattel or article, or upon any such cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing as aforesaid, was genuine and true, and not forged or counterfeit, and not wrongfully used, unless the contrary shall be expressed in some writing, signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

20. In every case in which at any time after the thirty-first day of December one thousand eight hundred and sixty-three, any person shall sell or contract to sell (whether by writing or not), to any other person any chattel or article upon which, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing together with which such chattel or article shall be sold or contracted to be sold, any description, statement, or other indication of or respecting the number, quantity, measure, or weight of such chattel or article, or the place or country in which such chattel or article shall have been made, manufactured, or produced, the sale or contract to sell shall in every such case be deemed to have been made with a warranty or contract by the vendor to or with the vendee that no such description, statement, or other indication was in any material respect false or untrue, unless the contrary shall be expressed in some writing signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

21. In every case in any suit at law or in equity against any person for forging or counterfeiting any trade mark, or for fraudulently applying any trade mark to any chattel or article, or for selling, exposing for sale, or uttering any chattel or article with any trade mark falsely or wrongfully applied thereto, or with any forged or counterfeit trade mark applied thereto, or for

preventing the repetition or continuance of any such wrongful act, or the committal of any similar act, in which the plaintiff shall obtain a judgment or decree against the defendant, the Court shall have power to direct every such chattel and article to be destroyed or otherwise disposed of; and in every such suit in a Court of law the Court shall or may upon giving judgment for the plaintiff award a writ of injunction or injunctions to the defendant, commanding him to forbear from committing and not by himself or otherwise to repeat or commit any offence or wrongful act of the like nature as that of which he shall or may have been convicted by such judgment, and any disobedience of any such writ of injunction or injunctions shall be punished as a contempt of Court, and in every such suit at law or in equity it shall be lawful for the Court or a judge thereof to make such order as such Court or judge shall think fit for the inspection of every or any manufacture or process carried on by the defendant in which any such forged or counterfeit trade mark, or any such trade mark as aforesaid, shall be alleged to be used or applied as aforesaid, and of every or any chattel, article, and thing in the possession or power of the defendant alleged to have thereon or in any way attached thereto any forged or counterfeit trade mark, or any trade mark falsely or wrongfully applied, and every or any instrument in the possession or power of the defendant used or intended to be or capable of being used for producing or making any forged or counterfeit trade mark, or trade mark alleged to be forged or counterfeit, or for falsely or wrongfully applying any trade mark; and any person who shall refuse or neglect to obey any such order shall be guilty of a contempt of Court.

22. In every case in which any person shall do or cause to be done any of the wrongful acts following, (that is to say,) shall forge or counterfeit any trade mark; or for the purpose of sale, or for the purpose of any manufacture or trade, shall apply any forged or counterfeit trade mark to any chattel or article, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or thing in or with which any chattel or article shall be intended to be sold or shall be sold or uttered or exposed for sale, or for any purpose of trade or manufacture; or shall enclose or place any chattel or article in, upon, under, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeit trade mark shall have been applied; or shall apply or attach to any chattel or article any case, cover, reel, wrapper, band, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeit trade mark shall have been applied; or shall enclose, place, or attach any chattel or article in, upon, under, with, or to any cask, bottle, stopper, vessel, case, cover, reel, wrapper, band, ticket, label, or other thing having thereon any trade mark of any other person; every person aggrieved by any such wrongful act shall be entitled to maintain an action or suit for damages in respect thereof against the person who shall be guilty of having done such act or causing or procuring the same to be done, and for preventing the repetition or continuance of the wrongful act, and the committal of any similar act.

23. In every action which any person shall, under the provisions of this

Act, commence as plaintiff for or on behalf of her Majesty for recovering any penalty or sum of money, if the defendant shall obtain judgment, he shall be entitled to recover his costs of suit, which shall include a full indemnity for all the costs, charges, and expenses by him expended or incurred in, about, or for the purposes of the action, unless the Court or a judge thereof shall direct that costs of the ordinary amount only shall be allowed.

24. In any action which any person shall, under the provisions of this Act, commence as plaintiff for or on behalf of her Majesty for recovering any penalty or sum of money, if it shall be shown to the satisfaction of the Court or a judge thereof that the person suing as plaintiff for or on behalf of her Majesty has no ground for alleging that he has been aggrieved by the committing of the alleged offence, in respect of which the penalty or sum of money is alleged to have become payable; and also that the person so suing as plaintiff is not resident within the jurisdiction of the Court, or not a person of sufficient property to be able to pay any costs which the defendant may recover in the action, the Court or judge shall or may order that the plaintiff shall give security by the bond or recognisance of himself and a surety, or by the deposit of a sum of money, or otherwise, as the Court or judge shall think fit, for the payment to the defendant of any costs which he may be entitled to recover in the action.

25. Nothing in this Act contained shall be construed to affect the rights and privileges of the Corporation of Cutlers of the liberty of Hallamshire, in the county of York, nor shall anything in this Act contained be construed in any way to repeal or make void any of the provisions contained in the fifty-ninth George Third, chapter seven, intituled *An Act to regulate the Cutlery Trade in England*.

26. The expression "The Merchandise Marks Act, 1862," shall be a sufficient description of this Act.

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## THE WEIGHTS AND MEASURES (IRELAND) AMENDMENT ACT, 1862,

25 & 26 VICT. C. 76.

### PART III.

#### *Prevention of Frauds.*

§ 14. If any person commit any of the following offences, he shall for each offence be liable to a penalty not exceeding five pounds:

- (1.) If he, with intent to defraud, counterfeit or procure to be counterfeited any brand or stamp used by or under the authority of the owner or lessee of a market or fair, or of any person having by law the control of a market or fair, to denote the weight, measure, or quality of any article sold in the market or fair, or within the prescribed limits, during the holding of the market or fair, or of any cask, firkin, or

other vessel, covering, or thing in which such article is sold, or the impression of any such brand or stamp :

- (2.) Or, with the like intent, use or procure to be used any such counterfeit brand, or stamp, or impression :
- (3.) Or, with the like intent, alter an impression of any such genuine brand or stamp :
- (4.) Or, with the like intent, have in his possession anything having thereon an impression of any such counterfeit brand or stamp, or a fraudulently altered impression of any such genuine brand or stamp :
- (5.) Or, with the like intent, transfer or apply any cask, firkin, or other vessel, covering, or thing, having thereon an impression of any such genuine brand or stamp, to any article other than that for denoting the weight, measure, or quality whereof such impression was made on such cask, firkin, or other vessel, covering, or thing, or in any other manner alter the *bonâ fide* application of an impression of any such genuine brand or stamp :
- (6.) Or knowingly weigh or cause to be weighed, contrary to the provisions of this Act, or act or assist in committing or connive at any fraud respecting the weighing or the weight or measure of any such article as in Part II. of this Act is mentioned :
- (7.) Or, with intent to defraud, alter any ticket specifying the weight of any such article :
- (8.) Or, with intent to defraud, make or use, or be privy to the making or using of any such ticket, falsely stating the weight of any such article, or of any covering, cart, or load :
- (9.) Or shall dispose of, sell, or cause to be sold any weight or measure having a false or counterfeit stamp, or a stamp purporting to resemble a genuine stamp.

§ 15. If any person shall wilfully pack up or mix, or cause to be packed up or mixed, with or in any butter contained in any firkin or cask, any salt, pickle, or other substance, with intent to increase the weight of such butter, and shall bring or send any butter so packed or mixed to any market for sale, he shall be liable to pay a fine not exceeding forty shillings, or be imprisoned for any period not exceeding one month, as the justice or justices shall determine.

§ 16. If any person shall wind or cause to be wound in any fleece or wool not being sufficiently rivered or washed, or wind or cause to be wound within any fleeces any deceitful locks, cots, skin, or lamb's wool, or any substance, matter, or thing, whereby the fleece may be rendered more weighty, to the deceit and loss of the buyer, such person shall be liable to a penalty of two shillings for every fleece so fraudulently made up.

By 30 & 31 Vict. c. 94 (1867), the provisions of the former Act are extended to "such parts of the Police District of Dublin Metropolis as are without the municipal boundaries of the borough of Dublin."

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THE EXHIBITION MEDALS ACT, 1863—26 & 27 Vict. c. 119.

§ 1. If any trader commits any of the offences following; that is to say—

- (1.) Falsely represents that he has obtained a medal or certificate from the Exhibition Commissioners (z) in respect of any article or process for which a medal or certificate has been awarded by the Commissioners;
- (2.) Falsely represents (knowing such representation to be false) that any other trader has obtained a medal or certificate from the Exhibition Commissioners :
- (3.) Falsely represents (knowing such representation to be false) that any article sold or exposed for sale has been made by, or by any process invented by, a person who has obtained in respect of such article or process a medal or certificate from the Exhibition Commissioners :

He shall incur the following penalties, that is to say :

- (1.) For the first offence he shall forfeit to her Majesty a sum not exceeding five pounds :
- (2.) For any subsequent offence he shall forfeit to her Majesty a sum not exceeding twenty pounds, or be imprisoned for a period not exceeding six months.

By § 2, in proceedings under this Act, it is not necessary to prove that any person has sustained damage by the false representations.

By § 5 no provision of this Act is to affect any right or civil remedy.

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PATENTEE'S NAME, ETC.

*Act to Amend the Law of Letters Patent—5 & 6 Wm. IV. c. 83 (1835).*

§ 7. And be it enacted, that if any person shall write, paint, or print, or mould, cast, or carve, or engrave, or stamp, upon anything made, used or sold by him, for the sole making or selling of which he hath not or shall not have obtained letters patent, the name or any imitation of the name of any other person who hath or shall have obtained letters patent for the sole making and vending of such thing, without leave in writing of such patentee or his assigns; or if any person shall upon such thing, not having been purchased from the patentee or some person who purchased it from or under such patentee, or not having had the licence or consent in writing of such patentee or his assigns, write, paint, print, mould, cast, carve, engrave, stamp, or otherwise mark the word "patent," the words "letters patent," or the words "by the King's patent," or any words of the like kind, meaning, or import, with a view of imitating or counterfeiting the stamp, mark, or other device of the patentee, or shall in any other manner imitate or counterfeit the stamp, or mark, or other device of the patentee, he shall for every such

(a) Of 1851 or 1862. See § 3.

offence be liable to a penalty of fifty pounds, to be recovered by action of debt, bill, plaint, process, or information in any of his Majesty's Courts of Record at Westminster or in Ireland, or in the Court of Session in Scotland, one half to his Majesty, his heirs and successors, and the other to any person who shall sue for the same: Provided always that nothing herein contained shall be construed to extend to subject any person to any penalty in respect of stamping or in any way marking the word "patent" upon any thing made, for the sole making or vending of which a patent before obtained shall have expired.

### CUSTOMS REGULATIONS.

*The Customs Consolidation Act, 1876 — 39 & 40 Vict. c. 36.*

§ 42. The goods enumerated and described in the following table of prohibitions and restrictions inwards are hereby prohibited to be imported or brought into the United Kingdom, save as thereby excepted, and if any goods so enumerated and described shall be imported or brought into the United Kingdom contrary to the prohibitions or restrictions contained therein, such goods shall be forfeited, and may be destroyed or otherwise disposed of as the Commissioners of Customs may direct.

#### A TABLE OF PROHIBITIONS AND RESTRICTIONS INWARDS.

##### *Goods prohibited to be imported.*

\* \* \* \* \*

Articles of foreign manufacture, and any packages of such articles bearing any names, brand, or mark being or purporting to be the name, brand or mark of manufacturers resident in the United Kingdom (a), or any name, brand, or mark which states or implies that such articles were manufactured at any place in the United Kingdom (b).

Any name, brand, or mark which states or implies that any such articles were manufactured at a town or place having the same name as a place in the United Kingdom, shall, unless accompanied by the name of the country in which such place is situate, be deemed for the purposes of this section to state or imply that such articles were manufactured at a place in the United Kingdom (c).

Clocks and watches, or any other article of metal impressed with any mark or stamp representing or in imitation of any legal British assay mark or stamp, or purporting by any mark or appearance to be of the manufacture of the United Kingdom (d).

(a) This is re-enacted from 16 & 17  
Vict. c. 107, § 44.

(b) This is re-enacted from 35 & 36  
Vict. c. 20, § 4.

(c) This is re-enacted from 35 & 36  
Vict. c. 20, § 4.

(d) This is re-enacted from 16 & 17  
Vict. c. 107, § 44.



§ 63. \* \* Provided also, that if any British goods brought into the United Kingdom bear the name, brand, or mark of any British manufacturer, the same shall, either by bill of store, or by and with the consent in writing of the proprietor of such name, brand, or mark, or his legal representative, or on proof to the satisfaction of the Commissioners of Customs, by declaration of the importer that such goods are of British manufacture, be admitted to entry as British (a).

§ 153. If any articles of foreign manufacture, and any packages of such articles, bearing any names, brands, or marks being or purporting to be the names, brands, or marks of manufacturers resident in the United Kingdom, shall be imported into any of the British possessions abroad, the same shall be forfeited (b).

(a) This is re-enacted from 30 & 31  
*Vict. c. 82, § 6.*

(b) This is re-enacted from 16 & 17  
*Vict. c. 107, § 161.*

## APPENDIX D.

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### STATUTORY ENACTMENTS WITH RESPECT TO MARKS ON SPECIAL CLASSES OF GOODS (a).

#### CUTLERY.

59 *Geo. III. c. 7 (b)*, "An Act to regulate the Cutlery Trade in England."

§ 1. Manufacturers may mark with the figure of a hammer articles of cutlery made by them by means of the hammer.

§ 3. No person is to mark articles of cutlery not made by means of the hammer with the figure of a hammer, or to possess for the purpose of sale, or offer for sale such articles so marked, under penalty of forfeiture of the articles so marked, together with a fine of 5*l.* a dozen.

§ 4. No person is to mark articles of cutlery, or possess for the purpose of sale, or offer for sale articles marked with any words indicative of a quality other than the true one, under similar penalties.

§ 5. No person is to mark articles, or possess, &c., articles marked with the words "London" or "London made," unless such articles were made within the City of London, or twenty miles distance therefrom, under penalty of forfeiture, together with a fine of 10*l.* a dozen.

§ 14. Articles of cutlery subject to forfeiture by virtue of the Act may be seized and destroyed, &c., by order of justices.

The remaining provisions refer chiefly to forms of procedure, recovery of penalties, &c.

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#### *The Cutlers' Company of Hallamshire.*

21 *Jac. I. c. 31* (1623).

§ 1 (c). The cutlers living in Hallamshire, or within six miles distance therefrom, are incorporated under the corporate name of "The Master,

(a) The Acts abstracted in the text are in force at present.

(b) The Merchandise Marks Act, 1862, does not interfere with this Act. See

§ 25 of that Act.

(c) The remainder of this Act is repealed by 31 *Geo. III.*, c. 58.

Wardens, Searchers, Assistants and Commonalty of the Company of Cutlers in Hallamshire in the county of York.”

31 *Geo. III. c. 58* (1791) (*a*).

§ 1. The Company to consist of the trades hereinafter mentioned, and of none other.

§ 3 enumerates “the arts or trades of makers of knives, sickles, shears, scissors, razors, files and forks.”

§ 7. Apprentices who have served for seven years are to have, at twenty-one years of age, their freedom of the company and a mark to be assigned them.

The Act contains other provisions with respect to the constitution of the company, procedure, &c.

41 *Geo. III. c. 97* (1801), (Local).

§ 2. A freeman of the company is empowered to give his mark by will to any person or persons, in the same manner as his other personalty, subject to the life estate therein which his widow is to have during her widowhood or any future coverture, and which she may sell, though on her death the provisions of the husband’s will take effect.

§ 3. In default of a will, the mark is to pass in the same manner as its owner’s other personalty, subject to the widow’s life estate (*b*).

§ 5. Parish apprentices who shall prove to the satisfaction of a justice that they have regularly served a freeman for seven years shall be entitled to their freedom and a mark.

54. *Geo. III. c. 119* (1814), (Local).

This Act repeals several of the provisions of the Act of 1791, in favour of free trade.

§ 3. Any person carrying on any of the specified trades within the specified limits has a right to have a mark assigned to him by the company on application, which mark is not to be one that is the property of another, nor a surname (*c*); and for such mark he is to pay forty shillings, and if the mark be one previously assigned but surrendered, 3*l.* in addition, besides, in either case, any stamp duty imposed by Act of Parliament (*d*).

§ 4. No mark is to be assigned by the company if they have notice that it is in common use, or in the use of any person within the district (*e*).

§ 5. Members of the company, or any other persons carrying on any of the specified trades within the specified limits, who shall counterfeit a mark assigned by the company to another person, shall for every offence

(*a*) Considerable portions of this Act have been repealed by the Acts which follow.

(*b*) And see § 6 of the Act of 1814.

(*c*) The similar provision in § 24 of the Act of 1791 (repealed by the present Act), with respect to non-freemen, provided that, on a non-freeman having a mark assigned to him, he should become a freeman of the company. This is not repeated here.

(*d*) A mark assigned to a non-freeman is assignable by him. See *Bury v. Bedford*, 33 L. J. Ch. 465.

(*e*) By the Trade Marks Registration Act, 1875, § 9, no mark is now to be assigned by the company which has been registered under the Trade Marks Registration Acts, notice of the registration having been given to the Cutler’s Company.

forfeit and pay a sum not exceeding 20*l.*, half of the fine to go to the injured person, the other half to the company.

§ 6. The provisions made by § 2 of the Act of 1801, for the devolution of marks on the deaths of their owners are to apply to marks assigned under the present Act (*a*), but not more than one person of the family shall be entitled to use the mark at the same time.

23 *Vict. c. xliii.* (1860), (Local).

§ 1. The provisions of the previous Acts are extended to "the arts or trades of manufacturers of steel and makers of saws and edge-tools and other articles of steel, or of steel and iron combined, having a cutting edge.

§ 2. Any person exercising any of the trades formerly or now specified, within the specified limits, may and shall, on application to the company and payment of 20*l.* in addition to any other fees payable, become a freeman of the company and have a mark assigned to him.

§ 3. The former and present Acts may be cited as "The Cutlers' Company's Acts, 1623, 1791, 1801, 1814, 1860," respectively.

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The rights of the Cutlers' Company were expressly reserved by The Merchandise Marks Act 1862 (*b*), § 25, and also by The Trade Marks Registration Act, 1875, § 9 (*c*).

See also the special provisions in regard to the Cutlers' Company contained in the Trade Marks Registration Act, 1875, § 9 (*c*), and in 46-56 of the Rules under that Act (*d*); the effect of which is that the registrar of trade marks is to be supplied with copies of all Sheffield corporate marks, and the Cutlers' Company with copies of all trade marks registered for goods or classes of goods within § 2 of the Cutlers' Company's Act, 1860; that notice of applications for assignment or registration of such marks, and of such assignment or registration, when complete, is to be given by the Cutlers' Company to the registrar and *vice versa*; that marks identical with, or similar to marks already assigned or registered, are not to be registered or assigned respectively (except, in the former case, with the special leave of the Court); and that Sheffield marks may be registered under The Trade Marks Registration Acts.

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## GOLD AND SILVER PLATE.

### ENGLAND.

2 *Hen. VI. c. 17* (in Ruffhead's ed., c. 14) (1423) (*e*).

No goldsmith or silversmith in the City of London to sell wrought silver of less than sterling fineness. No harness of silver to be offered for sale in

(*a*) Thus including non-freemen in possession of Company's marks.

(*b*) 25 & 26 *Vict. c. 88.* See p. 277.

(*c*) See p. 219.

(*d*) See p. 235.

(*e*) The earliest statute on the subject

was 28 *Edw. I. c. 20* (1300), by which it was provided, among other things, that no vessel of silver should pass out of the worker's hands until assayed by the wardens of the craft, and marked with the leopard's head, and that no worse gold

that city, until touched with the touch of the leopard's head, if it may reasonably bear the same, and also with the workman's mark, under penalty of forfeiture of double value. The mark of every goldsmith to be known to the wardens of the same craft. In the cities of York, Newcastle-upon-Tyne, Lincoln, Norwich, Bristol, Salisbury, and Coventry, to be divers touches. In other places, where no touch is ordained, silver not to be worked of less than sterling fineness, nor to be offered for sale without the worker's mark. Penalty of double value (a).

18 *Eliz. c. 15* (1576) (b).

If plate marked by the Goldsmith's Company be found deceitful, the Company to forfeit the value.

8 & 9 *Wm. III. c. 8* (1697).

§ 8 (in Ruffhead's ed. § 9) (c). No silver plate to be made of less fineness than 11 oz. 10 dwt. in the lb. troy (d), nor offered for sale until marked (e).

If plate marked by the Goldsmith's Company be found deceitful, the Company to forfeit the value, half to the Crown, half to the informer.

12 & 13 *Wm. III. c. 4* (1700), "An Act for appointing wardens and assay masters for assaying wrought plate in the cities of York, Exeter, Bristol, Chester, and Norwich" (f).

§ 2. Goldsmiths, &c., of the cities of York, Exeter, Bristol, Chester, and Norwich, incorporated into respective companies, to be called respectively "The Company of Goldsmiths of ———."

§ 3. No goldsmith, &c., in those cities to make silver plate of less fineness than the standard for the time being, nor sell it until marked with:—

The worker's mark, to be expressed with the two first letters of his surname.

The lion's head erased and the figure of Britannia.

The arms of that one of the above cities in which the plate is assayed and marked.

should be worked than that of the touch of Paris. This Act was repealed, saving the King's prerogative, by 19 & 20 *Vict. c. 64*.

(a) 4 *Hen. VII. c. 2* (1487) (repealed by 19 & 20 *Vict. c. 64*) required finers of gold and silver to put their marks upon the metal.

(b) It was provided by the earlier part of this Act (repealed by the Statute Law Revision Act, 1863) that gold should not be made or sold under 22 carats in fineness, nor silver under 11 oz. 2 dwt.; and that no silver plate should be sold without the worker's mark, under penalty of forfeiting the value.

(c) The remainder of the Act was repealed by the Statute Law Revision Act, 1867.

(d) The standard was thus raised from that fixed by the preceding Act (11 oz.

2 dwt.), but by 6 *Geo. I. c. 11*, both standards were established. See *infra*.

(e) The following marks are appointed by this Act:—

The worker's mark, to be expressed by the two first letters of his surname.

The mark of the mystery or craft of the goldsmiths, which, instead of the leopard's head and the lion, shall for this plate be the figure of a lion's head erased, and the figure of a woman commonly called Britannia.

A distinct variable mark to denote the year of manufacture of the plate.

Penalty—Forfeiture of the plate or its value, half to the Crown, half to the informer. See 12 *Geo. II. c. 26*, § 5.

(f) Bristol never exercised the powers hereby conferred. York and Norwich have discontinued doing so.

A distinct variable mark or letter in Roman character to denote the year (*a*).

Penalty—Forfeiture of the plate or value, half to the Crown, half to the informer.

The Act also contains provisions with respect to the appointment of wardens and assayers, procedure, &c.

1 *Anne c. 3* (1 Anne, stat. 1, c. 9, in Ruffhead's ed.) (1701).

The provisions of the last Act extended to Newcastle-upon-Tyne, and "The Company of Goldsmiths of Newcastle-upon-Tyne" incorporated.

6 *Geo. I. c. 11* (1719) (*b*).

§ 1. The old silver standard of 11 oz. 2 dwt. restored.

§ 3. No goldsmith, &c., to work silver plate of less fineness than 11 oz. 2 dwt., nor to sell it, &c., until touched, assayed and marked, under the former penalties.

§ 41. Two standards of silver, 11 oz. 10 dwt. and 11 oz. 2 dwt. continued (*c*).

12 *Geo. II. c. 26* (1739) (*d*).

§ 1. Gold plate not to be made under 22 carats in fineness, nor silver plate under 11 oz. 2 dwt. Penalty, 10*l*.

§ 5. Gold and silver plate not to be sold or exported until marked as follows:—

Gold plate of 22 carats fine and silver plate of 11 oz. 2 dwt. with:—

The worker's mark, which shall be the first letters of his Christian and surname.

These marks of the Company of Goldsmiths in London, viz., the leopard's head, the lion passant (*e*), and a distinct variable mark or letter to denote the year. Or,

The worker's mark, and

The marks appointed to be used by the assayers at York, Exeter, Bristol, Chester, Norwich, or Newcastle-upon-Tyne.

Silver plate of 11 oz. 10 dwt., with—

The worker's mark as before.

These marks of the said Company, viz., the lion's head erased, the figure of Britannia, and the mark or letter to denote the year. Or,

The worker's mark, and

(*a*) See 12 *Geo. II. c. 26*, § 5.

(*b*) The whole of this Act but §§ 1—3 and § 41 repealed by Statute Law Revision Act, 1870.

(*c*) Silver plate of 11 oz. 10 dwt. to be marked with:—

The workman's mark.

The mark of the wardens of the Goldsmith's Company.

The figure of a lion's head erased.

The figure of Britannia.

Silver plate of 11 oz. 2 dwt. to be marked with:—

The workman's mark.

The mark of the wardens of the Goldsmith's Company.

The figure of a lion passant.

The figure of a leopard's head.

See 12 *Geo. II. c. 26*, § 5.

(*d*) Repealed in part, 30 *Geo. III. c. 31*, § 1, Statute Law Revision Act, 1867.

(*e*) By 38 *Geo. III. c. 69*, § 2, gold plate of 18 carats fine is to be marked with a crown and 18, instead of the lion passant, and by 7 & 8 *Vict. c. 22*, § 15, gold of 22 carats with a crown and 22.

The mark of one of the said cities or towns.

Penalty—10*l.* fine, or, in default, hard labour not exceeding six months.

§ 21. All goldsmiths, &c., to enter their new marks, names, and places of abode in one of the assay offices at London, York, Exeter, Bristol, Chester, Norwich, or Newcastle-upon-Tyne. Such new marks to be of a character or alphabet different from their old marks; all old marks to be broken. Penalty, 10*l.* fine, and 10*l.* more for using any other mark; in default, hard labour not exceeding six months.

13 *Geo. III. c. 52* (1772), "An Act for appointing wardens and assay-masters for assaying wrought plate in the towns of Sheffield and Birmingham" (a).

§ 2. Incorporation of "The Guardians of the standard of wrought plate for Birmingham" (b).

§ 4. No silversmith or plate worker in either of these towns, or within twenty miles thereof, to sell or export silver plate made in these towns, and the specified limits, until marked as follows:—

Silver plate of 11 oz. 2 dwt., with:—

The mark of the worker or maker, which shall be the first letters of his Christian and surname.

The lion passant.

The mark of the company in whose assay office the plate was assayed and marked.

A distinct variable mark or letter to denote the year.

Silver plate of 11 oz. 10 dwt. with:—

The worker's mark.

The figure of Britannia.

The mark of the Company, and

The mark or letter to denote the year.

Penalty—Forfeiture of the plate or value, half to the Crown, half to the informer.

§ 5. The peculiar mark of the Birmingham Company to be an anchor, of the Sheffield Company a crown.

The Act also contains provisions for the election of wardens and assayers, the process of assaying, punishment of counterfeiting, &c.

24 *Geo. III. sess. 2, c. 20* (1784), relates to Sheffield.

§ 2. Manufacturers of goods plated with silver, within Sheffield or 100 miles thereof, may strike upon such goods their surname or the name of their firm, together with some other mark, figure, or device.

§ 3. Names to be in legible characters and struck with only one punch, and marks to be approved and registered by the Guardians for Sheffield.

24 *Geo. III. sess. 2, c. 53* (1784) (c).

§ 5. The assaying officer to mark with an additional new mark, of the King's head, all gold and silver plate sent to be touched, marked and

(a) Repealed as to Birmingham, by 5 *Geo. IV. c. lii.* (local). As to Sheffield, see 24 *Geo. III. sess. 2, c. 20.* The present Act only deals with silver.

(b) Or "Sheffield."

(c) Repealed in part 25 *Geo. III. c. 64, § 2*; 30 *Geo. III. c. 31, § 1*; Statute Law Revision Acts, 1861—71.

assayed, but to ask and receive duty before touching, marking, or assaying.

§ 8. Gold and silver plate not to be sold or exported until marked with the King's head. Penalty—50*l.*, or, in default, hard labour of not more than one year, nor less than six months. Also, forfeiture of the unmarked plate, half to the Crown, half to the informer.

30 *Geo. III. c. 31* (1790).

This Act regulates the exemptions from marking.

38 *Geo. III. c. 69* (1798).

§ 1. Gold plate may be manufactured down to 18 carats fine.

§ 2. Such gold plate not to be sold or exported until marked with a crown and the figures 18, instead of the lion passant. Penalty, £10.

§ 3. Gold plate of 18 carats fine may be marked by the various Goldsmiths' Companies, &c., as before, with the exception of the alteration of this mark.

§ 4. Gold plate of 22 carats may still be made, sold, exported, &c.

§ 5. This Act not to authorize the application of the mark used before the Act to gold plate of less than 22 carats fine.

§ 6. Penalty of £50 for selling, exporting, &c., gold plate not marked with one of the marks.

§ 8 (a). Previous regulations for gold of 22 carats, except as to the mark of the lion passant, to apply to gold of 18 carats.

55 *Geo. III. c. 185* (1815).

§ 7 (b). Penalties for forging duty marks on plate, or selling or exporting plate so marked, or possessing dies, &c.

5 *Geo. IV. c. lii.* (1824) (Local—Birmingham and thirty miles round).

§ 1. 13 *Geo. III. c. 52*, repealed, so far as relates to Birmingham.

§ 4. Re-incorporation of "The Guardians of the Standard of Wrought Plate in Birmingham," with authority within a radius of thirty miles.

§ 20. No goldsmith, silversmith, &c., within Birmingham or thirty miles thereof, to sell or export gold or silver plate made within the specified limits until marked as follows:—

Gold of 22 carats fine with the lion passant (c).

„ 18 „ „ crown and 18.

Silver of 11 oz. 2 dwt. fine with the lion passant.

„ 11 oz. 10 dwt. „ Britannia.

And all gold and silver alike with the following additional marks:—

The worker's mark (the first letters of his Christian and surname, or in case of any partnership, the initials of the name or firm of such partnership).

The company's mark (an anchor).

A distinct variable mark or letter, to denote the year.

(a) § 7 provided penalties for counterfeiting, but this was repealed as to England by 7 & 8 *Vict. c. 22*, § 1, though still unrepealed for Scotland.

(b) The greater part of this Act is

repealed by 33 & 34 *Vict. c. 99*, and 36 & 37 *Vict. c. 91*.

(c) By 7 & 8 *Vict. c. 22*, § 15, a crown and 22.



Penalty—Forfeiture of the plate or its value, half to the Crown, half to the informer.

§ 21. Goldsmiths, silversmiths, &c., within Birmingham and thirty miles, to enter their names, marks, and places of abode with the company. Penalty—£100, half to the informer, half to the purposes of the Act.

§ 22. Penalties of counterfeiting, &c.

The Act also contains numerous provisions with respect to the constitution of the company, the election of its officers, its procedure, &c.

7 & 8 *Vict. c. 22* (1844).

This Act (which see) regulates the punishments and penalties for counterfeiting, &c., hall-marks (*a*).

§ 15. Gold plate of 22 carats fine to be marked with a crown and 22, instead of the lion passant.

17 & 18 *Vict. c. 96* (1854).

This Act authorizes her Majesty, by Order in Council, to allow any standard for gold plate, not being less than one-third part of the whole, and to approve thereby of the instrument for stamping such plate, setting forth in figures the actual fineness of the metal (*b*).

18 & 19 *Vict. c. 60* (1855).

Gold wedding rings are to be assayed and marked in the same way as other gold plate.

5 & 6 *Vict. c. 47* (1842) (Customs Act) (*c*).

§ 59. Foreign gold and silver plate imported from abroad shall be of the respective standards required for plate wrought in England, and it shall not be sold, &c., until assayed, stamped and marked in England, Scotland, or Ireland, as plate of the same description made in that country.

5 & 6 *Vict. c. 56* (1842) (Customs Act).

§ 6 (*d*). Foreign ornamental plate, manufactured before 1800, and imported, is exempted from the operation of the last Act.

39 & 40 *Vict. c. 35* (1876) (Customs Act).

§ 2 (*e*). Foreign gold and silver plate imported and sent to an assay office in the United Kingdom for assay shall be marked, in addition to the marks ordinarily used at that office for British plate, with an F on an oval escutcheon, to denote the foreign origin of the plate.

(*a*) See *R. v. Lee*, 1 Leach, 416, and *R. v. Ogden*, 6 C. & P. 631, decided on the earlier statutes; also *R. v. Suter & Coulson*, 10 Cox, 577; and *R. v. Ardley*, L. R. 1 C. C. R. 301, 12 Cox, 23; in which a spurious hall-mark was made the means of obtaining money by false pretences.

(*b*) Accordingly the following reduced standards were ordered by the Council:—  
15 carats, to be marked with 15 and 625.

12 carats, to be marked with 12 and 500.

9 " " 9 " 375.  
The crown and sovereign's head are not placed on plate of these qualities.

(*c*) The entire Act but §§ 59 and 60 is repealed.

(*d*) The remainder of the Act is repealed by 8 & 9 *Vict. c. 84*, § 2.

(*e*) This re-enacts 30 & 31 *Vict. c. 82*, § 24, the whole of which Act is repealed by the present one.

ENGLISH HALL MARKS AT THE PRESENT DAY (a).

	GOLD.					SILVER.	
	22 CARATS.	18 CARATS.	15 CARATS.	12 CARATS.	9 CARATS.	11 oz. 2 dwt.	11 oz. 10 dwt.
Quality Mark ... ..	22	18	15·625	12·5	9·375	None (b).	None.
Standard Mark ... ..	Crown.	Crown.	None.	None.	None.	Lion passant.	Britannia.
Date Mark ... ..	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.
Maker's Mark ... ..	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.
Duty Mark ... ..	Sovereign's head.	Sovereign's head.	None.	None.	None.	Sovereign's head.	Sovereign's head.
Assay Town Mark ... ..	On all qualities of gold and silver the special mark of the town.						

The special marks of the assay towns are as follows:—London, a leopard's head (except for silver of 11 oz. 10 dwt., for which it is a lion's head erased); Exeter, a castle; Chester, a dagger and 3 sheaves; Newcastle, 3 castles; Sheffield, a crown; Birmingham, an anchor (c).

(a) Gold and silver of all these qualities are manufactured at London, Chester, Newcastle-on-Tyne, and Birmingham. At Exeter only gold of 22 carats and silver of 11 oz. 2 dwt. are manufactured; at Sheffield only silver of 11 oz. 2 dwt. and 11 oz. 10 dwt. At York and Norwich no plate is now manufactured. At Bristol the powers conferred by 12 & 13 Wm. III.

c. 4, were never exercised.

(b) Except at Newcastle, where the mark of a leopard's head crowned is used.

(c) The marks for York and Norwich (now discontinued) were:—York, 5 lions on a cross; Norwich, a castle and a lion passant.

## SCOTLAND (a).

13 *Geo. III. c. 59* (1773) (b).

§ 2, which provided penalties for counterfeiting, &c., the marks for plate, is unrepealed in Scotland.

38 *Geo. III. c. 69* (1798), (see above).

§ 7 (c), which provided penalties for counterfeiting, &c., the marks for plate, is unrepealed in Scotland.

6 & 7 *Wm. IV. c. 69* (1836).

§ 1. Gold plate not to be made, sold, or exported, under 18 carats fine, nor silver under 11 oz. 2 dwt. fine. Penalty—Fine not exceeding 100*l.*

§ 2. Scotch goldsmiths to send their names, descriptions, and marks (to consist of the initial letters of their Christian and surnames, or, in the case of a partnership, of the initial letters of the firm name) for registration to the Goldsmiths' Company of Edinburgh, or of Glasgow.

§ 3. Gold plate of 22 carats fine, and silver plate of 11 oz. 2 dwt. to be sent, marked with the maker's mark, to the assay office, and to be there marked with :—

The mark of the thistle.

A distinct variable letter to denote the year.

The mark of the assaying company.

Gold plate of 18 carats fine to be marked in addition with 18.

Silver plate of 11 oz. 10 dwt. fine to be marked in addition with the figure of Britannia.

§§ 16 and 17 contain certain exemptions from marking.

§§ 18, 19 and 21 contain penalties for selling or exporting plate not duly marked, counterfeiting marks, &c., marking base metal, &c.

The Act also contains provisions with respect to the assaying, recovering penalties, &c.

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The following statutes mentioned above under the head of "England" are also in force in Scotland: 6 *Geo. I. c. 11*; 24 *Geo. III. sess. 2, c. 53*; 38 *Geo. III. c. 69*; 5 & 6 *Vict. c. 47*; 5 & 6 *Vict. c. 56*; 17 & 18 *Vict. c. 96*; 18 & 19 *Vict. c. 60*; and 39 & 40 *Vict. c. 35*.

(a) In the reign of James III. of Scotland (1483) gold 22 carats fine, and silver 11 penny fine were to be marked with the maker's mark, the mark of the deacon of the craft, and the mark of the town.

(b) This Act was repealed as to Eng-

land by 7 & 8 *Vict. c. 22, § 1*. The first section was repealed by the Statute Law Revision Act, 1871.

(c) Repealed as to England by 7 & 8 *Vict. c. 22, § 1*.

**SCOTCH HALL MARKS AT THE PRESENT DAY (a).**

	GOLD.					SILVER.	
	22 CARATS.	18 CARATS.	15 CARATS.	12 CARATS.	9 CARATS.	11 oz. 2 dwt.	11 oz. 10 dwt.
Quality Mark ... ..	— 22	— 18	— 15	— 12	— 9	— None.	— Britannia.
Standard Mark—							
Edinburgh ... ..	Thistle.	Thistle.	None.	None.	None.	Thistle.	Thistle.
Glasgow ... ..	Lionrampant.	Lionrampant.	Lionrampant.	Lionrampant.	Lionrampant.	Lionrampant.	Lionrampant.
Date Mark ... ..	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.
Maker's Mark ... ..	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.
Duty Mark ... ..	Sovereign's head.	Sovereign's head.	None.	None.	None.	Sovereign's head.	Sovereign's head.
Assay Town Mark ... ..	On all qualities of gold and silver the special mark of the town.						

The special marks of the assay towns are :—Edinburgh, a castle; Glasgow, a tree, fish, and bell.

(a) Gold and silver of all these qualities are manufactured at Edinburgh and Glasgow.

## IRELAND.

3 *Geo. II. c. 3* (1730), (Irish Act) (*a*).

§ 32. Gold and silver plate not to be sold until assayed, touched and marked.

§ 33. Plate to be assayed by the Dublin Company of Goldsmiths. Gold of 22 carats, and silver of 11 oz. 2 dwt., to be touched by the wardens of the company, and marked with "the marks now usual for that purpose." On payment of duty, the plate to be marked with a mark to be appointed by the Commissioners of His Majesty's Revenue (*b*).

§ 38. Penalties for counterfeiting, &c., provided.

23 & 24 *Geo. III. c. 23* (1783), (Irish Act).

§ 2. No gold plate to be made, sold, &c., except of 22 carats, 20 carats, or 18 carats fine. Penalty—Forfeiture and fine of 10*l*.

§ 3. The following marks appointed for gold of 22 carats :

The mark of the maker, which is the number 22, and the first letter of the maker's Christian and surname. And,

For Dublin, a harp crowned.

For New Geneva (*c*), a like harp with a bar across the strings.

§ 4. Marks for gold of 20 carats :

The number 20.

The maker's initials. And,

For Dublin, a plume with three feathers.

For New Geneva, a plume with two feathers.

§ 5. Marks for gold of 18 carats :

The number 18.

The maker's initials. And,

For Dublin, an unicorn's head.

For New Geneva, an unicorn's head with a collar round the neck.

§ 6 contains exemptions.

§ 11 provides for the registration of new marks.

§ 28 provides penalties for counterfeiting, &c.

47 *Geo. III. sess. 2, c. 15* (1807).

§ 3. Irish gold plate of 22, 20 or 18 carats, and silver plate of 11 oz. 2 dwt., to be assayed by the Goldsmith's Company of Dublin, touched and marked with "the marks now or hereafter to be used."

§ 6. On payment of duty, gold and silver plate to be marked with the King's head, to denote that this has been done (*d*).

§§ 14, 15 and 16 provide penalties for persons selling or buying unmarked plate, or counterfeiting, &c., the marks used.

(*a*) This Act was repealed as to gold by 23 & 24 *Geo. III. c. 23*, § 1 (Irish). It fixed a standard of 22 carats for gold (§ 33).

(*b*) The figure of Hibernia was accordingly appointed.

(*c*) This was a company of Geneva watchmakers, who established themselves in Co. Waterford. They carried on operations only from about 1784 to 1790.

(*d*) The figure of Hibernia continued to be used in addition.

The Act also provides for the manner in which duty is to be paid, books kept, &c.

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The following statutes mentioned above under the head of "England," are also in force in Ireland: 5 & 6 *Vict. c. 47*; 5 & 6 *Vict. c. 56*; 17 & 18 *Vict. c. 96*; 18 & 19 *Vict. c. 60*; 39 & 40 *Vict. c. 35*.

## IRISH HALL MARKS AT THE PRESENT DAY (a).

	GOLD.						SILVER.
	22 CARATS.	20 CARATS.	18 CARATS.	15 CARATS.	12 CARATS.	9 CARATS.	11 OZ. 2 DWT.
Quality Mark ... ..	— 22	— 20	— 18	— 15·625	— 12·5	— 9·375	— None.
Standard Mark ... ..	Harp crowned.	Plume of 3 feathers.	Unicorn's head.	None.	None.	None.	Harp crowned.
Date Mark ... ..	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.
Maker's Mark ... ..	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.
Duty Mark ... ..	Sovereign's head.	Sovereign's head.	Sovereign's head.	None.	None.	None.	Sovereign's head.
Dublin Mark ... ..	Hibernia.	Hibernia.	Hibernia.	Hibernia.	Hibernia.	Hibernia.	Hibernia.

(a) The only assay town in Ireland is Dublin, where gold is manufactured of a standard (20 carats) not used in England or Scotland, but silver only of the earlier standard of 11 oz. 2 dwt., and none of 11 oz. 10 dwt.

N.B.—For very full information on all points connected with Hall Marks, see Mr. Chaffers' book on Hall Marks, 5th ed., London, 1875, 8vo.

## CLOCKS AND WATCHES, ETC.

39 & 40 *Vict. c. 36*, § 42 (a) (1876).

Clocks and watches and other metal articles marked in imitation of British marks are forbidden to be imported into the United Kingdom (b).

## METAL BUTTONS.

36 *Geo. III. c. 60* (c) (1796).

§ 1 provides penalties for ordering metal buttons to be falsely marked in indication of quality, and for purchasing buttons so marked.

§ 2 provides penalties for falsely marking buttons in indication of quality, and for offering them for sale so marked.

§ 3. No marks indicative of quality are to be placed upon metal buttons, except the words "gilt," or "plated," respectively.

§ 4. The words "double gilt" and "treble gilt" may be placed upon buttons gilt to a specified degree.

§ 7 declares what quality is required to constitute a "gilt" or "plated" button.

The Act also contains provisions with respect to procedure, &c.

## GUN-BARRELS.

By *Royal Charter*, 1637, "The Master Wardens and Society of the Mystery of Gunmakers of the City of London" were incorporated, proof marks assigned to them, &c.

53 *Geo. III. c. 115* (d) (1813).

§ 4 incorporates "The Guardians, Trustees and Wardens of the Gun-Barrel Proof House of the Town of Birmingham."

§ 7 appoints the Birmingham proof marks to be—1. Crossed sceptres surmounted by a crown, with the letters B. C. P. 2. The same device, with the letter V (e).

18 & 19 *Vict. c. 148* (1855) (Local), "The Gun-Barrel Proof Act, 1855."

§ 9 repeals the former Acts.

§ 12 continues the incorporation of the Birmingham Company, under the name of "The Guardians of the Birmingham Proof House."

Many provisions follow for the regulation of the Birmingham Company.

§§ 84—101 contain provisions with respect to the marking of gun-barrels, penalties for falsely marking, &c.

§§ 106—109 relate to foreign gun-barrels.

(a) This is a re-enactment, with some variations, of 16 & 17 *Vict. c. 107*, § 44.

(b) See p. 289.

(c) Repealed in part, Statute Law Revision Act, 1871.

(d) Repealed by 18 & 19 *Vict. c. 148*,

§ 9 (Local).

(e) 55 *Geo. III. c. 59* (1815), further regulated the marking of gun-barrels, but was also repealed by 18 & 19 *Vict. c. 148*, § 9 (Local).



## CHAIN CABLES AND ANCHORS.

27 & 28 *Vict. c. 27* (1864); 34 & 35 *Vict. c. 101* (1871); 35 & 36 *Vict. c. 30* (1872); and 37 & 38 *Vict. c. 51* (1874), regulate the testing, proving, and marking of chain cables and anchors, and provide penalties for falsely marking, &c.

By § 4 of the Act of 1874, every contract for the sale of a chain cable implies, in the absence of an express stipulation to the contrary, that the cable has been duly tested and marked.

## PLAYING CARDS.

25 & 26 *Vict. c. 22* (1862).

§§ 28—37 provide that playing cards are to be sold in separate packs, enclosed in wrappers to be provided by the Commissioners of Inland Revenue, on which the duty chargeable and the name of the maker are to be marked. Penalties for frauds, &c.

16 & 17 *Vict. c. 107* (1853).

§§ 114—115. Imported playing cards are to be sold in separate packs, to be enclosed in proper wrappers to be provided by the Commissioners of Inland Revenue.

§ 116. Penalties for counterfeiting, &c., such wrappers.

## PAINTINGS, DRAWINGS, AND PHOTOGRAPHS.

25 & 26 *Vict. c. 68* (1862), “Copyright for Works of Art Act.”

§ 7. By this section it is forbidden to do any of the following acts:—

1. Fraudulently sign any painting, drawing, photograph or negative with any name, initials or monogram.

2. Fraudulently sell, publish, &c., any painting, &c., marked with the name, &c., of a person who did not execute such work.

3. Fraudulently utter any copy or colourable imitation of any painting, &c., whether the subject of subsisting copyright or not, as having been executed by the author of the original.

4. Where the author of any painting, &c., has parted with the possession of the work, and the work is altered by any other person, it is forbidden, during the life of the author, to make, sell, publish, &c., such work or a copy of it so altered as or for the unaltered work of the author.

The section provides penalties for offenders against its provisions, but limits the time during which they can be incurred to within twenty years after the death of the person whose works have been wrongfully dealt with.

## HOPS.

54 *Geo. III. c. 123 (a)* (1814).

§ 1. Growers of hops are to mark the bags, in letters of specified dimensions, with their names, and the names of the parish and county in which the hops were grown, before putting the hops into the bag. Penalty for putting in the hops before marking the bag.

29 & 30 *Vict. c. 37* (1866), "The Hop (Prevention of Frauds) Act, 1866."

§ 2. Growers of hops are to mark each bag, in addition to their own names and the names of the parish and county, with the year in which the hops were grown, the progressive number of the bag, and its weight.

Penalties are provided for not marking, falsely marking, wilfully altering marks, &c.

§ 18. The vendor is to be deemed to contract that the marks are genuine.

§ 20. The provisions of the Merchandise Marks Act, 1862, §§ 23 and 24, are incorporated.

## WOOLLEN CLOTHS.

5 *Geo. III. c. 51* (1765), (West Riding of Yorkshire).

§ 2 provides for the appointment by the justices of the peace for the West Riding of Yorkshire of searchers and measurers of cloth within the riding.

§ 3. After measuring cloths milled at the fulling mill as provided, the searcher and measurer is to affix to one end of each cloth a leaden seal provided by the clothier, and to stamp on the seal or rivet the name of the searcher and measurer, the length and breadth of the cloth, and the number of the piece, according to an annual rotation.

§ 6. After the milled cloth is brought from the fulling mill, and before it is put upon the tenter, the clothier is to seal the other end, and stamp the seal or rivet with the length and breadth of the cloth.

§ 18. Every clothier is to weave or sew into the head of the cloth, at the time of making, his name and place of abode.

Penalties for frauds, &c.

6 *Geo. III. c. 23* (1766), (West Riding of Yorkshire).

§ 2. The searcher and measurer is to measure milled cloths as provided by the last Act, and to rivet on a leaden seal, and to stamp on the rivet his name and the name of the mill where he is stationed, and on the rest of the seal the length, breadth, and number of the cloth.

§ 5. Where cloth is remeasured, as provided, and is found to be of less length, or of less length for above one third of the length than was stated on

(a) This Act is repealed in part. The former Acts, now repealed, were 14 *Geo. III. c. 68*, under which the excise officer was to mark each bag of hops with the weight of hops, the name and place of abode of the grower, and the date of the year; 39 & 40 *Geo. III. c. 81*, under

which the grower was himself to mark his name and place of abode, the excise officer the weight, date, and progressive number of the bag; and 48 *Geo. III. c. 134*, under which the owner was in addition to mark the name of the parish and county in which the hops were grown.

the previous seal, the last measurer is to affix a new stamp, and place his own name on the rivet, with the words "Inspector" or "Supervisor," and on the same seal the true length and breadth.

§ 13. The clothier may weave or sew his name and place of abode into the cloth, either in distinct letters or words, or in common or usual abbreviations. Penalties for frauds, &c.

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LINEN.

13 *Geo. I. c. 26 (a)*, (1726), (Scotland).

§ 30. Every trader, dealer, and weaver of linen may weave in any piece of linen of his make his name, or some known mark. Penalty for counterfeiting such mark.

17 *Geo. II. c. 30 (b)*, (1743).

§ 1. Penalties provided for stamping foreign linens in imitation of British or Irish, and for placing counterfeit stamps on British or Irish linens.

18 *Geo. II. c. 24 (b)*, (1744).

§ 1. Linens to be stamped must be sworn to be of the manufacture of [Scotland or] Ireland.

§ 2 (c). No bounty to be paid on British or Irish linens exported, but on such as are marked at both ends of every piece with the name and place of abode of the maker, the year of manufacture, the number of the piece in rotation, the name and place of abode of the exporter or seller for exportation; and unless the ends are also marked with the month and year when, and the name of the port at which the linens are entered for exportation. The marks to be stamped with lamp black and burnt oil.

Penalties for falsely stamping, &c.

4 *Geo. IV. c. 40* (1823), (Scotland).

§ 3. Every manufacturer or weaver of linen and dealer in linen in Scotland may weave his name, or fix any mark or seal, in any piece of linen of his make, to denote the length, breadth, or quality of the linen, or the maker's name. Penalties for counterfeiting.

5 & 6 *Wm. IV. c. 27* (1835), (Ireland).

§ 4. Across each end of every piece of linen offered for sale in open fair or market in Ireland there are to be woven two coarse threads or cords at a distance of one fourth of an inch, and close to such threads or cords on each end are to be written the Christian name, surname, and place of residence of the weaver or manufacturer, and on the outside fold of every piece its length and breadth.

§ 14. The Lord Lieutenant to appoint a committee of twelve in each county, to superintend the brown linen trade.

(a) This Act is in great part repealed.

(b) Repealed as to Scotland by 4 *Geo. IV. c. 40*, § 1.

(c) Repealed as to bounty by 6 *Geo. IV. c. 105*.

§ 19. The committee in each county to prescribe the form and device of the seal or stamp to be used by the county sealmaster of brown linen.

§ 21. The sealmaster shall affix to each piece of brown linen brought for the purpose, and which shall be in accordance with the Act, an impression of the seal, in black, red, or blue; and shall also mark with the same ingredients on the back of each piece its length, breadth, name of sealmaster, and the parish and county where he resides, or the name of the market town to which he is appointed.

Regulations for sales, penalties for frauds, &c.

#### PUBLIC STORES.

38 & 39 *Vict. c. 25 (a)* (1875), "The Public Stores Act, 1875."

§ 4. The marks described in the First Schedule to the Act are appropriated to denote her Majesty's property. Penalty for unauthorized use of such marks.

§ 5. Penalty provided for obliteration of marks.

§ 6. Penalty for unlawful possession of public stores (b).

(a) This Act repealed the following Acts, by which the Public Stores had previously been regulated:—9 *Wm. III. c. 41* (1697); this Act provided penalties for forging the King's marks, or having in possession goods so marked; 9 *Geo. I. c. 8* (1722); this Act modified the penalties contained in the former Act; 17 *Geo. II. c. 40, § 10* (1743); this provided for the trial of offences against these Acts before any judge, justice, or justices at assizes, or justices of the peace at general quarter sessions; 39 & 40 *Geo. III. c. 89* (1800); this Act provided penalties for selling or having in possession goods marked with the marks specified, or defacing, &c., such marks; 54 *Geo. III. c. 60* (1814); this extended the provisions of the former Acts to cordage wrought with worsted threads; 54 *Geo. III. c. 159, § 10* (1814); this provided a penalty for sweeping for lost anchors, cables, &c., belonging to the King's service; 55 *Geo. III. c. 127* (1815); this extended the previous Acts to include all public stores; 30 & 31 *Vict. c. 128* (1867), "*The War Department Stores Act, 1867*;" and 32 & 33 *Vict. c. 12* (1869), "*The Naval Stores Act, 1869*." The following Acts have also from time to time regulated Naval Stores: 25 & 26 *Vict. c. 64*, "*The Naval and*

*Victualling Stores Act, 1862*"; 27 & 28 *Vict. c. 91*, "*The Naval and Victualling Stores Act, 1864*"; 30 & 31 *Vict. c. 119*, "*The Naval Stores Act, 1867*"; all of which Acts were previously repealed.

(b) It has been repeatedly decided that on an indictment under 9 & 10 *Wm. III. c. 41*, for being unlawfully in possession of marked stores, the prisoner cannot be convicted unless he is in possession with knowledge of the marks. See *R. v. —*, Foster Cr. Cas. 439; *R. v. Banks*, 1 Esp. 144; *R. v. Willmet*, 3 Cox, 281; *R. v. Cohen*, 8 Cox, 41; *R. v. Sleep*, 8 Cox, 472. In *R. v. Banks* it was, indeed, held by Lord Kenyon, C. J., that it was sufficient for the prosecution to prove the finding of the marked goods in the prisoner's possession, the prisoner being allowed to obtain acquittal by proving his ignorance; but it is now for the prosecution to prove the knowledge, in the affirmative (see *R. v. Willmet*; *R. v. Cohen*; *R. v. Sleep*). Such knowledge may, however, be presumed by the jury from the circumstances attending the possession: *R. v. Sleep*. Although a specified certificate was required by 9 & 10 *Wm. III. c. 41*, to justify possession of marked goods, it was held that another form of certificate might be accepted (*R. v. Willmet*), or even the

*First Schedule.*

Marks appropriated for use in or on her Majesty's stores :

Stores.	Marks.
Hempen cordage and wire rope.	White, black, or coloured worsted threads laid up with the yarns and the wire respectively.
Canvas, fearnought, hammocks, and seamen's bags.	A blue line in a serpentine form.
Buntin.	A double tape in the warp.
Candles.	Blue or red cotton threads in each wick or wicks of red cotton.
Timber or metal.	The name of her Majesty, her predecessors, her heirs or successors, or of any public department, or any branch thereof, or the broad arrow, or a crown, or her Majesty's arms, whether such broad arrow, crown, or arms be alone or be in combination with any such name as aforesaid, or with any letters denoting any such name.
Any stores not before enumerated, whether similar to the above or not.	

certificate be dispensed with altogether (*R. v. —* ; *R. v. Banks*), there being no proof of knowledge.

Possession by a railway company for purpose of transfer, on behalf of the prisoner, is such a possession by the

prisoner as to justify a conviction : *R. v. Sunley*, 8 Cox, 179.

As to the exception in favour of contractors and contractors' servants, see *R. v. Silversides*, 3 Q. B. 406 ; and *R. v. Fitzgerald*, 43 C. C. C. Sess. Pap. 369.

## APPENDIX E.

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### UNITED STATES STATUTE LAW.

ACT OF CONGRESS OF JULY 8TH, 1870.

§ 77. And be it further enacted, that any person or firm domiciled in the United States, and any corporation created by the authority of the United States, or of any State or Territory thereof, and any person, firm, or corporation resident of or located in any foreign country which, by treaty or convention, affords similar privileges to citizens of the United States, and who are entitled to the exclusive use of any lawful trade mark, or who intend to adopt and use any trade mark, for exclusive use within the United States, may obtain protection for such lawful trade mark by complying with the following requirements, to wit:—

*First*—By causing to be recorded in the Patent Office, the names of the parties and their residences and place of business, who desire the protection of the trade mark.

*Second*—The class of merchandise and the particular description of goods comprised in such class, by which the trade mark has been or is intended to be appropriated.

*Third*—A description of the trade mark itself with fac-similes thereof, and the mode in which it has been or is intended to be applied and used.

*Fourth*—The length of time, if any, during which the trade mark has been used.

*Fifth*—The payment of a fee of twenty-five dollars, in the same manner and for the same purpose as the fee required for patents.

*Sixth*—The compliance with such regulations as may be prescribed by the Commissioner of Patents.

*Seventh*—The filing of a declaration, under the oath of the person or of some member of the firm or officer of the corporation, to the effect that the party claiming protection for the trade mark, has a right to the use of the same, and that no other person, firm, or corporation, has the right to such use, either in the identical form, or having such near resemblance thereto as might be calculated to deceive, and that the description and fac-similes presented for record are true copies of the trade mark sought to be protected.

§ 78. And be it further enacted, that such trade mark shall remain in force for thirty years from the date of such registration, except in cases where such trade mark is claimed for and applied to articles not manufactured in this country, and in which it receives protection under the laws of any foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this Act, at the same time that it becomes of no effect elsewhere, and during the period that it remains in force it shall entitle the person, firm, or corporation registering the same to the exclusive use thereof, so far as regards the description of goods to which it is appropriated in the statement filed under oath as aforesaid, and no other person shall lawfully use the same trade mark, or substantially the same, or so nearly resembling it as to be calculated to deceive upon substantially the same description of goods: Provided that six months prior to the expiration of the said term of thirty years, application may be made for a renewal of such registration, under regulations to be prescribed by the Commissioner of Patents, and the fee for such renewal shall be the same as for the original registration, certificate of such renewal shall be issued in the same manner as for the original registration, and such trade mark shall remain in force for a further term of thirty years: And provided further, that nothing in this section shall be construed by any court as abridging or in any manner affecting unfavourably the claim of any person, firm, corporation, or company to any trade mark after the expiration of the term for which such trade mark was registered.

§ 79. And be it further enacted, that any person or corporation who shall reproduce, copy, counterfeit, or imitate any such recorded trade mark, and affix the same to goods of substantially the same description, properties, and qualities as those referred to in the registration, shall be liable to an action on the case for damages for such unlawful use of said trade mark at the suit of the owner thereof in any Court of competent jurisdiction in the United States, and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of his trade mark, and to recover compensation therefor in any Court having jurisdiction over the person guilty of such wrongful use. The Commissioner of Patents shall not receive and record any proposed trade mark which is not and cannot become a lawful trade mark, or which is merely the name of a person, firm, or corporation only, unaccompanied by a mark sufficient to distinguish it from the same name where used by other persons, or which is identical with a trade mark appropriated to the same class of merchandise and belonging to a different owner and already registered or received for registration, or which so nearly resembles such last-mentioned trade mark as to be likely to deceive the public: Provided, that this section shall not prevent the registry of any lawful trade mark rightfully used at the time of the passage of this Act.

§ 80. And be it further enacted, that the time of the receipt of any trade mark at the Patent Office for registration shall be noted and recorded, and copies of the trade mark and of the date of the receipt thereof, and of the statement filed therewith under the seal of the Patent Office, certified by the

Commissioner, shall be evidence in any suit in which such trade mark shall be brought in controversy.

§ 81. And be it further enacted, that the Commissioner of Patents is authorized to make rules and regulations and to prescribe forms for the transfer of the right to use such trade marks, conforming as nearly as practicable to the requirements of the law respecting the transfer and transmission of copyrights.

§ 82. And be it further enacted, that any person who shall procure the registry of any trade mark, or of himself as the owner thereof, or an entry respecting a trade mark in the Patent Office under this Act, by making any false or fraudulent representations or declarations verbally or in writing, or by any fraudulent means, shall be liable to pay damages in consequence of any such registry or entry to the person injured thereby, to be recovered in an action on the case in any Court of competent jurisdiction within the United States.

§ 83. And be it further enacted, that nothing in this Act shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any party aggrieved by any wrongful use of any trade mark might have had if this Act had not been passed.

§ 84. And be it further enacted, that no action shall be maintained under the provisions of this Act by any person claiming the exclusive right to any trade mark which is used or claimed in any unlawful business, or upon any article which is injurious in itself, or upon any trade mark which has been fraudulently obtained, or which has been formed and used with the design of deceiving the public in the purchase or use of any article of merchandise.

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#### ACT OF CONGRESS OF 1875.

BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled:—

§ 1. That every person who shall, with intent to defraud, deal in or sell, or keep or offer for sale, or cause or procure the sale of, any goods of substantially the same descriptive properties as those referred to in the registration of any trade mark, pursuant to the statutes of the United States, to which, or to the package in which the same are put up, is fraudulently affixed said trade mark, or any colourable imitation thereof, calculated to deceive the public, knowing the same to be counterfeit, or not the genuine goods referred to in said registration, shall, on conviction thereof, be punished by fine not exceeding one thousand dollars, or imprisonment not more than two years, or both such fine and imprisonment.

\*



§ 2. That every person who fraudulently affixes, or causes or procures to be fraudulently affixed, any trade mark registered pursuant to the statutes of the United States, or any colourable imitation thereof, calculated to deceive the public, to any goods of substantially the same descriptive properties as those referred to in said registration, or to the package in which they are put up, knowing the same to be counterfeit, or not the genuine goods referred to in said registration, shall, on conviction thereof, be punished as prescribed in the first section of this Act.

§ 3. That every person who fraudulently fills, or causes or procures to be fraudulently filled, any package to which is affixed any trade mark, registered pursuant to the statutes of the United States, or any colourable imitation thereof, calculated to deceive the public, with any goods of substantially the same descriptive properties as those referred to in said registration, knowing the same to be counterfeit, or not the genuine goods referred to in said registration, shall, on conviction thereof, be punished as prescribed in the first section of this Act.

§ 4. That any person or persons who shall, with intent to defraud any person or persons, knowingly and wilfully cast, engrave, or manufacture, or have in his, her, or their possession, or buy, sell, offer for sale, or deal in, any die or dies, plate or plates, brand or brands, engraving or engravings, on wood, stone, metal, or other substance, moulds, or any false representation, likeness, copy, or colourable imitation of any die, plate, brand, engraving or mould of any private label, brand, stamp, wrapper, engraving on paper or other substance, or trade mark, registered pursuant to the statutes of the United States, shall, upon conviction thereof, be punished as prescribed in the first section of this Act.

§ 5. That any person or persons who shall, with intent to defraud any person or persons, knowingly and wilfully make, forge or counterfeit, or have in his, her, or their possession, or buy, sell, offer for sale, or deal in, any representation, likeness, similitude, copy, or colourable imitation of any private label, brand, stamp, wrapper, engraving, mould, or trade mark, registered pursuant to the statutes of the United States, shall, upon conviction thereof, be punished as prescribed in the first section of this Act.

§ 6. That any person who shall, with intent to injure or defraud the owner of any trade mark, or any other person lawfully entitled to use or protect the same, buy, sell, offer for sale, deal in, or have in his possession any used or empty box, envelope, wrapper, case, bottle, or other package, to which is affixed, so that the same may be obliterated without substantial injury to such box or other thing aforesaid, any trade mark, registered pursuant to the statutes of the United States, not so defaced, erased, obliterated, and destroyed as to prevent its fraudulent use, shall, on conviction thereof, be punished as prescribed in the first section of this Act.

§ 7. That if the owner of any trade mark, registered pursuant to the statutes of the United States, or his agent, make oath, in writing, that he has reason to believe, and does believe, that any counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, or moulds, of his said registered trade mark, are in the possession of any person, with intent to use the same for the purpose of deception and fraud, or make such oaths that

any counterfeits or colourable imitations of his said trade mark, label, brand, stamp, wrapper, engraving on paper or other substance, or empty box, envelope, wrapper, case, bottle, or other package, to which is affixed said registered trade mark not so defaced, erased, obliterated, and destroyed as to prevent its fraudulent use, are in the possession of any person with intent to use the same for the purpose of deception and fraud, then the several judges of the circuit and district courts of the United States, and the commissioners of the circuit courts may, within their respective jurisdictions, proceed under the law relating to search-warrants, and may issue a search-warrant authorising and directing the marshal of the United States for the proper district to search for and seize all said counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, moulds, and said counterfeit trade marks, colourable imitations thereof, labels, brands, stamps, wrappers, engravings on paper, or other substance, and said empty boxes, envelopes, wrappers, cases, bottles, or other packages that can be found; and upon satisfactory proof being made that said counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, moulds, counterfeit trade marks, colourable imitations thereof, labels, brands, stamps, wrappers, engravings on paper or other substance, empty boxes, envelopes, wrappers, cases, bottles, or other packages, are to be used by the holder or owner for the purpose of deception and fraud, that any of said judges shall have full power to order all said counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, moulds, counterfeit trade marks, colourable imitations thereof, labels, brands, stamps, wrappers, engravings on paper or other substance, empty boxes, envelopes, wrappers, cases, bottles, or other packages, to be publicly destroyed.

§ 8. That any person who shall, with intent to defraud any person or persons, knowingly and wilfully aid or abet in the violation of any of the provisions of this Act, shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars, or imprisonment not more than one year, or both such fine and imprisonment.

## APPENDIX F.

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### TREATY WITH THE UNITED STATES, 1877.

#### DECLARATION BETWEEN GREAT BRITAIN AND THE UNITED STATES FOR THE PROTECTION OF TRADE MARKS.

The Government of her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the Government of the United States of America, with a view to the reciprocal protection of the marks of manufacture and trade in the two countries, have agreed as follows :

The subjects or citizens of each of the contracting parties shall have, in the dominions and possessions of the other, the same rights as belong to native subjects or citizens, or as are now granted or may hereafter be granted to the subjects and citizens of the most favoured nation, in everything relating to property in trade marks and trade labels.

It is understood that any person who desires to obtain the aforesaid protection must fulfil the formalities required by the laws of the respective countries.

In witness whereof the Undersigned have signed the present Declaration, and have affixed thereto the seal of their arms.

Done at London, the 24th day of October, 1877.

(L.S.) DERBY.

(L.S.) EDWARDS PIERREPONT.

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*E. R. W.*

THE END.