THE

LAW OF TRADE MARKS

AND THEIR

REGISTRATION AND MATTERS CONNECTED THEREWITH,

INCLUDING A CHAPTER ON GOODWILL,

THE

PATENTS, DESIGNS AND TRADE MARKS ACTS, 1883-8,

AND THE TRADE MARKS RULES AND INSTRUCTIONS THEREUNDER;

WITH

FORMS AND PRECEDENTS.

THE MERCHANDISE MARKS ACTS, 1887-94,

AND OTHER STATUTORY ENACTMENTS;

THE UNITED STATES STATUTES, 1870-82,

AND THE RULES AND FORMS THEREUNDER;

AND THE TREATY WITH THE UNITED STATES, 1877.

BY

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THE FOURTH EDITION

BY

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TO

The Memory of

THE RIGHT HON. SIR GEORGE JESSEL,

MASTER OF THE ROLLS,

TO WHOM,

BY HIS KIND PERMISSION,

THE FIRST EDITION OF

This Work

WAS MOST RESPECTFULLY DEDICATED.

PREFACE

TO

THE FOURTH EDITION.

SINCE the third edition of this book was published many new decisions have been given with reference to matters relating to the registration of trade marks and also in actions for infringement and passing off. One of the most notable developments of the last few years has been the increase in the number of actions brought to enforce traders' common law rights, the reason, no doubt, being that persons who desire to engage in an unfair competition are usually sufficiently wary to avoid a direct imitation of registered trade marks, while yet contriving in other ways to divert to themselves custom not intended for them. The decisions in the "Yorkshire Relish" and "Camel Hair Belting" cases have greatly helped to give an impetus to this development, though it is necessary to read these decisions in the light of the more recent "Cellular Clothing" case.

The most important recent decisions relating to registration are probably the pronouncements as to the "person aggrieved" by a wrongful registration, which are to be found in the "Apollinaris" and "Yorkshire Relish" cases, and the statements by the House of Lords in the "Solio" case as to the meaning of the term "invented word." In view of the use made in that case by some of their Lordships of the Report of Lord Herschell's Committee, it has been thought useful to print in an Appendix the more important parts of that Report. Another addition which has for the first time been made in this edition, and which it is hoped may be of use, is a Table of Decisions under sect. 92 as to the alteration of registered marks. A large proportion of such decisions have never been reported, but are published in the Trade Marks Journal, with sufficient details to enable the marks altered to be identified.

As in the third edition, the Trade Marks Registration Acts, 1875-7, are reprinted; since, though they are repealed, the validity of trade marks registered under them still depends upon the terms of the Acts in force at the date of registration, and a reference to those Acts is frequently necessary in order to correctly appreciate the bearing of the earlier decisions.

In this edition, as in former editions, a large number of American and colonial decisions are cited, both because of the sale which this book has obtained in the United States and the Colonies, and also because of the increasing extent to which such decisions are cited in this country. "Although," as Cockburn, C. J., said (*a*), "the decisions of the American Courts are, of course, not binding on us, yet the sound and enlightened views of American lawyers in the administration and development of the law—a law, except so far as altered by statutory enactment, derived from a common source with our own—entitle their decisions to the utmost respect and confidence on our part." These decisions are, it is admitted, "intrinsically entitled to the highest respect" (*b*), having been delivered by acute and practised judges, after full consideration of English as well as American authorities; and it may reasonably be anticipated that English judges will in similar circumstances arrive at similar conclusions.

In order to avoid rendering the book unduly thick the size of the page has been enlarged, with the result that, notwithstanding the great increase in the matter dealt with, the handiness of the book remains practically unaltered.

The author desires to offer his grateful thanks to his coadjutor, Mr. Hemming, who has devoted great pains and attention to the preparation of this edition; also to Mr. W. H. Draper, of Lincoln's Inn, who has given much valuable help; to Mr. Ralph Griffin, Registrar of Trade Marks; to Sir W. Murton, of the Board of Trade, and others, for kind assistance.

L. B. S.

13, NEW SQUARE, LINCOLN'S INN,
June, 1899.

(*a*) *Scaramanga* v. *Stamp*, 5 C. P. D. 295—303.

(*b*) See *per* Patteson, J., in *Beverley* v. *Lincoln Gas Light and Coke Co.*, 6 Ad. & Ell. 829-37, and Bacon, V.-C., in *Dawson* v. *Bank of Whitehaven*, 4 Ch. D. 639-48.

TABLE OF CONTENTS.

	PAGE
Table of Cases	ix
Table of Defendants	lxxv
Table of Abbreviations	xci

CHAPTER I.

GENERAL INTRODUCTION 1

CHAPTER II.

WHAT IS A TRADE MARK 18

CHAPTER III.

ACQUISITION, TRANSFER, AND DISCONTINUANCE OF TRADE MARKS . 83

CHAPTER IV.

INFRINGEMENT 115

CHAPTER V.

THE CRIMINAL PROSECUTION 146

CHAPTER VI.

THE CIVIL REMEDY. I. 155

CHAPTER VII.

THE CIVIL REMEDY. II. DEFENCES, DISCOVERY AND INSPECTION, ACCOUNT, DAMAGES, COSTS 197

CHAPTER VIII.

CASES ANALOGOUS TO THOSE OF TRADE MARK 247

CHAPTER IX.

GOODWILL 299

APPENDIX A.

PAGE

The Patents, Designs, and Trade Marks Acts, 1883-8, and the Trade Marks Rules and Instructions thereunder, with the Comptroller-General's Guide to the Classification of Goods 327

APPENDIX B.

Forms and Precedents 471

APPENDIX C.

International Arrangements 532

APPENDIX D.

The Trade Marks Registration Acts, 1875-7, with the Orders in Council thereunder, and the Cotton Marks Rules, all repealed . . . 540

APPENDIX E.

Extracts from the Report of the Departmental Committee (1887-8), presided over by Lord Herschell 552

APPENDIX F.

The Merchandise Marks Act, 1887, and the Statutes, Regulations, and Orders connected therewith 559

APPENDIX G.

Statutory Enactments with respect to Marks on Goods, &c. 605

APPENDIX H.

Statutory Enactments with respect to Marks on Special Classes of Goods 610

APPENDIX I.

The United States Statute Law, Rules and Forms 633

APPENDIX K.

The Treaty with the United States, 1877 663

INDEX 664

TABLE OF CASES.

A.

Abb—All PAGE

Abbott *v.* Bakers' and Confectioners' Tea Association, V.-C.—W. N. 1871, p. 207; L. J. N. of C. 1871, p. 199. L. C.—W. N. 1872, p. 31; Dig. 379 - - - - - - - - 127, 130, 135

Accident Insurance Co. Limited *v.* Accident, Disease and General Insurance Corporation, Limited, Pearson, J.—54 L. J. Ch. 104; 51 L. T. N. S. 597. C. A.—W. N. 1884, p. 191; L. J. N. of C. 1884, p. 109 - 257

Accountants, Society of, in Edinburgh *v.* Corporation of Accountants, Limited, Ct. Sess. Cas. 4th Ser. XX. 750 - - - - - 85

Actien Gesellschaft Apollinaris Brunnen *v.* Somborn, 14 Bl. C. C. 380 - 136, 177

Adams, *In re*, 9 P. R. 174; 66 L. T. N. S. 610 - - 214, 376, 378

Adams *v.* Heisel, 31 Fed. Rep. 279 - - - 81, 129, 637, 643

Addington *v.* Cullinane, 28 Mo. App. 238 - - - - 234

Adee *v.* Peck Bros. & Co., 48 U. S. Pat. Gaz. 823 - - 55, 56

Adriance, Platt & Co., *Ex parte*, 20 U. S. Pat. Gaz. 1820 - - 645

Adshead, *In re*, Kekewich, J., Nov. 25th, 1892 - - - 377, 380

Aikins *v.* Piper, 15 Grant, Up. Can. Ch. 581 - - - - 24

Ainslie & Co., *In re*, 4 P. R. 212 - - - 40, 72, 368, 371

Ainsworth *v.* Bentley, 14 W. R. 630; Dig. 259 - - 192, 277, 521

Ainsworth *v.* Walmsley, L. R. 1 Eq. 518; 35 L. J. Ch. 352; 12 Jur. N. S. 205; 14 L. T. N. S. 220; 14 W. R. 363; Dig. 257 9, 27, 28, 78, 79, 90, 103, 122, 125, 141, 193, 223, 236, 277, 336

Air Brush Manufacturing Co. *v.* Thayer, 84 Fed. Rep. 640; 79 U. S. Pat. Gaz. 683 - - - - - - - - - 55

Alaska Packers' Association *v.* Alaska Imperial Co., 60 Fed. Rep. 103 - 102, 208, 212

Albert (Prince) *v.* Strange, V.-C.—2 De G. & Sm. 652; 13 Jur. 45—507; 12 L. T. 367; 13 L. T. 341; 37 Leg. Obs. 276. L. C.—1 Mac. & G. 25; 1 H. & Tw. 1; 18 L. J. Ch. 120; 13 Jur. 109; 12 L. T. 441; 37 Leg. Obs. 394; Dig. 98 - - - - - - 287, 521

Alden, *Ex parte*, 15 U. S. Pat. Gaz. 389 - - - - - 58, 637

Alden *v.* Gross, 25 Mo. App. 123 - - - - - 59

Alexander *v.* Morse, 14 R. I. 153; 51 Amer. Rep. 369 - 62, 137, 212, 213, 223

Alexander & Co. *v.* Henry & Co., 12 P. R. 360 - - 162, 175, 233, 234

Alff *v.* Radam, 77 Tex. 530; 19 Amer. St. Rep. 792 - - - 60

Alleghany Fertiliser Co. *v.* Woodside, 1 Hughes, 115; Dig. 364 - 58, 60, 68, 69, 86, 131, 136

All—Ang PAGE
Allen *v.* Macarthy, 37 Minn. 347; 36 Alb. L. J. 538 - 62, 85, 351, 638
Allen *v.* Richards, 26 Sol. J. 658; 73 L. T. (Journal) 283 - 122, 143
Allsopp *v.* Walker, Dig. 545 - - - - - 35, 343, 344, 349
Allsopp *v.* Wheatcroft, L. R. 15 Eq. 59; 42 L. J. Ch. 12; 27 L. T. N. S. 372; 21 W. R. 102 - - - - - - - - 289
Allsopp and Sons, Limited, *In re*, Chitty, J., July 6th, 1888 - 380, 383
"Alpine" Trade Mark, *In re*. See Stapley and Smith, *In re*.
American Cereal Co. *v.* Eli Pettijohn Cereal Co., 72 Fed. Rep. 903; 76 Fed. Rep. 372; 76 U. S. Pat. Gaz. 610 - 176, 208, 211, 261, 263
American Chemical Co., *Ex parte*, 62 U. S. Pat. Gaz. 588 - - 645
American Fibre Chamois Co. *v.* De Lee, 67 Fed. Rep. 329; 71 U. S. Pat. Gaz. 1458 - - - - - - - - 61
American Grocer Publishing Association *v.* Grocer Publishing Co. (1), 51 How. Pr. 402; Dig. 503 - - - - - - 128, 176
American Grocer Publishing Association *v.* Grocer Publishing Co. (2), 32 N. Y. Sup. Ct. 398 - - - - - - - - 294
American Grocery Co. *v.* Sloan, 68 Fed. Rep. 539; 71 U. S. Pat. Gaz. 1770 - - - - - - - - - 61, 137
American Lead Pencil Co., *Ex parte*, 61 U. S. Pat. Gaz. 151 - - 645
American Lubricating Oil Co., *In re*, 9 U. S. Pat. Gaz. 687; Dig. 486 - 132, 349, 638
American Order of Scottish Clans *v.* Merrill, 151 Mass. 558 - - 260
American Sardine Co., *In re*, 3 U. S. Pat. Gaz. 495; Dig. 422 - 58, 66, 75, 212, 351, 637
American Saw Co., *Ex parte*, 58 U. S. Pat. Gaz. 521 - - 75, 76, 644
American Solid Leather Button Co. *v.* Anthony, 15 R. I. 338; 2 Amer. St. Rep. 898 - - - - - - - - 64, 79, 637
American Tobacco Co. *v.* Guest, (1892) 1 Ch. 630; 9 P. R. 218; 61 L. J. Ch. 242; 66 L. T. N. S. 257; 40 W. R. 364 - 119, 171, 172, 242
Amoskeag Manufacturing Co. *v.* Garner (1), 55 Barb. 151; 6 Abb. Pr. N. S. 265; R. Cox, 541; Dig. 314 - - - 4, 73, 90, 183, 202
Amoskeag Manufacturing Co. *v.* Garner (2), 54 How. Pr. 298; 4 Am. L. T. N. S. 176; Dig. 500 - 4, 73, 119, 136, 183, 207, 230, 232, 235
Amoskeag Manufacturing Co. *v.* Spear, 2 Sandf. S. C. 599; R. Cox, 87; Dig. 100 - - - - - - - 5, 20, 63, 78, 138
Amoskeag Manufacturing Co. *v.* Trainer, 101 U. S. 51; 17 U. S. Pat. Gaz. 1217; 21 Alb. L. J. 451 - - - - - 2, 3, 63, 77, 128
Ams, *Ex parte*, 23 U. S. Pat. Gaz. 344 - - - - 59, 644
Anderson, *In re*, Chitty, J.—26 Ch. D. 409; 53 L. J. Ch. 664; 32 W. R. 677. C. A.—54 L. J. Ch. 1084 - - - 21, 35, 89, 328
Anderson *v.* Liebig's Extract of Meat Co., Limited, 45 L. T. N. S. 757 - 176, 280, 281
Angier *v.* Webber, 96 Mass. 211 - - - - - - - 310
Anglo-Swiss Condensed Milk Co. *v.* Metcalf, 31 Ch. D. 454; 3 P. R. 28; 55 L. J. Ch. 463; 34 W. R. 345 - 97, 130, 131, 132, 141, 143, 164, 221, 336, 371, 372
Anglo-Swiss Condensed Milk Co. *v.* Piggott, Cockson & Co., Bacon, V.-C., July 12th, 1884; Grocer, 1884, p. 37 - - - - - - 138
Anglo-Swiss Condensed Milk Co. *v.* Swiss Condensed Milk Co., W. N. 1871, p. 163; L. J. N. of C. 1871, p. 154; Dig. 370 - 130, 207, 286

Anh—Aub PAGE

Anheuser Busch Brewing Association v. Clarke, 26 Fed. Rep. 410; 34 U. S. Pat. Gaz. 562 - - - - - - 121, 139

Anheuser Busch Brewing Association v. Piza, 23 Bl. C. C. 245; 24 Fed. Rep. 149; 32 U. S. Pat. Gaz. 1123 - - - - 75, 76, 121

Ansell v. Gaubert, Seton, 5th ed. 535; Dig. 163 - - 289, 522

Apollinaris Co., *In re* (1), (1891) 1 Ch. 1; 63 L. T. N. S. 502; 39 W. R. 309 - - - - - - - - - 246

Apollinaris Co., *In re* (2), Kekewich, J.—(1891) 2 Ch. 186; 8 P. R. 137; 63 L. T. N. S. 162. C. A.—(1891) 2 Ch. 213; 8 P. R. 154; 61 L. J. Ch. 625; 65 L. T. N. S. 6 - 4, 40, 43, 46, 52, 89, 141, 145, 183, 184, 220, 238, 245, 246, 328, 329, 332, 333, 334, 335, 339, 350, 352, 353, 354, 367, 368, 369, 371, 372, 374, 377, 400, 406

Apollinaris Co. v. Edwards, Seton, 5th ed. 537; Dig. 509 - 5, 73, 171, 517

Apollinaris Co. v. Herrfeldt, 4 P. R. 478 - - 137, 200, 205, 355

Apollinaris Co. v. Norrish, 33 L. T. N. S. 242; Dig. 465 - 5, 73, 134, 166, 517

Apollinaris Co. v. Scherer, 23 Bl. C. C. 459; 27 Fed. Rep. 18 - 141, 183

Apollinaris Co. v. Snook, Kekewich, J.—7 P. R. 474. C. A.—8 P. R. 166 - - - - - - - - 355, 359

Apollinaris Co. v. Wilson, 31 Ch. D. 632; 55 L. J. Ch. 665; 54 L. T. N. S. 478; 34 W. R. 537 - - - - - - - - 246

Arbenz, *In re*, Kay, J.—35 Ch. D. 248; 3 P. R. 345; 55 L. T. N. S. 480. C. A.—35 Ch. D. 256; 4 P. R. 143; 56 L. J. Ch. 524; 56 L. T. N. S. 252; 35 W. R. 527 - - - - 40, 51, 342, 369, 371

Archbold v. Sweet, 1 M. & Rob. 162; 5 C. & P. 219; Dig. 49 - 130, 275

Armistead v. Blackwell, 1 U. S. Pat. Gaz. 603; Browne on Trade Marks, 495; Dig. 399 - - - - - 60, 75, 106, 114, 637, 640

Armstrong v. Armit, 2 Times L. R. 887 - - - - 280, 281

Armstrong v. Kleinhaus, Ky. Sup. Ct.—1 Ky. L. Rep. 112; 22 Alb. L. J. 143. Ky. Ct. of App.—82 Ky. 303; 56 Amer. Rep. 894 - 182, 270, 273

Army and Navy Co-operative Society, Limited v. Army, Navy, and Civil Service Co-operative Society of India, Limited, Kekewich, J.—8 P. R. 426. C. A.—8 P. R. 472 - - - - - 221, 257, 526

Army and Navy Co-operative Society, Limited v. Junior Army and Navy Stores, Limited, Dig. 640 - - - - - - - 258

Arundell v. Bell, 52 L. J. Ch. 537; 49 L. T. N. S. 345; 31 W. R. 477 - 303, 305

Ascough v. Johnson & Co., 3 Times L. R. 735 - - 131, 135, 139, 358

Ashton & Sons, *In re*, Hall, V.-C., Feb. 26th, 1881 - 141, 336, 549

Atkins Filter and Engineering Co., Limited, *In re*, 3 P. R. 164 - 59, 246, 333, 335, 352, 354

Atkinson, *In re*. See *In re* Hall & Co.

Atkinson v. Atkinson, 85 L. T. (Journal) 229 - - 189, 261, 264

Atlantic Milling Co. v. Robinson, 20 Fed. Rep. 217; 27 U. S. Pat. Gaz. 1322 - - - - - - - - 61, 136, 182, 234

Atlantic Milling Co. v. Rowland, 27 Fed. Rep. 24 - - - 231

Attenborough v. Jay, North, J.—14 Times L. R. 365. C. A.—14 Times L. R. 439 - - - - - - 255, 261, 263, 299, 315

Attorney-General v. Sheffield Gas Consumers' Co., 3 De G. M. & G. 327; 22 L. J. Ch. 811; 17 Jur. 677; 21 L. T. O. S. 49; 1 W. R. 185 - 202, 205

Aubin v. Holt, 2 K. & J. 66; 25 L. J. Ch. 36; 4 W. R. 112; Dig. 135 - 304, 324

Aus—Ban PAGE
Austen v. Boys, M. R.—24 Beav. 598; 27 L. J. Ch. 243; 3 Jur. N. S. 1285; 30 L. T. O. S. 216. L. C.—2 De G. & J. 626; 27 L. J. Ch. 714; 4 Jur. N. S. 719; 31 L. T. O. S. 276; 6 W. R. 729; Dig. 156 - 302, 303, 305, 326
Australian Mortgage, Land and Finance Co. v. Australian and New Zealand Mortgage Co., Malins, V.-C., Dec. 4th, 1879. C. A.—W. N. 1880, p. 6 - - - - - - - - - 258, 259
Australian Wine Co., Limited, *In re*, 61 L. T. N. S. 427 - 356, 373, 382
Australian Wine Importers, Limited, *In re*, Kay, J.—41 Ch. D. 278; 6 P. R. 311; 60 L. T. N. S. 436. C. A.—41 Ch. D. 283; 6 P. R. 314; 58 L. J. Ch. 380; 60 L. T. N. S. 438; 37 W. R. 578 - 2, 4, 97, 245, 329, 340, 341, 344, 349, 350, 369, 374
Austria, Emperor of, v. Day, V.-C.—2 Giff. 628; 30 L. J. Ch. 690; 7 Jur. N. S. 483; 4 L. T. N. S. 274; 9 W. R. 568. L. C. & L. JJ.—3 De G. F. & J. 217; 30 L. J. Ch. 690; 7 Jur. N. S. 639; 4 L. T. N. S. 494; 9 W. R. 712; Dig. 197 - - - - 166, 278, 279, 522
Avanzo v. Mudie, 10 Ex. 203 - - - - - - - 624
Avery & Sons v. Meikle & Co., 27 U. S. Pat. Gaz. 1027; 23 Alb. L. J. 443 - - - 19, 22, 62, 63, 77, 86, 88, 109, 121, 130, 136
Avril, *In re*, Stirling, J., April 20th, 1888 - - - 374, 382
Axmann v. Lund, L. R. 18 Eq. 330; 43 L. J. Ch. 655; 31 L. T. N. S. 119; 22 W. R. 789 - - - - - - - 279
Ayer v. Rushton, 7 Daly, 9; Dig. 574 - - - 58, 123, 222, 271

B.

Babbit v. Brown, 75 N. Y. Sup. Ct. 515 - - - - - 81, 139
Backus v. Taylor, 84 Ind. 503 - - - - - - - 325
Badische Anilin & Soda Fabrik, *In re*, Stirling, J., July 3rd, 1891 - 378, 383, 384
Badische Anilin & Soda Fabrik v. Maneckji Shapurji Kabrak, Ind. L. R. 17 Bomb. 584 - - - - - - - - - 135
Baeder v. Baeder, 59 N. Y. Sup. Ct. 170 - - - - - 261
Bailly v. Nashawannuck Manufacturing Co., 51 U. S. Pat. Gaz. 970 - 61
Bain v. Munro, Ct. Sess. Cas. 4th Ser. V. 416; 15 Scot. L. Rep. 260; Dig. 588 - - - - - - - - - 303, 305
Baker (Walter) & Co. v. Baker. See Walter Baker & Co. v. Baker.
Baker (Walter) & Co. v. Sanders. See Walter Baker & Co. v. Sanders.
Baker v. Rawson, 45 Ch. D. 519; 8 P. R. 89; 60 L. J. Ch. 49; 63 L. T. N. S. 306 - 46, 129, 236, 237, 336, 337, 345, 353, 354, 356, 368, 371, 373
Baker & Sons, *In re*. See Baker v. Rawson.
Balfour & Co. v. Kilburn & Co., 1 Hyde, 270 - 116, 119, 121, 138, 221
Ball v. Siegel, 116 Ill. 137; 56 Amer. Rep. 766 - 59, 81, 135, 136, 637
Baltz (J. & P.) Brewing Co. v. Kaiserbrauerei Beck & Co. See Kaiserbrauerei Beck & Co. v. J. & P. Baltz Brewing Co.
Bancroft & Co., *In re*, 5 P. R. 209 - - 54, 330, 346, 347, 350
Banks v. Gibson, 34 Beav. 566; 34 L. J. Ch. 591; 11 Jur. N. S. 680; 13 W. R. 1012; 6 N. R. 373; Dig. 248 - 106, 108, 266, 267, 306, 307, 308, 315, 319, 324
Banks & James, *In re*, 12 P. R. 333; 44 W. R. 32 - 30, 40, 41, 92, 371, 372, 400

Bar—Bay PAGE

Barber *v.* Manico, 10 P. R. 93 - - - - 122, 178, 221, 260

Barker *v.* Connecticut Mutual Life Insurance Co., 15 Fed. Rep. 312 302, 308

Barker & Son, *In re*, 53 L. T. N. S. 23 - - - 87, 135, 349, 371

Barlow *v.* Gobindram, Ind. L. R. 24 Calc. 364 - - - 63, 79, 80

Barlow & Jones, Ld. *v.* Johnson & Co., 7 P. R. 395 - 14, 47, 55, 56, 57, 61, 64, 88, 111, 134, 143, 164, 197, 198, 205, 232, 298, 353, 355, 358, 359, 369, 372

Barnard *v.* Pillow, W. N. 1868, p. 94; Dig. 293 - - 130, 275

Barnett *v.* Leuchars, 13 L. T. N. S. 495; 14 W. R. 166; Dig. 253 43, 67, 143, 166, 188, 229

Barrett *v.* Gomm, 74 L. T. (Journal) 368 - - 124, 144, 222, 242

Barrett *v.* White, North, J., May 12th, 1883 - - 124, 144, 223

Barrow *v.* Barrow, 27 L. T. N. S. 431 - - - - - 320

Barrows, *Ex parte*, W. N. 1877, p. 119; L. J. N. of C. 1877, p. 110; Dig. 555 - - - - - - - - - 336

Barrows, *In re*, V.-C.—5 Ch. D. 353; 46 L. J. Ch. 450; 36 L. T. N. S. 291; 25 W. R. 407; 1 Trade Marks, 122. C. A.—5 Ch. D. 364; 46 L. J. Ch. 725; 36 L. T. N. S. 780; 25 W. R. 564; 1 Trade Marks, 126; Dig. 540 - - - - 3, 77, 163, 337, 345, 353, 358, 392

Barrows *v.* Knight, 6 R. I. 434; 78 Amer. Dec. 452; R. Cox, 238; Dig. 184 - - - - - - - - - 29, 136

Barrows *v.* Pelsall Coal and Iron Co., Dig. 530 - - 77, 137, 194, 349

Barsalou *v.* Darling, Quebec Q. B.—1 Dorion, 218; Can. Sup. Ct.—9 Can. Sup. Ct. 677 - - - - - - - 132, 138

Baschiera & Co., *In re*, 33 Sol. J. 469; 5 Times L. R. 480 - 131, 345, 349, 350, 400

Bass *v.* Dawber, 19 L. T. N. S. 626; Dig. 310 - 34, 35, 119, 128, 172, 224, 235, 236

Bass, Ratcliff & Gretton, Limited, *In re*, Chitty, J., July 21st, 1882 - 377, 380, 383

Bass, Ratcliff & Gretton, Limited *v.* Laidlaw, Ct. Sess. Cas. 4th Ser. XIII. 898 - - - - - - - - - 140

Bassett, *Ex parte*, 55 U. S. Pat. Gaz. 997 - - - - 643

Bassett *v.* Percival, 87 Mass. 345 - - - - - 311

Batchellors *v.* Batchellor Manufacturing Co., 12 Amer. Rep. 414, n. - 258

Batchelor *v.* Thomson, 86 Fed. Rep. 630 - - - 108, 299, 309

Batt & Co., *In re* (1), 6 P. R. 493 - - - 40, 72, 369, 371

Batt & Co., *In re* (2), Romer, J.—15 P. R. 262; 78 L. T. N. S. 552; 46 W. R. 459. C. A.—(1898) 2 Ch. 432; 15 P. R. 534; 67 L. J. Ch. 576; 79 L. T. N. S. 206 - 19, 89, 92, 97, 110, 141, 199, 247, 329, 337, 343, 355, 369, 371, 372

Battle & Co. *v.* Finlay, 45 Fed. Rep. 796; 50 Fed. Rep. 106 - 61, 130, 222

Batty *v.* Hill, 1 H. & M. 264; 8 L. T. N. S. 791; 11 W. R. 745; 2 N. R. 265; Dig. 218 - - - - - - - 8, 62, 189, 335

Baumgarten *v.* Broadaway, 77 N. Car. 8 - - - - 313

Baxter *v.* Conolly, 1 Jac. & W. 576; Dig. 32 - - - - 308

Bayer *v.* Baird, 15 P. R. 615; Ct. Sess. Cas. 4th Ser. XXV. 1142 - 78, 121, 122, 133, 139, 221, 250, 254, 261, 335

Bayer *v.* Connell (1), (1897) 1 I. R. 544 - - - - 372, 391

Bayer *v.* Connell (2), 16 P. R. 157 - - - - 77, 122

Bea—Bla PAGE

Beadleston & Woerz *v.* Cooke Brewing Co., 74 Fed. Rep. 229; 76 U. S. Pat. Gaz. 1576 - - - - - - - - 59

Beanes, *In re*, Chitty, J., May 16th, 1884 - - - 378, 381

Beard *v.* Turner, 13 L. T. N. S. 746; Dig. 251 - 35, 123, 203, 207, 222, 230, 235

Beazley *v.* Soares, 22 Ch. D. 660; 52 L. J. Ch. 201; 31 W. R. 887 - 249, 307, 318

Beddow *v.* Beddow, 9 Ch. D. 89; 47 L. J. Ch. 588; 26 W. R. 570 - 279

Beddow & Sons *v.* Boyd, 4 P. R. 310 - - - - - - 128

Bell, Black & Co. *v.* Bell & Co., Dig. 514 - - 35, 121, 128, 137

Bell *v.* Locke, 8 Paige, 75; 34 Amer. Dec. 371; R. Cox, 11; Dig. 65 - 128, 296

Benbow *v.* Low (1), 23 Sol. J. 819 - - - - - - 280

Benbow *v.* Low (2), 13 Ch. D. 553; 42 L. T. N. S. 14; 28 W. R. 384 - 176

Benbow *v.* Low (3), V.-C. B.—28 W. R. 891. C. A.—16 Ch. D. 93; 50 L. J. Ch. 35; 44 L. T. N. S. 119; 29 W. R. 265 - - - 225

Benbow *v.* Low (4), 44 L. T. N. S. 875; 29 W. R. 837 - 54, 61, 108, 185, 346

Benedictus *v.* Sullivan, Powell & Co., 12 P. R. 25 - 4, 92, 137, 212, 220

Benkert *v.* Feder, 34 Fed. Rep. 534 - - - - - 231

Bennett *v.* McKinley, 65 Fed. Rep. 505; 26 U. S. App. 496 - - 59

Bergamini *v.* Bastian, 35 La. Ann. 60; 48 Amer. Rep. 216 - 309, 311

Berliner Brauerei Gesellschaft Tivoli *v.* Knight, Stocks & Co., W. N. 1883, p. 70 - - - - 16, 46, 61, 84, 134, 222, 223, 347

Besant *v.* Moffatt & Paige, 84 L. T. (Journal) 152 - - - 274

Beverley *v.* Lincoln Gas Light & Coke Co., 6 Ad. & E. 829 - - vi

Bewlay & Co. *v.* Hughes, 15 P. R. 290 - - 73, 74, 138, 178, 250, 517

Biegel, *In re*, 4 P. R. 525; 57 L. T. N. S. 247 - - 348, 371, 373

Binninger *v.* Wattles, 28 How. Pr. 206; R. Cox, 318; Dig. 240 - 24, 58, 260

Birmingham Vinegar Brewery Co., Limited, *In re*, 11 P. R. 195; 70 L. T. N. S. 646 - - - - - - - - 333, 335

Birmingham Vinegar Brewery Co., Limited *v.* Liverpool Vinegar Co., Limited, 32 Sol. J. 559 - - - - - 222, 261, 262

Birmingham Vinegar Brewery Co. *v.* Powell. See Powell *v.* Birmingham Vinegar Brewery Co. (2).

Birmingham Wagon Co., Limited, *In re*, Chitty, J., Nov. 22nd, 1890 379, 382

Bischop *v.* Toler, 65 L. J. M. C. 1; 73 L. T. N. S. 402; 44 W. R. 189 148, 563

Blackwell *v.* Armistead, 5 Am. L. T. 85; Browne on Trade Marks, 510; Dig. 392 - - - - 60, 87, 123, 134, 166, 208, 212

Blackwell *v.* Crabb, 36 L. J. Ch. 504; Dig. 274 - 34, 68, 128, 135, 197

Blackwell *v.* Dibrell, 14 U. S. Pat. Gaz. 633; Dig. 590 - 60, 75, 109, 110

Blackwell *v.* Harper, 2 Atk. 95; Barnard. 210 - - - - 624

Blackwell *v.* McElwee, 100 N. C. 150 - - - - - 204

Blackwell *v.* Wright, 73 N. Car. 310; Dig. 466 - 6, 11, 60, 117, 119, 126, 128, 130, 135, 197, 284

Blair *v.* Stock, 52 L. T. N. S. 123 - - - 48, 73, 370, 373

Blakeslee & Co., *In re*, U. S. Pat. Comm. Decis. 1871, 284; Dig. 376 - 58, 62, 638

Blakey & Sons *v.* Latham & Co., Chitty, J.—32 Sol. J. 257; 84 L. T. (Journal) 279. C. A.—85 L. T. (Journal) 47 - - - - 217

Blanchard *v.* Hill, 2 Atk. 484; Dig. 2 - - - 6, 117, 162, 165

Bla—Bra PAGE

Blank *v.* Footman, 39 Ch. D. 678; 57 L. J. Ch. 909; 36 W. R. 921; 5 P. R. 653; 59 L. T. N. S. 507 - - - - - - - 609

Bloch & Co., *Ex parte*, 40 U. S. Pat. Gaz. 443 - - - 351, 645

Block & Co., *In re*, 14 U. S. Pat. Gaz. 235; Dig. 584 - - 635, 638

Bloete *v.* Simon, 19 Abb. N. C. 88 - - - -85, 351, 638

Blofeld *v.* Payne, 4 B. & Ad. 410; 1 N. & M. 353; 2 L. J. K. B. N. S. 68; Dig. 50 - - - - - - - 121, 162, 222, 233

Bloss *v.* Bloomer, 23 Barb. 604; R. Cox, 200; Dig. 146- 194, 202, 212

Bloxwich Iron and Steel Co., Limited, *In re*, Chitty, J., Nov. 24th, 1887 381

Boardman *v.* Meriden Britannia Co., 35 Conn. 402; 95 Amer. Dec. 276; R. Cox, 490; Dig. 302 - - - 69, 79, 123, 139, 222

Bodega Co., Limited *v.* Owens, 6 P. R. 236; 7 P. R. 31; 23 L. R. Ir. 371 - - 47, 119, 120, 169, 201, 221, 249, 253, 254, 255, 270, 355

Boehm, *In re.* See Mouson & Co. *v.* Boehm.

Boehm & Co., *In re*, 8 U. S. Pat. Gaz. 319; Dig. 470 - - - 635

Bolanachi's Empire Chocolate Co., Limited, *In re*, 89 L. T. (Journal) 273 9, 105, 306, 317

Bond *v.* Milbourn, 20 W. R. 197; Dig. 383 - 106, 267, 307, 309, 315, 324

Bondier *v.* Depatie, 3 Dorion, 233 - - 77, 115, 158, 162, 235

Bonner *v.* Field, 5 T. R. 44 - - - - - - - 624

Boon *v.* Moss, 70 N. Y. 465; Dig. 576 - - - 302, 306, 308

Boord, *In re*, Jessel, M. R., March 25th, 1881 - - - 376, 380

Booth, *In re*, Kay, J., Dec. 21st, 1882 - - - - 379, 382

Booth *v.* Jarrett, 52 How. Pr. 169; Dig. 524 - - 102, 263, 272, 315

Borthwick *v.* Evening Post, Limited, 37 Ch. D. 449; 57 L. J. Ch. 406; 58 L. T. N. S. 252 - - - - - - - - 236, 296

Boston Rubber Shoe Co. *v.* Boston Rubber Co., 149 Mass. 436 - - 260

Boswell *v.* Mathie, Ct. Sess. Cas. 4th Ser. XI. 1072; 21 Scot. L. Rep. 727 - - - - - - - - - - 269

Boulnois *v.* Peake, 13 Ch. D. 513, n.; Dig. 294 - - 253, 264, 270

Bovril Trade Mark, *In re*, Kekewich, J.—13 P. R. 382; 74 L. T. N. S. 805. C. A.—(1896) 2 Ch. 600; 13 P. R. 387; 65 L. J. Ch. 715; 74 L. T. N. S. 807; 45 W. R. 150 - - 39, 51, 333, 369, 372, 400

Bowman *v.* Floyd, 85 Mass. 76; 80 Amer. Dec. 55; Dig. 201 - 30, 88, 253, 315

Bozon *v.* Farlow, 1 Mer. 459; Dig. 22 - - - - - 303, 308

Braby & Co., *In re*, 21 Ch. D. 223; 51 L. J. Ch. 637; 46 L. T. N. S. 380; 30 W. R. 675 - - - - - - - 90, 336

Bradbury *v.* Beeton, 39 L. J. Ch. 57; 21 L. T. N. S. 323; 18 W. R. 33; Dig. 320 - - - - - - - - 166, 295

Bradbury *v.* Dickens, 27 Beav. 53; 28 L. J. Ch. 667; 33 L. T. O. S. 54; Dig. 173 - - - - 106, 297, 307, 308, 319, 322, 325, 326

Bradley, *In re*, 9 P. R. 205 - - - 28, 80, 220, 245, 333

Bradley *v.* Norton, 33 Conn. 157; 87 Amer. Dec. 200; R. Cox, 331; Dig. 250 - - - - - - - - -30, 139, 166

Braham *v.* Beachim (1), 7 Ch. D. 848; 47 L. J. Ch. 348; 38 L. T. N. S. 640; 26 W. R. 654; Dig. 599 - 5, 74, 121, 127, 178, 179, 258, 274, 527

Braham *v.* Beachim (2), Dig. 633 - - - - - - 179

Braham *v.* Bustard, 1 H. & M. 447; 9 L. T. N. S. 199; 11 W. R. 1061; 2 N. R. 572; Dig. 226 - 3, 8, 20, 51, 60, 62, 68, 112, 123, 181, 222, 223, 517

Bra—Buc PAGE

Brand Stove Co., Limited, *Ex parte*, 62 U. S. Pat. Gaz. 588 - 59, 644

Brandreth, *In re*, 9 Ch. D. 618; 47 L. J. Ch. 816; 27 W. R. 281; Dig. 626 - - - - - 20, 54, 58, 97, 245, 341, 374

Braun & Co. *v.* Blackwell, 19 U. S. Pat. Gaz. 481 - - 639, 654

Brebner, *In re*, 2 W. & W. (I. E. & M.) 12; Dig. 649 - - 2, 196

Brett *v.* Bowles, North, J.—L. J. N. of C. 1890, p. 43. C. A.—April 30th, 1890 - - - - - - - - - 296

Brewer *v.* Lamar, 69 Ga. 656; 47 Amer. Rep. 766 - 192, 267, 289

Brigham, *Ex parte*, 20 U. S. Pat. Gaz. 891 - - - 59, 634, 637

Brill *v.* Singer Manufacturing Co., 41 Ohio St. 127; 52 Amer. Rep. 74- 56, 81, 130, 637

Brinsmead *v.* Brinsmead, North, J.—12 Times L. R. 631. C. A.—13 Times L. R. 3 - - - - 132, 178, 221, 257, 261, 263, 524

British Electrozone Co., *In re*, 13 P. R. 447 - - - 43, 334

British Tea and Trading Association, Limited, *In re*, North, J., Oct. 26th, 1886 - - - - - - - - - 378, 381

British Tea and Trading Association, Limited *v.* Cooke, Bacon, V.-C., June 8th, 1886 - - - - - - 333, 353, 354, 356

Briton Life Association, Limited *v.* Roberts, 2 Times L. R. 319- - 283

Broadhurst *v.* Barlow, W. N. 1872, p. 212; L. J. N. of C. 1872, p. 183; Dig. 411 - - - - - - - 33, 70, 79, 516

Brook, *In re*, 26 W. R. 791; Dig. 622 - 54, 64, 77, 189, 335, 338, 345, 346, 349, 353, 548, 549

Brook *v.* Evans, V.-C.—29 L. J. Ch. 616; 6 Jur. N. S. 1025; 2 L. T. N. S. 740. C. A.—29 L. J. Ch. 617; 3 L. T. N. S. 571; Dig. 190 - 237, 280

Brooklyn White Lead Co. *v.* Masury, 25 Barb. 416; R. Cox, 210; Dig. 154 - - - - - - - - - 122, 130, 257

Brooks *v.* Cocks, 3 Ad. & Ell. 138 - - - - - - 624

Broughton *v.* Broughton, 44 L. J. Ch. 526; 23 W. R. 779; Dig. 451 - 323

Brower *v.* Boulton, 53 Fed. Rep. 389; 58 Fed. Rep. 888 -86, 111, 201, 643

Brown, *In re*, 11 P. R. 365; 71 L. T. N. S. 156- - 376, 377, 380, 382

Brown *v.* De Tastet, Jac. 284 - - - - - - - 321

Brown *v.* Mercer, 37 N. Y. Super. Ct. 265; Dig. 435 - 121, 130, 135, 136

Brown Chemical Co. *v.* Meyer, 31 Fed. Rep. 453; 139 U. S. 540- 24, 27, 60, 102, 125, 211, 261, 299, 308

Browne *v.* Freeman (1), 12 W. R. 305; 4 N. R. 476; Dig. 230 - 10, 57, 58, 67, 113, 283

Browne *v.* Freeman (2), W. N. 1873, p. 178; Dig. 424 - 111, 113, 279, 283

Brunnen *v.* Somborn, 14 Bl. C. C. 380 - - - - - - 177

Bryant & May, Limited, *In re* (1), 4 Times L. R. 675 - 333, 365, 375, 377

Bryant & May, Limited, *In re* (2), 8 P. R. 69; 59 L. J. Ch. 763; 63 L. T. N. S. 676 - - - - - - - 62, 80, 333, 335

Bryant & May *v.* Heyde, 7 N. S. W. Rep. (E.) 72 - 136, 142, 172, 191, 223, 333, 357

Bryson *v.* Whitehead, 1 S. & S. 74; 1 L. J. Ch. O. S. 42; Dig. 36 - 288, 289, 306, 308, 313

Buck's Stove and Range Co. *v.* Kiechle, 76 Fed. Rep. 758 - - 286

Buckingham *v.* Waters, 14 Cal. 246 - - - - - 308

Bud—Cai PAGE

Budd *v.* Lucas, (1891) 1 Q. B. 408; 60 L. J. M. C. 95; 64 L. T. N. S. 292; 39 W. R. 350 - - - - - 561, 562, 563, 564

Bulloch, Lade & Co. *v.* Gray, 19 Journ. of Jurisp. 218; Dig. 452 - 58, 112

Bullock *v.* Chapman, 2 De G. & Sm. 211; 12 Jur. 738; 11 L. T. O. S. 326; Dig. 95 - - - - - - - 278, 280

Bumsted *v.* General Reversionary Co., Limited, 4 Times L. R. 621 - 258

Bunn *v.* Guy, 4 East, 190; Dig. 11 - - - 299, 303, 304, 307

Burckhardt *v.* Burckhardt, 36 Ohio St. 261 - - - - 314

Burfield *v.* Rouch, 31 Beav. 241 - - - - - - 319

Burgess *v.* Burgess, 3 De G. M. & G. 896; 22 L. J. Ch. 675; 17 Jur. 292; 21 L. T. O. S. 53; Dig. 117 - 24, 26, 29, 70, 125, 178, 202, 211, 221, 247, 251, 260, 261, 269, 309

Burgess *v.* Hately, 26 Beav. 249; Dig. 169 - - 229, 240, 241

Burgess *v.* Hills, 26 Beav. 244; 28 L. J. Ch. 356; 5 Jur. N. S. 233; 32 L. T. O. S. 328; 7 W. R. 158; Dig. 170 - 118, 137, 166, 220, 240

Burgon & Wilkinson, Limited, *In re*, 40 Sol. J. 336 - 364, 374, 379, 382

Burgoyne, *In re*, 6 P. R. 227 - - - 39, 40, 243, 349, 400

Burham Brick, Lime, & Cement Co., Limited, *In re*, 9 P. R. 422 379, 382

Burke, *In re*, W. N. 1891, p. 2; 35 Sol. J. 191 - 377, 378, 380, 383, 384

Burke *v.* Cassin, 45 Cal. 467; 13 Amer. Rep. 204; Dig. 415 - 30, 58, 63, 112, 139

Burland & Co., *In re*. See Burland & Co. *v.* Broxburn Oil Co., Limited.

Burland & Co. *v.* Broxburn Oil Co., Limited (1), 41 Ch. D. 542; 58 L. J. Ch. 591; 60 L. T. N. S. 586; 37 W. R. 470; 6 P. R. 482 - - 173

Burland & Co. *v.* Broxburn Oil Co., Limited (2), 42 Ch. D. 274; 6 P. R. 484; 58 L. J. Ch. 816; 61 L. T. N. S. 618; 38 W. R. 89 - 33, 40, 41, 49, 67, 245, 332, 335, 352, 353, 354, 371, 373

Burnett *v.* Phalon, N. Y. Super. Ct.—22 Monthly L. R. (12 N. S.) 220; 9 Bos. 192; R. Cox, 376. N. Y. Ct. of App.—3 Keyes, 594; 3 Trans. App. 167; 5 Abb. Pr. N. S. 212; R. Cox, 397; Dig. 277 60, 67, 137, 166

Burnett *v.* Tate, 45 L. T. N. S. 743 - - - - 280, 281

Burroughes, Wellcome & Co., *In re*. See Wellcome, *In re*.

Burrows *v.* Foster, 1 N. R. 156; 32 Beav. 18; Seton, 5th ed. 592; Dig. 207 - - - - - - - - 264, 268, 325, 527

Burt *v.* Smith, 71 Fed. Rep. 161 - - - - - - 77, 645

Burton *v.* Stratton, 12 Fed. Rep. 696; 73 L. T. (Journal) 349 - 55, 61, 75, 77, 79, 207

Bury *v.* Bedford, M. R.—32 L. J. Ch. 741; 9 Jur. N. S. 956; 8 L. T. N. S. 847; 11 W. R. 973; 1 N. R. 5. C. A.—4 De G. J. & S. 352; 33 L. J. Ch. 465; 10 Jur. N. S. 503; 10 L. T. N. S. 470; 12 W. R. 726; 4 N. R. 180; Dig. 222 - - 29, 101, 102, 103, 104, 105, 612

Bush & Co., *In re*, 10 U. S. Pat. Gaz. 164; Dig. 506 60, 189, 335, 349, 638

Butler *v.* Burleson, 16 Vt. (1 Washb.) 176 - - - 303, 313

Byass *v.* Sullivan, 21 How. Pr. 50; R. Cox, 278 - - - 226

Byron (Ld.) *v.* Johnston, 2 Mer. 29; Dig. 23 - - - 274, 276

C.

Cady *v.* Schultz, 19 R. I. 193; 61 Am. St. Rep. 763 68, 249, 250, 253, 270

Caire, *Ex parte*, 15 U. S. Pat. Gaz. 248 - - - 130, 349, 638

Cal—Car PAGE

Californian Fig Syrup Co., *In re*, 40 Ch. D. 620; 6 P. R. 126; 58 L. J. Ch. 341; 60 L. T. N. S. 590; 37 W. R. 268 - 15, 16, 40, 80, 389, 533

Californian Fig Syrup Co. *v.* Improved Fig Syrup Co., 51 Fed. Rep. 296; 54 Fed. Rep. 175; 61 U. S. Pat. Gaz. 155 - - 59, 66, 135, 223

Californian Fig Syrup Co. *v.* Putnam, 66 Fed. Rep. 750; 69 Fed. Rep. 740 - - - - - - - - 59, 66, 208, 351

Californian Fig Syrup Co. *v.* Stearns, 67 Fed. Rep. 1008; 73 Fed. Rep. 812 - - - - - - - 59, 66, 208, 351

Californian Fig Syrup Co. *v.* Taylor's Drug Co., Kekewich, J.—14 P. R. 341. C. A.—14 P. R. 564 - - - - 128, 255, 258

Californian Fig Syrup Co. *v.* Worden, E., & Co., 86 Fed. Rep. 212 - 59, 66, 132, 135

Campbell *v.* Hollins, Dig. 548 - - - - - - 258, 263

Canal Co. *v.* Clark, U. S. C. C., S. Dt. of N. Y.; 7 Bl. C. C. 112. U. S. Sup. Ct.—80 U. S. 311; 5 Am. L. T. 135; 1 U. S. Pat. Gaz. 279; Dig. 327 - - - - - 2, 5, 49, 51, 55, 58, 75

Candee, Swan & Co. *v.* Deere & Co., 54 Ill. 439; 5 Amer. Rep. 125; 4 Am. L. T. 266; 10 Am. L. Reg. N. S. 694; Dig. 339 - 19, 63, 75, 77, 109

Canham *v.* Jones, 2 V. & B. 218; Dig. 19 - - 117, 165, 288, 289

Capital & Counties Bank, Limited *v.* Capital & County Deposit Bank, Chitty, J., Feb. 9th, 1884 - - - - - - 257

Carbolic Soap Co. *v.* Thompson, 25 Fed. Rep. 625 - 59, 122, 135, 139, 190

Carey *v.* Goss, 11 Ont. Rep. 619 - - - - - 294, 358

Carlsbad (City of) *v.* Kutnow, 68 Fed. Rep. 794; 71 Fed. Rep. 167; 73 U. S. Pat. Gaz. 140 - - - - 5, 16, 76, 212, 223

Carlsbad (City of) *v.* Schultz, 78 Fed. Rep. 469; 79 U. S. Pat. Gaz. 1361 - 5, 76, 123

Carlsbad (City of) *v.* Thackeray, 57 Fed. Rep. 18 - - 5, 76, 222

Carlsbad (City of) *v.* Tibbetts, 51 Fed. Rep. 852; 61 U. S. Pat. Gaz. 1166 - - - - - - - - 5, 75, 76, 125

Carmichael *v.* Latimer, 11 R. I. 395; 23 Amer. Rep. 481; 16 Alb. L. J. 73; Dig. 521 - - - - 24, 30, 75, 101, 102, 182, 211

Carmrick *v.* Morson, L. J. N. of C. 1877, p. 71; Chemist & Druggist, 1877, p. 161; Dig. 543 - - - - 41, 60, 67, 137

Carroll, *In re*, 16 P. R. 82 - - - - - 28, 30, 332

Carroll *v.* Ertheiler, 1 Fed. Rep. 688; 21 Alb. L. J. 503 - 30, 123, 134, 141, 222

Carson *v.* Ury, 49 U. S. Pat. Gaz. 411 - - - - 62, 85, 638

Carter *v.* Goetze, 2 Keen, 581 - - - - - - 288

Carter Medicine Co., *In re*, (1892) 3 Ch. 472; 9 P. R. 401; 61 L. J. Ch. 716; 67 L. T. N. S. 747; 41 W. R. 13 - 15, 16, 80, 201, 329, 389, 533

Cartier *v.* Carlile, 31 Beav. 292; 8 Jur. N. S. 183; Dig. 204 - 12, 35, 77, 118, 128, 131, 166, 220, 228, 229, 231, 232

Cartier *v.* May, cited in Lloyd on Trade Marks, pp. 55, 77; Dig. 200 - 35, 77, 131, 180, 206, 239

Cartier *v.* Westhead, Dig. 199 - - - - - 35, 77, 131

Caruncho *v.* Highmoor, 27 Sol. J. 199; L. J. N. of C. 1883, p. 15 176, 241

Caruncho *v.* Stephenson, 25 Sol. J. 929 - - - - 69, 517

Carver *v.* Bowker, V.-C.—1 Trade Marks, 252. C. A.—Dig. 581 - 33, 34, 38, 63, 77, 79, 80, 81, 178, 207, 229

Carver *v.* Pinto Leite, V.-C.—L. R. 7 Ch. 92; 41 L. J. Ch. 93; 25 L. T. N. S. 724; 20 W. R. 135. C. A.—L. R. 7 Ch. 90; 41 L. J. Ch. 92; 25 L. T. N. S. 722; 20 W. R. 134; Dig. 356 - - - 33, 79, 225

Cas—Chu PAGE

Cassidy v. Metcalf, 1 Mo. App. 593 - - - 308, 309, 313

Caswell v. Davis, N. Y. C. P.—4 Abb. Pr. N. S. 6; 35 How. Pr. 76; R. Cox, 429. N. Y. Ct. of App.—58 N. Y. 223; 17 Amer. Rep. 223; Dig. 289 - - - - - - - - - 58

Caswell v. Hazard, 121 N. Y. 484; 18 Am. St. Rep. 833 - 106, 107, 267, 317

Cave v. Myers, Seton, 5th ed. 539 - 123, 128, 175, 206, 216, 224, 264, 271, 524

Cellular Clothing Co., Limited v. Maxton & Murray, 15 P. R. 581; Ct. Sess. Cas. 4th Ser. XXV. 1098. H. L.—(1899) A. C. 326; Times, Ap. 28th, 1899 - - - - - - - 251, 252

Cellular Clothing Co., Limited v. Riley. See Cellular Clothing Co., Limited v. Maxton & Murray.

Celluloid Manufacturing Co. v. Cellonite Manufacturing Co., 32 Fed. Rep. 94; 41 U. S. Pat. Gaz. 693 - 112, 121, 137, 205, 223, 258

Celluloid Manufacturing Co. v. Read, 47 Fed. Rep. 712 - - 90, 112, 141

Centaur Co. v. Heinsfurter, 84 Fed. Rep. 955; 56 U. S. App. 7 - - 55

Chadwick v. Covell, 151 Mass. 190; 51 U. S. Pat. Gaz. 2087 - 55, 99, 141, 168, 201, 290

Champlin v. Stoddart, 37 N. Y. Sup. Ct. 300 - - - - 289

Chance v. Sheppard, Dig. 317 - - - - - - 294

Chaney v. Hoxie. See Hoxie v. Chaney.

Chappell v. Davidson, V.-C.—2 K. & J. 123. C. A.—8 De G. M. & G. 1; Dig. 136 - - - - - - 116, 162, 235, 241, 297

Chappell v. Griffith, 53 L. T. N. S. 459 - - - 267, 305, 319

Chappell v. Sheard, 2 K. & J. 117; 1 Jur. N. S. 996; 3 W. R. 646; Dig. 132 - - - - - - - 202, 297, 522

Charles S. Higgins Co. v. Higgins Soap Co., 78 N. Y. Sup. Ct. 101; 144 N. Y. 462; 43 Am. St. Rep. 769 - - - 258, 261, 262, 263

Charleson v. Campbell, Ct. of Sess. Cas. 4th Ser. IV. 149; 14 Scot. L. Rep. 104; Dig. 520 - - - - - - - - - 272

Chase v. Mayo, 121 Mass. 343; Dig. 523 - - - 81, 84

Chattanooga Medicine Co. v. Thedford (1), 49 Fed. Rep. 949 - 99, 192

Chattanooga Medicine Co. v. Thedford (2), 58 Fed. Rep. 347; 66 Fed. Rep. 544; 73 U. S. Pat. Gaz. 2163 - - - - 99, 192

Chatteris v. Isaacson, 57 L. T. N. S. 177 - - - 267, 315

Cheavin v. Walker, V.-C.—5 Ch. D. 854; 46 L. J. Ch. 265; 35 L. T. N. S. 757. C. A.—5 Ch. D. 850; 46 L. J. Ch. 686; 36 L. T. N. S. 938; Dig. 528 - - - 13, 55, 68, 123, 166, 170, 216, 222, 232

Chichester Chemical Co., *Ex parte*, 52 U. S. Pat. Gaz. 1061 - 65, 645

Chinn v. Thomas, 5 V. L. R. Eq. 188 - - 31, 128, 177, 204, 317

Chissum v. Dewes, 5 Russ. 29; Dig. 45 - - - 301, 306, 318

Chorlton v. Dugdale, *In re*, 53 L. T. N. S. 337; 34 W. R. 60 - 46, 372

Choynski v. Cohen, 39 Cal. 501; 2 Amer. Rep. 476; R. Cox, 593; Dig. 336 - - - - - - - - - 58, 270

Christiansen, *In re*, 3 P. R. 54 - - 128, 130, 132, 338, 348, 370, 371

Christie v. Christie, V.-C.—42 L. J. Ch. 261; L. R. 8 Ch. 502, n. C. A.—L. R. 8 Ch. 499; 42 L. J. Ch. 544; 28 L. T. N. S. 607; 21 W. R. 493; Dig. 414 - - - - - - 175, 261, 264

Christie v. Foster Brewing Co., Limited, 18 V. L. R. 292 - - 149

Christy v. Murphy, 12 How. Pr. 77; R. Cox, 164; Dig. 137 - - 260

Chubb v. Griffiths, 35 Beav. 127; Dig. 255 - - 175, 224, 243

Chubb v. Priest, 1 L. T. O. S. 142 - - - - 30, 122

Chu—Coc PAGE

Churton *v.* Douglas, Johns. 174; 28 L. J. Ch. 841; 5 Jur. N. S. 887; 33 L. T. O. S. 57; 7 W. R. 365; Dig. 172 - 100, 101, 104, 122, 211, 221, 248, 254, 257, 261, 263, 264, 266, 268, 299, 300, 301, 303, 306, 307, 308, 309, 310, 315, 317, 323, 324, 342

Cigar Makers' Association of the Pacific Coast, *Ex parte*, 16 U. S. Pat. Gaz. 958 - - - - - - - 62, 85, 351, 638

Cigar Makers' Protective Union *v.* Conhaim, 40 Minn. 726; 12 Am. St. Rep. 243 - - - - - - - 62, 85, 351, 638

Civil Service Supply Association *v.* Dean, 13 Ch. D. 512 - 19, 88, 127, 254

Clark *v.* Clark, 25 Barb. 76; R. Cox, 206; Dig. 148 - - 130, 166

Clark *v.* Freeman, 11 Beav. 112; 17 L. J. Ch. 142; 12 Jur. 149; 11 L. T. O. S. 22; 35 Leg. Obs. 436; Dig. 93 - - - 188, 275, 276, 277, 278

Clark *v.* German Mutual Fire Insurance Co., 7 Mo. App. 77 - - 102

Clark *v.* Leach, M. R.—32 Beav. 14; 32 L. J. Ch. 290; 9 Jur. N. S. 165; 8 L. T. N. S. 40; 11 W. R. 227; 1 N. R. 155. L. C.—1 De G. J. & S. 409; 32 L. J. Ch. 290; 9 Jur. N. S. 610; 8 L. T. N. S. 40; 11 W. R. 351; Dig. 210 - - - - 267, 269, 309, 310, 315, 319, 324

Clark *v.* Sharp, 15 P. R. 141 - - - - - - 128, 130

Clark & Co., *In re*, 27 Sol. J. 396 - - - - - - 336

Clark Thread Co. *v.* Armitage, 67 Fed. Rep. 896; 74 Fed. Rep. 936; 76 U. S. Pat. Gaz. 1419 - - - - - 111, 204, 210, 212

Clarkson and Finlay, *In re*, Kay, J.—Ap. 5th, 1889 - - 378, 381

Clay, Bock & Co., Limited, *In re.* See Henry Clay, Bock & Co., *In re.*

Clayton *v.* Day, 26 Sol. J. 43; 76 L. T. (Journal) 79 - - - 265

Clegg *v.* Edmonson, 8 De G. M. & G. 787; 26 L. J. Ch. 673; 3 Jur. N. S. 299; 29 L. T. O. S. 131 - - - - - - - 205

Clemens *v.* Belford, 11 Biss. 459; 14 Fed. Rep. 728; 27 Alb. L. J. 293 - 275, 638

Clemens *v.* Such, Codd. Dig. 312; Dig. 429 - - - - 274

Clement *v.* Maddick, 1 Giff. 98; 5 Jur. N. S. 592; 33 L. T. O. S. 117; Dig. 174 - - - - - - 119, 166, 293, 297, 520

Clement & Cie., *In re*, 16 P. R. 173; 80 L. T. N. S. 230 - 73, 80, 334, 335, 352, 372

Cleveland Stone Co. *v.* Wallace, 52 Fed. Rep. 431 135, 204, 212, 222, 286

Clippens Oil Co., *In re*, Jessel, M. R., March 11th, 1881 - - 345

Clotworthy *v.* Schapp, 42 Fed. Rep. 62; 52 U. S. Pat. Gaz. 161 - 59, 61, 137, 207

Clover *v.* Royden, L. R. 17 Eq. 190; 43 L. J. Ch. 665; 29 L. T. N. S. 639; 22 W. R. 254 - - - - - - - - 280

Clowes *v.* Hogg, V.-C.—W. N. 1870, p. 268; L. J. N. of C. 1870, p. 267. L. JJ.—W. N. 1871, p. 40; Dig. 345 - - - 193, 207, 292, 297

Coats, *Ex parte*, 16 U. S. Pat. Gaz. 544 - - - - - 638

Coats *v.* Chadwick, (1894) 1 Ch. 347; 63 L. J. Ch. 328; 70 L. T. N. S. 228; 42 W. R. 328 - - - - - - 180, 281

Coats *v.* Holbrook, 2 Sandf. Ch. 586; 3 N. Y. Leg. Obs. 404; R. Cox, 20; Dig. 79 - - - - - - 84, 190, 221, 222, 240, 241

Coats *v.* Merrick Thread Co., 45 U. S. Pat. Gaz. 347; on app. 149 U. S. 562; 60 U. S. Pat. Gaz. 1531 - - - 55, 63, 133, 135, 248

Cochrane *v.* McNish, (1896) A. C. 225; 13 P. R. 100; 65 L. J. P. C. 20; 74 L. T. N. S. 109 - - - - - 131, 132, 134, 164, 218

Cocks *v.* Chandler, L. R. 11 Eq. 446; 40 L. J. Ch. 575; 24 L. T. N. S. 379; 19 W. R. 593; Dig. 351 - - - - 34, 57, 207, 283

Coe—Com PAGE
Coe *v.* Bradley, 9 U. S. Pat. Gaz. 541; Dig. 489 - - 137, 277
Coffeen *v.* Brunton (1), 4 McLean, 516; R. Cox, 82; Dig. 99 - 13, 60, 138, 162, 221
Coffeen *v.* Brunton (2), 5 McLean, 256; R. Cox, 132; Dig. 109 - 60, 186, 222
Coggin, Kidder & Co., *In re*, 11 U. S. Pat. Gaz. 1109; Dig. 490 - 30, 134, 349, 638
Cohn, *Ex parte* (1), 16 U. S. Pat. Gaz. 680 - - - 58, 63, 637
Cohn, *Ex parte* (2), 16 U. S. Pat. Gaz. 680 - - - 58, 637
Cohn *v.* Kahn, 2 Cinc. L. B. 154; 26 Alb. L. J. 342 - - 270, 271
Cohn *v.* People, 149 Ill. 486; 41 Am. St. Rep. 304 - 62, 85, 282, 351, 638
Colburn *v.* Simms, 2 Hare, 543; 12 L. J. Ch. 388; 7 Jur. 1104 - - 240
Coleman *v.* Flavel, 12 Sawy. 220 - - - - - 284
Coles *v.* Sims, 5 De G. M. & G. 1; 23 L. J. Ch. 208; 18 Jur. 683 - 202
Colgan *v.* Danheim, 35 Fed. Rep. 150 - - - - - 59
Colladay *v.* Baird, 4 Phila. 139; R. Cox, 257; Dig. 186 - - 90, 128
Collard *v.* Marshall, (1892) 1 Ch. 571; 61 L. J. Ch. 268; 66 L. T. N. S. 248; 40 W. R. 473 - - - - - - - 280
Colley *v.* Hart (1), 6 P. R. 17 - - - - - - 281
Colley *v.* Hart (2), 7 P. R. 101 - - - - - - 281
Collins Chemical and Manufacturing Co. *v.* Capitol City Manufacturing Co., 42 Fed. Rep. 64; 52 U. S. Pat. Gaz. 162 - - - - 129
Collins Co. *v.* Ames & Sons, 20 Bl. C. C. 542; 18 Fed. Rep. 561 - 91, 141, 204
Collins Co. *v.* Brown, 3 K. & J. 423; 3 Jur. N. S. 929; 30 L. T. O. S. 62; Dig. 151 - - - - - - 29, 30, 84, 86, 165
Collins Co. *v.* Cowen, 3 K. & J. 428; 3 Jur. N. S. 929; 29 L. T. O. S. 245; 30 L. T. O. S. 62; 5 W. R. 676; Dig. 152 - 13, 15, 30, 83, 117, 165
Collins Co. *v.* Reeves, 28 L. J. Ch. 56; 4 Jur. N. S. 865; 33 L. T. O. S. 101; 6 W. R. 717; Dig. 164 - - - - - 84, 166
Collins Co. *v.* Walker, 7 W. R. 222; Dig. 171 - 84, 176, 235, 240, 517
Colman, *In re* (1), (1891) 2 Ch. 402; 8 P. R. 209; 60 L. J. Ch. 550; 64 L. T. N. S. 507; 39 W. R. 488 - - 350, 377, 378, 381, 383
Colman, *In re* (2), (1894) 2 Ch. 115; 11 P. R. 129; 63 L. J. Ch. 403; 70 L. T. N. S. 398; 42 W. R. 555 - - - - 31, 335
Colman *v.* Crump, N. Y. Super. Ct.—40 N. Y. Super. Ct. 548. N. Y. Ct. of App.—70 N. Y. 573; 16 Alb. L. J. 352; Dig. 579 - 9, 90, 119, 130, 136, 141, 166, 223
Colman, J. J., Limited *v.* Farrow & Co., 15 P. R. 198 - 133, 135, 139
Colnaghi *v.* Ward, 12 L. J. Q. B. 1; 6 Jur. 969 - - - - 624
Colonial Life Assurance Co. *v.* Home and Colonial Assurance Co., 33 Beav. 548; 33 L. J. Ch. 741; 10 Jur. N. S. 967; 10 L. T. N. S. 448; 12 W. R. 783; 4 N. R. 129; Dig. 236 - - - - 256
Colton *v.* Thomas, 7 Phila. 257; 2 Brews. 308; R. Cox, 507; Dig. 305 - 122, 128, 130, 269, 284
Columbia Mill Co. *v.* Alcorn, 150 U. S. 460; 65 U. S. Pat. Gaz. 1916 - 3, 75, 130, 208
Compagnie Générale d'Eaux Minérales et de Bains de Mer, *In re*, (1891) 3 Ch. 451; 8 P. R. 446; 60 L. J. Ch. 728; 40 W. R. 89 173, 246, 367
Compania General de Tabacos *v.* Rehder & Co., 5 P. R. 61 - 48, 72, 134, 135
Comstock *v.* White, 18 How. Pr. 421; R. Cox, 232; Dig. 180 - 13, 60, 210, 224

Con—Cos PAGE

Condy *v.* Mitchell, V.-C.—37 L. T. N. S. 268. C. A.—37 L. T. N. S. 766; 26 W. R. 269; Dig. 561 - 55, 105, 107, 120, 128, 130, 258, 267, 277, 288, 307, 315

Condy & Mitchell *v.* Taylor & Co., 56 L. T. N. S. 891 - - 143, 319

Congress and Empire Spring Co. *v.* High-Rock Congress Spring Co., N. Y. Sup. Ct.—57 Barb. 526; R. Cox, 599. N. Y. Ct. of App.—45 N. Y. 291; 10 Abb. Pr. N. S. 348; 6 Amer. Rep. 82; 4 Am. L. T. 168; R. Cox, 624; Dig. 354 - - - 5, 60, 73, 100, 122, 299

Connell *v.* Reed, 128 Mass. 477; 35 Amer. Rep. 397 - - 65, 207

Conrad *v.* Joseph Uhrig Brewing Co., 8 Mo. App. 277 - - - 135

Consolidated Fruit Jar Co., *Ex parte*, 16 U. S. Pat. Gaz. 679 - 55, 214, 635, 638

Consolidated Fruit Jar Co., *In re*, 14 U. S. Pat. Gaz. 269; Dig. 578 - 24, 25, 55, 214, 638

Consolidated Fruit Jar Co. *v.* Dorflinger, 6 Amer. L. T. N. S. 511; Dig. 444 - - - - - - - 207, 215, 217

Constable & Co. *v.* Brewster, Ct. of Sess. Cas. 1st Ser. III. 215 (new ed. 152); Dig. 39 - - - - - - 292, 294

Converse *v.* Hood, 149 Mass. 471 - - - - - 260

Cook *v.* Collingridge, Jac. 607; 1 L. J. Ch. 74; Collyer on Partnership (2nd ed.) 215; Dig. 37 - - - - - 321, 325

Cook *v.* Starkweather, 13 Abb. Pr. N. S. 392; Dig. 395 - 13, 81, 103, 122, 127, 128, 136, 139, 222, 637

Cook & Bernheimer Co. *v.* Ross, 73 Fed. Rep. 203; 76 U. S. Pat. Gaz. 613 - - - - - - - - - 122

Coon, *Ex parte*, 58 U. S. Pat. Gaz. 946 - - - - - 645

Copper *v.* Hamilton, 6 N. Z. L. R. 598 - - - - - 147

Cooper *v.* Hood, 26 Beav. 293; 28 L. J. Ch. 212; 4 Jur. N. S. 1266; 32 L. T. O. S. 171; 7 W. R. 83; Dig. 168 - - 299, 306, 307, 308, 313, 342

Cooper *v.* Metropolitan Board of Works, 25 Ch. D. 472; 53 L. J. Ch. 109; 50 L. T. N. S. 602; 32 W. R. 709 - - - 301, 302, 318

Cooper *v.* Watson, 3 Doug. 413; Dig. 5 - - - - - 306, 313

Cope *v.* Evans, L. R. 18 Eq. 138; 30 L. T. N. S. 292; 22 W. R. 453; Dig. 433 - - - 69, 96, 120, 127, 128, 169, 172, 221, 224

Copley *v.* Kirk, 84 L. T. (Journal) 140 - - - - 148, 149

Coppen *v.* Moore (1), (1898) 2 Q. B. 300; 67 L. J. Q. B. 689; 78 L. T. N. S. 520 - - - - - - - 147, 148

Coppen *v.* Moore (2), (1898) 2 Q. B. 306; 67 L. J. Q. B. 690; 78 L. T. N. S. 521; 46 W. R. 620 - - - - 147, 561, 562, 564

Corbin *v.* Gould, 133 U. S. 308; 51 U. S. Pat. Gaz. 622 - 60, 81

Corning & Co., *Ex parte*, 65 U. S. Pat. Gaz. 751 - - - 645

Corns *v.* Griffiths, W. N. 1873, p. 93; Pemberton (4th ed.) 489; Dig. 420 - - - - - - - - - 294, 520

Cornwall, *In re* (1), 12 U. S. Pat. Gaz. 138; Dig. 563 - - 60, 638

Cornwall, *In re* (2), 12 U. S. Pat. Gaz. 312; Dig. 565 - 66, 73, 76, 637

Correspondent Newspaper Co. *v.* Saunders, 11 Jur. N. S. 540; 12 L. T. N. S. 540; 13 W. R. 804; Dig. 246 - - - - 13, 297, 298

Corwin *v.* Daly, 7 Bos. 222; R. Cox, 265; Dig. 187 - - - 58

Cory *v.* Gertcken, 2 Madd. 49 - - - - - 224, 243

Coslake *v.* Till, 1 Russ. 376; Dig. 42 - - - - 306, 308

Cot—Dal PAGE

Cotton *v.* Gillard, 44 L. J. Ch. 90; Dig. 447 - 9, 34, 60, 68, 99, 104, 109, 186, 201, 289, 300, 342

Cottrell *v.* Babcock Printing Press Manufacturing Co., 35 Alb. L. J. 129 - - - - - - - - - - 324

Coulson & Sons *v.* Coulson & Co., Q. B. Div.—3 Times L. R. 740. C. A. —3 Times L. R. 846 - - - - - 280, 281, 315

Covell *v.* Chadwick, 153 Mass. 263; 25 Am. St. Rep. 625 - 99, 201, 282

Coventry Machinists Co., Limited *v.* Helsby, Kekewich, J.—13 Times L. R. 92. C. A.—13 Times L. R. 161 - - - 176, 249

Cowan *v.* Miller, Ct. Sess. Cas. 4th Ser. XXII. 833 - - - 273

Cowen *v.* Hulton, 46 L. T. N. S. 897 - - - 119, 166, 296

Cowie *v.* Herbert, 14 P. R. 436; Ct. Sess. Cas. 4th Ser. XXIV. 353, 361 - - - - - - - 128, 178, 356, 372, 391

Crawford *v.* Bernard, 11 P. R. 580 - -119, 124, 125, 211, 250, 261

Crawford *v.* Shuttock, 13 Grant, Up. Can. Ch. 149 - - 68, 134

Crawford's Trustees *v.* Lennox, Ct. Sess. Cas. 4th Ser. XXIII. 747 - 272

Crawshay *v.* Collins, 15 Ves. 218; Dig. 14 - - - - 321, 322

Crawshay *v.* Thompson, 4 Man. & G. 357; 5 Scott N. R. 562; 11 L. J. C. P. 301; Dig. 72 - - -33, 76, 115, 116, 157, 158, 159, 197

Creedmoor Cartridge Co., *Ex parte*, 56 U. S. Pat. Gaz. 1333 - - 645

Croft *v.* Day (1), 7 Beav. 84; Dig. 76 - 107, 117, 122, 126, 165, 168, 222, 265, 514

Croft *v.* Day (2), 28 Leg. Obs. 378; Dig. 77 - - - - 179

Crookes *v.* Petter, 6 Jur. N. S. 1131; 3 L. T. N. S. 225; Dig. 181 - 277

Crosfield, *In re*, 15 P. R. 754 - - - - - - - 342

Cruttwell *v.* Lye, 17 Ves. 335; 1 Rose, 123; Dig. 17 - 253, 266, 301, 307, 309, 311

Cuervo *v.* Jacob Henkell Co., 50 Fed. Rep. 471; 60 U. S. Pat. Gaz. 440 - 190, 205

Cuervo *v.* Landauer, 63 Fed. Rep. 1003 - - - - - 100, 119

Cuervo *v.* Owl Cigar Co., 68 Fed. Rep. 541 - - - - 135

Currie, *In re*, 13 P. R. 681 - - - - - - - 345

Currie *v.* Currie, 15 P. R. 339 - - - 10, 100, 299, 307, 308

Curtis *v.* Bryan, 2 Daly, 212; 36 How. Pr. 33; R. Cox, 434; Dig. 291 - 30, 71, 212

Curtis, Harvey & Co. *v.* Kraft, Meyer & Co., Chitty, J., June 16th, 1882 - - - - - - - - - - 132

Curtis, Harvey & Co. *v.* Pape, 5 P. R. 146 - - - 137, 177

Curtiss *v.* Messler, 13 A. L. T. 127 - - 117, 119, 220, 250, 269

D.

Dadirrian *v.* Gullian, 79 Fed. Rep. 784 - - - - - - 190

Dadirrian *v.* Theodorian, 74 U. S. Pat. Gaz. 1902 - - 56, 59, 71

Dadirrian *v.* Yacubian, 72 Fed. Rep. 1010; 75 U. S. Pat. Gaz. 1856 - 56, 59, 71, 123

Dakin *v.* Cope, 2 Russ. 170; Dig. 43 - - - - - 306

Dale *v.* General Newspaper Co., 1 Times L. R. 177 - - - 295

Dale *v.* Smith, W. N. 1882, p. 145 - - - 178, 239, 295

Dal—Deg PAGE
Dale *v.* Smithson, 12 Abb. Pr. 237; R. Cox, 282; Dig. 195 - 166, 211
Daniel *v.* Whitehouse (1), (1898) 1 Ch. 685; 15 P. R. 134; 67 L. J. Ch. 262 - - - - - - - 51, 111, 250, 289
Daniel *v.* Whitehouse (2), 16 P. R. 71 - - - 179, 180, 222
Darbey *v.* Whitaker, 4 Drew. 134; 5 W. R. 772; Dig. 153 - 306, 308
Dausman & Drummond Tobacco Co. *v.* Ruffner, 15 U. S. Pat. Gaz. 559 3, 36
Davenport *v.* Rylands, L. R. 1 Eq. 302; 35 L. J. Ch. 204; 12 Jur. N. S. 71; 14 L. T. N. S. 53; 14 W. R. 243 - - - - - 13, 233
Davids & Co., *Ex parte*, 16 U. S. Pat. Gaz. 94 - - 335, 634, 636, 638
Davies, *In re*, Chitty, J., March 9th, 1885 - - 95, 97, 347, 353
Davies *v.* Hodgson, 25 Beav. 177; 27 L. J. Ch. 449; 4 Jur. N. S. 252; 31 L. T. O. S. 49; 6 W. R. 355; Dig. 158 - - - 306, 325
Davis, *In re*, 14 P. R. 903 - - - - 40, 55, 245, 371
Davis *v.* Davis, 27 Fed. Rep. 490 - - - -82, 140, 637
Davis *v.* Kendall, 2 R. I. 566; R. Cox, 112; Dig. 103 - 13, 60, 139, 166, 221
Davis *v.* Kennedy, 13 Grant, Up. Can. Ch. 523; Dig. 281 - 15, 31, 60, 68, 84, 134, 222
Davis *v.* Reid, 17 Grant, Up. Can. Ch. 69 - - 120, 121, 135, 348
Davis *v.* Rogers, 89 L. T. (Journal) 212 - - - 260, 264, 292
Davis *v.* Smaggasgale, W. N. 1890, pp. 158, 169; 35 Sol. J. 677, 705 - 313
Davis *v.* Tylor (1), Jessel, M. R., July 27th, 1877 - - - 177
Davis *v.* Tylor (2), Jessel, M. R., April 24th, 1879 - 5, 73, 243, 341, 345
Davis & Co., *In re.* See Davis & Co. *v.* Stribolt & Co.
Davis & Co. *v.* Stribolt & Co., 6 P. R. 207; 59 L. T. N. S. 854 39, 40, 71, 371
Dawes *v.* Davies, Codd. Dig. 260; Dig. 426 - - -79, 128, 130
Dawes & Fanning, *Ex parte*, 1 U. S. Pat. Gaz. 27; Dig. 382 - 20, 79, 637
Dawson *v.* Bank of Whitehaven, 4 Ch. D. 639; 46 L. J. Ch. 545; 36 L. T. N. S. 310; 25 W. R. 582 - - - - - - - vi
Dawson *v.* Beeson, 22 Ch. D. 504; 52 L. J. Ch. 563; 48 L. T. N. S. 407; 31 W. R. 537 - - - - - - - 309, 311, 324, 325
Day *v.* Binning, C. P. Coop. 489; 1 Leg. Obs. 205; Dig. 47 8, 122, 163, 284
Day *v.* Brownrigg, V.-C.—39 L. T. N. S. 226. C. A.—10 Ch. D. 294; 48 L. J. Ch. 173; 39 L. T. N. S. 553; 27 W. R. 217; Dig. 631 - 272, 280
Day *v.* Day, Eden on Inj. (ed. of 1821) 314; Dig. 21 - - - 163
Day *v.* Finch, 25 Sol. J. 354 - - - - - 267, 309
Day *v.* Neale, Bacon, V.-C., May 24th, 1881 - 59, 108, 185, 207, 237
Day *v.* Walls, 12 Phila. 274 - - - - - 121, 135
Day & Martin, Limited, *In re*, Stirling, J., Aug. 2nd, 1894 381, 382, 383, 384
Dayton *v.* Wilkes, 17 How. Pr. 510; R. Cox, 224; Dig. 178 - 207, 307, 319, 322
De Kuyper *v.* Van Dulken, 24 Can. Sup. Ct. Rep. 114 - - - 345
De Kuyper *v.* Wittemann, 23 Fed. Rep. 871; 30 U. S. Pat. Gaz. 346 - 144
De la Branchardière *v.* Elvery, 4 Ex. 380; 18 L. J. Ex. 381 - - 608
De Long *v.* De Long Hook and Eye Co., 96 N. Y. Sup. Ct. 406; 74 U. S. Pat. 809 - - - - - - - - 261, 263
De Otaduy, *In re*, W. N. 1885, p. 177; L. J. N. of C. 1885, p. 155; 29 Sol. J. 681 - - - - - - 98, 336, 347, 365, 409
Decker *v.* Decker, 52 How. Pr. 218; Dig. 525 - - -24, 634, 647
Degraves *v.* Whiteman, 5 V. L. R. Eq. 304 - 68, 87, 128, 176, 236

Dei—Dix PAGE
Deiz v. Lamb, 29 N. Y. Super. Ct. 537; Dig. 266 - - 274, 286
Del Valle v. Mayer, Seton, 5th ed. 536; Dig. 326 - - 191, 518
Delondre v. Shaw, 2 Sim. 237; Dig. 44 - - - 188, 229, 276
Dence v. Brand, W. N. 1881, p. 31 - - 179, 180, 222, 239, 265
Dence v. Mason (1), Malins, V.-C.—W. N. 1877, p. 23; 1878, p. 42; L. J. N. of C. 1877, p. 33; Dig. 534. C. A.—41 L. T. N. S. 573 - 24, 121, 122, 178, 179, 184, 222, 315, 324
Dence v. Mason (2), Dig. 570 - - - - 265, 267, 269, 284
Densham, *In re*, Romer, J.—(1895) 2 Ch. 176; 12 P. R. 75; 64 L. J. Ch. 286; 72 L. T. N. S. 148. C. A.—(1895) 2 Ch. 185; 12 P. R. 271; 64 L. J. Ch. 634; 72 L. T. N. S. 614; 43 W. R. 515 - 39, 42, 66, 334, 372
Dent v. Turpin, 2 J. & H. 139; 30 L. J. Ch. 495; 7 Jur. N. S. 673; 4 L. T. N. S. 637; 9 W. R. 548; Dig. 196 - 30, 62, 107, 108, 171, 187, 223, 230, 323
Derby Photographic Dry Plate Co. v. Pollard, Graham & Co., 2 Times L. R. 276 - - - - - - - - 121, 137
Derringer v. Plate, 29 Cal. 292; 87 Amer. Dec. 170; R. Cox, 324; Dig. 249 - - - - - - 15, 30, 100, 166, 300
Derry v. Peek, 14 App. Cas. 337; 58 L. J. Ch. 864; 61 L. T. N. S. 265 - 157
Desmond's Appeal, 103 Penn. St. 126; 49 Amer. Rep. 118 - - 129
Deverall v. Banker, 45 U. S. Pat. Gaz. 591 - - - - 218
Devlin v. Devlin, N. Y. Sup. Ct.—11 N. Y. Sup. Ct. 651. N. Y. Ct. of App.—69 N. Y. 212; 15 Alb. L. J. 290; 5 Amer. Rep. 173; Dig. 463 - - - - - - - 25, 122, 179, 239, 261, 309
Dewhurst, *In re* (1), Jessel, M. R., Feb. 23rd, 1878 - - 376, 380
Dewhurst, *In re* (2), Jessel, M. R., March 19th, 1880 - - - 376
Dewhurst, *In re* (3), Jessel, M. R., June 11th, 1880 - - 98, 332
Dewhurst, *In re* (4), Jessel, M. R., July 9th, 1880 - - - 376
Dewhurst & Sons, Limited, *In re*, (1896) 2 Ch. 137; 13 P. R. 288; 65 L. J. Ch. 618; 74 L. T. N. S. 388; 44 W. R. 672 - 98, 131, 330, 345, 346, 347, 348, 349, 404
Dexter, *In re*. See Wills, *In re* (2).
Dick & Co., *In re*, 9 U. S. Pat. Gaz. 538; Dig. 493 - 4, 58, 62, 91, 638
Dickinson, Akroyd & Co., *In re*, Hall, V.-C., July 8th, 1880 - - 549
Dicks v. Brooks, V.-C.—15 Ch. D. 22; 40 L. T. N. S. 710. C. A.—15 Ch. D. 31; 49 L. J. Ch. 812; 43 L. T. N. S. 71; 29 W. R. 87 - - 280
Dicks v. Jackson, Chitty, J., March 31st, 1884 - - - 231, 234
Dicks v. Yates, Bacon, V.-C.—18 Ch. D. 76; 43 L. T. N. S. 470; 29 W. R. 135. C. A.—18 Ch. D. 83; 50 L. J. Ch. 809; 44 L. T. N. S. 660 - - - - - - - - - 13, 295, 297
Dickson v. McMaster & Co., 18 Ir. Jur. 202; Dig. 260 - 182, 299, 315, 319, 320
Didirrian v. Yacubian. See Dadirrian v. Yacubian.
Dixon v. Fawcus, 3 Ell. & Ell. 537; 30 L. J. Q. B. 137; 7 Jur. N. S. 895; 3 L. T. N. S. 693; 9 W. R. 414; Dig. 194 28, 30, 118, 158, 161, 243
Dixon v. Holden, L. R. 7 Eq. 488; 30 L. T. N. S. 357; 17 W. R. 482; Dig. 311 - - - - - - - - 278, 279
Dixon v. Jackson, Ct. of Sess. Cas. 2nd Ser. V. 326; 3 Scot. L. Rep. 188; Dig. 271 - - - - - - - - 86, 121
Dixon Crucible Co. v. Guggenheim, 7 Phila. 408; 2 Brews. 321; 3 Am. L. T. 288; R. Cox, 559; Dig. 331 9, 20, 100, 127, 130, 166, 271, 299, 300

Dix—Ede PAGE

Dixon (William), Ld., *In re.* See William Dixon.

Dole Bros., *In re*, 12 U. S. Pat. Gaz. 939; Dig. 577 - 58, 66, 182, 212, 351, 637, 638

Donald *v.* Hodgart's Trustees, Ct. Sess. Cas. 4th Ser. XXI. 246 302, 306, 326

Dougherty *v.* Van Nostrand, Hoff. 68; Dig. 64 - - 308, 319, 322

Dover Stamping Co., *Ex parte*, 51 U. S. Pat. Gaz. 1784 - - 76, 644

Dover Stamping Co. *v.* Fellows, 163 Mass. 191; 47 Am. St. Rep. 448 - 55

Dreydoppel *v.* Young, 14 Phila. 226 - - - - 59, 136

Drummond Tobacco Co. *v.* Randle, 114 Ill. 412 - - - - 258

Du Boulay *v.* Du Boulay, L. R. 2 P. C. 430—441; 6 Moo. P. C. N. S. 31; 38 L. J. P. C. 35—38; 22 L. T. N. S. 228—231; 17 W. R. 594; Dig. 312 - - - - - - - - 248

Dugdale, *In re*, 49 L. J. Ch. 303; 28 W. R. 436 - - - 549

Duke *v.* Green, 16 U. S. Pat. Gaz. 1094 - - - - 635, 639

Dunbar *v.* Glenn, 42 Wisc. 118; Dig. 529 - - 5, 75, 134, 285

Duniway Publishing Co. *v.* North-West Printing Co., 11 Oreg. 322 - 296

Dunlop Pneumatic Tyre Co., Limited *v.* Dunlop Lubricant Co., Limited, 16 P. R. 12 - - - - - - 141, 257, 263, 265

Dunlop Pneumatic Tyre Co., Limited *v.* Dunlop Truffault Cycle & Tube Manufacturing Co., 40 Sol. J. 544 - - - 141, 257, 261, 263

Dunn, *In re* (1), Hall, V.-C., Dec. 20th, 1880 - - - 378, 383

Dunn, *In re* (2), Kay, J.—41 Ch. D. 439; 6 P. R. 148; 58 L. J. Ch. 604; 60 L. T. N. S. 414. C. A.—41 Ch. D. 444; 6 P. R. 379; 58 L. J. Ch. 607; 61 L. T. N. S. 98. H. L.—15 App. Cas. 252; 7 P. R. 311; 63 L. T. N. S. 6; 39 W. R. 161 - 46, 51, 59, 60, 141, 244, 329, 334, 340, 341, 344, 345, 349, 350, 352, 370, 371

Dunnachie *v.* Young & Sons, Ct. Sess. Cas. 4th Ser. X. 874; 20 Scot. L. Rep. 588 - - - - - - 5, 187, 188, 223

Duryea *v.* National Starch Manufacturing Co., 79 Fed. Rep. 651 - 122, 261, 262

Dutcher Temple Co., *In re*, U. S. Pat. Comm. Dec. 1871, 248; Dig. 371 - - - - - - 7, 19, 21, 78, 110, 199, 355

Duwel *v.* Bohmer, 14 U. S. Pat. Gaz. 270; Dig. 613 - - - 636

Dwight *v.* Hamilton, 113 Mass. 175 - - - - - 310

Dyson, *In re*, 65 L. T. N. S. 488 - - - - - 246

E.

Eagle Pencil Co., *In re*, 10 U. S. Pat. Gaz. 981; Dig. 522 - 3, 63, 79, 634, 637

Eastman, *In re*, W. N. 1880, p. 128 - - - 46, 48, 55, 61

Eastman Photographic Materials Co., Limited, *In re*, Kekewich, J.—13 P. R. 707; 76 L. T. N. S. 730. C. A.—14 P. R. 487; 76 L. T. N. S. 732. H. L.—(1898) A. C. 571; 15 P. R. 476; 67 L. J. Ch. 628; 79 L. T. N. S. 195 - - - - - - 42, 44, 333, 334

Eastman Photographic Materials Co., Limited *v.* Comptroller-General. See Eastman Photographic Materials Co., Limited, *In re.*

Eastman Photographic Materials Co., Limited *v.* Griffiths Cycle Corporation, Limited, 15 P. R. 105 - - - - 141, 257, 370, 372

Ede Bros. & Co., *Ex parte*, 28 W. R. 436; Dig. 632 - - - 549

Ede—Eno PAGE

Edelsten *v.* Edelsten, 1 De G. J. & S. 185; 9 Jur. N. S. 479; 7 L. T. N. S. 768; 11 W. R. 328; 1 N. R. 300; Dig. 213 - 12, 34, 35, 118, 120, 131, 157, 166, 167, 171, 197, 220, 221, 222, 229, 231, 232, 235, 518

Edelsten *v.* Vick, 11 Hare, 78; 1 Eq. Rep. 413; 18 Jur. 7; Dig. 119 - 55, 86, 117, 127, 150, 165, 198, 207, 215, 286, 517

Edge, *In re*, 8 P. R. 207 - 28, 31, 40, 65, 66, 125, 245, 351, 354, 367, 370, 371, 373, 400

Edge *v.* Harrison, 8 P. R. 74 - - 122, 139, 222, 261, 265, 266

Edge *v.* Johnson, 9 P. R. 134 - - - - 132, 134, 179, 286

Edge & Sons, Limited *v.* Gallon, 15 P. R. 689 - - - 140, 249

Edgington, *In re*. See Edgington (B.), Limited *v.* Edgington (J.) & Co.

Edgington *v.* Edgington, 11 L. T. N. S. 299; Dig. 237 - 236, 265, 370

Edgington (B.), Limited *v.* Edgington (J.) & Co., 6 P. R. 513; 61 L. T. N. S. 323 - - - - - - - 48, 353, 359, 372

Edinburgh Correspondent Newspaper, *In re*, Ct. of Sess. Cas. 1st Ser. I. (new ed.) 407, n.; Dig. 34 - - - - - 292, 294

Edmonds *v.* Benbow, Seton, 5th ed. 539; Dig. 33 - - 294, 520

Edwards, *In re*. See Edwards *v.* Dennis.

Edwards *v.* Dennis, Q. B. D.—30 Ch. D. 454; 54 L. T. N. S. 112; 1 Cab. & Ell. 428. V. C. B.—30 Ch. D. 460; 55 L. J. Ch. 125; 54 L. T. N. S. 114. C. A.—30 Ch. D. 466; 55 L. J. Ch. 130; 54 L. T. N. S. 116 - 9, 19, 46, 52, 89, 90, 92, 97, 99, 109, 110, 187, 247, 328, 329, 332, 337, 339, 343, 355, 356, 368, 371, 372, 402

Edwards *v.* Elkan, 5 P. R. 70 - - - - - - - 177

Eggers *v.* Hink, 69 Cal. 445; 49 Amer. Rep. 96 - - 59, 75

Ehrmann, *In re*, (1897) 2 Ch. 495; 14 P. R. 665; 66 L. J. Ch. 699; 77 L. T. N. S. 200; 45 W. R. 698 - - - 108, 187, 345, 346

El Modello Cigar Manufacturing Co. *v.* Gato, 25 Fla. 886; 23 Am. St. Rep. 537 - - - - - - 75, 119, 204, 205, 261

Electro-Silicon Co. *v.* Hazard, 36 N. Y. Sup. Ct. 369 - - 61, 67

Electro-Silicon Co. *v.* Levy, 59 How. Pr. 469 - - - 59, 135

Electro-Silicon Co. *v.* Trask, 59 How. Pr. 189 - - - 67, 137

Ellin *v.* Slack, 24 Sol. J. 290; L. J. N. of C. 1880, p. 15 - - 229

Ellis *v.* Zeilen & Co., 42 Ga. 91; Dig. 348 - - - 128, 210

Ellis & Sons *v.* Ruthin Soda Water Co., Jessel, M. R., Nov. 21st, 1879 - - - - - - - - - 124, 145

Elsas *v.* Williams, 54 L. J. Ch. 336; 52 L. T. N. S. 39 - - - 177

Emerson *v.* Badger, 101 Mass. 82; Dig. 309 - 29, 30, 123, 125, 269

Emperor of Austria *v.* Day. See Austria, Emperor of *v.* Day.

Empire Typesetting Machine Co. of New York *v.* Linotype Co., Limited, 79 L. T. N. S. 8 - - - - - - - - 282

Employers' Liability Assurance Corporation *v.* Employers' Liability Insurance Co., 60 N. Y. Sup. Ct. 552 - - - - - 259

England *v.* Curling, 8 Beav. 129; Dig. 75 - 265, 268, 299, 319, 325, 527, 529

England *v.* Downs, 6 Beav. 269; 12 L. J. Ch. 85; 6 Jur. 1075; Dig. 74 - - - - - - - - - 301, 308

England *v.* New York Publishing Co., 8 Daly, 375 - - 25, 26, 264

English, *In re*, U. S. Pat. Comm. Dec. 1870, 142; Dig. 342 - 4, 65, 91, 634

Eno, *In re*. See Dunn, *In re*.

Eno *v.* Dunn (1). See Dunn, *In re*.

Eno—Far PAGE
Eno *v.* Dunn (2), 10 P. R. 261 - - - - 130, 222, 250
Eno *v.* Stephens, V.-C.—1 Trade Marks, 324. C. A.—1 Trade Marks, 325; Dig. 609 - - - - - 51, 60, 123, 134, 170, 220
Enoch Morgan's Sons' Co. *v.* Hunkele, 16 U. S. Pat. Gaz. 1092 - 67, 176
Enoch Morgan's Sons' Co. *v.* Schwachhofer, 55 How. P. R. 37; 17 Alb. L. J. 229 - - - - - - - - 67, 127, 139
Enoch Morgan's Sons' Co. *v.* Troxell, N. Y. Sup. Ct.—57 How. Pr. 121; 30 N. Y. Sup. Ct. 632; N. Y. Ct. of App.—89 N. Y. 292; 42 Amer. Rep. 294 - - - - - - - - 128, 139
Enoch Morgan's Sons' Co. *v.* Wendover, 43 Fed. Rep. 420 - 140, 189
Ermen & Roby, *In re*, 56 L. J. Ch. 177; 56 L. T. N. S. 230; 4 P. R. 70 - - - - - - - - - 379, 384
Esbensen, *In re*, Pearson, J., Jan. 25th, 1883 - - - - 407
Estcourt *v.* Estcourt Hop Essence Co., V.-C.—31 L. T. N. S. 567. C.A.—L. R. 10 Ch. 276; 44 L. J. Ch. 223; 32 L. T. N. S. 80; 23 W. R. 313; Dig. 449 - - - - 202, 206, 212, 288, 289, 291, 523
Estes *v.* Belford, Clarke & Co., 30 U. S. Pat. Gaz. 99 - - - 297
Estes *v.* Leslie (1), 23 Bl. C. C. 476; 27 Fed. Rep. 22 - - - 297
Estes *v.* Leslie (2), 29 Fed. Rep. 91 - - - - 137, 297
Estes *v.* Williams, 22 Bl. C. C. 364; 21 Fed. Rep. 189 - - - 297
Estes *v.* Worthington (1), 23 Bl. C. C. 165; 22 Fed. Rep. 822 - - 204
Estes *v.* Worthington (2), 30 Fed. Rep. 465 - - - - 189
Estes *v.* Worthington (3), 24 Bl. C. C. 371; 31 Fed. Rep. 154 - 297, 298
European Blair Camera Co., *In re*, 13 P. R. 600; 75 L. T. N. S. 63 - 184, 246, 372
Evans *v.* Hughes, 18 Jur. 691; Dig. 127 - - - 318, 326
Evans *v.* Smith, 3 Times L. R. 390 - - 48, 72, 175, 204, 355
Evans *v.* Von Laer, 32 Fed. Rep. 153 - - - - 75, 129, 144
Explosives Co., Limited, *In re*, North, J., July 31st, 1896 - - 383

F.

Faber v. D'Utassey, 11 Abb. Pr. N. S. 399; Dig. 355 - - - 120
Faber *v.* Faber, 49 Barb. 357; 3 Abb. Pr. N. S. 115; R. Cox, 401; Dig. 278 - - - - - - - - - 24, 30
Faber *v.* Hovey, Codd. Dig. 79, 242; Dig. 481 - - - 60, 68
Fairbank, N. K., Co. *v.* Bell, R. W., Manufacturing Co., 71 Fed. Rep. 295; 77 Fed. Rep. 869 - - - 81, 130, 136, 139, 222
Fairbank, N. K., Co. *v.* Central Lard Co., 64 Fed. Rep. 133; 70 U. S. Pat. Gaz. 635 - - - - - - - - 61, 137, 222
Fairbanks *v.* Jacobus, 14 Bl. C. C. 337 - 55, 58, 66, 81, 82, 212, 215, 216
Fairchild, *Ex parte*, 21 U. S. Pat. Gaz. 789 - - - - 638, 645
Falkinburg *v.* Lucy, 35 Cal. 52; 95 Amer. Dec. 76; R. Cox, 448; Dig. 296 - - - - - - - - - 13, 128
Farbenfabriken Vormals Fried. Bayer & Co., *In re*, (1894) 1 Ch. 645; 11 P. R. 84; 63 L. J. Ch. 257; 70 L. T. N. S. 186; 42 W. R. 488 - 42, 244, 333
Farina, *In re* (1), 26 W. R. 261; Dig. 592 - - - 35, 344, 349

Far—Flo PAGE
Farina, *In re* (2), 27 W. R. 456; Dig. 642 - 15, 31, 111, 136, 189, 205, 335, 344, 349
Farina, *In re* (3), Dig. 654 - - - - 31, 35, 97, 347
Farina, *In re* (4), 44 L. T. N. S. 99; 29 W. R. 391 - 107, 188, 343, 373, 374
Farina *v.* Cathery, L. J. N. of C. 1867, p. 134; Dig. 275 - 15, 121, 176, 189
Farina *v.* Gebhardt, cited 3 Eq. Rep. 891; 1 K. & J. 517; Dig. 118 - 202
Farina *v.* Shaw, cited 3 Eq. Rep. 886-7; 1 K. & J. 514; 24 L. J. Ch. 632; 25 L. T. O. S. 211; 3 W. R. 532; Dig. 113 - - - 190
Farina *v.* Silverlock, V.-C.—1 K. & J. 509; 3 Eq. Rep. 883; 24 L. J. Ch. 632; 25 L. T. O. S. 211; 3 W. R. 532. L. C.—6 De G. M. & G. 214; 26 L. J. Ch. 11; 2 Jur. N. S. 1008; 27 L. T. O. S. 277; 4 W. R. 731; 52 Leg. Obs. 342. Q. B.—30 L. T. O. S. 242; 31 L. T. O. S. 99. V.-C.—4 K. & J. 650; Dig. 130 - 13, 31, 115, 144, 145, 158, 166, 169, 171, 188, 190, 235, 519
Farnum & Co., *Ex parte*, 18 U. S. Pat. Gaz. 412 - 66, 75, 76, 637
Farr *v.* Pearce, 3 Madd. 74; Dig. 28 - - - - 304, 319
Farrow, *In re*, 7 P. R. 260; 63 L. T. N. S. 233 - - 329, 342, 348, 349
Featherstonhaugh *v.* Fenwick, 17 Ves. 298; Dig. 16 - - 306, 321
Feder *v.* Benkert, 70 Fed. Rep. 613 - - - - - 102
Fenn *v.* Bolles, 7 Abb. Pr. 202; Dig. 166 - - - - 323
Fennessy *v.* Clark, 37 Ch. D. 184; 57 L. J. Ch. 398; 58 L. T. N. S. 289 - 227
Fennessy *v.* Day, 55 L. T. N. S. 161 - - - - - 242
Fennessy *v.* Rabbits & Sons, 56 L. T. N. S. 138 - - - 175
Fenton *v.* Levy, 29 Sol. J. 735, 79 L. T. (Journal) 332 - 267, 319
Ferguson *v.* Davol Mills, 2 Brews. 314; 7 Phila. 253; R. Cox, 516; Dig. 307 - - - - - - - - 20, 78
Fetridge *v.* Merchant, 4 Abb. Pr. 156; R. Cox, 194; Dig. 145 - 60, 66, 68, 210
Fetridge *v.* Wells, 4 Abb. Pr. 144; 13 How. Pr. 385; R. Cox, 180; Dig. 144 - - - - - - - 58, 68, 207, 210, 236
Field *v.* Lewis, Seton, 5th ed. 537; Dig. 280 - 43, 68, 123, 222, 241
Fielding *v.* Hawley, 48 L. T. N. S. 639 - - - - 608, 609
Filkins *v.* Blackman, 13 Bl. C. C. 440; Dig. 502 31, 102, 104, 105, 313
Filley *v.* Child, 16 Bl. C. C. 376; 16 U. S. Pat. Gaz. 261 - 60, 68, 112, 203
Filley *v.* Fassett, 44 Mo. 173; 100 Amer. Dec. 275; R. Cox, 530; 8 Am. L. Reg. N. S. 402; Dig. 313 - - 43, 60, 68, 127, 134, 166, 204, 223
Findlater, Mackie & Co., *In re*, North, J., Ap. 24th, 1896 - 379, 382
Fischer *v.* Blank, 138 N. Y. 244 - - - 81, 135, 139
Fish Bros. Wagon Co. *v.* La Belle Wagon Works, 82 Wisc. 546; 33 Am. St. Rep. 72 - - - - - - 36, 100, 261, 262
Fisher *v.* Apollinaris Co., V.-C.—L. R. 10 Ch. 299, n.; 32 L. T. N. S. 628. C. A.—L. R. 10 Ch. 297; 44 L. J. Ch. 500; 32 L. T. N. S. 628; 23 W. R. 460; Dig. 457 - - - - - - 279
Flavel *v.* Harrison, 10 Hare, 467; 22 L. J. Ch. 866; 17 Jur. 368; 1 W. R. 213; Dig. 116 - - - - - 65, 175, 202, 204, 214
Fleischmann *v.* Fleischmann, 7 App. Div. N. Y. 280 - - - 215
Fleischmann *v.* Schuckmann, 62 How. Pr. 92 - - 73, 123, 134, 222
Fleischmann *v.* Starkey, 25 Fed. Rep. 127 - - - 338, 645
Fleming *v.* Newton, Ct. Sess.—Ct. of Sess. Cas. 2nd Ser. VIII. 677. H. L.—1 H. L. C. 363; Dig. 94 - - - - - 278

Foc—Fun PAGE

Foot *v.* Lea, 13 Ir. Eq. 484; Dig. 107 - - - 121, 166, 270

Ford *v.* Foster, V.-C.—L. R. 7 Ch. 616, n.; 27 L. T. N. S. 220; 20 W. R. 311. C. A.—L. R. 7 Ch. 611; 41 L. J. Ch. 682; 27 L. T. N. S. 219; 20 W. R. 818; Dig. 384 - 4, 10, 12, 33, 60, 65, 69, 111, 112, 123, 124, 134, 178, 181, 202, 212, 214, 217, 221, 222, 223, 231, 256, 516, 518

Foss, *Ex parte*, Comm.—30 L. T. O. S. 354. C. A.—2 De G. & J. 230; 27 L. J. Bky. 17; 4 Jur. N. S. 522; 31 L. T. O. S. 30; Dig. 159 - 105, 297, 306, 307

Foster, *In re* (1), Chitty, J., July 25th, 1890 - - 377, 380, 383

Foster, *In re* (2), North, J., March 22nd, 1895 - - - 382, 384

Foster *v.* Blood Balm Co., 77 Ga. 216; 36 Alb. L. J. 837 - - 135

Foster *v.* Megevand, Pemberton, 4th ed. 492; Dig. 499 - - 518

Fowle *v.* Spear, 7 Penn. L. J. 176; R. Cox, 67; Dig. 90 - 60, 210

Fox & Co., *In re*, Hall, V.-C., May 7th, 1881 - - - 337, 345

Fradella *v.* Weller, 2 R. & M. 247 - - - - - 240

Framjee, Sands & Co., *In re*, Bacon, V.-C., Nov. 30th, 1883 - - 549

Francis & Mallon, *In re*, U. S. Pat. Comm. Dec. 1871, 283; Dig. 375 - 60, 67, 637

Frank *v.* Sleeper, 150 Mass. 583 - - - - - - - 78

Frankau *v.* Pope, 11 Cape of Good Hope, 209 - - - 78, 138

Franke *v.* Chappell, 57 L. T. N. S. 141 - - - - - 264

Franklyn, Morgan & Davey, *In re*, Romer, J., July 17th, 1891 378, 383

Franks *v.* Weaver, 10 Beav. 297; 8 L. T. O. S. 510; Dig. 375 - 115, 121, 285, 523

Frazer *v.* Frazer Lubricator, 121 Ill. 147; 2 Am. St. Rep. 73 - 24, 192, 261, 309

Free Fishers and Dredgers of Whitstable *v.* Elliott. See Whitstable, Free Fishers and Dredgers of *v.* Elliott.

Freeman Bros. *v.* Sharpe Bros. Co., 16 P. R. 205 - 92, 185, 284, 372

French *v.* Alter & Julian Co., 74 Fed. Rep. 788 - - - - 176

Frese *v.* Bachof (1), 13 Bl. C. C. 234; Dig. 484 - - 140, 171, 286

Frese *v.* Bachof (2), 14 Bl. C. C. 432; 13 U. S. Pat. Gaz. 635; Dig. 603 - - - - 13, 58, 103, 120, 123, 139, 198, 222, 286

Frieberg & Workum, *Ex parte*, 20 U. S. Pat. Gaz. 1164 - - 645

Friedlander, *In re*, W. N. 1885, p. 85; L. J. N. of C. 1885, p. 80; 29 Sol. J. 397; 78 L. T. (Journal) 460 - - - - - 40

Frost & Rindskopf, 42 Fed. Rep. 408 - - - - 31, 36, 57

Fuente, *In re*, (1891) 2 Ch. 166; 8 P. R. 214; 60 L. J. Ch. 308; 64 L. T. N. S. 196; 39 W. R. 489 - - - 46, 209, 336, 340, 351

Fullwood *v.* Fullwood (1), V.-C.—W. N. 1873, p. 93. C. A.—W. N. 1873, p. 185; Dig. 421 - - - 25, 122, 261, 263, 284

Fullwood *v.* Fullwood (2), 9 Ch. D. 176; 47 L. J. Ch. 459; 38 L. T. N. S. 380; 26 W. R. 435; Dig. 602 - 25, 30, 122, 123, 139, 193, 204, 261, 263, 309, 524

Fulton *v.* Sellers, 4 Brews. 42; Dig. 279 - - 20, 30, 31, 62, 100, 102, 211, 299

Funke *v.* Dreyfus, 34 La. Ann. 80; 44 Amer. Rep. 413 - 31, 61, 204, 211

G.

Gag—Gli PAGE

Gage *v.* Canada Publishing Co., Ont. Ch. D., Ferguson, J.—6 Ont. Rep. 68. Ont. Ct. of App.—11 Ont. App. 402. Can. Sup. Ct.—11 Can. Sup. Ct. 306 - 62, 102, 103, 106, 192, 221, 223, 261, 277, 294, 297, 299

Gail *v.* Wackerbarth, 28 Fed. Rep. 286; 37 U. S. Pat. Gaz. 894 128, 139

Gally *v.* Colt's Patent Firearms Manufacturing Co., 30 Fed. Rep. 118; 41 U. S. Pat. Gaz. 576 - - - - - - - 55

Gamage, A. W., Limited *v.* Randall, H. E., Limited, 16 P. R. 185 - 252

Gamble *v.* Stephenson, 10 Mo. App. 581 - - - 204, 272

Garde *v.* Mitchell, 17 V. L. R. 209; 12 A. L. T. 191 - - 269, 284

Gardner *v.* Bailey, Codd. Dig. 131; Dig. 365 - - - - 137

Garrett *v.* Garrett, T. H., & Co., 78 Fed. Rep. 472; 79 U. S. Pat. Gaz. 1681 - - - - - - - - 135, 261, 263

Gaskin *v.* Balls, 13 Ch. D. 324; 28 W. R. 552 - - - - 280

Geary *v.* Norton, 1 De G. & Sm. 9 - - - 171, 220, 240, 241

Gebbie *v.* Stitt, 89 N. Y. Sup. Ct. 93 - - - - - 75

Gee *v.* Pritchard, 2 Swanst. 402; Dig. 30 - - - - 278

Genesee Salt Co. *v.* Burnap, 67 Fed. Rep. 534; 73 Fed. Rep. 818 75, 135

Genin *v.* Chadsey, cited 2 Brews. 330; R. Cox, 567; Dig. 300 - - 271

George *v.* Smith, 52 Fed. Rep. 830 - - - - 61, 91, 223

Gessler *v.* Grieb, 80 Wisc. 21; 27 Am. St. Rep. 20 - 60, 121, 123, 285

Gianaclis, *In re*, 6 P. R. 467; 58 L. J. Ch. 782 - 28, 31, 125, 245, 332, 368, 370, 372

Giblett *v.* Read, 9 Mod. 459; Dig. 3 - - - - 107, 228, 299, 307

Gilka *v.* Mihalovitch, 50 Fed. Rep. 427 - - - - - 205

Gillespie & Co. *v.* Marshall, Dig. 648 - - - - 159, 195

Gillis *v.* Hall (1), 7 Phila. 422; 2 Brews. 342; R. Cox, 580; Dig. 335 - 313

Gillis *v.* Hall (2), 8 Phila. 231; 3 Brews. 509; R. Cox, 596; Dig. 353 - 25, 31, 139, 179, 261

Gillott *v.* Esterbrook, N. Y. Sup. Ct.—47 Barb. 455; R. Cox, 340. N. Y. Comm. of App.—48 N. Y. 374; 8 Amer. Rep. 553; Dig. 269 - 3, 62, 79, 166, 204

Gillott *v.* Kettle, 3 Duer, 624; R. Cox, 148; Dig. 126 - 3, 79, 143, 222

Gilman *v.* Hunnewell, 122 Mass. 139; Dig. 541 - 24, 34, 58, 68, 123, 130, 166

Ginesi *v.* Cooper & Co., 14 Ch. D. 596; 49 L. J. Ch. 601; 42 L. T. N. S. 751 - - - - - - - - 302, 309, 310

Ginter *v.* Kinney Tobacco Co., 12 Fed. Rep. 782; 22 U. S. Pat. Gaz. 770 - - - - - - - - - 65, 66, 351

Giron *v.* Gartner, 47 Fed. Rep. 467; 57 U. S. Pat. Gaz. 1430 - 77, 121, 122

Glen & Hall Manufacturing Co. *v.* Hall, N. Y. Sup. Ct.—6 N. Y. Sup. Ct. 158. N. Y. Comm. of App.—61 N. Y. 226; 19 Amer. Rep. 278; Dig. 443 - - - - - 171, 263, 264, 271, 357

Glen Cove Manufacturing Co. *v.* Ludeman, 23 Bl. C. C. 46; 22 Fed. Rep. 823; 32 U. S. Pat. Gaz. 255 - - - 121, 130, 137, 634, 647

Glendon Iron Co. *v.* Uhler, 75 Penn. St. 467; 15 Amer. Rep. 599; 13 Amer. L. Reg. N. S. 543; 6 U. S. Pat. Gaz. 154; Dig. 439 - - 75

Glenny *v.* Smith, 2 Drew. & Sm. 476; 11 Jur. N. S. 964; 13 L. T. N. S. 11; 13 W. R. 1032; 6 N. R. 363; Dig. 247 - - 122, 269, 524

Glines, *In re*, 8 U. S. Pat. Gaz. 435; Dig. 471 - - - 60, 68

God—Gre PAGE
Godillot, *In re*, 6 U. S. Pat. Gaz. 641; Dig. 446 - - - 634
Godillot *v.* American Grocery Co., 71 Fed. Rep. 873 - 77, 122, 141, 250
Godillot *v.* Hazard (Harris), N. Y. Super. Ct. (Monell, C. J.)—49 How. P. R. 5; 44 N. Y. Super. Ct. 427; Dig. 461. N. Y. Super. Ct.—44 N. Y. Super. Ct. 435. N. Y. Ct. of App.—81 N. Y. 263 - 3, 4, 13, 35, 58, 64, 121, 135, 136, 184
Goldstein *v.* Whelan, 62 Fed. Rep. 124 - - - - - 208
Goodall, *In re*, 42 Ch. D. 566; 38 W. R. 189 - - 349, 353, 354
Goodall *v.* Wilkinson, Stirling, J.—90 L. T. (Journal) 357. C. A.—91 L. T. (Journal) 29 - - - - - - 120, 128
Goodfellow *v.* Prince, Chitty, J.—35 Ch. D. 9; 56 L. J. Ch. 545; 56 L. T. N. S. 617. C. A.—35 Ch. D. 16; 56 L. J. Ch. 548; 56 L. T. N. S. 618; 35 W. R. 488 - - - 88, 92, 183, 197, 255, 358
Goodman *v.* Meriden Britannia Co., 50 Conn. 139 - - - 99
Goodman *v.* Way, 36 Sol. J. 830 - - - - - - 269
Goodwin *v.* Venning, 24 Sol. J. 690 - - - 128, 142, 224
Goodyear Rubber Co., *In re*, 11 U. S. Pat. Gaz. 1062; Dig. 547 - 58, 62, 637
Goodyear Rubber Co. *v.* Day, 22 Fed. Rep. 44 - - - 55, 176
Goodyear Rubber Co. *v.* Goodyear India Rubber Glove Manufacturing Co., U. S. C. C.—22 Bl. C. C. 421; 21 Fed. Rep. 276; 30 U. S. Pat. Gaz. 97. U. S. Sup. Ct.—128 U. S. 598; 46 U. S. Pat. Gaz. 122 - 55, 59, 258, 259
Gordon, *In re*, 12 U. S. Pat. Gaz. 517; Dig. 572 - - 81, 82, 637
Gordon *v.* Cheltenham Railway Co., 5 Beav. 229 - - - 204
Gordon and Dilworth, *In re*, 13 P. R. 629 - - - - 371
Gouraud *v.* Trust, 10 N. Y. Sup. Ct. 627; 6 Thomp. & C. 133; Dig. 460 - 26, 31, 60, 123, 264, 268
Gout *v.* Aleploglu, 6 Beav. 69; 5 Leg. Obs. 495; Chitty, Gen. Pr. 721; Dig. 51 - - - - - - - 8, 70, 163, 165, 357
Graham, *In re*, 2 U. S. Pat. Gaz. 618; Dig. 412 - - 58, 62
Graham *v.* Plate, 40 Cal. 593; 6 Amer. Rep. 639; 4 Am. L. T. 75; Dig. 347 - - - - - - - - 161, 233, 234
Graham & Co. *v.* Kerr, Dods & Co., 3 Beng. L. R. App. 4; Dig. 315 - 119, 165
Gravel Roofers' Exchange *v.* Turnbull, 64 U. S. Pat. Gaz. 441 - 62, 85, 351, 638
Graveley *v.* Winchester, Seton, 5th ed. 591; Dig. 272 - 171, 232, 264, 268, 325, 527
Graves *v.* Ashford, L. R. 2 C. P. 410; 36 L. J. C. P. 139; 16 L. T. N. S. 98; 15 W. R. 495 - - - - - - - 624
Gray *v.* Koch, 2 Mich. N. P. 119; Dig. 363 - - - 58, 270
Gray *v.* Smith, Kekewich, J.—58 L. J. Ch. 863; 61 L. T. N. S. 481. C. A.—43 Ch. D. 208; 59 L. J. Ch. 145; 62 L. T. N. S. 335; 38 W. R. 310 - - - - - - 267, 307, 308, 317
Gray *v.* Taper Sleeve Pulley Works, 16 Fed. Rep. 436; 24 U. S. Pat. Gaz. 602 - - - - - - - - 223, 258
Great North of Scotland Railway Co. *v.* Mann, Ct. Sess. Cas. 4th Ser. XIX. 1035 - - - - - - - 222, 272
Great Tower St. Tea Co. *v.* Langford & Co., 5 P. R. 66 - 135, 139, 358
Great Tower Street Tea Co. *v.* Smith, 6 P. R. 165 - 34, 40, 41, 72, 128, 238, 333, 370, 371
Green, *In re*, 8 U. S. Pat. Gaz. 729; Dig. 473 - 60, 66, 76, 212, 351, 637

Gre—Han PAGE

Green *v.* Folgham, 1 S. & S. 398; 1 L. J. Ch. 203; Dig. 38 - 31, 228, 288, 289, 290

Green *v.* Rooke, W. N. 1872, p. 49; L. J. N. of C. 1872, p. 54; Dig. 389 - - - - - - 55, 58, 176, 284, 289

Green *v.* Shepherd, Ct. of Sess. Cas. 3rd Ser. IV. 1028; 2 Scot. L. Rep. 168; Dig. 262 - - - - - - - 177

Green *v.* Woodhouse, 38 U. S. Pat. Gaz. 1491 - - - 55, 135

Greenlees, *In re*, 9 P. R. 93 - - - - - 343, 374

Grezier *v.* Autran, 13 P. R. 1 - 51, 73, 122, 132, 133, 134, 138, 139, 178, 222, 249, 514

Grezier *v.* Ziemer & Co., 89 L. T. (Journal) 117 - - - - 238

Gridley *v.* Swinborne, 5 Times L. R. 71; 52 J. P. 791 - 147, 150, 560, 561, 563, 569

Grillon *v.* Guénin, W. N. 1877, p. 14; Dig. 532 - - - 60, 69, 166

Grimshaw, *Ex parte*, W. N. 1877, p. 24; L. J. N. of C. 1877, p. 24; 1 Trade Marks, 23; Dig. 535 - - - - - - 343

Grist & Bowring, *Ex parte*, 11 V. L. R. 630 - - - 193, 340

Grossmith, *In re*, 6 P. R. 180; 60 L. T. N. S. 612 - 40, 46, 48, 111, 243, 347, 349, 350

Grove, *Ex parte*, 67 U. S. Pat. Gaz. 1447 - - 60, 61, 66, 351, 645

Guardian Fire and Life Assurance Co. *v.* Guardian and General Assurance Co., Limited, 50 L. J. Ch. 252; 43 L. T. N. S. 791 - 240, 257

Guinness *v.* Heap, Dig. 617 - - - - - 137, 171

Guinness *v.* Ullmer, 10 L. T. O. S. 127; Dig. 89 - 144, 190, 518

Guinness, Son & Co., Limited, *In re*, 5 P. R. 316 - - 377, 380

H.

Hagg *v.* Darley, 47 L. J. Ch. 567; 38 L. T. N. S. 312; Dig. 604 193, 283, 288, 289, 313

Haines, Batchelor & Co., *In re*, 5 P. R. 669 - - - 348, 349

Hall *v.* Barrows, M. R.—32 L. J. Ch. 548; 9 Jur. N. S. 483; 8 L. T. N. S. 227; 11 W. R. 525; 1 N. R. 543. L. C.—4 De G. J. & S. 150; 33 L. J. Ch. 204; 10 Jur. N. S. 55; 9 L. T. N. S. 561; 12 W. R. 322; 3 N. R. 259; Dig. 215 - 9, 17, 29, 33, 77, 86, 90, 101, 103, 106, 117, 141, 166, 169, 223, 250, 299, 303, 307, 319, 320, 322, 324, 336

Hall *v.* Hall, 20 Beav. 139; Dig. 129 - - - 306, 319, 320

Hall & Co., *In re*, 13 U. S. Pat. Gaz. 229; Dig. 596 - - 30, 51, 637

Hallett *v.* Cumston, 110 Mass. 29; Dig. 391 - 122, 222, 265, 277, 315

Halliday Bros., *Ex parte*, 16 U. S. Pat. Gaz. 500 - 36, 68, 81, 637

Halsey *v.* Brotherhood, M. R.—15 Ch. D. 514; 49 L. J. Ch. 786; 43 L. T. N. S. 366; 29 W. R. 9. C. A.—19 Ch. D. 386; 51 L. J. Ch. 233; 45 L. T. N. S. 640; 30 W. R. 279 - - - 280, 281

Hammond *v.* Douglas, 5 Ves. 539; Dig. 9 - - - 306, 322

Hammond *v.* Malcolm, Brunker & Co., 9 P. R. 301 9, 105, 220, 223, 306, 342, 350

Handy *v.* Commander, 49 La. Ann. 1119 - - - - 135

Hanford *v.* Westcott, 16 U. S. Pat. Gaz. 1181 - - - 31, 639

Hanfstaengl *v.* American Tobacco Co., (1895) 1 Q. B. [illegible]; 64 L. J. Q. B. 277; 71 L. T. N. S. 864; 43 W. R. 261 - - - - 14

Han—Haz PAGE
Hankinson, *In re*, 8 U. S. Pat. Gaz. 89; Dig. 464 - - - 635
Hannay, *In re*, 7 P. R. 46 - - 28, 40, 66, 125, 332, 351, 370, 371
Hanson, *In re* (1), Bacon, V.-C., June 2nd, 1885 - - - 381
Hanson, *In re* (2), 37 Ch. D. 112; 5 P. R. 130; 57 L. J. Ch. 173; 57 L. T. N. S. 859; 36 W. R. 124 - - 40, 126, 332, 338, 348
Hanson *v.* British Tea and Trading Association, Limited, Bacon, V.-C., April 9th, 1884. C. A.—June 19th, 1884 - - - 126, 338
Hanson *v.* Game, Harrison & Larner, Limited, 9 P. R. 186 - - 366
Harden Star Hand Grenade Fire Extinguisher Co., Limited, *In re*, 3 P. R. 132; 55 L. J. Ch. 596; 54 L. T. N. S. 834 - - - 40, 370
Hardy *v.* Cutter, 3 U. S. Pat. Gaz. 468; Dig. 427 - 13, 24, 26, 58
Hargreave *v.* Freeman, (1891) 3 Ch. 39; 8 P. R. 237; 61 L. J. Ch. 23; 65 L. T. N. S. 487 - 88, 92, 110, 141, 197, 199, 236, 329, 337, 355
Hargreaves, *In re* (1), 11 Ch. D. 669; 27 W. R. 550; Dig. 645 - 336, 349
Hargreaves, *In re* (2), Stirling, J., Jan. 11th, 1890 - - 378, 384
Hargreaves *v.* Smith, Dig. 338 - - - - 35, 135, 157, 159
Harper *v.* Pearson, 3 L. T. N. S. 547; Dig. 193 - - - 182, 268
Harper & Co. *v.* Wright and Butler Lamp Manufacturing Co. See John Harper & Co.
Harrington *v.* Libby, 14 Bl. C. C. 128; 12 U. S. Pat. Gaz. 188; 4 Am. L. T. N. S. 47; Dig. 538 - - - - - - 81, 637
Harris, *In re* (1), Stirling, J.; Jan. 11th, 1889 - - - - 381
Harris, *In re* (2), 9 P. R. 492 - - - - - 40, 400
Harris *v.* Ogg, 5 N. S. W. Rep. (E.) 114 - - 142, 216, 236, 357, 372
Harris Drug Co. *v.* Stucky, 46 Fed. Rep. 624 - 36, 95, 124, 135, 644
Harrison *v.* Gardner, 2 Mad. 198; Dig. 25 - 301, 309, 310, 313, 318, 324
Harrison *v.* Hogg, 2 Ves. Jun. 323 - - - - - - 624
Harrison *v.* Taylor, 11 Jur. N. S. 408; 12 L. T. N. S. 339; Dig. 244 - 118, 207, 230, 517
Harrison, McGregor & Co., *In re*, 42 Ch. D. 691; 59 L. J. Ch. 22; 61 L. T. N. S. 484; 7 P. R. 25 - - - - 46, 57, 88, 371
Hart *v.* Colley, 44 Ch. D. 193; 7 P. R. 93; 59 L. J. Ch. 355; 62 L. T. N. S. 623; 38 W. R. 440 - - 9, 93, 143, 197, 198, 336, 358
Harter *v.* Souvazoglu, V.-C.—W. N. 1875, p. 11; L. J. N. of C. 1875, p. 20. C. A.—W. N. 1875, p. 101; Dig. 454 - - - 34, 37, 81
Haslam & Co. *v.* Hall, 20 Q. B. D. 491; 5 P. R. 144; 57 L. J. Q. B. 352; 59 L. T. N. S. 102 - - - - - - - 359
Hatchard *v.* Mège, 18 Q. B. D. 771; 56 L. J. Q. B. 397; 56 L. T. N. S. 662; 35 W. R. 576 - - - - - - 166, 283
Hauthaway, *In re* (1), U. S. Pat. Comm. Dec. 1871, 97; Dig. 357 - 58, 637
Hauthaway, *In re* (2), U. S. Pat. Comm. Dec. 1871, 284; Dig. 377 - 58
Hawloetz *v.* Kass, 25 Fed. Rep. 765 - - - - - 218
Hayward & Co., *In re*. See Hayward & Sons, *In re*.
Hayward & Co. *v.* Hayward & Sons, 34 Ch. D. 198; 56 L. J. Ch. 287; 55 L. T. N. S. 729; 35 W. R. 392 - - - - - 282
Hayward & Sons, *In re*, 54 L. J. Ch. 1003; 53 L. T. N. S. 487 - 46, 95, 97, 330, 350, 353, 354, 357, 367, 371, 372, 392
Hayward & Sons, Limited, *In re*, 13 P. R. 729 - - 377, 380, 383
Hazard *v.* Caswell, N. Y. Super. Ct.—46 N. Y. Super. Ct. 559; 47 *ib.* 537. N. Y. Ct. of App.—93 N. Y. 259; 45 Amer. Rep. 198 - 106, 107, 212, 299

Haz—Hil PAGE

Hazzopulo *v.* Kaufmann, 23 Sol. J. 819 - - - - 198, 358
Headley, *Ex parte*, 72 U. S. Pat. Gaz. 1654 - - - 75, 76, 644
Heath *v.* Rollason. See Rollason, *In re.*
Heath *v.* Wright, 3 Wall. Jr. 1; R. Cox, 154; Dig. 133 - 60, 210
Heathcote *v.* Hulme, 1 Jac. & W. 122 - - - - - - 321
Heaton, *In re*, 27 Ch. D. 570; 53 L. J. Ch. 959; 51 L. T. N. S. 220; 32 W. R. 951 - - - - - - - 87, 205, 213, 352
Hecht *v.* Porter, 9 Pac. C. L. J. 569; 26 Alb. L. J. 42 - - 61, 68, 141
Hegeman *v.* O'Byrne, 9 Daly, 264 - - - 123, 136, 222, 223
Hegeman & Co. *v.* Hegeman, 8 Daly, 1 - 10, 59, 102, 103, 104, 306, 309, 311, 315
Heinrichs *v.* Bastendorff, 10 P. R. 160 - - - - - - 609
Helmbold *v.* Helmbold Manufacturing Co., 53 How. Pr. 453; Dig. 575 - 24, 58, 68, 102, 105, 109, 186, 207, 277, 290, 311
Helmore *v.* Smith, V. C. B.—35 Ch. D. 436; 56 L. T. N. S. 535. C. A.—35 Ch. D. 445; 56 L. T. N. S. 537 - - - - - - 306
Hemming & Son, *Ex parte*, M. R., April 27th, 1881 - - 98, 187, 348
Henderson *v.* Jorss, Seton, 5th ed. 536; cited in Lloyd on Trade Marks, p. 54; Dig. 198 - - - - - - 33, 35, 123, 518
Hendriks *v.* Montagu, M. R.—17 Ch. D. 638; 50 L. J. Ch. 257; 44 L. T. N. S. 89. C. A.—17 Ch. D. 643; 50 L. J. Ch. 456; 44 L. T. N. S. 879; 30 W. R. 168 - - - - - 254, 257, 259, 526
Hennessy *v.* Cooper, Dig. 549 - - - - - - 143
Hennessy *v.* Hogan, 6 W. W. & A'B. Eq. 225; Dig. 651 - 119, 130, 136, 143, 222
Hennessy *v.* Kennett, Dig. 556 - - - - - 140, 143, 222
Hennessy *v.* Rohmann, Osborne & Co., 36 L. T. N. S. 51; Dig. 531 - 143, 176, 227
Hennessy *v.* Wheeler, N. Y. C. P.—51 How. Pr. 457. N. Y. Ct. of App. —69 N. Y. 271; 15 Alb. L. J. 454; 25 Amer. Rep. 188; Dig. 483 - 213
Hennessy *v.* White, 6 W. W. & A'B. Eq. 216; Dig. 650 - 119, 122, 130, 136, 143, 222
Henry *v.* Price, 1 Leg. Obs. 364; Dig. 48 - - 8, 122, 139, 163
Henry Clay, Bock & Co., Limited, *In re*, (1892) 3 Ch. 549; 9 P. R. 449; 62 L. J. Ch. 143; 67 L. T. N. S. 614 - - - - 376, 377
Hermann Loog, Limited *v.* Bean, Pearson, J.—26 Ch. D. 306; 51 L. T. N. S. 442. C. A.—26 Ch. D. 311; 51 L. T. N. S. 443; 32 W. R. 994 - 282
Heyde *v.* Wittkowski, 5 N. S. W. Rep. (E.) 74 - - 136, 154, 204, 209
Heyman, *Ex parte*, 18 U. S. Pat. Gaz. 922 - - - 61, 644
Heywood *v.* Potter, 1 E. & B. 439; 22 L. J. Q. B. 133; 20 L. T. O. S. 207; 17 Jur. 528 - - - - - - - 608, 609
Hicks, *In re*, 22 V. L. R. 636 - - - - - - 328, 372
Hier *v.* Abrahams, 82 N. Y. 519; 37 Amer. Rep. 589 - 61, 123, 137, 222
Higgins, Charles S., Co. *v.* Higgins Soap Co. See Charles S. Higgins Co. *v.* Higgins Soap Co.
Hildreth *v.* McDonald, 164 Mass. 16; 49 Am. St. Rep. 440 - 133, 139
Hill, *In re*, 10 P. R. 113 - - - - 65, 102, 207, 350, 370, 372
Hill *v.* Hart-Davies, 21 Ch. D. 798; 51 L. J. Ch. 845; 47 L. T. N. S. 82; 31 W. R. 22 - - - - - - - - - 282
Hill *v.* Lockwood, 32 Fed. Rep. 389 - - - 142, 178, 183

Hil—Hop PAGE
Hilsen v. Libby, 44 N. Y. Super. Ct. 12 - - - - - 170
Hilson Co. v. Foster, 80 Fed. Rep. 896 - - - - 139, 209
Hine v. Lart, 10 Jur. 106; 7 L. T. O. S. 41; Dig. 80 - 60, 73, 86, 108, 120, 187, 323
Hinrichs v. Berndes, W. N. 1878, p. 11; L. J. N. of C. 1878, p. 11; Dig. 594 - - - - - - - - - 280
Hipkins v. Plant, 15 P. R. 294 - - - - - 238, 240
Hiram Holt Co. v. Wadsworth, 41 Fed. Rep. 34 - - - 55, 61
Hiram Walker & Sons v. Hocksteader, 85 Fed. Rep. 776 - - 135
Hiram Walker & Sons v. Mikolas, 79 Fed. Rep. 955 - - 121, 135
Hirsch v. Hirsch & Co., 80 L. T. (Journal) 283 - - - 254, 283
Hirsch v. Jonas, 3 Ch. D. 584; 45 L. J. Ch. 364; 3 L. T. N. S. 228; Dig. 494 - - - - - - 4, 14, 84, 145, 184, 298
Hirst v. Denham, L. R. 14 Eq. 542; 41 L. J. Ch. 752; 27 L. T. N. S. 56; Dig. 400 - - - - - 3, 34, 60, 64, 68, 166
Hitchcock v. Coker, 6 Ad. & E. 438; 1 N. & P. 796; 2 H. & W. 464; 6 L. J. Ex. N. S. 266; Dig. 58 - - - - - - 306
Hobbs v. Français, 19 How. Pr. 567; R. Cox, 287; Dig. 191 - - 210
Hoby v. Grosvenor Library Co., Limited, 28 W. R. 386 - - 181, 271
Hodgson v. Kynoch, Limited, 15 P. R. 465 - - 131, 139, 237
Hodgson v. Sinclair, 9 P. R. 22 - - - - 39, 40, 72, 400
Hodson & Co., *In re*, 26 Sol. J. 43 - - 46, 54, 108, 185, 347, 354
Hoeb v. Bishop, 49 U. S. Pat. Gaz. 1845 - - - 20, 139, 644
Hoff v. Tarrant & Co., 71 Fed. Rep. 163; 76 Fed. Rep. 959 - - 261
Hoffman v. Duncan, Seton, 5th ed. 589; Dig. 122 - - 266, 527
Hogg v. Kirby, 8 Ves. 215; Dig. 10 - - - 8, 210, 292, 521
Hogg v. Maxwell (and see Maxwell v. Hogg), V.-C.—12 Jur. N. S. 916; 15 L. T. N. S. 204; 15 W. R. 84. C. A.—L. R. 2 Ch. 316; 36 L. J. Ch. 437; 16 L. T. N. S. 133; 15 W. R. 470; Dig. 265 - - 213
Hohner v. Gratz (1), 50 Fed. Rep. 369 - - - - - 16
Hohner v. Gratz (2), 52 Fed. Rep. 871 - - - 122, 222, 223
Holloway v. Holloway, 13 Beav. 209; Dig. 106 - 24, 25, 29, 177, 210, 211, 224, 261, 309
Holmes, Booth & Haydens v. Holmes, Booth & Atwood Manufacturing Co., 37 Conn. 278; 9 Amer. Rep. 324; Dig. 340 - 257, 261, 265
Holt, *In re*, North, J.—(1896) 1 Ch. 711; 13 P. R. 16; 65 L. J. Ch. 142; 73 L. T. N. S. 572; 44 W. R. 269. C. A.—(1896) 1 Ch. 717; 13 P. R. 118; 65 L. J. Ch. 410; 74 L. T. N. S. 225; 44 W. R. 369 - 30, 44, 332, 334, 372
Holt v. Menendez, U. S. C. C.—23 Fed. Rep. 869; 32 U. S. Pat. Gaz. 136. U. S. Sup. Ct.—128 U. S. 182; 46 U. S. Pat. Gaz. 971 - 2, 4, 61, 69, 106, 113, 120, 145, 204, 206, 207, 230, 232, 254
Holt v. Smith, 4 Times L. R. 329 - - - 122, 263, 317
Holt (Hiram) Co. v. Wadsworth. See Hiram Holt Co. v. Wadsworth.
Hookham v. Pottage, V.-C.—L. R. 8 Ch. 93, n.; 26 L. T. N. S. 755; 20 W. R. 720. C. A.—L. R. 8 Ch. 91; 27 L. T. N. S. 595; 21 W. R. 47; Dig. 398 - - - - 122, 269, 309, 319, 323, 324, 524
Hooper v. Balfour, W. N. 1890, p. 61; L. J. N. of C. 1890, p. 42 - 563
Hoosier Drill Co. v. Ingels, 14 U. S. Pat. Gaz. 785; Dig. 627 86, 634, 639
Hop Bitters Manufacturing Co. v. Luke, 10 V. L. R. (E.) 234 - 59, 236

Hop—Hud PAGE

Hop Bitters Manufacturing Co. *v.* Wharton, 10 V. L. R. (L.) 377 - 59, 135, 138

Hopkins *v.* Hitchcock, 14 C. B. N. S. 65; 32 L. J. C. P. 154; 9 Jur. N. S. 896; 8 L. T. N. S. 204; 11 W. R. 597; 2 N. R. 32; Dig. 216 - - - - - - - - 77, 195

Hopkinson, *In re*, (1892) 2 Ch. 116; 9 P. R. 102; 61 L. J. Ch. 387; 66 L. T. N. S. 487 - - - - - 25, 27, 28, 30, 47, 49, 125

Hornbostel *v.* Kinney, 52 N. Y. Super. Ct. 41 - - - - 193

Horsburgh, *In re*, 53 L. J. Ch. 237; 50 L. T. N. S. 2; 32 W. R. 530; 1 Trade Marks, 260; Dig. 597 - 28, 48, 58, 61, 67, 112, 124, 125, 135, 335, 350

Horton Manufacturing Co. *v.* Horton Manufacturing Co., 18 Fed. Rep. 816 - - - - - - - - - 101, 211

Hostetter *v.* Adams, 20 Bl. C. C. 326; 10 Fed. Rep. 838; 22 U. S. Pat. Gaz. 943 - - - - - - - 59, 122, 135, 139

Hostetter *v.* Anderson, 1 V. R. (1 W. A'B. & W.) Eq. 7; 1 A. J. 4; Dig. 652 - - - - - - - -31, 122, 144

Hostetter *v.* Fries, 21 Bl. C. C. 339; 17 Fed. Rep. 620 - - - 142

Hostetter *v.* Vowinkle, 1 Dill. 329; Dig. 366 - - 31, 137, 161, 234

Hostetter Co. *v.* Becker, 73 Fed. Rep. 297 - 122, 133, 137, 139, 144

Hostetter Co. *v.* Bower, 74 Fed. Rep. 235; 76 U. S. Pat. Gaz. 1856 - 129

Hostetter Co. *v.* Brueggeman Reinart Distillery Co., 46 Fed. Rep. 188; 56 U. S. Pat. Gaz. 530 - - - - - - 122, 133, 144, 190

Hostetter Co. *v.* Van Vorst, 62 Fed. Rep. 600; 69 U. S. Pat. Gaz. 1648 - 133

Hothersall *v.* Moore, 9 P. R. 27 - - - - - - - 609

Houghton & Hallmark, *In re*. See Mitchell & Co., *In re*.

Houlston *v.* Morley, 90 L. T. (Journal) 40 - - - - 296

Hovenden *v.* Lloyd, 18 W. R. 1132; Dig. 337 - - 107, 108, 202, 290

Howard *v.* Henriques, 2 Sandf. S. C. 725; R. Cox, 129; Dig. 108 - 272

Howe *v.* Howe Machine Co., 50 Barb. 236; R. Cox, 421; Dig. 284 24, 30

Howe *v.* McKernan, 30 Beav. 547; Dig. 203 - - -84, 226, 284

Howe *v.* Searing, 6 Bos. 354; 10 Abb. Pr. 264; 19 How. Pr. 14; R. Cox, 244; Dig. 185 - - - - - - 263, 306, 307, 315, 317

Hoxie *v.* Chaney, 143 Mass. 592; 58 Amer. Rep. 149 - 31, 101, 102, 106, 268, 300, 309, 311

Hoyle & Sons, Limited, *In re* (1), Hall, V.-C., May 8th, 1880 - - 549

Hoyle & Sons, Limited, *In re* (2), Chitty, J., Nov. 30th, 1883 - 97, 347, 353, 549

Hoyt *v.* Hoyt, 143 Penn. St. 623; 24 Am. St. Rep. 575 - - 81, 139

Hoyt *v.* Lovett (J. T.) & Co., 71 Fed. Rep. 173 - - - 5, 75

Hubbuck, *In re*, Jessel, M. R., June 20th, 1879 - - - 347, 373

Hubbuck & Sons, Limited *v.* Wilkinson, Heywood & Clark, Limited, (1899) 1 Q. B. 86; 68 L. J. Q. B. 34; 79 L. T. N. S. 429 - - 282

Hubinger (J. C.) Bros. Co. *v.* Eddy, 74 Fed. Rep. 551; 76 U. S. Pat. Gaz. 1120 - - - - - - - - - 129

Hudson, *Ex parte*, 55 U. S. Pat. Gaz. 1401 - - - - 652

Hudson, *In re*, Bacon, V.-C.—3 P. R. 155; 55 L. T. N. S. 228. C. A.—32 Ch. D. 311; 3 P. R. 158; 55 L. J. Ch. 531; 55 L. T. N. S. 229; 34 W. R. 616 - 59, 89, 244, 328, 333, 335, 341, 352, 353, 355, 358, 392

Hudson *v.* Bennett, 12 Jur. N. S. 519; 14 L. T. N. S. 698; 14 W. R. 911; Dig. 261 - - - - - - - - 235, 240

Hud—Ind PAGE

Hudson *v.* Osborne, 39 L. J. Ch. 79; 21 L. T. N. S. 386; Dig. 323 - 10, 103, 104, 211, 265, 270, 306, 309, 524

Hudson *v.* Osgerby, 50 L. T. N. S. 323 - - - - - 238

Huet, *In re*, Kekewich, J., Dec. 6th, 1898 - - - - 371

Humphreys' Specific Homœopathic Medicine Co. *v.* Wenz, 14 Fed. Rep. 250 - - - - - - - 59, 62, 79, 122, 135, 223

Humphries *v.* Taylor Drug Co. (1), 39 Ch. D. 693; 5 P. R. 687; 59 L. T. N. S. 177; 37 W. R. 192 - - - - - - - 228

Humphries *v.* Taylor Drug Co. (2), 59 L. T. N. S. 820 - 40, 87, 236, 238, 245, 353, 354, 371, 373

Hunt *v.* Maniere, M. R.—34 Beav. 157; 34 L. J. Ch. 142; 11 Jur. N. S. 28; 11 L. T. N. S. 469; 13 W. R. 212; 5 N. R. 181. C. A.—34 L. J. Ch. 144; 11 Jur. N. S. 73; 11 L. T. N. S. 723; 13 W. R. 363; 5 N. R. 295; Dig. 239 - - - - - - - 192

Hunt *v.* Stephens, W. N. 1878, p. 79 - - - - - - 608

Huntley & Palmer *v.* Reading Biscuit Co., 10 P. R. 277 - 72, 250, 254

Hurd, *Ex parte*, 59 U. S. Pat. Gaz. 1763 - - - - 645

Hurricane Patent Lantern Co. *v.* Miller & Co., 56 How. Pr. 234 - 128

Hurter, *In re*, W. N. 1887, p. 71; 82 L. T. (Journal) 378 - - 246

Hutchings *v.* Sheard, W. N. 1881, p. 20 - - - - - 294

Hutchinson *v.* Blumberg, 51 Fed. Rep. 829; 61 U. S. Pat. Gaz. 1017 - 131, 178, 240

Hutchinson *v.* Covert, 51 Fed. Rep. 832 - - - - - 131

Huwer *v.* Dannenhoffer, 82 N. Y. 499 - - - - 107, 302

Hyde & Co., *In re*, 7 Ch. D. 724; 54 L. J. Ch. 395; 38 L. T. N. S. 777; 26 W. R. 625; 1 Trade Marks, 245; Dig. 593 - 33, 54, 111, 203, 245, 339, 346, 353, 370, 406

Hygeia Water Ice Co. *v.* New York Hygeia Ice Co., 140 N. Y. 94 - 259

Hygienic Underwear Co. *v.* Simons, 49 Fed. Rep. 276 - - - 123

I.

Idris & Co. *v.* Ward, C. A.—Feb. 4th, 1889 - - - - 144

Ihlee *v.* Henshaw, 31 Ch. D. 323; 55 L. J. Ch. 273; 53 L. T. N. S. 949; 34 W. R. 269; 3 P. R. 15 - - - - - 199, 358

Imbs, *In re*, 10 U. S. Pat. Gaz. 463; Dig. 518 - - 78, 128, 349, 638

Improved Fig Syrup Co. *v.* California Fig Syrup Co. See California Fig Syrup Co. *v.* Improved Fig Syrup Co.

Incandescent Gas Light Co., Limited *v.* New Incandescent Gas Lighting Co., Limited, 76 L. T. N. S. 47 - - - - 280, 281

Ind, Coope & Co., Limited, *In re*, Stirling, J., June 22nd, 1888 - 377, 380

India and China Tea Co. *v.* Teede, W. N. 1871, p. 241 - - - 259

Indiana Bicycle Co., *Ex parte*, 72 U. S. Pat. Gaz. 1654 - - 76, 644

Indiarubber Comb Co., *In re*, 8 U. S. Pat. Gaz. 905; Dig. 476 - 30, 259, 638

Indiarubber Comb Co. *v.* Meyer, cited 8 U. S. Pat. Gaz. 905; Dig. 475 - 28, 30, 259

Indiarubber Comb Co. *v.* Rubber Comb and Jewelry Co., 45 N. Y. Super. Ct. 258 - - - 25, 30, 79, 121, 127, 178, 221, 259, 261

Ing—Jeu PAGE

Ingram *v.* Stiff, 5 Jur. N. S. 947; 33 L. T. O. S. 195; Dig. 175 294, 520
Insurance Oil-Tank Co. *v.* Scott, 33 La. Ann. 946; 39 Amer. Rep. 286 - 61
International Trust Co. *v.* International Loan and Trust Co., 153 Mass. 271 - - - - - - - - - - 258
Investor Publishing Co. of Massachusetts *v.* Dobinson, 72 Fed. Rep. 603 - 295
Iowa Seed Co. *v.* Dorr, 70 Iowa, 481 - - - 105, 261, 306, 311
Isaacs *v.* Daly, 39 N. Y. Super. Ct. 511; Dig. 440 - - 297, 298
Isaacson *v.* Thompson, 41 L. J. Ch. 101; 20 W. R. 196; Dig. 381 - 175, 177, 202, 204, 206, 237, 260

J.

Jackson & Co. *v.* Napper, 35 Ch. D. 162; 4 P. R. 45; 56 L. J. Ch. 406; 55 L. T. N. S. 836; 35 W. R. 228 - 16, 46, 54, 84, 91, 223, 237, 243, 330, 346, 347, 353
Jackson Co., *In re*, 6 P. R. 80; 60 L. T. N. S. 93 - - - 40
Jacobsohn *v.* Blake, 7 Scott N. R. 772; 6 Man. & G. 919; 13 L. J. C. P. 89; 8 Jur. 272; 2 L. T. O. S. 310 - - - - - 569
Jacoby *v.* Whitmore, 49 L. T. N. S. 335; 32 W. R. 18 - 300, 313, 314
Jacoby & Co. *v.* Lopes & Co., 23 U. S. Pat. Gaz. 342 - 639, 650, 654
Jaeger's Sanitary Woollen System Co. *v.* Le Boutillière, 54 N. Y. Sup. Ct. 521 - - - - - - - - - - 88
Jaffray *v.* Emmott, Bacon, V.-C., July 3rd, 1885 - - - 296
James, *In re*. See James *v.* Parry.
James *v.* James, L. R. 13 Eq. 421; 41 L. J. Ch. 353; 26 L. T. N. S. 568; 20 W. R. 434; Dig. 388; Seton, 5th ed. 539 - 25, 31, 55, 58, 279, 283, 288, 289
James *v.* James (2), 60 L. T. N. S. 569 - - - 303, 304, 524, 530
James *v.* Parry, Pearson, J.—31 Ch. D. 340; 3 P. R. 340; 55 L. J. Ch. 214; 54 L. T. N. S. 125; 34 W. R. 347. C. A.—33 Ch. D. 392; 3 P. R. 343; 55 L. J. Ch. 915; 55 L. T. N. S. 415; 35 W. R. 67 37, 372
Jamieson & Co. *v.* Jamieson, Byrne, J.—15 P. R. 169. C. A.—15 P. R. 180 - - - - - - 24, 125, 134, 208, 211, 261
Jaros Hygienic Underwear Co. *v.* Fleece Hygienic Underwear Co., 65 Fed. Rep. 424 - - - - - - - - - 16, 59
Jaros Hygienic Underwear Co. *v.* Simons, 49 Fed. Rep. 276; 58 U. S. Pat. Gaz. 1095 - - - - - - - 123
Jarrahdale Timber Co., Limited *v.* Temperley, 11 Times L. R. 119 - 280
Jarrett *v.* British North Borneo Cigar Co., 37 Sol. J. 116 124, 126, 129, 130, 176
Jarvis *v.* Peck, 10 Paige, 118 - - - - - - 289
Jay *v.* Ladler, 40 Ch. D. 649; 6 P. R. 136; 60 L. T. N. S. 27; 37 W. R. 505 - - - - - - - - - 18, 46, 93, 358
Jeffrey & Co., *In re*, Stirling, J., May 18th, 1888 - - 97, 338, 347
Jelley, Son & Jones, *In re*, 51 L. J. Ch. 639; 46 L. T. N. S. 381; 1 Trade Marks, 346; Dig. 616 - 46, 54, 90, 108, 128, 131, 141, 243, 336, 344, 346, 348, 349, 402
Jennings *v.* Jennings, (1898) 1 Ch. 378; 77 L. T. N. S. 786; 46 W. R. 344 - - - - - - - - - - 312
Jeudwine *v.* Slade, 2 Esp. N. P. C. 572; Dig. 8 - - - - 196

Joh—Kel PAGE

John Harper & Co., Limited *v.* Wright & Butler Lamp Manufacturing Co., Limited, (1896) 1 Ch. 142; 12 P. R. 483; 65 L. J. Ch. 161; 44 W. R. 274 - - - - - - - - - 609

Johnson *v.* Bailey, 11 P. R. 21 - - - - - - 608, 609

Johnson *v.* Bauer, 79 Fed. Rep. 954; 82 Fed. Rep. 954; 53 U.S. App. 437 - 131

Johnson *v.* Helleley, M. R.—34 Beav. 63; 34 L. J. Ch. 32; 10 Jur. N. S. 1041; 11 L. T. N. S. 295; 13 W. R. 38; 5 N. R. 4. C. A.—2 De G. J. & S. 446; 34 L. J. Ch. 179; 11 L. T. N. S. 581; 13 W. R. 220; 5 N. R. 211; Dig. 238 - - - - - 266, 325, 326

Johnson *v.* Raylton, 7 Q. B. D. 438; 50 L. J. Q. B. 735; 45 L. T. N. S. 374; 30 W. R. 350 - - - - - 145, 194, 196

Johnson & Co., *In re*, 2 U. S. Pat. Gaz. 315; Dig. 404 - - 58, 68

Johnson, Philpott & Co., *In re*, North, J., Feb. 21st, 1888 97, 338, 347, 373

Johnston, *In re*, 43 L. T. N. S. 672 - - - - 97, 341, 407

Johnston & Co. *v.* Orr-Ewing & Co. See Orr-Ewing & Co. *v.* Johnston & Co.

Jollie *v.* Jaques, 1 Bl. C. C. 618; Dig. 105 - - - - 298

Jones, *In re*, 53 L. T. N. S. 1 - - - - - - 106, 185

Jones *v.* Hallworth, 14 P. R. 225 - - - - - - 139

Jones & Co., *In re*, Chitty, J., July 20th, 1883 - - - 377, 380

Jones (Orlando) & Co., Limited, *In re*. See Orlando Jones & Co., Limited, *In re*.

Jones Bros. & Co., *In re*, Hall, V.-C., July 10th, 1880 - 244, 338, 404, 549

Josselyn *v.* Swezey & Dart, 15 U. S. Pat. Gaz. 702 - - - 639

Joule & Sons, *In re*. See Thompson *v.* Montgomery.

Julian *v.* Hoosier Drill Co., 75 Ind. 408 - - - - 111, 204

Jurgensen *v.* Alexander, 24 How. Pr. 269; R. Cox, 298; Dig. 211 30, 172

K.

Kaiserbrauerei Beck & Co. *v.* Baltz (J. & P.) Brewing Co., 71 Fed. Rep. 695; 74 Fed. Rep. 222 - - - - - - 16, 61

Kane & Co., *In re*, 9 U. S. Pat. Gaz. 105; Dig. 480 - - 55, 81, 637

Kathreiner's Malz Kaffee Fabriken, &c. *v.* Pastor Kneip Medicine Co., 82 Fed. Rep. 321; 53 U. S. App. 425 - - - - 35, 86, 260

Keasbey *v.* Brooklyn Chemical Works, 142 N. Y. 467; 40 Am. St. Rep. 623 - - - - - - - - - 60, 61, 645

Keene *v.* Harris, 17 Ves. 338 - - - - 294, 297, 306, 307

Keep Bros., *In re*, 26 Ch. D. 187; 54 L. J. Ch. 637; 50 L. T. N. S. 453; 32 W. R. 427 - - - - - - - 97, 341, 347, 409

Keller *v.* Goodrich Co., 117 Ind. 556; 10 Am. St. Rep. 88 121, 135, 222

Kelly *v.* Byles, V.-C.—13 Ch. D. 682; 48 L. J. Ch. 569; 40 L. T. N. S. 623; 28 W. R. 585. C. A.—13 Ch. D. 691; 49 L. J. Ch. 181; 42 L. T. N. S. 338; 28 W. R. 587 - - - - - 296

Kelly *v.* Hooper, 1 Y. & C. Ch. 197 - - - - - 240, 241

Kelly *v.* Hutton, V.-C.—37 L. J. Ch. 297; 17 L. T. N. S. 591. C. A.—L. R. 3 Ch. 703; 37 L. J. Ch. 917; 19 L. T. N. S. 228; 16 W. R. 1182; Dig. 292 - - - - - 10, 13, 14, 293, 297

Ken—Kup PAGE
Kennedy, *Ex parte*, 9 V. L. R. (L.) 335 - - - 130, 348, 349
Kennedy *v.* Lee, 3 Mer. 441; Dig. 27 - - - 309, 319, 324
Kenny *v.* Gillet, 70 Ind. 574 - - - - - 208, 209
Kenrick & Jefferson, *In re*, 7 P. R. 321 - - - - - 347
Kerry *v.* Les Sœurs de l'Asile de la Providence, 2 St. Dig. 726 - - 59
Kerry *v.* Toupin, 60 Fed. Rep. 272; 67 U. S. Pat. Gaz. 931 - - 135
Kidd *v.* Johnson, 100 U. S. 617 - 2, 9, 68, 100, 105, 106, 113, 166, 202, 300
Kidd & Co. *v.* Mills, Johnson & Co., 5 U. S. Pat. Gaz. 337; Dig. 437 - 29, 60, 68, 105, 113, 202, 206
Kimball, *In re*, 11 U. S. Pat. Gaz. 1109; Dig. 553 - - 68, 635
Kinahan, *In re* (1), North, J., Dec. 16th, 1891 - - - 378, 384
Kinahan, *In re* (2), 10 P. R. 393 - - - -2, 46, 109, 336, 378
Kinahan *v.* Bolton, 15 Ir. Ch. 75; Dig. 228 - 77, 115, 118, 123, 166, 170, 202, 205, 222
Kinahan *v.* Kinahan, 45 Ch. D. 78; 8 P. R. 18; 59 L. J. Ch. 705; 62 L. T. N. S. 718; 38 W. R. 655 - - - - - 173
King, *Ex parte* (1), U. S. Pat. Comm. Decis. 1870, 109; Dig. 341 - 634
King, *Ex parte* (2), 46 U. S. Pat. Gaz. 119 - - - 34, 90, 636
King *v.* Midland Railway Co., 17 W. R. 113 - - - 301, 318
King & Co., Limited, *In re*, Kekewich, J.—(1892) 2 Ch. 462; 9 P. R. 350; 62 L. J. Ch. 153; 62 L. T. N. S. 489, 491. C. A.—(1892) 2 Ch. 476; 9 P. R. 357; 62 L. J. Ch. 156; 67 L. T. N. S. 33 - 174, 330, 342, 367, 391
Kingsford & Son, *In re* (1), 6 P. R. 413; 61 L. T. N. S. 426 - - 374
Kingsford & Son, *In re* (2), 15 P. R. 197 - - 342, 405, 502, 504
Kinney, *Ex parte*, 72 U. S. Pat. Gaz. 1349 - - - 95, 644
Kinney *v.* Allen, 1 Hughes, 106; 4 Am. L. T. N. S. 258; Dig. 557 - 63, 79, 125, 637
Kinney *v.* Basch, 1 Trade Marks, 183; Dig. 542 - 73, 75, 79, 127, 169
Kinney Tobacco Co. *v.* Maller, 60 N. Y. Sup. Ct. 340 - - - 135
Kipling, *Ex parte*, 24 U. S. Pat. Gaz. 899 - - - 59, 644
Kirby *v.* Maclaughlin & Co. *v.* Johnston, 72 U. S. Pat. Gaz. 1785 - 645
Kirkpatrick, *In re*, Chitty, J., Feb. 21st, 1890 - - 377, 380, 381
Kirshenboim *v.* Salmon & Gluckstein, (1898) 2 Q. B. 19; 67 L. J. Q. B. 601; 78 L. T. N. S. 658; 46 W. R. 573 - - 147, 148, 563
Kitchin, *In re*. See *Ex parte* Punnett.
Klotz *v.* Hecht, 73 Fed. Rep. 822 - - - 71, 212, 269, 284
Knapp, *Ex parte*, 16 U. S. Pat. Gaz. 318 - 66, 75, 212, 351, 637
Knott *v.* Marshall, W. N. 1894, p. 214 - - - - 4, 139, 183
Knott *v.* Morgan, 2 Keen, 213; Dig. 57 - - - 274, 286, 524
Koehler *v.* Sanders, 55 N. Y. Sup. Ct. 48; 122 N. Y. 65 207, 208, 258, 259
Kohler Manufacturing Co. *v.* Beshore, 53 Fed. Rep. 262; 62 U. S. Pat. Gaz. 592; 59 Fed. Rep. 573; 67 U. S. Pat. Gaz. 678 - 210, 291, 643, 647
König & Ebhardt, *In re*, (1896) 2 Ch. 236; 13 P. R. 449; 65 L. J. Ch. 404; 45 W. R. 230 - - - - - - 345, 346, 347
Krauss *v.* Joseph R. Peebles Sons Co., 58 Fed. Rep. 585 - 183, 207
Kuhn & Co., *In re*, 53 L. J. Ch. 238; Dig. 637 - 54, 95, 97, 203, 207, 241, 242, 245, 339, 345, 346, 347, 353, 373
Kuppenheimer, *Ex parte*, 60 U. S. Pat. Gaz. 439 - 62, 85, 638, 645

Kut—Laz PAGE
Kutnow, *In re*, 10 P. R. 401 - - - - 76, 348, 351, 370
Kyle & Co., *Ex parte*, 57 U. S. Pat. Gaz. 274 - - - - 645
Kynoch & Co., Limited, *In re*, 14 P. R. 905 - - - - 42

L.

Labbatt *v.* Trester, 2 St. Dig. 726 - - - - - - 209
Labouchere *v.* Dawson, L. R. 13 Eq. 322; 41 L. J. Ch. 427; 25 L. T. N. S. 894; 20 W. R. 309; Dig. 385 - - 301, 309, 310, 311, 325, 529
Lacroix *v.* Escobal, 37 La. Ann. 533 - - - - 635, 643
Lacroix *v.* May, 15 Fed. Rep. 236 - - - - - 84
Lafean *v.* Weeks, 177 Pa. 412 - - - - - - - 81
Laferme (Compagnie) *v.* Hendrickx, Dig. 512 - - 15, 115, 178, 237
Laing, *In re*, L. J. N. of C. 1887, p. 102 - - - 40, 72, 371
Laird *v.* Wilder, 9 Bush. 131; 15 Amer. Rep. 707; Dig. 418 - 122, 139, 207, 210
Lamb *v.* Evans, Chitty, J., (1892) 3 Ch. 462; 61 L. J. Ch. 681; 67 L. T. N. S. 523. C. A.—(1893) 1 Ch. 218; 62 L. J. Ch. 404; 68 L. T. N. S. 131; 41 W. R. 405 - - - - - - - 287, 288
Lambert, *In re*, North, J.—5 P. R. 542; 61 L. T. N. S. 138; 37 W. R. 154. C. A.—6 P. R. 344; 61 L. T. N. S. 143 - 337, 342, 346, 348, 363, 364, 369, 370, 372
Lamplough *v.* Balmer, W. N. 1867, p. 293; Dig. 288 - -67, 214, 217
Lamplough *v.* Beedzler, M. R.—24 Sol. J. 672. C. A., Nov. 12th, 1880 - - - - - - - - 59, 124, 128, 356
Lancaster Harbord, *Ex parte*. See Perry Davis & Son, *In re*.
Landreth, *Ex parte*, 31 U. S. Pat. Gaz. 1441 - - - 338, 645
Landreth & Sons *v.* Landreth, 22 Fed. Rep. 41; 29 U. S. Pat. Gaz. 1131 - - - - - - - - 120, 139, 261
Langdon, *Ex parte*, 61 U. S. Pat. Gaz. 286 - - - - 643
Larrabee *v.* Lewis, 67 Ga. 561; 44 Amer. Rep. 735; 25 Alb. L. J. 203 - 59
Lauferty *v.* Wheeler, 63 How. Pr. 488; 11 Daly, 194 - 61, 73, 134, 216
Lautz Bros. *v.* Schultz & Co., 9 U. S. Pat. Gaz. 791; Dig. 496 - - 639
Lavergne *v.* Hooper, Ind. L. R. 8 Mad. 149 - - 21, 110, 185, 202
Lawrence & Co., *In re*, 10 U. S. Pat. Gaz. 163; Dig. 504 - 58, 71, 637
Lawrence Bros., *Ex parte*, 44 L. T. N. S. 98; 29 W. R. 392; Dig. 630 - 98, 188, 343, 356, 372, 373
Lawrence Manufacturing Co. *v.* Lowell, 129 Mass. 325; 37 Amer. Rep. 362 - - - - - - - - - 64, 79
Lawrence Manufacturing Co. *v.* Tennessee Manufacturing Co., 31 Fed. Rep. 776; on appeal, 138 U. S. 537 - - 3, 10, 63, 112, 201, 208, 213
Lawrie *v.* Baker, 2 P. R. 213 - - - - - 134, 162
Lawson *v.* Bank of London, 18 C. B. 84; 25 L. J. C. P. 188; 2 Jur. N. S. 716; 27 L. T. O. S. 134; 4 W. R. 481; Dig. 140 - 88, 160, 256
Lazarus, Schwarz & Lipper, *Ex parte*, 64 U. S. Pat. Gaz. 1396 - 95, 644
Lazenby, *In re*, Malins, V.-C., Feb. 26th, 1880 - - - 379, 381
Lazenby *v.* Lazenby, Seton, 5th ed. 537; cited 41 L. J. Ch. 354; Dig. 160 - - - - - - - - - 31, 53, 135

Laz—Lem PAGE

Lazenby v. White (1), M. R.—Cited L. R. 11 Eq. 448; 40 L. J. Ch. 576; 24 L. T. N. S. 380; 19 W. R. 595; Seton, 5th ed. 537. C. A.—41 L. J. Ch. 354; Dig. 344 - - - 24, 53, 55, 58, 111, 204, 283

Lazenby v. White (2), L. R. 6 Ch. 89; 19 W. R. 291; Dig. 346 - 178

Le Coq, *In re*, Stirling, J., Dec. 19th, 1890 - - - 379, 382

Le Page v. Russia Cement Co., 51 Fed. Rep. 941; 5 U. S. App. 112 - 102, 262, 266

Lea v. Deakin, 11 Biss. 23 - - - - 51, 75, 112, 204

Lea v. Millar, Seton, 5th ed. 546; Dig. 513 - - 10, 51, 73, 112

Lea v. Wolff, N. Y. Sup. Ct.—13 Abb. Pr. N. S. 389; 1 Thomp. & C. 626. N. Y. Sup. Ct.—15 Abb. Pr. N. S. 1; 46 How. Pr. 157; 1 Am. L. T. N. S. 400; Dig. 407 - - - - 68, 76, 123, 135, 222

Leaf, Sons & Co., *In re*, Bacon, V.-C.—33 Ch. D. 477; 3 P. R. 289; 55 L. J. Ch. 740; 55 L. T. N. S. 254; 35 W. R. 99. C. A.—34 Ch. D. 632; 4 P. R. 31; 56 L. J. Ch. 370; 56 L. T. N. S. 288; 35 W. R. 294 - - - - - - - 38, 40, 244

Leahy v. Glover, 10 P. R. 141 - - 4, 10, 115, 128, 135, 145, 189

Leather Cloth Co. v. American Leather Cloth Co., V.-C.—1 H. & M. 271; 32 L. J. Ch. 721; 8 L. T. N. S. 829; 11 W. R. 931; 2 N. R. 481. L. C.—4 De G. J. & S. 137; 33 L. J. Ch. 199; 10 Jur. N. S. 81; 9 L. T. N. S. 558; 12 W. R. 289; 3 N. R. 264. H. L.—11 H. L. C. 523; 35 L. J. Ch. 53; 11 Jur. N. S. 513; 12 L. T. N. S. 742; 13 W. R. 873; 6 N. R. 209; Dig. 223 - 6, 9, 27, 29, 32, 65, 68, 87, 90, 99, 101, 102, 103, 115, 117, 130, 165, 166, 167, 168, 188, 207, 209, 211, 215, 216, 217, 229, 269, 277, 324

Leather Cloth Co. v. Hirschfeld (1), 1 N. R. 551 (and see 1 H. & M. 295); Dig. 214 - - - - - - - - - 215

Leather Cloth Co. v. Hirschfeld (2), 1 H. & M. 295; 11 W. R. 933; Dig. 224 - - - - - - - - - - 227

Leather Cloth Co. v. Hirschfeld (3), L. R. 1 Eq. 299; 13 L. T. N. S. 427; 14 W. R. 78; Dig. 252 - - - - 161, 233, 234

Leather Cloth Co. v. Lorsont, L. R. 9 Eq. 345; 39 L. J. Ch. 86; 21 L. T. N. S. 661; 18 W. R. 572; Dig. 324 - - - 214, 216, 236, 289

Leclanche Battery Co. v. Western Electric Co., 21 Fed. Rep. 538; 23 *ib.* 276 - - - - - - - 55, 56, 135, 176

Ledger v. Ray, Dig. 550 - - - - - - - 128, 295

Lee v. Ehrhart, 19 L. T. N. S. 637 - - - - - - 313

Lee v. Gibbings, 67 L. T. N. S. 263 - - - 275, 277, 280, 281

Lee v. Haley, V.-C.—21 L. T. N. S. 546; 18 W. R. 181. C. A.—L. R. 5 Ch. 155; 39 L. J. Ch. 284; 22 L. T. N. S. 251; 18 W. R. 242; Dig. 325 - - - 122, 128, 175, 178, 206, 213, 224, 253, 256, 526

Leggott v. Barrett, 15 Ch. D. 306; 51 L. J. Ch. 90; 43 L. T. N. S. 641; 28 W. R. 962 - - - - - - 309, 310, 324, 325, 529

Lehigh Valley Coal Co. v. Hamblin, 23 Fed. Rep. 225 - - - 258

Lehmann v. McArthur, L. R. 3 Ch. 496; 37 L. J. Ch. 625; 18 L. T. N. S. 806; 16 W. R. 877 - - - - - - - 205

Leidersdorf v. Flint (1), 8 Biss. 327; 13 Am. L. Rev. 390; 18 Alb. L. J. 429; Dig. 629 - - - - - - - 86, 171, 633, 636

Leidersdorf v. Flint (2), 50 Wisc. 401 - - - - - 136, 232

Lemoine v. Ganton, 2 E. D. Smith, 343; R. Cox, 142; Dig. 125 84, 114, 142, 162

Lemon, Hart & Son, *In re*, Dig. 537 - - - - - - 10

Leo—Lis PAGE

Leonard & Ellis, *In re*. See Leonard & Ellis *v*. Wells & Co.

Leonard & Ellis *v*. Wells & Co., Pearson, J.—53 L. J. Ch. 233; 50 L. T. N. S. 23; 32 W. R. 530. C. A.—26 Ch. D. 288; 53 L. J. Ch. 603; 51 L. T. N. S. 35; 32 W. R. 532 - 34, 41, 46, 48, 52, 55, 57, 58, 61, 67, 84, 88, 89, 112, 134, 200, 247, 285, 332, 347, 353, 356, 368, 369, 371, 372, 406

Leonard & Ellis *v*. White's Golden Lubricator Co., 48 U. S. Pat. Gaz. 1401 - - - - - - - - 57, 61, 67, 223

Leonardt, *In re*, 1 Trade Marks, 316; Dig. 610 - 54, 97, 346, 347, 353, 373

Lever, *In re*, Chitty, J., Dec. 3rd, 1886 - - - - 368, 370

Lever *v*. Bedingfield, Kekewich, J.—15 P. R. 453. C. A.—16 P. R. 3; 80 L. T. N. S. 100 - - - - 128, 135, 236, 237, 239

Lever *v*. Goodwin, Chitty, J.—36 Ch. D. 1; 4 P. R. 492. C. A.—36 Ch. D. 3; 4 P. R. 504; 36 W. R. 177 - 40, 130, 133, 139, 171, 198, 228, 231, 286, 355, 358, 519

Levy *v*. Waitt, 56 Fed. Rep. 1026; 65 U. S. Pat. Gaz. 893; 61 Fed. Rep. 1008; 21 U. S. App. 394; 68 U. S. Pat. Gaz. 1521 4, 87, 183, 185

Levy *v*. Walker, 10 Ch. D. 436; 48 L. J. Ch. 273; 39 L. T. N. S. 654; 27 W. R. 370; Dig. 639 - - 267, 299, 307, 308, 315, 319, 324

Lewis *v*. Klapproth, 11 V. L. R. 214 - 52, 59, 89, 123, 201, 332, 356

Lewis *v*. Langdon, 7 Sim. 421; 4 L. J. Ch. N. S. 258; Dig. 55 - 307, 315, 317, 318, 322, 323, 326

Lewis's *v*. Goodbody, 67 L. T. N. S. 194 - - 65, 119, 207, 219, 333, 366

Lewis's *v*. Lewis, 45 Ch. D. 281; 59 L. J. Ch. 712; 63 L. T. N. S. 84 - 262

Licensed Victuallers' Newspaper Co. *v*. Bingham, North, J.—38 Ch. D. 139; 58 L. J. Ch. 36; 59 L. T. N. S. 187. C. A.—38 Ch. D. 141; 58 L. J. Ch. 37; 59 L. T. N. S. 188; 36 W. R. 433 - 296, 297, 298

Lichtenstein *v*. Mellis, 8 Oreg. 464; 34 Amer. Rep. 592 - - - 271

Liebig's Extract of Meat Co. *v*. Anderson (1), Field, J.—W. N. 1882, p. 147; L. J. N. of C. 1882, p. 119. C. A.—W. N. 1883, p. 185; 28 Sol. J. 105. H. L.—July 16th, 1885 - 55, 58, 111, 130, 260

Liebig's Extract of Meat Co. *v*. Anderson (2), 55 L. T. N. S. 206 283, 530

Liebig's Extract of Meat Co. *v*. Chemists' Co-operative Society, Limited, Kekewich, J.—13 P. R. 635. C. A.—13 P. R. 736 - 130, 135, 139, 288

Liebig's Extract of Meat Co. *v*. Hanbury, 17 L. T. N. S. 298; Dig. 286 - 55, 58, 111, 172

Liggett & Myers' Tobacco Co. *v*. Finzer, 128 U. S. 182; 45 U. S. Pat. Gaz. 943 - - - - - - - - - - 128

Liggett & Myers' Tobacco Co. *v*. Hynes, 20 Fed. Rep. 883; 28 U. S. Pat. Gaz. 809 - - - - - - 2, 81, 130, 131, 136, 637

Liggett & Myers' Tobacco Co. *v*. Reid Tobacco Co., 104 Mo. 53; 24 Am. St. Rep. 313 - - - - - - - - 3, 127, 130

Lincoln, Bennett & Co., *In re*, Chitty, J., April 18th, 1890 - - 381

Lindo *v*. Bensel, 29 N. Y. Sup. Ct. 601 - - - - - - 170

Linoleum Manufacturing Co. *v*. Nairn, 7 Ch. D. 834; 47 L. J. Ch. 430; 38 L. T. N. S. 448; 26 W. R. 463; 1 Trade Marks, 291; Dig. 536 - 51, 55, 56, 58, 177

Linotype Co., *In re*, 14 P. R. 900 - - - - - - 44

Lipton, Limited *v*. Duncans, Times, Nov. 26th, 1898 - - - 280

Lisner, *In re*, 13 U. S. Pat. Gaz. 455; Dig. 600 - - - - - 635

Listman Mill Co. *v*. William Listman Milling Co., 88 Wisc. 334; 43 Am. St. Rep. 907 - - - - - - - 3, 61, 100, 127, 134

Lit—Lym PAGE

Little v. Gallus, 4 App. Div. N. Y. 569 - - - - - 288, 289

Littlejohn & Son v. Mulligan, 3 N. Z. L. R. (Sup. Ct.) 446 - - 233

Liverpool Household Stores Association v. Smith, 37 Ch. D. 170; 52 L. J. Ch. 85; 58 L. T. N. S. 204 - - - - - 280, 281

Llewellyn v. Rutherford, L. R. 10 C. P. 456; 44 L. J. C. P. 281; 32 L. T. N. S. 610; Dig. 462 - - - - - 302, 306, 308

Lloyd, *In re*, 10 P. R. 281 - - - - - - 40, 371

Lloyd v. Bottomley, 27 Ch. D. 646; 54 L. J. Ch. 66; 51 L. T. N. S. 898 - - - - - 52, 89, 332, 339, 353, 356, 368, 370

Lloyd & Sons, *In re*. See Lloyd v. Bottomley.

Lochgelly Co., Limited v. Lumphinnans Iron Co., Ct. of Sess. Cas. 4th Ser. VI. 482; 16 Scot. L. Rep. 268 - - - - 5, 73, 241

Lockett v. Lockett, L. R. 4 Ch. 341; 38 L. J. Ch. 290; 17 W. R. 476 - 225

Lockwood v. Bostwick, 2 Daly, 521; R. Cox, 555; Dig. 319 - 60, 67, 103, 130, 137

Loftus, *In re*, (1894) 1 Ch. 193; 11 P. R. 29; 63 L. J. Ch. 52; 69 L. T. N. S. 690; 42 W. R. 251 - - - 78, 124, 331, 335, 349

London Assurance v. London and Westminster Assurance Corporation, 32 L. J. Ch. 664; 9 Jur. N. S. 497; 8 L. T. N. S. 497; Dig. 221 - 256

London and County Banking Co. v. Hampshire and North Wilts Bank, Dig. 618 - - - - - - - 130, 258

London and Provincial Law Assurance Society v. London and Provincial Joint Stock Life Assurance Co., 17 L. J. Ch. 37; 11 Jur. 938; 10 L. T. O. S. 127; Dig. 88 - - - - - - - 256

London Chemical Co., Limited, *In re*, North, J., March 22nd, 1895 - 383

London General Omnibus Co., Limited v. Felton, 12 Times L. R. 213 - 286

London Road Car Co. v. Era Omnibus Association (1), Times, June 23rd, 1898 - - - - - - - - - 131, 286

London Road Car Co. v. Era Omnibus Association (2), Times, April 28th, 1899 - - - - - - - - - 131, 286

Londonderry (Marquis of) v. Russell, Bacon, V.-C.—2 Times L. R. 843. C. A.—3 Times L. R. 360 - - - - - - 205, 256

Longman v. Tripp, 2 Bos. & P. N. R. 67; Dig. 12 - 105, 297, 306, 307

Longman v. Winchester, 16 Ves. 269; Dig. 15 - - - - 292

Loog (Hermann), Limited v. Bean. See Hermann Loog, Limited.

Lorillard v. Pride, 28 Fed. Rep. 434; 36 U. S. Pat. Gaz. 1150 - 56, 82, 87, 637

Lorillard v. Wight, 15 Fed. Rep. 383 - - - - 82, 136, 637

Low v. Fells, 35 Fed. Rep. 361 - - - - - - 207, 230

Low v. Hart, 90 N. Y. 457 - - - - - - 116, 189

Lowell Manufacturing Co. v. Larned, Codd. Dig. 341; Dig. 428 - 82, 638

Lown v. Ohio Coffee and Spice Co., 73 U. S. Pat. Gaz. 1136 - - 645

Lucke v. Webster, Jessel, M. R., April 4th, 1879 - 36, 135, 235, 353

Lumley v. Wagner, V.-C.—5 De G. & Sm. 485. L. C.—1 De G. M. & G. 604; 21 L. J. Ch. 898; 16 Jur. 871; Dig. 112 - - - 193

Lutz, *Ex parte*, 33 U. S. Pat. Gaz. 1389 - - - - - 634

Luyties v. Hollender (1), 22 Bl. C. C. 413; 21 Fed. Rep. 281 - - 647

Luyties v. Hollender (2), 24 Bl. C. C. 353; 30 Fed. Rep. 632; 40 U. S. Pat. Gaz. 119 - - - - - - - - - - 10

Lyman v. Burns, 47 U. S. Pat. Gaz. 660 - - - - - 61

Lyn—Mag PAGE

Lyndon, *In re*, Pearson, J.—32 Ch. D. 109; 54 L. J. Ch. 972; 54 L. T. N. S. 405. C. A.—32 Ch. D. 115; 3 P. R. 102; 55 L. J. Ch. 456; 54 L. T. N. S. 407; 34 W. R. 403 - 46, 89, 90, 124, 328, 336, 344, 348, 349

Lyon, Dupuy & Co., *Ex parte*, 28 U. S. Pat. Gaz. 191 - - 634, 645

Lyric Theatre, Limited *v.* Cordingley, 90 L. T. (Journal) 122 - - 271

Lysaght, *In re*, Dig. 623 - - - - - - - 336, 375

M.

McAndrew *v.* Bassett, V.-C.—33 L. J. Ch. 561; 10 Jur. N. S. 492; 10 L. T. N. S. 65, 442; 4 N. R. 12. L. C.—4 De G. J. & S. 380; 33 L. J. Ch. 566; 10 Jur. N. S. 550; 10 L. T. N. S. 442; 12 W. R. 777; 4 N. R. 123; Dig. 234 - 9, 17, 19, 29, 33, 60, 72, 73, 74, 87, 109, 117, 120, 161, 165, 166, 167, 170, 188, 199, 229, 235, 240, 247, 254, 293, 355, 517

McCall *v.* Theal, 28 Grant, Up. Can. Ch. 48 - 59, 88, 139, 223, 357

McCann *v.* Anthony, 21 Mo. App. 83; 38 U. S. Pat. Gaz. 333 - 119, 130, 135, 138

McCardel *v.* Peck, 28 How. P. R. 120; R. Cox, 312; Dig. 233 - - 272

McCartney *v.* Garnhart, 45 Mo. 593; 100 Amer. Dec. 397; Dig. 332 - - - - - - - - - 123, 138

McCord *v.* Williams, 96 Penn. St. 78 - - - - - - 314

McCormick *v.* McCubbin, Ct. of Sess. Cas. 1st Ser. I. 541 (new ed. 496); Dig. 35 - - - - - - 297, 306, 307, 319, 322

McDonald *v.* Richardson, 1 Giff. 81; 5 Jur. N. S. 9; 32 L. T. O. S. 237; Dig. 165 - - - - - - - 307, 321, 322

McElwee *v.* Blackwell, 15 U. S. Pat. Gaz. 658 - - 634, 636, 640

McGowan Bros. Pump and Machine Co. *v.* McGowan, 2 Cinc. 313; Dig. 406 - - - - - - 193, 258, 261, 300, 315, 317, 323

McIntyre *v.* Belcher, 14 C. B. N. S. 654; 32 L. J. C. P. 254; 10 Jur. N. S. 239; 8 L. T. N. S. 461; 11 W. R. 889; 2 N. R. 324; Dig 220 - 318

McLean *v.* Fleming, 96 U. S. 245; 13 U. S. Pat. Gaz. 913; Dig. 580 - 2, 13, 22, 24, 25, 29, 31, 68, 86, 88, 101, 107, 119, 120, 125, 127, 130, 132, 136, 166, 171, 184, 204, 207, 221, 224, 230, 239, 286, 517

McMurdo *v.* Smith, 7 T. R. 518 - - - - - - - 624

McNair *v.* Cleave, 10 Phila. 155 - - - - - 207, 258

McSymons' Stores, Limited *v.* Shuttleworth, 15 P. R. 748 - 154, 216, 219, 390

McVeagh *v.* Valencia Cigar Factory, 32 U. S. Pat. Gaz. 1124 - 9, 99, 343

McVey *v.* Brendel, 144 Penn. St. 235; 27 Am. St. Rep. 625 62, 85, 351, 638

Macintosh, *In re*, Stirling, J., Nov. 29th, 1889 - - - 377, 380

Mack *v.* Petter, L. R. 14 Eq. 431; 41 L. J. Ch. 781; 20 W. R. 964; Dig. 403 - - - - - - - - - 297, 520

Mackinnon *v.* Thompson, 5 Can. Leg. News, 396; 26 Alb. L. J. 523 35, 300

Magee Furnace Co. *v.* Le Barron, 127 Mass. 115 - 123, 223, 254

Magnolia Metal Co., *In re*, Kekewich, J.—(1897) 2 Ch. 371; 66 L. J. Ch. 312; 76 L. T. N. S. 190; 45 W. R. 406. C. A.—(1897) 2 Ch. 385; 14 P. R. 621; 66 L. J. Ch. 598; 76 L. T. N. S. 672 - 9, 40, 43, 44, 47, 57, 61, 112, 250, 334, 342, 343, 371

Magnolia Metal Co. *v.* Atlas Metal Co., Collins, J.—14 P. R. 389. C. A.—14 P. R. 400 - - 51, 55, 57, 88, 178, 233, 238, 250, 514, 515

Magnolia Metal Co. *v.* Tandem Smelting Co., Ridley, J.—15 P. R. 701. C. A.—15 P. R. 715 - - - - - - 55, 254

PAGE

Mai—Mel

Maignen, *In re*, 28 W. R. 759 - - - - - - 31, 244

Mallan *v.* Davis, 3 Times L. R. 221 - - - 175, 204, 285

Manchester Brewery Co. *v.* North Cheshire and Manchester Brewery Co., (1898) 1 Ch. 539; 67 L. J. Ch. 351; 78 L. T. N. S. 537; 46 W. R. 515; H. L. 15 Times L. R. 110 - - - - 254, 257, 259

Manhattan Medicine Co. *v.* Wood, U. S. C. C., Dt. of Me.—4 Cliff. 461; 14 U. S. Pat. Gaz. 519; Dig. 628. U. S. Sup. Ct.—108 U. S. 218; 28 Alb. L. J. 89; 23 U. S. Pat. Gaz. 1925 - 5, 13, 15, 31, 81, 101, 102, 109, 113, 130, 131, 187, 194, 202, 207, 212, 290

Manitowoc Manufacturing Co. *v.* Dickerman, 57 U. S. Pat. Gaz. 1720 - 647

Manockji Petit Manufacturing Co. *v.* Mahalaxmi Spinning and Weaving Co., Limited, Ind. L. R. 10 Bomb. 617 - - - 132, 234

Marcovitch *v.* Bramble, Wilkins & Co., Dig. 595 - - 68, 180

Marks *v.* Conservative Newspaper Co., Limited, 3 Times L. R. 244 - 280

Marks & Tellefsen, *In re*, 79 L. T. (Journal) 247 - 329, 345, 349

Marsching & Co., *Ex parte*, 15 U. S. Pat. Gaz. 294 58, 66, 75, 212, 351, 637

Marsh *v.* Billings, 7 Cush. 322; 54 Amer. Dec. 723; 14 Monthly L. R. (4 N. S.) 664; R. Cox, 118; Dig. 111 - - - - 274, 286

Marshall *v.* Hawkins, 4 N. Z. L. R. Sup. Ct. 59 - - - 56, 129, 135

Marshall *v.* Marshall, 38 Ch. D. 330; 59 L. T. N. S. 484 - - 173

Marshall *v.* Pinkham, 52 Wisc. 572; 38 Amer. Rep. 756 - 24, 59, 202

Marshall *v.* Ross, L. R. 8 Eq. 651; 39 L. J. Ch. 225; 21 L. T. N. S. 260; 17 W. R. 1086; Dig. 316 - - - 137, 150, 216, 220, 569

Marshall *v.* Watson, 25 Beav. 501; Dig. 162 - - - 307, 326

Martell *v.* Paarl Berg Wine and Spirit Co., 12 Cape of Good Hope, 326 - 129, 135, 256

Marten *v.* Van Schaick, 4 Paige, 479 - - - - - - 319

Martha Washington Creamery Buttered Flour Co. *v.* Martien, 44 Fed. Rep. 473 - - - - - - - - - 201

Martin *v.* Wright, 6 Sim. 297; Dig. 52 - - - - 275, 278

Mason *v.* Queen, 23 Scot. L. Rep. 641 - - - - 273, 302

Massam *v.* Thorley's Cattle Food Co. (1), 6 Ch. D. 574; 46 L. J. Ch. 707; 36 L. T. N. S. 848; Dig. 560 - - - - - - 24, 55

Massam *v.* Thorley's Cattle Food Co. (2), 14 Ch. D. 748; 42 L. T. N. S. 851; 28 W. R. 966 - 2, 25, 27, 29, 30, 31, 98, 101, 113, 128, 178, 211, 258, 285, 288, 528

Matsell *v.* Flanagan, 2 Abb. Pr. N. S. 459; R. Cox, 367; Dig. 270 - 294

Matthews *v.* Hodgson, 2 Times L. R. 899 - - 267, 270, 319

Mauger *v.* Dick, 55 How. Pr. 132 - - - - - - 279

Maxwell *v.* Hogg (and see Hogg *v.* Maxwell), V.-C.—12 Jur. N. S. 916; 15 L. T. N. S. 204; 15 W. R. 84. C. A.—L. R. 2 Ch. 307; 36 L. J. Ch. 433; 16 L. T. N. S. 130; 15 W. R. 467; Dig. 264 - 14, 19, 88, 109, 161, 166, 199, 247, 276, 279, 298, 355

May & Baker, Limited, *In re*, North, J., May 1st, 1891 - - 383

Meaby & Co. *v.* Triticine Limited, 15 P. R. 1 - 40, 55, 214, 371, 400

Meeus, *In re*, (1891) 1 Ch. 41; 8 P. R. 25; 60 L. J. Ch. 96; 63 L. T. N. S. 610; 39 W. R. 216 - - 16, 46, 84, 336, 347, 353, 354

Meikle, *In re*, 24 W. R. 1067; 1 Trade Marks, 22; Dig. 515 - 163, 339, 392, 406

Melachrino (M.) & Co. *v.* Melachrino (R.) & Co., Chitty, J., May 29th, 1888 - 122, 129, 211, 216, 221, 223, 224, 261, 266, 283, 336, 358, 525

Mel—Mis PAGE
Melachrino (M.) & Co. *v.* Melachrino Egyptian Cigarette Co., 4 P. R. 215 - - - - - 122, 222, 223, 261, 263, 265, 336, 358
Mellersh *v.* Keen, 27 Beav. 236; 28 Beav. 453; Dig. 177 - 225, 326
Mellin *v.* White, Romer, J.—(1894) 3 Ch. 276; 70 L. T. N. S. 775. C. A. —(1894) 3 Ch. 279; 63 L. J. Ch. 666; 70 L. T. N. S. 775; 42 W. R. 549. H. L.—(1895) A. C. 154; 64 L. J. Ch. 308; 72 L. T. N. S. 334; 43 W. R. 353 - - - - - - - 279, 280, 282
Melton & Co., *In re*, North, J., May 23rd, 1890 - - - - 382
Meneely *v.* Meneely, N. Y. Sup. Ct.—8 N. Y. Sup. Ct. 673; 2 Thomp. & C. 540. N. Y. Ct. of App.—62 N. Y. 427; 20 Amer. Rep. 489; 2 Amer. L. T. N. S. 482; Dig. 472 - - - - 24, 30
Menendez *v.* Holt. See Holt *v.* Menendez.
Merchant Banking Co. of London *v.* Merchants' Joint Stock Bank, Limited, 9 Ch. D. 560; 47 L. J. Ch. 828; 26 W. R. 847; Dig. 619 9, 90, 258, 260
Meriden Britannia Co. *v.* Parker, 39 Conn. 450; 12 Amer. Rep. 401; 13 Am. L. Reg. N. S. 153; Dig. 409 - 29, 30, 122, 139, 172, 211, 222
Merriam *v.* Famous Shoe and Clothing Co., 47 Fed. Rep. 411 - 36, 57
Merriam *v.* Holloway Publishing Co., 43 Fed. Rep. 450; 53 U. S. Pat. Gaz. 1409 - - - - - - - - 57, 248
Merriam *v.* Texas Siftings Publishing Co., 49 Fed. Rep. 944 - 36, 57
Merrimack Manufacturing Co. *v.* Garner, 2 Abb. Pr. 318; 4 E. D. Smith, 387; R. Cox, 155; Dig. 134 - - - - - - - 176
Merry *v.* Hoopes, 111 N. Y. 415 - - - - 3, 64, 100, 299
Merryweather *v.* Moore, (1892) 2 Ch. 518; 61 L. J. Ch. 505; 66 L. T. N. S. 719; 40 W. R. 540 - - - - - - - 288
Messer *v.* Fadettes, 168 Mass. 140; 60 Am. St. Rep. 371 102, 103, 208
Messerole *v.* Tynberg, 4 Abb. Pr. N. S. 410; 36 How. Pr. 14; R. Cox, 479; Dig. 300 - - - - - - - - 29, 60
Metcalf, *In re*. See Anglo-Swiss Condensed Milk Co. *v.* Metcalf.
Metcalfe *v.* Brand, 86 Ky. 331; 9 Am. St. Rep. 282 - 18, 75, 76, 100, 130
Metzler *v.* Wood, V.-C.—8 Ch. D. 608. C. A.—8 Ch. D. 606; 47 L. J. Ch. 625; 38 L. T. N. S. 541; 26 W. R. 577; Dig. 587 121, 210, 224, 237, 294
Meyerstein & Co., *In re*, 43 Ch. D. 604; 7 P. R. 114; 59 L. J. Ch. 401; 62 L. T. N. S. 526; 38 W. R. 440 - - - -42, 333, 349
Mickle *v.* Emery, Seton, 5th ed. 534; Dig. 495 - - - - 517
Midland Electric Light and Power Co. *v.* Brush Midland Electric Light and Power Co., 26 Sol. J. 465 - - - - - - 258
Miller Tobacco Manufactory *v.* Commerce, 45 N. J. Law, 123; 28 Alb. L. J. 236 - - - - - - - - - 120, 139
Milliken *v.* Dart, 33 N. Y. Sup. Ct. 24 - - - - - 10
Millington *v.* Fox, 3 My. & Cr. 338; Dig. 63 - 8, 12, 33, 76, 77, 118, 165, 166, 188, 207, 235, 240, 294, 316, 357, 517
Milne & Co., *In re* (1), Chitty, J., July 6th, 1883 - - - 350
Milne & Co., *In re* (2), Kekewich, J., April 15th, 1890 - - 379, 384
Milner *v.* Reed, Bryce on Trade Marks, 90; Dig. 328 - 260, 305, 323
Mississippi Glass Co., *Ex parte*, 64 U. S. Pat. Gaz. 713 - - 76, 644
Missouri (State of) *v.* Gibbs, 56 Mo. 133; Dig. 436 - - 6, 84, 166

Mit—Mor PAGE

Mitchell, *In re* (1), 7 Ch. D. 36; 46 L. J. Ch. 876; 26 W. R. 326; 1 Trade Marks, 55; Dig. 568 - - - - - 8, 23, 76, 78, 336

Mitchell, *In re* (2), W. N. 1878, p. 101; 1 Trade Marks, 317; Dig. 611 - 54, 347, 353, 373

Mitchell *v.* Henry, 15 Ch. D. 181; 43 L. T. N. S. 186 - 64, 81, 125, 128, 176, 338, 370, 404

Mitchell *v.* Read (1), 61 N. Y. 128 - - - - - 321

Mitchell *v.* Read (2), 26 N. Y. Sup. Ct. 418 - - 301, 302, 346

Mitchell & Co., *In re*, 28 Ch. 666; 54 L. J. Ch. 216, 809; 51 L. T. N. S. 900; 52 L. T. N. S. 575; 33 W. R. 148, 408 - - 97, 98, 347, 365

Mitchell & Co. *v.* Joshua Brothers, 17 V. L. R. 736; 13 A. L. T. 131 - 100, 131, 139, 356

Moeller *v.* Schreiber, *In re*, Kay, J., March 7th, 1888 - - 377, 380

Moet, *In re*, 7 P. R. 226 - - - - - - 341, 342, 407, 412

Moet *v.* Clybouw, Dig. 533 - - - 33, 77, 109, 122, 222, 265

Moet *v.* Couston, 33 Beav. 578; 10 L. T. N. S. 395; 4 N. R. 86; Dig. 235 12, 33, 120, 166, 171, 172, 220, 229, 231, 232, 235, 240

Moet *v.* Pickering, Fry, J.—6 Ch. D. 770. C. A.—8 Ch. D. 372; 47 L. J. Ch. 527; 38 L. T. N. S. 799; 26 W. R. 637; Dig. 567 - 33, 77, 109, 191, 192, 235, 236, 518

Moet & Chandon, *In re*, Pearson, J., Aug. 19th, 1882 - - 379, 382

Mogford *v.* Courtenay, 45 L. T. N. S. 303; 29 W. R. 864 - 121, 265, 267, 324

Montague *v.* Moore, Seton, 5th ed. 539; Dig. 242 - 260, 268, 524

Montgomerie *v.* Donald & Co., Ct. Sess. Cas. 4th Ser. XI. 506; 21 Scot. L. Rep. 338 - - - - - - - 5, 59, 75, 187

Montgomery *v.* Thompson. See Thompson *v.* Montgomery.

Moodie, *Ex parte*, 28 U. S. Pat. Gaz. 1271; 30 U. S. Pat. Gaz. 97 - 634

Moodie *v.* Butterworth. See Moodie, *Ex parte.*

Moore *v.* Craven, L. R. 7 Ch. 94, n. - - - - - - 225

Moorman *v.* Hoge, 2 Sawy. 78; 4 Am. L. T. 217; 6 Am. L. Rev. 365; Dig. 373 - - - - - 81, 122, 139, 201, 634, 637

Morgan *v.* McAdam, 36 L. J. Ch. 228; 15 L. T. N. S. 348; Dig. 267 - 65, 214, 215, 216, 235, 563

Morgan *v.* Perhamus, 36 Ohio St. 517 - - - - - 306, 313

Morgan *v.* Rogers, 19 Fed. Rep. 596; 26 U. S. Pat. Gaz. 1113 - 31, 99, 109, 201, 300, 342

Morgan *v.* Schuyler, 79 N. Y. 490; 21 Alb. L. J. 154 - 122, 285, 325

Morgan's Sons' Co. *v.* Hunkele, Schwachhofer, Troxell, Wendover. See Enoch Morgan's Sons' Co. *v.* Hunkele, Schwachhofer, Troxell, Wendover.

Morison *v.* Moat, V.-C.—9 Hare, 241; 20 L. J. Ch. 513; 15 Jur. 787. C. A.—21 L. J. Ch. 248; 16 Jur. 321; Dig. 110 - 202, 288, 289, 522

Morison *v.* Salmon, 2 Man. & G. 385; 2 Scott, N. R. 449; 10 L. J. C. P. 91; Dig. 68 - - - - 115, 116, 158, 159, 162, 233, 235

Morris *v.* Moss, 25 L. J. Ch. 194; Dig. 131 - - - 306, 308

Morrison *v.* Case, 9 Bl. C. C. 548; 2 U. S. Pat. Gaz. 544; Dig. 394 132, 638

Morse *v.* Cornwell. See Morse *v.* Worrell.

Morse *v.* Hall, 109 Mass. 409 - - - - - - - 315

Morse *v.* Martin, Quebec Sup. Ct., Johnson, J., Feb. 28th, 1882. Quebec Q. B.—3 Dorion, 353. Can. Sup. Ct.—Cas. Dig. 509 - 88, 128, 357, 358

Mor—Neb PAGE

Morse *v.* Worrell, 10 Phila. 168; 9 Am. L. Rev. 368; Codd. Dig. 242; Dig. 445 - - - - - - - 35, 60, 138

Moses *v.* Sargood, Ewen & Co., Dig. 636 - 3, 64, 91, 130, 131, 136, 141

Mossop *v.* Mason, Upper Can. Ch.—16 Grant, Up. Can. Ch. 302. V.-C. —17 Grant, Up. Can. Ch. 360. C. A.—18 Grant, Up. Can. Ch. 453 - 273, 284, 309, 315

Motley *v.* Downman, 3 My. & Cr. 1; 6 L. J. Ch. N. S. 308; Dig. 61 - 33, 76, 77, 116, 166, 176, 182, 202

Mouson & Co., *In re.* See Mouson & Co. *v.* Boehm.

Mouson & Co. *v.* Boehm, 26 Ch. D. 398; 53 L. J. Ch. 932; 50 L. T. N. S. 784; 32 W. R. 612 - 88, 110, 111, 143, 197, 205, 243, 346, 347, 355, 358, 372

Moxie Nerve Food Co. *v.* ——, 43 U. S. Pat. Gaz. 888 - 59, 120

Moxie Nerve Food Co. *v.* Baumbach, 32 Fed. Rep. 205 - 122, 139, 212, 223, 224

Moxie Nerve Food Co. *v.* Beach, 33 Fed. Rep. 248 - - - 139

Mulkern *v.* Ward, L. R. 13 Eq. 619; 41 L. J. Ch. 464; 26 L. T. N. S. 831 - - - - - - - - - - 279

Münch, *In re,* 50 L. T. N. S. 12 - - - - 16, 46, 84, 347

Munro *v.* Beadle, 46 U. S. Pat. Gaz. 448; 62 N. Y. Sup. Ct. 312 13, 294, 298

Munro *v.* Smith, 62 N. Y. Sup. Ct. 419 - - - - - 13, 294

Munro *v.* Tonsey, 129 N. Y. 38 - - - - - 13, 294, 298

Munsey *v.* Butterfield, 133 Mass. 492 - - - - - 310

Muntz, *In re,* Kay, J., Dec. 13th, 1883 - - - - 378, 381

Murphy & Co., *In re,* 7 P. R. 163 - - - 332, 345, 349, 376

Musselman & Clarkson's Appeal, *In re,* 62 Penn. St. 81 - - - 321

Myers *v.* Baker, 3 H. & N. 802; 28 L. J. Ex. 90; 32 L. T. O. S. 133; 7 W. R. 66; Dig. 167 - - - - - - 116, 157, 218, 390

Myers *v.* Kalamazoo Buggy Co., 54 Mich. 215; 52 Amer. Rep. 811 - 258, 309, 319

N.

Nähmaschinen Fabrik Vormals Frister & Rossmann Actiengesellschaft *v.* Singer Manufacturing Co., 10 P. R. 310 - - - 280, 281

National Folding Box & Paper Co. *v.* National Folding Box Co., Limited, 43 W. R. 156 - - - - - - - 84, 122, 176, 257

National Starch Manufacturing Co. *v.* Munn's Patent Maizena & Starch Co., 13 N. S. W. Rep. (Eq.) 101; 15 N. S. W. Rep. (Eq.) 35; P. C. (1894) A. C. 275; 11 P. R. 281; 63 L. J. P. C. 112 - 10, 51, 111, 203, 218, 372

National United States Stamp Delivery Co., *Ex parte,* 60 U. S. Pat. Gaz. 893 - - - - - - - - - 645

National Wholesale Tea Supply Association, Limited, *In re,* 10 P. R. 164 - - - - - - - - 377, 379, 383, 384

Native Guano Co., Limited *v.* Sewage Manure Co., Bacon, V.-C.—W. N. 1886, p. 90; L. J. N. of C. 1886, p. 73. Kay, J.—4 P. R. 473. C. A. —8 P. R. 125; H. L. 8 P. R. 132 - - - 8, 55, 59, 284

Nebraska Loan & Trust Co. *v.* Nine, 27 Nebr. 507; 20 Am. St. Rep. 686 - - - - - - - - - 75, 258

Nei—Old PAGE

Neilson *v.* Betts, L. R. 5 H. L. 1; 40 L. J. Ch. 317; 19 W. R. 1121 - - - - - - - 171, 232

Neva Stearine Co. *v.* Mowling, 9 V. L. R. (E.) 98 10, 51, 112, 203, 205, 249

New England Awl & Needle Co. *v.* Marlborough Awl & Needle Co., 168 Mass. 154; 60 Am. St. Rep. 377 - - 134, 139, 140, 253, 286

New Home Sewing Machine Co. *v.* Bloomingdale, 59 Fed. Rep. 284 61, 86

New Ormonde Cycle Co., Limited, *In re*, (1896) 2 Ch. 520; 13 P. R. 475; 65 L. J. Ch. 785; 75 L. T. N. S. 50 - - 365, 374, 379

New York & Rosendale Cement Co. *v.* Coplay Cement Co., 44 Fed. Rep. 277; 45 Fed. Rep. 212; 53 U. S. Pat. Gaz. 1408 - - 59, 74, 75

New York Consolidated Card Co. *v.* Union Playing Card Co., 46 N. Y. Sup. Ct. 611 - - - - - - - - 216

Newbery *v.* James, 2 Mer. 446; Dig. 24 - - - 288, 290

Newby *v.* Oregon Central Railway Co., Deady, 609; 9 Amer. Rep. 331, n.; Dig. 318 - - - - - - - 257

Newhaven Patent Rolling Spring Bed Co. *v.* Farren, 51 Conn. 324 - 128

Newling *v.* Dobell, 38 L. J. Ch. 111; 19 L. T. N. S. 408; Dig. 303 - 306, 313

Newman *v.* Alvord, N. Y. Sup. Ct.—49 Barb. 588; 35 How. Pr. 108; R. Cox, 404. N. Y. Comm. of App.—51 N. Y. 189; 10 Amer. Rep. 588; Dig. 282 - - - - - - - 67, 73, 188

Newman *v.* Pinto, 4 P. R. 508; 57 L. T. N. S. 31 16, 46, 84, 209, 212, 223, 235, 236, 239, 336, 347, 353, 354, 358

Newton *v.* Cowie, 4 Bing. 234 - - - - - - - 624

Nichol *v.* Godts, 10 Ex. 191; 23 L. J. Ex. 314; 2 C. L. Rep. 1468; 23 L. T. O. S. 162 - - - - - - - 195

Nicholls *v.* Kimpton, 3 Times L. R. 674 - - - 221, 224, 243, 261

Nixey *v.* Roffey, W. N. 1870, p. 227; Dig. 343 - - 214, 217, 236

Noera *v.* Williams Manufacturing Co., 158 Mass. 110 - - 204, 249

Normal Co., Limited, *In re*, Chitty, J.—35 Ch. D. 231; 3 P. R. 269; 56 L. J. Ch. 513; 56 L. T. N. S. 246. C. A.—35 Ch. D. 238; 4 P. R. 123; 56 L. J. Ch. 519; 56 L. T. N. S. 250; 35 W. R. 464 163, 330, 359, 369

North Cheshire & Manchester Brewery Co. *v.* Manchester Brewery Co. See Manchester Brewery Co. *v.* North Cheshire & Manchester Brewery Co.

North London Railway Co. *v.* Great Northern Railway Co., 11 Q. B. D. 30; 52 L. J. Q. B. 380; 48 L. T. N. S. 695; 31 W. R. 490 - - 280

Nunn *v.* D'Albuquerque, 34 Beav. 595 - - - 230, 238, 240

Nuthall *v.* Vining, 28 W. R. 330 - - 88, 89, 124, 126, 145, 338, 348, 355

O.

Oakes *v.* Tonsmierre (1), 4 Woods, 547 - - - 99, 102, 324, 343

Oakes *v.* Tonsmierre (2), 49 Fed. Rep. 447 - 99, 102, 120, 192, 231

Oakey, *In re*, North, J., Aug. 26th, 1893 - - - - - 380

Oakey & Sons *v.* Dalton, 35 Ch. D. 700; 4 P. R. 313; 57 L. T. N. S. 18; 35 W. R. 709 - - - - - - - - 166, 181

Oldham *v.* James, M. R.—13 Ir. Ch. 393. C. A.—14 Ir. Ch. 81; Dig. 209 - - - - - - - - 194, 202

Oli—Pal PAGE

Olin *v.* Bate, 98 Ill. 55; 38 Amer. Rep. 78 - - - - 260

Oliphant *v.* Salem Flouring Mills, 5 Sawy. 128 - - - - 218

Oliver, *Ex parte*, 18 U. S. Pat. Gaz. 923 - - - - 75, 644

Orlando Jones & Co., Limited, *In re*, 12 P. R. 278 - 377, 378, 379, 380

O'Rourke *v.* Central City Soap Co., 26 Fed. Rep. 576; 35 U. S. Pat. Gaz. 875 - - - - - 61, 87, 142, 208, 213

Orr *v.* Diaper, 4 Ch. D. 92; 46 L. J. Ch. 41; 35 L. T. N. S. 468; 25 W. R. 23; Dig. 519 - - - - 191, 198, 225, 227, 286

Orr-Ewing *v.* Chooneelall Mullick, Cor. 150; Dig. 241 - 15, 84, 140, 172

Orr-Ewing *v.* Registrar of Trade Marks. See Orr-Ewing & Co., *In re* (1).

Orr-Ewing & Co., *In re* (1), V.-C.—8 Ch. D. 798; 47 L. J. Ch. 180; 38 L. T. N. S. 313; 26 W. R. 259; 1 Trade Marks, 211. C. A.—8 Ch. D. 794; 47 L. J. Ch. 807; 38 L. T. N. S. 695; 26 W. R. 777; Dig. 586. H. L.—4 App. Cas. 479; 48 L. J. Ch. 707; 41 L. T. N. S. 239; 28 W. R. 17 - 22, 23, 96, 198, 329, 332, 336, 338, 339, 342, 346, 348, 349, 353, 355, 357, 548, 549

Orr-Ewing & Co., *In re* (2), 28 W. R. 412 - - 163, 244, 344, 549

Orr-Ewing & Co. *v.* Grant, Smith & Co., 2 Hyde, 185 - 2, 84, 86, 111, 118, 119, 166, 220, 221

Orr-Ewing & Co. *v.* Johnson & Co., Fry, J.—13 Ch. D. 434; 40 L. T. N. S. 307; 27 W. R. 575. C. A.—13 Ch. D. 450; 42 L. T. N. S. 67; 28 W. R. 330. H. L.—7 App. Cas. 219; 51 L. J. Ch. 797; 46 L. T. N. S. 216; Dig. 646 - 12, 54, 116, 119, 120, 121, 124, 131, 132, 170, 178, 198, 223, 353, 354, 515, 549

Osborne, Garrett & Co. *v.* Parton, Son & Co., Bacon, V.-C., July 25th, 1884 - - - - - - - - - - 193

Osgood *v.* Allen, 1 Holmes, 185; 6 Am. L. T. 20; 3 U. S. Pat. Gaz. 124; Dig. 410 - - - - - - 3, 63, 75, 296, 297, 298

Osgood *v.* Rockwood, 11 Bl. C. C. 310; Dig. 430 - - 636, 640

Otard, Dupuy & Co. *v.* Otard de Montebello Cognac Co., Limited, Stirling, J.—9 Times L. R. 295. C. A.—10 Times L. R. 67 121, 123, 221, 261, 263

Ottoman Cahvey Co. *v.* Dane, 95 Ill. 203 - - - - 258

P.

Pace, Talbot & Co., *Ex parte*, 16 U. S. Pat. Gaz. 909 - - 29, 35, 638

Packham & Co., Limited *v.* Sturgess & Co., North, J.—15 P. R. 669. C. A.—15 P. R. 672 - - - - 78, 123, 139, 250, 335

Page *v.* Townsend, 5 Sim. 395 - - - - - - - 188

Paine, *In re* (1), 9 P. R. 130; 61 L. J. Ch. 365; 66 L. T. N. S. 642 - 40, 41, 332, 400

Paine, *In re* (2), Kekewich, J.—10 P. R. 71; 68 L. T. N. S. 801. C. A. —(1893) 2 Ch. 567; 10 P. R. 217; 62 L. J. Ch. 732; 68 L. T. N. S. 807; 42 W. R. 40 - - 40, 119, 120, 178, 220, 254, 333, 370

Paine *v.* Daniells & Sons' Breweries, Limited. See Paine, *In re* (2).

Palmer, *Ex parte* (1), U. S. Pat. Comm. Decis. 1871, 289; Dig. 378 58, 62, 68, 637

Palmer, *Ex parte* (2), 58 U. S. Pat. Gaz. 383 - - - - 645

Pal—Pet PAGE

Palmer, *In re* (1), Chitty, J.—21 Ch. D. 47. C. A.—21 Ch. D. 53; 51 L. J. Ch. 673; 46 L. T. N. S. 787 - - 52, 89, 201, 332, 355, 356

Palmer, *In re* (2), 22 Ch. D. 88; 48 L. T. N. S. 52; 31 W. R. 33 179, 372

Palmer, *In re* (3), 24 Ch. D. 504; 50 L. T. N. S. 30; 32 W. R. 306 - 46, 52, 245, 332, 339, 353, 356, 370, 371, 406

Palmer *v.* Harris, 60 Penn. St. 156; 100 Amer. Dec. 557; R. Cox, 523; 8 Am. L. Reg. N. S. 137; Dig. 308 - - 60, 207, 208, 209, 211

Park, *In re*, 12 U. S. Pat. Gaz. 2; Dig. 544 - - 132, 634, 638

Parker, *In re*, 13 U. S. Pat. Gaz. 323; Dig. 582 - - 81, 634, 637

Parkland Hills Blue Lick Water Co. *v.* Hawkins, 98 Ky. 502; 44 Am. St. Rep. 254 - - - - - - - - - 5, 76

Parlett *v.* Guggenheimer, 67 Md. 542; 1 Amer. St. Rep. 416 87, 142, 208, 213, 223

Parsons *v.* Gillespie, 17 N. S. W. Rep. (Eq.) 227. P. C.—(1898) A. C. 239; 15 P. R. 57; 67 L. J. P. C. 21 - - 51, 60, 66, 123, 128, 252

Parsons *v.* Hayward, M. R.—31 Beav. 199; 31 L. J. Ch. 666; 8 Jur. N. S. 474; 6 L. T. N. S. 523; 10 W. R. 531. L. C.—31 L. J. Ch. 666; 8 Jur. N. S. 924; 6 L. T. N. S. 628; 10 W. R. 651; Dig. 206 - 302, 306, 321

Partlo *v.* Todd, 12 Ont. Rep. 171 - - - - 10, 353, 357

Partridge *v.* Menck, 2 Sandf. Ch. 622; 47 Amer. Dec. 281; 2 Barb. Ch. 101; 1 How. App. Cas. 558; R. Cox, 72; Dig. 91 - 101, 103, 130, 211, 222

Patching *v.* Dubbins, Kay, 1; 23 L. J. Ch. 45; 17 Jur. 1113; 22 L. T. O. S. 116; 2 W. R. 2 - - - - - - - - 204

Patent Nut and Bolt Screw Co., *In re*, Chitty, J., March 9th, 1883 - 407

Patent Plumbago Crucible Co., *In re* (1), Jessel, M. R., Aug. 1st, 1879...244, 349

Patent Plumbago Crucible Co., *In re* (2), 7 P. R. 282 - 374, 379, 384

Paton, *In re*, 1 Trade Marks, 285; Dig. 601 - - - - 407

Payton & Co., Limited *v.* Snelling, Lambard & Co., Limited, 16 P. R. 283 - - - - - - - - - 133, 139

Peabody *v.* Norfolk, 98 Mass. 452; Dig. 290 - - - 288, 289

Pearson *v.* Pearson, Kay, J.—54 L. J. Ch. 32; 51 L. T. N. S. 311. C. A. —27 Ch. D. 145; 54 L. J. Ch. 37; 51 L. T. N. S. 316; 32 W. R. 1006 - 311, 312

Peltz *v.* Eichele, 62 Mo. 171; Dig. 485 - - 25, 234, 277, 309, 313

Pennsylvania Salt Manufacturing Co. *v.* Myers, 79 Fed. Rep. 87 61, 134

People *v.* Fisher, 57 N. Y. Sup. Ct. 552 - - 62, 85, 351, 638, 640

Peper, *Ex parte*, 16 U. S. Pat. Gaz. 678 - - - - 68, 638

Pepper *v.* Labrot, 8 Fed. Rep. 29 - - - 102, 211, 273

Perks *v.* Hall & Co., W. N. 1881, p. 111 - 26, 29, 70, 122, 207, 222, 235, 236, 317

Perry Davis & Son, *In re*, Kay, J. and C. A.—5 P. R. 333; 58 L. T. N. S. 695. H. L.—15 App. Cas. 316; 7 P. R. 336; 60 L. J. Ch. 16; 63 L. T. N. S. 389 - - - 46, 47, 48, 59, 60, 245, 368, 371

Perry Davis & Son *v.* Harboard. See Perry Davis & Son, *In re*.

Perry *v.* Truefitt, 6 Beav. 66; 1 L. T. O. S. 384; Dig. 73 1, 12, 60, 65, 117, 123, 165, 166, 168, 208, 222

Peru, Republic of *v.* Reeves, 40 N. Y. Super. Ct. 316; Dig. 482 84, 181

Peterson *v.* Humphrey, 4 Abb. Pr. 394; R. Cox, 212; Dig. 149 307, 315, 319, 323

Pey—Por PAGE

Peyser, *Ex parte*, 62 U. S. Pat. Gaz. 588 - - - 20, 644
Phalon *v.* Wright, 5 Phila. 464; R. Cox, 307; Dig. 232 - 13, 58, 123, 210, 222
Phelan *v.* Collender, 13 N. Y. Sup. Ct. 244; Dig. 479 - 315, 317, 323, 324
Philadelphia & Novelty Manufacturing Co. *v.* Rouss, 50 U. S. Pat. Gaz. 1594 - - - - - - - - - 139
Phillips, *In re*, (1891) 3 Ch. 139; 8 P. R. 469; 61 L. J. Ch. 40; 65 L. T. N. S. 373 - - - - - 336, 337, 350, 376, 378
Phillips *v.* Ogden, 12 P. R. 325 - - - 46, 92, 110, 129, 141, 142
Philp's Executor *v.* Philp's Executor, Ct. Sess. Cas. 4th Ser. XXI. 482 - 302, 306
Pickford *v.* Grand Junction Railway Co., 3 Ry. Cas. 538 - 175, 204
Pidding *v.* How, 8 Sim. 477; 6 L. J. Ch. N. S. 345; Dig. 60 - 12, 60, 65, 208, 209
Pierce *v.* Franks, 15 L. J. Ch. 122; 10 Jur. 25; Dig. 81 - 229, 238
Pierce *v.* Guittard, 68 Cal. 68; 58 Amer. Rep. 1 - 121, 135, 136, 139
Pierce *v.* Worth, 18 L. T. N. S. 710 - - - - - 608
Piggott *v.* Anglo-American Telegraph Co., 19 L. T. N. S. 46 - - 225
Pike Manufacturing Co. *v.* Cleveland Stone Co., 35 Fed. Rep. 896; 45 U. S. Pat. Gaz. 947 - - - - - 75, 76, 113, 137
Pile *v.* Pile, 3 Ch. D. 36; 45 L. J. Ch. 841 - - - - 318
Pillsbury *v.* Pillsbury-Washburn Flour Mills Co., 64 Fed. Rep. 841 - 102, 135, 222, 261
Pillsbury-Washburn Flour Mills Co. *v.* Eagle, 82 Fed. Rep. 816 - 75
Pinet *v.* Maison Pinet (1), 14 P. R. 933; 77 L. T. N. S. 322 178, 261, 514, 525
Pinet *v.* Maison Pinet (2), (1898) 1 Ch. 179; 15 P. R. 65; 67 L. J. Ch. 41; 77 L. T. N. S. 613; 46 W. R. 506 - - 178, 254, 260, 525
Pink *v.* Trades and Labour Unions (Shipping, &c.) Federation, 67 L. T. N. S. 258 - - - - - - - - 280
Pinto *v.* Badman, 8 P. R. 181 - 9, 16, 72, 80, 102, 103, 131, 135, 137, 158, 201, 240, 329, 333, 335, 342, 352, 353, 356, 359, 366, 369
Pinto *v.* Trott, 8 P. R. 173 - - - - - 137, 233, 366
Pirie *v.* Goodall, Vaughan Williams, J.—(1892) 1 Ch. 35; 8 P. R. 237; 60 L. J. Ch. 691; 65 L. T. N. S. 80. C. A.—(1892) 1 Ch. 42; 9 P. R. 17; 61 L. J. Ch. 79; 65 L. T. N. S. 640; 40 W. R. 81 31, 33, 40, 80, 81, 182, 332, 333, 335, 353, 370, 371
Pittsburgh Crushed Steel Co. *v.* Diamond Steel Co., 85 Fed. Rep. 637 - 132
Plant Seed Co. *v.* Michel Plant Seed Co., 23 Mo. App. 519 - - 258
Pneumatic Rubber Stamp Co., Limited *v.* Lindner, 15 P. R. 522 - 219, 238
Polhill *v.* Walter, 3 B. & Ad. 114 - - - - - 159
Pollard *v.* Photographic Co., 40 Ch. D. 345; 58 L. J. Ch. 251; 60 L. T. N. S. 418 - - - - - - - - 280, 287
Ponsardin *v.* Peto, 33 Beav. 642; 33 L. J. Ch. 371; 10 Jur. N. S. 6; 9 L. T. N. S. 567; 12 W. R. 198; 3 N. R. 237; Dig. 229 - 33, 172, 192
Popham *v.* Cole. See Popham *v.* Wilcox.
Popham *v.* Wilcox, N. Y. Super. Ct.—14 Abb. Pr. N. S. 206. N. Y. Super. Ct.—38 N. Y. Super. Ct. 274. N. Y. Ct. of App.—66 N. Y. 69; 23 Amer. Rep. 22; Dig. 425 - - - 36, 58, 115, 128, 130, 637
Porous Plaster Co., *In re*, Pearson, J., Feb. 6th, 1885 - - 379, 384
Portal *v.* Hine, 4 Times L. R. 330 - - - - - 288, 289
Porter *v.* Munsford & Gorman, 65 Ga. 11 - - - - 309

Por—Pri PAGE

Porter (Robert) & Co., Limited, *In re*. See Robert Porter & Co., *In re*.

Porter Blanchard's Sons, *In re*, U. S. Pat. Comm. Decis. 1871, 97; Dig. 358 - - - - - - - - 61, 637, 638

Portland Cement Fabrik "Germania" H. Manske & Co., *Ex parte*, 64 U. S. Pat. Gaz. 858 - - - - - - 15, 76, 643, 644

Portuondo *v*. Monne, 28 Fed. Rep. 16 - - - - - 10, 135

Post *v*. Marsh, 16 Ch. D. 395; 50 L. J. Ch. 287; 43 L. T. N. S. 628; 29 W. R. 198 - - - - - - - - - 207

Potter *v*. Commissioners of Inland Revenue, 10 Ex. 147; 23 L. J. Ex. 345; 18 Jur. 778; 23 L. T. O. S. 269; 2 W. R. 561; Dig. 128 300, 302, 306

Potter *v*. McPherson, 28 N. Y. Sup. Ct. 559 - - - - 121, 294

Potter Drug and Chemical Co. *v*. Miller, 75 Fed. Rep. 656 - 61, 137

Poulett *v*. Chatto & Windus, 32 Sol. J. 24 - - - - - 280

Powell, *In re* (1), 1 Trade Marks, 237; Dig. 589 - - 54, 108, 346

Powell, *In re* (2), Chitty, J.—(1893) 2 Ch. 388; 10 P. R. 63; 69 L. T. N. S. 60. C. A.—(1893) 2 Ch. 398; 10 P. R. 195; 62 L. J. Ch. 848; 69 L. T. N. S. 63; 41 W. R. 627. H. L.—(1894) A. C. 8; 11 P. R. 4; 63 L. J. Ch. 152; 70 L. T. N. S. 1 - - 3, 45, 46, 88, 250, 336, 367, 368, 371

Powell *v*. Birmingham Vinegar Brewery Co., Limited (1). See *In re* Powell (2).

Powell *v*. Birmingham Vinegar Brewery Co., Limited (2), (motion) Stirling, J.—(1894) 3 Ch. 449; 11 P. R. 563; 71 L. T. N. S. 393. C. A.—(1894) 3 Ch. 462; 11 P. R. 573; (trial) Stirling, J.—(1896) 2 Ch. 54; 12 P. R. 496. C. A.—(1896) 2 Ch. 64; 13 P. R. 235; 65 L. J. Ch. 563; 74 L. T. N. S. 509; 44 W. R. 688. H. L.—(1897) A. C. 710; 14 P. R. 720; 66 L. J. Ch. 763; 76 L. T. N. S. 792 - 51, 57, 72, 119, 130, 132, 222, 247, 249, 250, 253, 261, 289, 368

Powell *v*. Birmingham Vinegar Brewery Co., Limited (3), 14 P. R. 1 - 227

Powell *v*. McNulty, Dig. 526 - - - - - - - - 73

Power *v*. Barham, N. P.—7 C. & P. 356; 1 M. & Rob. 507. K. B.—4 Ad. & E. 473; 6 N. & M. 62; 1 H. & W. 683; 5 L. J. K. B. N. S. 88; Dig. 56 - - - - - - - - - 196

Pratt, *In re*. See *In re* Powell (1).

Pratt's Appeal, 117 Penn. St. 401; 2 Amer. St. Rep. 676 - 24, 75, 107, 108, 119, 121, 170, 187, 223

Pratt & Farmer, *In re*, 10 U. S. Pat. Gaz. 866; Dig. 527 - 36, 132, 637

Pratt Manufacturing Co. *v*. Astral Refining Co., Limited, 27 Fed. Rep. 493 - - - - - - - - - 59, 68

Premier Cycle Co., Limited *v*. Premier Tube Co., Limited, 12 Times L. R. 481 - - - - - - - - - 141, 257

Price's Patent Candle Co., *In re*, 27 Ch. D. 681; 54 L. J. Ch. 210; 51 L. T. N. S. 653 - - - - - 28, 40, 59, 329, 333, 344

Price's Patent Candle Co. *v*. Everitt, 11 Cape of Good Hope, 213 - 132

Priestley *v*. Adams, 66 N. Y. Sup. Ct. 380 - - - 135, 260

Primrose Press Agency *v*. Knowles, L. J. N. of C. 1886, p. 43; 30 Sol. J. 338; 80 L. T. (Journal) 356 - - - 294, 297, 298

Prince Manufacturing Co. *v*. Prince Metallic Paint Co., 135 N. Y. 24 - 207

Prince Metallic Paint Co. *v*. Carbon Metallic Paint Co., Codd. Dig. 209; Dig. 573 - - - - - - - - 24, 128

Pri—Ray PAGE

Prince Metallic Paint Co. *v.* Prince Manufacturing Co., 57 Fed. Rep. 938; 17 U. S. App. 145 - - - 16, 100, 202, 204, 207

Probasco *v.* Bouyon, 1 Mo. App. 241 - - - 29, 192, 315, 324

Procter, Jr., *Ex parte*, 51 U. S. Pat. Gaz. 1785 - - - 75, 644

Provident Association of London, Limited *v.* London and Provincial Provident Association, Limited, 30 Sol. J. 753; 81 L. T. (Journal) 353 - 258

Prowett *v.* Mortimer, 2 Jur. N. S. 414; 27 L. T. O. S. 132; 4 W. R. 519; Dig. 141 - - - - - - - 294, 521

Prudential Assurance Co. *v.* Knott, L. R. 10 Ch. 142; 44 L. J. Ch. 192; 31 L. T. N. S. 866; 23 W. R. 249; Dig. 453 - - - 278, 279

Pullar *v.* Pullar, Fry, J., April 9th, 1883 - - -25, 221, 261

Punch *v.* Boyd, 16 L. R. Ir. 476 - - - - - - 283

Punnett, *Ex parte*, 16 Ch. D. 226; 50 L. J. Ch. 212; 44 L. T. N. S. 226; 29 W. R. 129 - - - - - 302, 306, 308, 318

Purser *v.* Brain, 17 L. J. Ch. 141; Dig. 92 - - -86, 256, 264

Putnam Nail Co. *v.* Ausable Horse-Nail Co., 53 Fed. Rep. 390 - - 129

Putnam Nail Co. *v.* Bennett, 43 Fed. Rep. 800 - - - - 248

Q.

Quartz Hill Consolidated Gold Mining Co. *v.* Beall, 20 Ch. D. 501; 51 L. J. Ch. 874; 46 L. T. N. S. 746; 30 W. R. 583 - 279, 280, 281

R.

Rabone, *In re*, Dig. 643 - - - 97, 131, 141, 336, 347, 363, 612

Radam *v.* Capital Microbe Destroyer Co., 81 Tex. 122; 26 Am. St. Rep. 783 - - - - - - - - 60, 129

Radde *v.* Norman, L. R. 14 Eq. 348; 41 L. J. Ch. 525; 26 L. T. N. S. 788; 20 W. R. 766; Dig. 397 - - 5, 20, 73, 120, 121, 137, 166, 176

Rader & Co., *In re*, 13 U. S. Pat. Gaz. 596; Dig. 612 - - 58, 62, 638

Radway *v.* Coleman, 15 Grant, Up. Can. Ch. 50 - - - 31, 240

Raggett *v.* Findlater, L. R. 17 Eq. 29; 43 L. J. Ch. 64; 29 L. T. N. S. 448; 22 W. R. 53; Dig. 431 - - - 3, 62, 69, 112, 123, 210

Ralli *v.* Fleming, Ind. L. R. 3 Calc. 417 - 3, 4, 64, 79, 121, 130, 132, 135

Ralph, *In re*, 25 Ch. D. 194; 53 L. J. Ch. 188; 49 L. T. N. S. 504; 32 W. R. 168 - - - - 55, 59, 110, 332, 343, 356, 368, 371

Rammelsberg *v.* Mitchell, 29 Ohio St. 22 - - 320, 324, 325

Ransome *v.* Bentall, 3 L. J. Ch. N. S. 161; Dig. 53 - - 30, 80

Ransome *v.* Graham, 51 L. J. Ch. 897; 47 L. T. N. S. 218 - 1, 3, 64, 76, 77, 80, 166, 172, 216, 224

Ratcliffe *v.* Evans (1892), 2 Q. B. 524; 61 L. J. Q. B. 535; 66 L. T. N. S. 794; 40 W. R. 578 - - - - - - 282

Rawlinson *v.* Clarke, 14 M. & W. 187; 14 L. J. Ex. 364 303, 313, 314

Rawson Brothers, *In re*. See Baker *v.* Rawson.

Raymond *v.* Royal Baking Powder Co. See Royal Baking Powder Co. *v.* Raymond.

Rea—R. PAGE
Read, *In re*, Hall, V.-C., July 7th, 1881 - - - 379, 383
Read Brothers *v.* Richardson & Co., 45 L. T. N. S. 54 - 131, 142, 216, 220, 224, 515
Reddaway *v.* Banham, C. A.—(1895) 1 Q. B. 286; 12 P. R. 83; 64 L. J. Q. B. 321; 72 L. T. N. S. 73; 43 W. R. 294. H. L.—(1896) A. C. 199; 13 P. R. 218; 65 L. J. Q. B. 381; 74 L. T. N. S. 289; 44 W. R. 638 - 27, 49, 51, 57, 73, 78, 132, 159, 166, 168, 170, 178, 221, 247, 249, 250, 261, 262, 515
Reddaway *v.* Bentham Hemp Spinning Co., Limited, (1892) 2 Q. B. 639; 9 P. R. 503; 67 L. T. N. S. 301 - 118, 120, 157, 158, 159, 162, 169, 250, 253
Reed *v.* O'Meara, 21 L. R. Ir. 216 - - - - - - 294
Reeves *v.* Denicke, 12 Abb. Pr. N. S. 92; Dig. 368 263, 268, 315, 317, 323
R. *v.* ——, Foster Cr. Cas. 439 - - - - - - - 631
R. *v.* Abbott, 1 Den. 273 - - - - - - 152
R. *v.* Ananiadi, Manchester Police Court, July 30th, 1889 148, 562, 563
R. *v.* Ardley, L. R. 1 C. C. R. 301; 12 Cox, 23; 40 L. J. M. C. 85; 24 L. T. N. S. 193; 19 W. R. 478; Dig. 349 - - 152, 154, 618
R. *v.* Avery, 8 C. & P. 596 - - - - - - 149
R. *v.* Ball, C. & M. 249 - - - - - - - 152
R. *v.* Banks, 1 Esp. 144 - - - - - - - 631
R. *v.* Boyes, C. C. C., Recorder of London, April 6th, 1886 - - 147
R. *v.* Bryan, D. & B. 265; 7 Cox, 312; 26 L. J. M. C. 84; 3 Jur. N. S. 620; 45 C. C. C. Sess. Pap. 529; Dig. 147 - - 151, 152, 154
R. *v.* Carter, 10 Cox, 642; 17 L. T. N. S. 321; 16 W. R. 342; Dig. 287 - - - - - - - - - - 154
R. *v.* Closs, D. & B. 460; 7 Cox, 494; 27 L. J. M. C. 54; 3 Jur. N. S. 309; Dig. 155 - - - - - - 146, 147, 151
R. *v.* Cohen, 8 Cox, 41 - - - - - - - 631
R. *v.* Cole, 2 East, P. C. 767 - - - - - - 631
R. *v.* Collicott, 2 Leach, 1048 - - - - - - 149
R. *v.* Comptroller-General. See *Moet, In re.*
R. *v.* Crampton, 3 P. R. 367 - - - - - 148, 390
R. *v.* Dark, 1 Den. 276 - - - - - - - 152
R. *v.* Dundas, 6 Cox, 380; Dig. 120 - - - 24, 60, 136, 150
R. *v.* Elsworth, 2 East, P. C. 986 - - - - - 149
R. *v.* Fitzgerald, 43 C. C. C. Sess. Pap. 369 - - - - 631
R. *v.* Foster, 13 Cox, 393 - - - - - - 152
R. *v.* Garlick, 1 Den. 276 - - - - - - 152
R. *v.* Goss, Bell, 208; 8 Cox, 262 - - - - - 152
R. *v.* Gray & Gosling, Lloyd on Trade Marks, p. 11; Dig. 183 - - 151
R. *v.* Hall, 45 C. C. C. Sess. Pap. 451 - - - - - 152
R. *v.* Hunter, 10 Cox, 642; 17 L. T. N. S. 321; 16 W. R. 342; Dig. 287 - - - - - - - - - - 154
R. *v.* Jones, Lloyd on Trade Marks, p. 11; Poland on Merchandise Marks Act, 1862, p. 33; Dig. 182 - - - - - 151
R. *v.* Lee (1), 1 Leach, 416 - - - - - - 618
R. *v.* Lee (2), 8 Cox, 233 - - - - - - 152
R. *v.* Lee (3), 9 Cox, 460 - - - - - 148, 154
R. *v.* Levine & Wood, 10 Cox, 374 - - - - - 152

R.—Ric PAGE

R. *v.* Lewis, Foster Cr. Cas. 116 - - - - - - - 149
R. *v.* Lipton, 32 L. R. Ir. 115 - - - - - 147, 148, 563
R. *v.* Lloyd, Recorder of Birmingham, Oct. 13th, 1881 - - - 147
R. *v.* Manoukion, Manchester Police Court, May 10th, 1898 - 148, 563
R. *v.* Morgan, 1 Trade Marks, 313 - - - - 216, 629
R. *v.* Morris, Gt. Marlborough St. Police Court, Dec. 16th, 1886 - 148, 154, 219, 390
R. *v.* O'Brien, 15 L. T. N. S. 419 - - - - - - 631
R. *v.* Ogden, 6 C. & P. 631; Dig. 54 - - - - - - 618
R. *v.* Pemberton, 20 Iron, 110 - - - - - - - 147
R. *v.* Priestley, 63 C. C. C. Sess. Pap. 541 - - - - 152
R. *v.* Ragg, 8 Cox, 265 - - - - - - - 148, 154
R. *v.* Ridgway, 3 F. & F. 838 - - - - - - - 154
R. *v.* Roberts, 70 L. T. (Journal) 265 - - - - - - 618
R. *v.* Roebuck, D. & B. 24; 7 Cox, 126 - - - - - - 152
R. *v.* Sherwood, 7 Cox, 270 - - - - - - 148, 154
R. *v.* Silversides, 3 Q. B. 406 - - - - - - - 631
R. *v.* Sleep, 8 Cox, 472; L. & C. 44 - - - - - - 631
R. *v.* Smith, D. & B. 566; 8 Cox, 32; 27 L. J. M. C. 225; 4 Jur. N. S. 1003; 31 L. T. O. S. 135; 6 W. R. 495; 47 C. C. C. Sess. Pap. 269; 48 C. C. C. Sess. Pap. 8; Dig. 161 - - - 146, 147, 151
R. *v.* Stevens, 1 Cox, 83 - - - - - - - - 152
R. *v.* Sunley, 8 Cox, 179; Bell, 145 - - - - - - 631
R. *v.* Suter & Coulson, 10 Cox, 577; 17 L. T. N. S. 177; 16 W. R. 141; Dig. 285 - - - - - - - 150, 152, 618
R. *v.* Wallis, 3 P. R. 1 - - - - - - 148, 219, 390
R. *v.* White, 72 C. C. C. Sess. Pap. 222 - - - - - - 149
R. *v.* Willis, C. C. C., Hawkins, J., Sept. 21st, 1885 - - - 147
R. *v.* Willmett, 3 Cox, 281 - - - - - - - 631
Reid *v.* Sibbald, 18 Journ. of Jurisp. 392; Dig. 438 - - 171, 278
Reiners, Von Laer & Co. *v.* Fehr, 9 Cape of Good Hope, 306 - 131, 345
Reinhardt *v.* Spalding, 49 L. J. Ch. 57; 28 W. R. 300 - 48, 60, 88, 123, 134, 181, 222, 224, 357
Reiss Bros., *In re*, 5 P. R. 291 - - - - - - 378, 381
Renard *v.* Levinstein, 10 L. T. N. S. 94; 3 N. R. 665 - - - 226
Rendle *v.* Rendle & Co., 63 L. T. N. S. 94 - 122, 222, 257, 261, 262, 264
République Française *v.* Schultz, 57 Fed. Rep. 37 - - 5, 76, 84
Reuter's Telegram Co., Limited *v.* International Guide Syndicate & International Express, Limited, North, J.—94 L. T. (Journal) 437. C. A. —94 L. T. (Journal) 460 - - - - - - - 294
Reveliere *v.* Gateley, 89 L. T. (Journal) 314 - - - 199, 358
Reynolds *v.* Bullock, 47 L. J. Ch. 773; 39 L. T. N. S. 443; 26 W. R. 678; Dig. 615 - - - - - - - - 308, 320
Reynolds & Son *v.* Walker, 87 L. T. (Journal) 93 - - - 121
Richards *v.* Butcher (1), 7 P. R. 288; 62 L. T. N. S. 867 92, 184, 198, 255, 358
Richards *v.* Butcher (2), Kay, J.—(1891) 2 Ch. 522; 8 P. R. 37; 63 L. T. N. S. 757. C. A.—(1891) 2 Ch. 540; 8 P. R. 249; 60 L. J. Ch. 530 - 27, 45, 46, 47, 52, 88, 245, 336, 368, 371

Ric—Rod PAGE

Richards *v.* Hunt, 65 Ga. 342 - - - - - - - 325
Richards *v.* Williamson, 30 L. T. N. S. 746; 22 W. R. 765; Dig. 441 - 30, 143
Richardson, *In re*, 3 U. S. Pat. Gaz. 120; Dig. 416 - 55, 58, 214, 637
Richardson *v.* Peacock, 26 N. J. Eq. 40 - - - - - - 314
Richmond Nervine Co. *v.* Richmond, 159 U. S. 293 - 35, 102, 260, 262
Richter *v.* Anchor Remedy Co. See Richter *v.* Reynolds.
Richter *v.* Reynolds, 52 Fed. Rep. 455; 59 Fed. Rep. 577; 67 U. S. Pat. Gaz. 404 - - - - - - - - 643, 647
Rillet *v.* Carlier, 61 Barb. S. C. 435; 11 Abb. Pr. N. S. 186; Dig. 334 - 60, 71, 134, 166
Ripley, *In re*, Kekewich, J.—15 P. R. 151; 77 L. T. N. S. 495. C. A.—15 P. R. 154; 78 L. T. 367 - - - - - - 40, 43, 334
Ripley *v.* Bandey, Kekewich, J.—14 P. R. 591. C. A.—14 P. R. 944 - 37, 111, 205, 236
Rivero *v.* Norris, Seton, 5th ed. 536; Dig. 299 - - - 191, 518
Riviere & Co., *In re*, Pearson, J.—53 L. J. Ch. 455; 49 L. T. N. S. 506. C. A.—26 Ch. D. 48; 53 L. J. Ch. 578; 50 L. T. N. S. 763; 32 W. R. 390. Pearson, J.—W. N. 1884, p. 75. C. A.—55 L. J. Ch. 545; 53 L. T. N. S. 237 16, 46, 84, 185, 198, 276, 328, 340, 367, 369, 372, 373, 374
Roach, *In re*, 10 U. S. Pat. Gaz. 333; Dig. 516 - - - 54, 58, 637
Robert Porter & Co., Limited, *In re*, W. N. 1895, p. 102 - 377, 383
Roberts, *In re* (1), U. S. Pat. Comm. Decis. 1871, 113; Dig. 359 - 68, 638
Roberts, *In re* (2), U. S. Pat. Comm. Decis. 1871, 100; Dig. 360 - 68, 638
Roberts, *In re* (3), U. S. Pat. Comm. Decis. 1871, 101; Dig. 361 - 68, 638
Roberts, *In re* (4), U. S. Pat. Comm. Decis. 1871, 100; Dig. 362 - 58, 637
Roberts *v.* Sheldon, 8 Biss. 398; 18 U. S. Pat. Gaz. 1277 59, 69, 190, 222
Robertson *v.* Berry, 50 Md. 591; 33 Amer. Rep. 328 - 130, 166, 291
Robertson *v.* Quiddington, 28 Beav. 529; Dig. 189 - 306, 308, 322
Robertson, Sanderson & Co., *In re* (1), 9 P. R. 213 - 174, 330, 342
Robertson, Sanderson & Co., *In re* (2), (1892) 2 Ch. 245; 9 P. R. 264; 61 L. J. Ch. 470; 66 L. T. N. S. 673; 40 W. R. 569 - 342, 407, 412
Robineau *v.* Charbonnel, W. N. 1876, p. 160; L. J. N. of C. 1876, p. 104; Dig. 498 - - - - - - - 122, 236, 270
Robinson, *In re*, 29 W. R. 31 - - - 81, 125, 338, 348, 404, 549
Robinson *v.* Currey, Q. B. D.—6 Q. B. D. 21; 50 L. J. Q. B. 9; 43 L. T. N. S. 504; 29 W. R. 284. C. A.—7 Q. B. D. 465; 50 L. J. Q. B. 561; 45 L. T. N. S. 368; 30 W. R. 39 - - - - 616, 618
Robinson *v.* Finlay, 9 Ch. D. 487; 39 L. T. N. S. 398; 27 W. R. 294; Dig. 585 - - - 4, 34, 35, 38, 79, 80, 81, 106, 113, 184, 188
Rock *v.* Lazarus, L. R. 15 Eq. 104; 42 L. J. Ch. 105; 27 L. T. N. S. 744; 21 W. R. 215 - - - - - - - 624
Rockingham Railway Co. *v.* Allen, 12 Times L. R. 345 51, 73, 221, 249, 250
Rodgers *v.* Nowill (1), V.-C.—6 Hare, 325. C. P.—5 C. B. 109; 17 L. J. C. P. 52; 11 Jur. 1039; 10 L. T. O. S. 88; Dig. 82 - 7, 11, 24, 30, 116, 117, 157, 159, 162, 166
Rodgers *v.* Nowill (2), V.-C.—17 Jur. 109; 1 W. R. 122. C. A.—3 De G. M. & G. 614; 22 L. J. Ch. 404; 17 Jur. 171; 20 L. T. O. S. 319; 1 W. R. 205; Dig. 115 - - - - - 179, 180, 206
Rodgers *v.* Philp, 1 U. S. Pat. Gaz. 29; Dig. 352 119, 120, 136, 137, 194, 197, 202, 203, 204

Rod—Row PAGE

Rodgers *v.* Rodgers, 31 L. T. N. S. 285; Dig. 442 120, 122, 204, 206, 207, 236

Rodgers & Sons, Limited *v.* Rottgen, 5 Times L. R. 678 - 16, 137, 173, 178, 355, 358

Roger, *In re* (1), 11 P. R. 637 - - - - - - - 342

Roger, *In re* (2), 12 P. R. 149 - - - 10, 100, 108, 185, 299, 342

Rogers *v.* Rogers, 53 Conn. 121; 55 Amer. Rep. 78; 33 Alb. L. J. 70 - 63, 128, 134, 261

Rogers *v.* Taintor, 97 Mass. 291; Dig. 283 25, 29, 30, 104, 105, 106, 125, 267, 307, 315

Rogers *v.* William Rogers Manufacturing Co., 70 Fed. Rep. 1019 261, 263

Rogers, R. W., Co. *v.* William Rogers Manufacturing Co. See William Rogers Manufacturing Co. *v.* Rogers, R. W., Co.

Rogers Manufacturing Co. *v.* Rogers & Spurr Manufacturing Co., Rogers, R. W., Co., Simpson. See William Rogers Manufacturing Co. *v.* Rogers & Spurr Manufacturing Co., Rogers, R. W., Co., Simpson.

Rohland, *In re*, 10 U. S. Pat. Gaz. 980; Dig. 497 - 31, 61, 103, 637

Rolfe *v.* Rolfe, 15 Sim. 88 - - - - - - - 313

Rollason, *In re*, Kekewich, J.—14 P. R. 893; 77 L. T. N. S. 605. C. A.—(1898) 1 Ch. 237; 14 P. R. 909; 67 L. J. Ch. 100; 77 L. T. N. S. 608. H. L.—(1898) A. C. 499; 15 P. R. 441; 67 L. J. Ch. 565; 79 L. T. N. S. 1 - - - - - - - - - 609

Rollins *v.* Hinks, L. R. 13 Eq. 355; 41 L. J. Ch. 358; 26 L. T. N. S. 56; 20 W. R. 287 - - - - - - - - - 279

Rolt *v.* Bulmer, W. N. 1878, p. 119; Dig. 614 - - - 308, 320

Roper's Patent Seat Raft and Marine Life Saving Apparatus Co. *v.* Copeman's Patent Seat Raft and Marine Life Saving Association, Limited, 28 Sol. J. 218 - - - - - - - 8, 62, 189, 280

Rorke *v.* Société des Huiles d'Olive, 14 App. Div. N. Y. 173 - - 106

Rose *v.* Evans, 48 L. J. Ch. 618 - - - - - - 8, 333, 367

Rose *v.* Henley, cited 47 L. J. Ch. 576; 38 L. T. N. S. 410 Dig. 551 - 122, 143

Rose *v.* Loftus, 47 L. J. Ch. 576; 38 L. T. N. S. 409; Dig. 608 - 116, 119, 120, 123, 124, 144, 220, 221, 222, 236

Rosenthal *v.* Reynolds, (1892) 2 Ch. 301; 9 P. R. 189; 61 L. J. Ch. 508; 67 L. T. N. S. 162; 40 W. R. 521 - - - -78, 250, 335

Rosing, *In re*, 54 L. J. Ch. 975; Dig. 621 - 35, 243, 346, 348, 349, 364

Rosing *v.* Atkinson, 27 Sol. J. 534; 75 L. T. (Journal) 128 - 61, 66

Roth Grocery Co., *Ex parte*, 62 U. S. Pat. Gaz. 315 - - 95, 644

Rotherham, *In re*, V.-C.—11 Ch. D. 250; 49 L. J. Ch. 511; 40 L. T. N. S. 387; 27 W. R. 503. C. A.—14 Ch. D. 585; 49 L. J. Ch. 513; 43 L. T. N. S. 1; Dig. 647 - - - 69, 163, 244, 392, 404

Rothschild, *In re*, 7 U. S. Pat. Gaz. 220; Dig. 456 - - - 634

Routh *v.* Webster, 10 Beav. 561; 11 Jur. 701; 9 L. T. O. S. 491; Dig. 386 - - - - - - - - 240, 276, 277, 531

Rowe, *In re*, 48 L. T. N. S. 388 - - - - - - - 369

Rowe & Post, *In re*, 9 U. S. Pat. Gaz. 496; Dig. 491 - - 28, 259, 638

Rowland *v.* Breidenbach, cited 1 Trade Marks, 261; Dig. 386 - 58, 112

Row—San PAGE

Rowland *v.* Michell, Romer, J.—13 P. R. 457; 65 L. J. Ch. 857; 75 L. T. N. S. 65. C. A.—(1897) 1 Ch. 71; 14 P. R. 37; 66 L. J. Ch. 110; 75 L. T. N. S. 498 - - - - 35, 135, 205, 224, 237, 372

Rowley *v.* Houghton, 2 Brews. 303; 7 Phila. 39; R. Cox, 486; Dig. 301 - 60, 87, 88, 90, 127, 130

Rowley *v.* Pyne, *In re*, 9 V. L. R. (L.) 307 - - -99, 345, 372

Roworth *v.* Wilkes, 1 Camp. 94 - - - - - - - 624

Roy & Nourse, *Ex parte*, 54 U. S. Pat. Gaz. 1267 - - 19, 643

Royal Baking Powder Co., *In re* (1), V.-C.—W. N. 1879, p. 108; L. J. N. of C. 1879, p. 101. C. A.—W. N. 1880, p. 49 - - 46, 336

Royal Baking Powder Co., *In re* (2), 14 P. R. 425 - 175, 367, 371

Royal Baking Powder Co. *v.* Davis, 26 Fed. Rep. 293; 33 U. S. Pat. Gaz. 1391 - - - - - - - - - - 28, 135

Royal Baking Powder Co. *v.* Raymond, 70 Fed. Rep. 376; 85 Fed. Rep. 231 - - - - - - - - 61, 99, 111, 208

Royal Baking Powder Co. *v.* Sherrill, N. Y. Sup. Ct.—59 How. Pr. 17. N. Y. Ct. of App.—93 N. Y. 331; 45 Amer. Rep. 229 - - 63

Royal Baking Powder Co. *v.* Wright, Crossley & Co., Romer, J.—15 P. R. 677. C. A.—16 P. R. 217 - - - - - - 280

Rubber Clothing Co., *In re*, 10 U. S. Pat. Gaz. 111; Dig. 507 - 30, 259, 638

Rudderow *v.* Huntington, 3 Sandf. S. C. 252; R. Cox, 106; Dig. 101 - 161, 172

Rugby Portland Cement Co., Limited *v.* Rugby & Newbold Portland Cement Co., Limited, Vaughan Williams, J.—8 P. R. 241. C. A.—9 P. R. 46 - - - - - - 74, 128, 135, 221, 333

Rumford Chemical Works *v.* Muth, 35 Fed. Rep. 524 - - - 59

Russell *v.* Crichton, Ct. Sess. Cas. 1st Ser. XV. 1270 - - - 226

Russell & Sons, Limited *v.* Smith, Jessel, M. R., June 18th, 1880 124, 336

Russia Cement Co. *v.* Le Page, 147 Mass. 206; 44 U. S. Pat. Gaz. 823 - 62, 102, 221, 223, 300

Rust & Co., *In re*, 44 L. T. N. S. 98; 29 W. R. 393 - 188, 373, 374

Rutter *v.* Daniel, Fry, J.—46 L. T. N. S. 684; 30 W. R. 724. C. A.—30 W. R. 801 - - - - - - - - 301, 302

Ryder *v.* Holt, 128 U. S. 525 - - - - - - 647

S.

Safety Powder Co., *Ex parte*, 16 U. S. Pat. Gaz. 136 - - 58, 637

St. Louis Piano Manufacturing Co. *v.* Merkel, 1 Mo. App. 305 - 18, 88

Salamon, *In re*, 1 Trade Marks, 135; Dig. 569 - - - 97, 407

Sales, Pollard & Co., *Ex parte*, Dig. 620 - 54, 346, 347, 353, 375

Salomon *v.* Hertz, 40 N. J. Eq. 400 - - - - 288, 289

Salt, *In re* (1), (1894) 3 Ch. 166; 11 P. R. 517; 63 L. J. Ch. 756; 71 L. T. N. S. 386; 42 W. R. 666 - - - - 43, 334

Salt, *In re* (2), North, J., Nov. 23rd, 1894 - - - - 383

Samuel *v.* Berger, 24 Barb. 163; 13 How. Pr. 342; 4 Abb. Pr. 88; R. Cox, 178; Dig. 143 - - - - - - 194, 202, 212

Sanche *v.* Electrolibation Co., 60 U. S. Pat. Gaz. 1189 - 100, 105, 202

Sander *v.* Hoffman, 64 N. Y. 248 - - - - - - 314

San—Sch PAGE

Sanders *v.* Jacob, 20 Mo. App. 96 - - - 204, 270, 313
Sanders *v.* Utt, 16 Mo. App. 322 - - - - - - 270
Sanitas Co., Limited, *In re*, 4 P. R. 533; 58 L. T. N. S. 166 - 40, 49, 134, 198, 250, 270, 330, 358
Sanitas Co., Limited *v.* Condy, Kay, J.—4 P. R. 195; 56 L. T. N. S. 621. Kekewich, J.—4 P. R. 530 - - 134, 137, 257, 349, 358
Sarazin *v.* Hamel, 32 Beav. 151; 9 Jur. N. S. 192; 7 L. T. N. S. 660; 32 L. J. Ch. 380 - - - - - - - - 608
Saunders *v.* Sun Life Assurance Co. of Canada, (1894) 1 Ch. 537; 63 L. J. Ch. 247; 69 L. T. N. S. 755; 42 W. R. 315 - - 125, 211, 258, 261
Saunion & Co., *In re*, Dig. 625 - - - - 58, 65, 212, 351
Savin, *In re*, 13 P. R. 21 - - - - - - - - 379
Sawyer *v.* Horn, 4 Hughes, 239; 1 Fed. Rep. 24 - - 81, 139, 637
Sawyer *v.* Kellogg, 7 Fed. Rep. 721; 9 Fed. Rep. 601; 19 U. S. Pat. Gaz. 1627; 20 U. S. Pat. Gaz. 1893 - 111, 122, 130, 131, 135, 137, 140, 189, 204, 205, 222, 229, 230, 241
Sawyer Crystal Blue Co. *v.* Hubbard, 32 Fed. Rep. 388; 41 U. S. Pat. Gaz. 580 - - - - - - - - 144
Saxby *v.* Easterbrook, 3 C. P. D. 339; 27 W. R. 188; Dig. 606 - 280
Saxlehner, *Ex parte*, Q. B. D., July 7th, 1887 - - - - 339
Saxlehner *v.* Apollinaris Co., (1897) 1 Ch. 893; 14 P. R. 645; 66 L. J. Ch. 533; 76 L. T. N. S. 617 - 73, 119, 160, 166, 171, 228, 231, 232, 238, 248, 256
Saxlehner *v.* Graef, 81 Fed. Rep. 704 - - - - - - 184
Saxony, *Ex parte* King of, 1 Trade Marks, 245; Dig. 598 - 84, 407
Sayer *v.* Dicey, 3 Wils. 60 - - - - - - - 624
Scaramanga *v.* Stamp, 5 C. P. D. 295; 49 L. J. C. P. 674; 42 L. T. N. S. 840; 28 W. R. 691 - - - - - - - - vi
Schauer *v.* Field, (1893) 1 Ch. 35; 62 L. J. Ch. 72; 68 L. T. N. S. 81; 41 W. R. 201 - - - - - - - - - 14
Scheile *v.* Brakell, 11 W. R. 796; Seton, 5th ed. 584; Dig. 219 265, 529
Schendel *v.* Silver, 70 N. Y. Sup. Ct. 330 - - - - 51, 137
Scheuer *v.* Miller, 74 Fed. Rep. 225 - - - - - - 120
Schmidt, *In re*. See Jackson & Co. *v.* Napper.
Schneider *v.* Williams, 44 N. J. Eq. 391; 44 U. S. Pat. Gaz. 1400 8, 62, 85, 88, 351, 638
Schnitzer & Co. *v.* Piggott, Cockson & Co., Bacon, V.-C., July 12th, 1884; Grocer, 1884, p. 37 - - - - - - - 138
Schove *v.* Schmincke, 33 Ch. D. 546; 55 L. J. Ch. 892; 55 L. T. N. S. 212; 34 W. R. 700 - - - - - - 59, 296, 297
Schrauder *v.* Beresford, U. S. Pat. Office, June 27th, 1872 - - 131
Schumacher & Ettlinger, *Ex parte* (1), 19 U. S. Pat. Gaz. 791 - - 634
Schumacher & Ettlinger, *Ex parte* (2), 22 U. S. Pat. Gaz. 1291 - - 634
Schumacher & Ettlinger *v.* Schwenke (1), 26 Fed. Rep. 818 - - 647
Schumacher & Ettlinger *v.* Schwenke (2), 36 U. S. Pat. Gaz. 457 84, 209, 357, 634, 647, 648
Schumacher & Ettlinger *v.* Wogram, 35 Fed. Rep. 210 - - - 634
Schweitzer, *In re*, North, J., March 25th, 1889 - - - 380, 381
Schweitzer *v.* Atkins, 37 L. J. Ch. 847; 19 L. T. N. S. 6; 16 W. R. 1080; Dig. 298 - - - - - - - 122, 136, 265

Sco—Sim PAGE
Scott v. Mackintosh, 1 V. & B. 503; Dig. 20 - - - 306, 314
Scott v. Rowland, 26 L. T. N. S. 391; 20 W. R. 508; Dig. 393 - 267, 306, 307, 315
Scott v. Scott, 16 L. T. N. S. 143; Dig. 268 - - 267, 268, 323, 527
Scott & Bowne, *In re*, Stirling, J., May 4th, 1896 - 378, 379, 383, 384
Scott Stamp & Coin Co. v. Scott, J. W., Co., 58 N. Y. Super. Ct. 380 - 261, 263
Scoville v. Toland, 6 West. L. J. 84; Dig. 97 - - - 14, 298
Seabury v. Grosvenor, 14 Bl. C. C. 262; 53 How. Pr. 192; 14 U. S. Pat. Gaz. 679; Dig. 562 - - - - - - - - 207
Sedon v. Senate, cited 2 V. & B. 220; Dig. 18 - - 121, 285, 288, 309
Seeley v. Fisher, 11 Sim. 581; 10 L. J. Ch. N. S. 274; 21 Leg. Obs. 474; Dig. 67 - - - - - - - 275, 278
Seixo v. Provezende, L. R. 1 Ch. 192; 12 Jur. N. S. 215; 14 L. T. N. S. 314; 14 W. R. 357; Dig. 256 - - - 2, 11, 33, 74, 129, 138, 514
Selby v. Anchor Tube Co., W. N. 1877, p. 191; Dig. 566 264, 268, 269, 310, 324, 325, 529
Selchow v. Baker, 93 N. Y. 59; 45 Amer. Rep. 169 - - 61, 112
Seltzer v. Powell, 8 Phila. 296; Dig. 374 - - 60, 86, 163, 166
Sen-Sen Co. v. Britten, (1899) 1 Ch. 692; 16 P. R. 137; 68 L. J. Ch. 250; 80 L. T. N. S. 278; 47 W. R. 358 - - - 219, 355, 358, 390
Shackle v. Baker, 14 Ves. 468; Dig. 13 - - - - 306, 309
Shaver v. Shaver, 54 Iowa, 208; 37 Amer. Rep. 194 - 25, 136, 221, 222, 261, 274
Shaw v. Pilling, 175 Phila. 78 - - - - - - - 260
Shaw Stocking Co. v. Mack, 21 Bl. C. C. 1; 12 Fed. Rep. 707 - 79, 137
Shendy v. Silver, 70 N. Y. Sup. Ct. 330 - - - - - 112
Shepherd v. Trustees of Port of Bombay, Ind. L. R. 1 Bomb. 132 - 279
Sheppard & Co. v. Stuart & Peterson, 13 Phila. 117 - 61, 69, 88, 113
Sherwood v. Andrews, 3 Am. L. Reg. N. S. 588; Dig. 263 - 30, 51, 58, 101, 103, 211
Shipwright v. Clements, 19 W. R. 599; Dig. 350 - 10, 99, 104, 229, 299, 306, 308, 309, 313, 320, 342
Showell v. Winkup, 60 L. T. N. S. 389 - - - - - 300, 314
Shrimpton v. Laight, 18 Beav. 164; Dig. 123 - - - 69, 130
Siegert v. Abbott (1), 61 Md. 276; 48 Amer. Rep. 101 - 210, 212, 291
Siegert v. Abbott (2), 79 N. Y. Sup. Ct. 243 - - - - 58
Siegert v. Ehlers, cited 7 Ch. D. 803; 38 L. T. N. S. 351; Dig. 432 - 71, 134, 190, 222, 285
Siegert v. Findlater, 7 Ch. D. 801; 47 L. J. Ch. 233; 38 L. T. N. S. 349; 26 W. R. 459; Dig. 591 - 51, 55, 56, 58, 71, 73, 74, 87, 121, 122, 123, 134, 139, 178, 189, 205, 212, 222, 224, 285, 517
Siegert v. Lawrence, 11 V. L. R. 47 - - - 172, 190, 191, 242
Silvers, *Ex parte*, 67 U. S. Pat. Gaz. 811 - - - - 643
Simmons Medicine Co. v. Simmons, 81 Fed. Rep. 163 121, 139, 265, 286, 288
Simpson, *In re*, L. J. N. of C. 1890, p. 143 - - - 245, 349
Simpson v. Anglo-Indian Tea Co., Limited, Bacon, V.-C., May 4th, 1883 - 257
Simpson v. Chapman, 4 De G. M. & G. 154 - - - 322, 323
Simpson v. Wright (1), 15 U. S. Pat. Gaz. 248 - - 106, 113, 206, 639
Simpson v. Wright (2), 15 U. S. Pat. Gaz. 293 - - - 636, 639

Sim—Smi PAGE

Simpson & Sons, *In re*, 10 U. S. Pat. Gaz. 333; Dig. 508 - - 634

Simpson, Davies & Sons, *In re* (1), 15 Ch. D. 525; 42 L. T. N. S. 675; 28 W. R. 760 - - - - - - - 97, 341, 407

Simpson, Davies & Sons, *In re* (2), Jessel, M. R., Jan. 12th, 1881 9, 19, 88, 97, 336, 340, 355

Singer Manufacturing Co. *v.* Bent, 41 Fed. Rep. 214; 75 U. S. Pat. Gaz. 1713 - - - - - - - - - 56, 57

Singer Manufacturing Co. *v.* June, 41 Fed. Rep. 208; 75 U. S. Pat. Gaz. 1703 - - - - - - - - - 56, 57, 134

Singer Manufacturing Co. *v.* Kimball & Morton, Ct. of Sess. Cas. 3rd Ser. XI. 267; 10 Scot. L. Rep. 173; Dig. 413 - 13, 56, 84, 123, 165, 166, 253

Singer Manufacturing Co. *v.* Larsen, 8 Biss. 181 - - - - 56

Singer Manufacturing Co. *v.* Loog (1), Dig. 635 - - - - 180

Singer Manufacturing Co. *v.* Loog (2), 11 Ch. D. 656; 48 L. J. Ch. 649; 27 W. R. 903 - - - - - - - - - 175

Singer Manufacturing Co. *v.* Loog (3), V.-C.—18 Ch. D. 395. C. A.—18 Ch. D. 412; 44 L. T. N. S. 888; 29 W. R. 699. H. L.—8 App. Cas. 15; 52 L. J. Ch. 481; 48 L. T. N. S. 3; 31 W. R. 325 - 7, 52, 55, 56, 117, 118, 120, 123, 129, 130, 132, 155, 157, 158, 159, 160, 165, 166, 167, 171, 182, 221, 222, 249, 253, 254, 286, 293, 299

Singer Manufacturing Co. *v.* Riley, 11 Fed. Rep. 706 - - 56, 129

Singer Manufacturing Co. *v.* Spence, 10 P. R. 297 - 56, 122, 134, 182

Singer Manufacturing Co. *v.* Stanage, 2 McCrary, 512; 6 Fed. Rep. 279 - - - - - - - - 55, 56

Singer Manufacturing Co. *v.* Wilson, M. R.—2 Ch. D. 434; 45 L. J. Ch. 491; 34 L. T. N. S. 858; 24 W. R. 1023. C. A.—2 Ch. D. 448; 45 L. J. Ch. 490; 34 L. T. N. S. 863; 24 W. R. 1026. H. L.—3 App. Cas. 376; 47 L. J. Ch. 481; 38 L. T. N. S. 303; 26 W. R. 664; Dig. 477 - 6, 11, 13, 16, 18, 34, 37, 52, 55, 82, 90, 109, 117, 119, 120, 123, 124, 130, 155, 159, 162, 164, 166, 167, 169, 170, 182, 214, 222, 223, 252, 253

Singleton *v.* Bolton, 3 Doug. 293; Dig. 4 - 6, 107, 116, 157, 288, 290

Skinner, *In re*, Jessel, M. R., Aug. 3rd, 1881 - - - 378, 383

Skinner *v.* Oakes, 10 Mo. App. 45 - - - - 99, 201

Slazenger *v.* Malings, W. N. 1885, p. 124; L. J. N. of C. 1885, p. 115; 29 Sol. J. 517; 79 L. T. (Journal) 95 - - - - - 39, 134

Slazenger *v.* Pigott, 12 P. R. 439 - - - - 240, 241

Slazenger & Sons *v.* Feltham & Co., 6 P. R. 531 - - 121, 137, 172

Smale *v.* Graves, 3 De G. & Sm. 706; 19 L. J. Ch. 157; 14 Jur. 662; 15 L. T. O. S. 179; Dig. 102 - - - - - - 305, 307

Smith, *Ex parte* (1), 16 U. S. Pat. Gaz. 679 - - - 349, 638

Smith, *Ex parte* (2), 16 U. S. Pat. Gaz. 679 - - - 36, 59, 637

Smith, *Ex parte* (3), 16 U. S. Pat. Gaz. 764 - - - 34, 59, 636

Smith, *In re*, Kay, J., Aug. 3rd, 1882 - - - - 379, 381

Smith *v.* Carron Co., 13 P. R. 108 - - - 128, 137, 241

Smith *v.* Everett, 27 Beav. 446; 29 L. J. Ch. 236; 5 Jur. N. S. 1332; 34 L. T. O. S. 58; 7 W. R. 605; Dig. 176 - - 306, 322, 325, 326

Smith *v.* Fair, 14 Ont. Rep. 729 - 9, 16, 46, 81, 84, 99, 131, 139, 198, 201, 223, 231, 300, 332, 338, 343, 357, 358

Smith *v.* Harris (1), 48 L. T. N. S. 869 - - - - - - 227

Smith *v.* Harris (2), C. A., Feb. 6th, 1884 - - - - 228

Smi—Sou PAGE

Smith *v.* Imus, 32 Alb. L. J. 455 - - 63, 75, 77, 99, 112, 319
Smith *v.* McBride, Ct. Sess. Cas., 4th Ser. XVI. 36 - 263, 265, 309, 315
Smith *v.* Mason, W. N. 1875, p. 62; L. J. N. of C., 1875, p. 44; Dig. 458 - - - - - - - 41, 60, 67, 166
Smith *v.* Reynolds (1), 10 Bl. C. C. 85; 3 U. S. Pat. Gaz. 213; Dig. 401 - - - - - - - - - - 635
Smith *v.* Reynolds (2), 10 Bl. C. C. 100; 3 U. S. Pat. Gaz. 214; Dig. 402 - - - - - - - 337, 635, 636
Smith *v.* Reynolds (3), 13 Bl. C. C. 458; Dig. 511 - - - 635
Smith *v.* Sixbury, 32 N. Y. Sup. Ct. 232 - - - - 61
Smith *v.* Smith, 4 Wend. 468 - - - - - 303, 313
Smith *v.* Walker, 37 Mich. 456 - - - - - 63, 75
Smith *v.* Woodruff, 48 Barb. 438; R. Cox, 373; Dig. 276 60, 68, 87, 210
Smokeless Powder Co., Limited, *In re*, (1892) 1 Ch. 590; 9 P. R. 109; 61 L. J. Ch. 391; 66 L. T. N. S. 407; 40 W. R. 507 - 80, 333, 335, 351, 352
Snowden *v.* Noah, Hopk. 347; 14 Amer. Dec. 547; R. Cox, 1; Dig. 41 - - - - - - - 128, 296, 297, 307, 308
Social Register Association *v.* Howard, 60 Fed. Rep. 270; 67 U. S. Pat. Gaz. 1448 - - - - - - - - 61, 295
Société Anonyme *v.* Western Distilling Co., 46 Fed. Rep. 921 - - 231
Société Anonyme de la Distillerie de la Bénédictine *v.* Micalovitch, Fletcher & Co., 36 Alb. L. J. 364 - - - 102, 112, 211, 635, 643, 645
Société Anonyme de la Distillerie de la Liqueur Bénédictine de l'Abbaye de Fécamp *v.* Western Distilling Co., 43 Fed. Rep. 416 - 136, 212
Société Anonyme des Mines et Fonderies de Zinc de la Vieille Montagne *v.* Baxter, 14 Bl. C. C. 261; 12 U. S. Pat. Gaz. 679; Dig. 559 - 9, 90, 141
Société Anonyme des Verreries de l'Etoile, *In re* (1), 10 P. R. 290 246, 367
Société Anonyme des Verreries de l'Etoile, *In re* (2), Stirling, J.—(1894) 1 Ch. 1; 10 P. R. 436; 63 L. J. Ch. 56; 69 L. T. N. S. 708. C. A.—(1894) 2 Ch. 26; 11 P. R. 142; 63 L. J. Ch. 381; 70 L. T. N. S. 295; 42 W. R. 420 - - 126, 131, 178, 205, 345, 348, 371
Société des Huiles d'Olive *v.* Rorke, 5 App. Div. N. Y. 175 - 184, 185
Sohier *v.* Johnson, 111 Mass. 238; Dig. 408 30, 105, 299, 307, 315, 342
Sohl *v.* Geisendorf, 1 Wils. (Ind.) 60; Dig. 367 - 2, 3, 64, 86, 104, 112, 131, 309
Solis Cigar Co. *v.* Pozo, 16 Col. 388; 25 Am. St. Rep. 279 100, 130, 209, 220
Somervell Brothers *v.* Cuthbert, 12 Cape of Good Hope, 255 - - 176
Somerville *v.* Schembri, 12 App. Cas. 453; 4 P. R. 179; 56 L. J. P. C. 61; 56 L. T. N. S. 454 - - - 9, 10, 87, 91, 223, 336, 353
Sone & Fleming Manufacturing Co., *In re*, 30 Ch. D. 505; 54 L. J. Ch. 961; 53 L. T. N. S. 33; 33 W. R. 796 - - - 54, 347, 350
Sorg *v.* Welsh, 16 U. S. Pat. Gaz. 910 - - - 61, 337, 634, 635
South Carolina, *Ex parte*, 64 U. S. Pat. Gaz. 1395 - - 84, 646
South Carolina *v.* Seymour, 65 U. S. Pat. Gaz. 1221; 66 U. S. Pat. Gaz. 1167; 153 U. S. 353 - - - - - - - - 646
South Hetton Colliery Co. *v.* North Eastern News Association, (1894) 1 Q. B. 133; 63 L. J. Q. B. 293; 69 L. T. N. S. 844; 42 W. R. 322 - 282
Southern *v.* How, Popham, 144; Cro. Jac. 471; 2 Rolle, 28; Dig. 1 - 6, 156

Sou—Sto PAGE

Southern White Lead Co. *v.* Carey, 25 Fed. Rep. 125; 33 U. S. Pat. Gaz. 624 - - - - - - - 75, 76, 121, 137, 139

Southorn *v.* Reynolds, 12 L. T. N. S. 75; Dig. 243 - -73, 108, 188

Sparks *v.* Harper, 3 Queen's L. J. Rep. 158, 201 - 60, 132, 139, 250

Speer, *In re*, 4 P. R. 521; 55 L. T. N. S. 880 - - 329, 345, 349

Spencer, *In re*, Chitty, J.—54 L. T. N. S. 659. C. A.—3 P. R. 73; 54 L. T. N. S. 660 - - - - 46, 52, 89, 332, 339, 356, 368, 371

Sphincter-Grip Armoured Hose Co., *In re*, 10 P. R. 84 - - 37, 342

Spicer *v.* James, Collyer on Partnership, 2nd ed. 104; Dig. 46 - - 305

Spottiswoode *v.* Clarke, 2 Ph. 154: 1 Coop. 254; 10 Jur. 1043; 8 L. T. O. S. 230—271; Dig. 85 - - - 2, 3, 62, 86, 176, 292

Spratt *v.* Jeffery, 10 B. & C. 249 - - - - - 306

Spratt's Patent *v.* Ward & Co., 11 Ch. D. 240; 48 L. J. Ch. 649; 40 L. T. N. S. 250: 27 W. R. 470; Dig. 644 - - - - - 175

Springhead Spinning Co. *v.* Riley, L. R. 6 Eq. 561; 37 L. J. Ch. 889; 19 L. T. N. S. 64; 16 W. R. 1138 - - - - 276, 279

Stachelberg *v.* Ponce, U. S. C. C.—23 Fed. Rep. 430. U. S. Sup. Ct.—128 U. S. 686; 46 U. S. Pat. Gaz. 337 - - 135, 212, 647

Standish *v.* Whitwell, 14 W. R. 512; Dig. 258 - - - 35, 238

Stapley & Smith, *In re*, 29 Ch. D. 877; 54 L. J. Ch. 727; 53 L. T. N. S. 79; 33 W. R. 725 - - - - - - 38, 39, 40, 333

Starey *v.* The Chilworth Gunpowder Co., 24 Q. B. D. 90; 59 L. J. M. C. 13; 62 L. T. N. S. 73; 38 W. R. 204 - - - 145, 147, 561, 563

State *v.* Bishop, 128 Mo. 373; 49 Am. St. Rep. 569 - 62, 85, 351, 638

Steedman, *In re*, L. J. N. of C. 1883, p. 83 - - - 81, 345

Steel, *In re*, Chitty, J., Jan. 12th, 1893 - - - -98, 347, 373

Steinthal *v.* Samson, Dig. 546 - - - - - - 35, 193

Steinway & Sons *v.* Henshaw, 5 P. R. 77 - - - 130, 137

Stephens, *Ex parte* (1), 24 W. R. 819; 1 Trade Marks, 13; Dig. 505 33, 97

Stephens, *Ex parte* (2), 3 Ch. D. 659; 46 L. J. Ch. 46; 24 W. R. 963; 1 Trade Marks, 13; Dig. 510 - - - 8, 22, 33, 76, 333, 334

Stephens *v.* Brett, 10 L. T. N. S. 231 - - - - - 227

Stephens *v.* De Conto, 4 Abb. Pr. N. S. 47; 30 N. Y. Super. Ct. 343; R. Cox, 442; Dig. 295 - - - - - - 128, 296

Stephens *v.* Peel, 16 L. T. N. S. 145; Dig. 273 - - 28, 29, 30, 136, 515

Sterling Remedy Co. *v.* Eureka Chemical & Manufacturing Co., 70 Fed. Rep. 704; 80 Fed. Rep. 105 - - - - - 61, 137

Sternberger *v.* Thalheimer, 3 U. S. Pat. Gaz. 120; Dig. 417 - 60, 68, 86, 110, 636

Stetson *v.* Winsor. See Winsor *v.* Clyde.

Steuart *v.* Gladstone, Fry, J.—10 Ch. D. 646; 47 L. J. Ch. 423; 38 L. T. N. S. 557; 26 W. R. 657. C. A.—10 Ch. D. 626; 40 L. T. N. S. 145; 27 W. R. 512; Dig. 605 - - - - - 319, 320, 321

Stevens *v.* Keating, 2 Ph. 333; 2 Webs. P. C. 176 - - - 176

Stevens *v.* Paine, 18 L. T. N. S. 600; Dig. 297 - - - 264, 268

Stewart *v.* Einstein & Sawhill (1), 61 U. S. Pat. Gaz. 287 - - 643

Stewart *v.* Einstein & Sawhill (2), 64 U. S. Pat. Gaz. 1333 106, 290, 322, 643

Stewart *v.* Smithson, 1 Hilt. 119; R. Cox, 175; Dig. 142 - - 214

Stimpson *v.* Pond, 2 Curtis, 502 - - - - - - 218

Stock, *In re*. See Blair *v.* Stock.

Sto—Tay PAGE
Stockowners' Meat Co. of New South Wales, *In re*, 14 P. R. 733 377, 383
Stokes, *Ex parte*, 64 U. S. Pat. Gaz. 437 - - - 60, 644
Stokes *v.* Allen, 63 N. Y. Sup. Ct. 526 - - - - - - 296
Stokes *v.* Landgraff, 17 Barb. 608; R. Cox, 137; Dig. 121 - - 63
Stone *v.* Carlan, 13 Monthly L. R. 360; R. Cox, 115; Dig. 104 - 274, 286
Stonebraker *v.* Stonebraker, 33 Md. 252, Dig. 333 - 25, 119, 166, 229
Stoughton *v.* Woodard, 50 U. S. Pat. Gaz. 1297 - - - - 61
Strahan & Co. *v.* King & Co., Dig. 539 - - - - - 292
Straiton & Storm, *Ex parte*, 18 U. S. Pat. Gaz. 923 - - 82, 644
Strasburger & Co., *Ex parte*, 20 U. S. Pat. Gaz. 155 - 59, 634, 639, 643, 644, 645, 654
Strasser *v.* Moonelis, N. Y. Super. Ct.—55 N. Y. Super. Ct. 197. N. Y. Ct. of App.—108 N. Y. 611 - - - - 62, 85, 351, 638
Street *v.* Union Bank of Spain and England, 30 Ch. D. 156; 55 L. J. Ch. 31; 53 L. T. N. S. 262; 33 W. R. 901 - - - - 272
Stringer, *In re*, 8 P. R. 145 - - - - - - 174, 330
Stuart *v.* Stewart (F. G.) Co., 85 Fed. Rep. 778 - - - 60, 261
Stuart & Co. *v.* Scottish Val de Travers Paving Co., Limited, Ct. Sess. Cas. 4th Ser. XIII. 1; 23 Scot. L. Rep. 11 - - 40, 41, 49, 59, 140
Sullivan & Burke, *Ex parte*, 16 U. S. Pat. Gaz. 765 - - 29, 35, 638
Swezey & Dart, *In re*, 62 How. Pr. 215; 10 Daly, 107 - - 102, 105
Swift *v.* Dey, 27 N. Y. Super. Ct. 611; R. Cox, 319; Dig. 245 - 130, 179
Swift *v.* Peters, 11 U. S. Pat. Gaz. 1110; Dig. 554 - 13, 31, 84, 86, 105, 113, 184, 639
Swift Specific Co., *In re*, 6 P. R. 352 - - - 244, 350, 354
Sykes, *In re*, 43 L. T. N. S. 626; 29 W. R. 235 - - 4, 97, 183, 347, 549
Sykes *v.* Sykes, 3 B. & Cr. 541; 5 D. & R. 292; 3 L. J. K. B. 46; Dig. 40 - - - - - 6, 11, 115, 116, 155, 158, 215, 221, 233
Symington & Co. *v.* Footman, Pretty & Co., 56 L. T. N. S. 696 - 59, 333
Symonds *v.* Greene, 28 Fed. Rep. 834 - - - 87, 142, 188, 647
Symonds *v.* Jones, 82 Maine, 302; 17 Am. St. Rep. 485 102, 212, 262

T.

Taendsticksfabriks Aktiebolaget Vulcan *v.* Myers, 65 N. Y. Sup. Ct. 161; 139 N. Y. 364 - - - - - - - 119, 127, 136
Talbot, *In re* (1). See Talbot *v.* Webley.
Talbot, *In re* (2), 11 P. R. 77; 63 L. J. Ch. 264; 70 L. T. N. S. 119; 42 W. R. 501 - - - - 40, 42, 129, 246, 368, 370, 371, 400
Talbot *v.* Judges, 3 Times L. R. 398 - - - - - 207, 296
Talbot *v.* Webley, 3 P. R. 276 - - - - - 48, 128, 372
Tallcott *v.* Moore, 13 N. Y. Sup. Ct. 106; Dig. 478 - - 236, 296
Tarrant & Co. *v.* Hoff. See Hoff *v.* Tarrant & Co.
Taylor *v.* Ashton, 11 M. & W. 415; 12 L. J. Ex. 363; 7 Jur. 978 116, 130, 157
Taylor *v.* Bemis, 4 Biss. 406; Dig. 231 - 99, 105, 109, 186, 201, 300, 342
Taylor *v.* Bothin, 5 Sawy. 584 - - - - - - - 374
Taylor *v.* Carpenter (1), 3 Story, 458; R. Cox, 14; Dig. 78 15, 60, 84, 223

Tay—Tol PAGE

Taylor *v.* Carpenter (2), 2 Wood & M. 1; R. Cox, 32; 9 L. T. O. S. 514; Dig. 83 - - - - - - - 60, 84, 161

Taylor *v.* Carpenter (3), 2 Sandf. Ch. 603; 42 Amer. Dec. 114; 11 Paige, 292; R. Cox, 45; Dig. 84 - - - - 13, 60, 84, 221, 222

Taylor *v.* Gillies, N. Y. C. P.—5 Daly, 285. N. Y. Ct. of App.—59 N. Y. 331; 17 Amer. Rep. 333; Dig. 448 - - - - 62, 189, 335

Taylor *v.* Taylor, 2 Eq. Rep. 290; 23 L. J. Ch. 255; 22 L. T. O. S. 271; Dig. 124 - - - - - - 24, 28, 30, 60, 73, 136

Taylor *v.* Virasami, Ind. L. R. 6 Mad. 108 - - - 4, 64, 131

Tetlow *v.* Savournin, 15 Phila. 170 - - - - - 171

Tetlow *v.* Tapper, 85 Fed. Rep. 774 - - - - 61, 111

Thewlis & Blakey, *In re*, 10 P. R. 369 - - - - - 350

Thomas, *Ex parte*, 2 Mont. D. & De G. 294; 10 L. J. Bky. 75; 5 Jur. 967; Dig. 69 - - - - - - - - 302, 306

Thomas, *In re*, 14 U. S. Pat. Gaz. 821; Dig. 634 - 34, 636, 637, 638

Thomas *v.* Williams, 14 Ch. D. 864; 49 L. J. Ch. 605; 43 L. T. N. S. 91; 28 W. R. 983 - - - - - - 175, 280, 283, 530

Thompson, *In re*, 13 P. R. 35 - - - 40, 178, 246, 250, 373

Thompson *v.* Bent's Brewery Co., Limited, 8 P. R. 479 - 178, 250, 514

Thompson *v.* Dunn, L. R. 5 Ch. 573; 18 W. R. 854 - - - 226

Thompson *v.* Improved French Dye Cleaning and Dyeing Co., Limited, 30 Sol. J. 753; 81 L. T. (Journal) 353 - - - - 257

Thompson *v.* Mackinnon, 2 Steph. Dig. 726 - - - 100, 299

Thompson *v.* Miller. See *In re* Thompson.

Thompson *v.* Montgomery, Chitty, J.—41 Ch. D. 35; 6 P. R. 404; 58 L. J. Ch. 93; 60 L. T. N. S. 766. C. A.—41 Ch. D. 42; 6 P. R. 409; 58 L. J. Ch. 374; 60 L. T. N. S. 769; 37 W. R. 637. H. L.—(1891) A. C. 217; 8 P. R. 361; 60 L. J. Ch. 757; 64 L. T. N. S. 748 46, 48, 72, 74, 121, 138, 178, 245, 250, 353, 368, 371, 514

Thompson *v.* Symonds, 5 T. R. 41 - - - - - - 624

Thompson & Co., *In re*, 6 P. R. 213 - - - - - 40, 72

Thompson, Derby & Co., *Ex parte*, 16 U. S. Pat. Gaz. 137 - 59, 637

Thomson *v.* Winchester, 36 Mass. 214; R. Cox, 7; Dig. 59 - 13, 58

Thomson & Co. *v.* Daily, Ct. Sess. Cas. 4th Ser. XXIV. 1173 - 233, 234

Thomson & Co. *v.* Robertson, Ct. Sess. Cas. 4th Ser. XV. 880; 25 Scot. L. Rep. 649 - - - - - - - - 4, 140, 184

Thorley's Cattle Food Co. *v.* Massam, V.-C. (1)—6 Ch. D. 582; 46 L. J. Ch. 713; Dig. 564. V.-C. (2)—14 Ch. D. 763; 41 L. T. N. S. 543; 28 W. R. 295. C. A.—14 Ch. D. 781; 42 L. T. N. S. 851; 28 W. R. 966 - - - - - - - - - 279, 282, 530

Thornbury *v.* Bevill, 1 Y. & C. Ch. 554; 6 Jur. 407; Dig. 71 - 304, 324

Thorneloe *v.* Hill, (1894) 1 Ch. 569; 11 P. R. 61; 63 L. J. Ch. 331; 70 L. T. N. S. 124; 42 W. R. 397 - - - 9, 17, 99, 236, 317

Thornton *v.* Crowley, 47 N. Y. Super. Ct. 527 - - 123, 135, 223

Thwaites, *In re*, Kekewich, J.—December 10th, 1897 - - - 383

Thynne *v.* Shove, 45 Ch. D. 577; 59 L. J. Ch. 509; 62 L. T. N. S. 803; 38 W. R. 667 - - - - - - - - 315, 317

Tipping *v.* Clarke, 2 Hare, 383 - - - - - - 288

Titus Salt & Co., *In re*. See Salt, *In re* (1).

Tolle, *In re*, 2 U. S. Pat. Gaz. 415; Dig. 405 - 34, 75, 81, 194, 202, 636, 637

Tom—Upp PAGE
Tompkins *v.* Butterfield, 25 Fed. Rep. 556 - - - - 218
Tonge *v.* Ward, 21 L. T. N. S. 480; Dig. 321 137, 171, 189, 231, 234, 240
Towgood Bros., *In re.* See Towgood Bros. *v.* Pirie & Sons, Limited.
Towgood Bros. *v.* Pirie & Sons, Limited, 4 P. R. 67; 56 L. T. N. S. 394; 35 W. R. 729 - - - - - - - - 40, 368, 371
Town *v.* Stetson, 4 Abb. Pr. N. S. 218; 3 Daly, 53; R. Cox, 514; Dig. 306 - - - - - - - - - 58
Trask Fish Co. *v.* Wooster, 28 Mo. App. 408 - - - 59, 139
Trego *v.* Hunt, (1896) A. C. 7; 65 L. J. Ch. 1; 73 L. T. N. S. 514; 44 W. R. 225 - - - - - - 301, 302, 311, 312, 529
Tucker Manufacturing Co. *v.* Boyington, 9 U. S. Pat. Gaz. 455; Dig. 474 - - - - - - - - 36, 55, 58, 135
Tudor *v.* Tudor, W. N. 1873, p. 72; Dig. 419 - 193, 266, 267, 278, 315
Tuerk Hydraulic Power Co. *v.* Tuerk, 99 N. Y. Sup. Ct. 65; 76 U. S. Pat. Gaz. 1274 - - - - - - - 130, 258, 264
Turner *v.* Evans, C. A.—2 De G. M. & G. 740. Q. B.—2 E. & B. 512; 22 L. J. Q. B. 412; 17 Jur. 1073; 21 L. T. O. S. 153; 1 W. R. 434; Dig. 114 - - - - - - - - 313
Turner *v.* Major, 3 Giff. 442; 8 Jur. N. S. 909; 5 L. T. N. S. 600; 10 W. R. 243; Dig. 202 - - - - - 307, 315, 318, 326
Turney, *In re*, 11 P. R. 37 - - - - - 126, 348, 349
Turton & Sons, Limited *v.* Turton, North, J.—61 L. T. N. S. 571. C. A. —42 Ch. D. 128; 58 L. J. Ch. 677; 61 L. T. N. S. 575; 38 W. R. 22 - - - - - - - - 24, 27, 125, 211, 261, 309
Tussaud *v.* Tussaud, 44 Ch. D. 678; 59 L. J. Ch. 631; 62 L. T. N. S. 635; 38 W. R. 503 - - 24, 25, 101, 211, 258, 259, 261, 263, 315
Tweed *v.* Mills, L. R. 1 C. P. 39 - - - - - - - 306
Twentsche Stoom Bleekery Gor [illegible] Ellinger & Co., 26 W. R. 70; Dig. 583 - - - - - - - 121, 189, 241, 358

U.

Union Paper Collar Co. *v.* Metropolitan Collar Co., 3 Daly, 171 - - 226
United States *v.* Marble, 22 U. S. Pat. Gaz. 1366 - - 36, 634
United States *v.* Morris, 2 Bond, 23 - - - - - 218
United States *v.* Roche, 1 McCrary, 385 - - - 179, 634, 640
United States *v.* Steffens, 100 U. S. 82; 16 U. S. Pat. Gaz. 999; 20 Alb. L. J. 447 - - - - - - 86, 634, 639, 640, 653
United States Mortgage Co., *In re*, 90 N. Y. Sup. Ct. 572 - - 258
United Vineyards Proprietors Co., *In re*, Stirling, J., Nov. 8th, 1889 - 330, 346
Upmann *v.* Currey, 29 Sol. J. 735; 79 L. T. (Journal) 332 119, 191, 220, 242
Upmann *v.* Elkan, M. R.—L. R. 12 Eq. 140; 40 L. J. Ch. 475; 24 L. T. N. S. 896; 19 W. R. 867. L. C.—L. R. 7 Ch. 130; 41 L. J. Ch. 246; 25 L. T. N. S. 813; 20 W. R. 131; Dig. 369 171, 172, 191, 235, 239, 240, 241, 518
Upmann *v.* Forester, 24 Ch. D. 231; 52 L. J. Ch. 946; 49 L. T. N. S. 122; 32 W. R. 28 - - - - 119, 191, 220, 241, 242
Upper Assam Tea Co. *v.* Herbert & Co., 7 P. R. 183 91, 130, 143, 224, 337

V.

Val—Wal PAGE

Valentine *v.* Valentine, 31 L. R. Ir. 488 - - - 24, 125, 242, 261

Van Beil *v.* Prescott, N. Y. Super. Ct.—46 N. Y. Super. Ct. 542. N. Y. Ct. of App.—82 N. Y. 630 - - - - - - 59, 357

Van Duzer, *In re*, V. C. B.—34 Ch. D. 623; 3 P. R. 240; 55 L. J. Ch. 812; 55 L. T. N. S. 134; 34 W. R. 730. C. A.—34 Ch. D. 631; 4 P. R. 31; 56 L. J. Ch. 370; 56 L. T. N. S. 286; 35 W. R. 294 - - 38, 40, 66, 72, 244, 330, 334, 351

Van Wyck *v.* Horowitz, 46 N. Y. Sup. Ct. 237 - - - - 269

Vaughan-Jones, *In re*, North, J., June 21st, 1884 - - 371, 373

Vergaras, *In re*, Hall, V.-C., June 3rd, 1881 - - - 54, 346

Vernon *v.* Hallam, 34 C. D. 748; 56 L. J. Ch. 115; 55 L. T. N. S. 676; 35 W. R. 156 - - - - - - - - 265, 267, 268, 311

Vickery *v.* Welch, 19 Pick. 523; Dig. 62 - - - 289, 313

Vidvard & Sheehan, *In re*, 8 U. S. Pat. Gaz. 143; Dig. 469 - - 635

Vignier, *In re*, 6 P. R. 490; 61 L. T. N. S. 495 - 40, 41, 49, 67, 245, 369, 371, 389

Vogeler Co. *v.* Middleton, 84 L. T. (Journal) 45 - - - - 128

Volta Belt Co., *In re*, 8 U. S. Pat. Gaz. 144; Dig. 468 - - - 635

Von Mumm *v.* Frash, 56 Fed. Rep. 830; 68 U. S. Pat. Gaz. 143 - 127, 129, 132, 139, 256

Von Mumm *v.* Wittemann, 85 Fed. Rep. 966 - - - 60, 135

Vonderbank *v.* Schmidt, 44 La. Ann. 264; 32 Am. St. Rep. 336 - 273, 301, 317

Vulcan Match Manufacturing Co. *v.* Jebson & Co., 1 Kyshe, 359 135, 234

Vulcan Match Manufacturing Co. *v.* Knos & Co., Pearson, J., June 22nd, 1883 - - - - - - - - - 137

W.

Wade *v.* Jenkins, 2 Giff. 509; 30 L. J. Ch. 633; 7 Jur. N. S. 39; 3 L. T. N. S. 464; Dig. 192 - - - - - - - 306, 321

Waeferling, *Ex parte*, 16 U. S. Pat. Gaz. 764 - - - 59, 634, 637

Wagner *v.* Daly, 74 N. Y. Sup. Ct. 477 - - - - - 208

Walkden Aerated Waters Co., *In re*, 54 L. J. Ch. 394; 1 Trade Marks, 39; Dig. 558 - - - - - - - - 35, 54, 346

Walker, *In re*, Dig. 624 - - - - - - - 378, 381

Walker *v.* Alley, 13 Grant, Up. Can. Ch. 366 - 120, 121, 166, 168, 271

Walker *v.* Cargill, 5 N. S. W. Rep. (L.) 243 - - - - 357

Walker *v.* Hawxhurst, 5 Bl. C. C. 494 - - - - - 218

Walker *v.* Mottram, 19 Ch. D. 355; 51 L. J. Ch. 108; 45 L. T. N. S. 659; 30 W. R. 165 - - - - - 277, 309, 310, 312, 325

Walker & Co., *Ex parte*. See *In re* Walker.

Walker, Hiram, & Sons *v.* Mikolas. See Hiram Walker & Sons *v.* Mikolas.

Wallace & Co. *v.* King & Co., Bombay High Ct., Bayley, J., April 30th, 1879 - - - - - - - - 128, 135, 238, 353

Wallis *v.* Wallis, 4 Dr. 458; 28 L. J. Ch. 441; 7 W. R. 313 - 237, 240, 241

Wal—Wei PAGE

Walter *v.* Emmott, Pearson, J.—53 L. T. N. S. 437. C. A.—54 L. J. Ch. 1059; 53 L. T. N. S. 438 - - - - 291, 295, 296, 297

Walter *v.* Head, M. R.—W. N. 1881, p. 124; 25 Sol. J. 742. C. A.—25 Sol. J. 757 - - - - - - - - 294, 520

Walter Baker & Co. *v.* Baker, 77 Fed. Rep. 181 - - 137, 139, 261

Walter Baker & Co. *v.* Sanders, 80 Fed. Rep. 889 - - 16, 261

Walton *v.* Crowley, 3 Bl. C. C. 440; R. Cox, 166; Dig. 138 - 10, 100, 130, 165, 342

Wamsutta Mills *v.* Allen, 12 Phila. 535 - - - 4, 137, 141, 183

Warburg & Co., *In re*, 13 U. S. Pat. Gaz. 44; Dig. 571 - 58, 66, 75, 212, 351, 637

Ward *v.* Beeton, L. R. 19 Eq. 207; 23 W. R. 533; Dig. 450 - 192, 277, 297

Ward *v.* Drat, L. J. N. of C. 1878, p. 67; Dig. 607 - - - 280

Ward *v.* Robinson. See Robinson *v.* Finlay.

Ward, Sturt & Sharp, *In re*, 50 L. J. Ch. 347; 44 L. T. N. S. 97; 29 W. R. 395 - - - - - - - - 373, 549

Warner *v.* Warner, Stirling, J.—5 Times L. R. 327. C. A.—5 Times L. R. 359 - - - - - - 25, 221, 261, 263, 317

Warren *v.* Warren Thread Co., 134 Mass. 247 - - - - 104

Washburn & Moen Manufacturing Co. *v.* Haish, 9 Biss. 141; 16 U. S. Pat. Gaz. 465 - - - - - - - - - 286

Washington Creamery Buttered Flour Co. *v.* Martien. See Martha Washington, &c.

Wason *v.* Waring, 15 Beav. 151 - - - - - - - 202

Waterman, *In re*. See Waterman *v.* Ayres.

Waterman *v.* Ayres, Kay, J.—39 Ch. D. 29; 59 L. T. N. S. 17; 5 P. R. 240. C. A.—39 Ch. D. 33; 57 L. J. Ch. 893; 59 L. T. N. S. 19; 37 W. R. 110; 5 P. R. 368 - 33, 39, 40, 47, 49, 56, 128, 332, 352, 371

Waterman *v.* Shipman, 130 N. Y. 301 - - - - - 55, 61

Watkins *v.* Landon, 52 Minn. 389; 38 Am. St. Rep. 560 - - 51

Watson *v.* Westlake, 12 Ont. Rep. 449 - - - - - 10, 357

Watt *v.* O'Hanlon, 4 P. R. 1 - - 59, 74, 235, 332, 333, 335, 353

Waukesha Hygeia & Mineral Springs Co. *v.* Hygeia Sparkling Distilled Water Co., 63 Fed. Rep. 438, 443; 24 U. S. App. 162, 172; 70 U. S. Pat. Gaz. 1319, 1321 - - - - - - 108, 192, 648

Weaver, *In re*, 10 U. S. Pat. Gaz. 1; Dig. 501 - - 60, 95, 132, 638

Weaver *v.* Sanitary Engineering and Ventilation Co., L. J. N. of C. 1887, p. 144 - - - - - - - - 204, 355

Weaver *v.* Stiff & Sons, L. J. N. of C. 1887, p. 144, 84 L. T. (Journal) 46 - - - - - - - - 204, 355

Webster *v.* Webster, 3 Swanst. 490; Dig. 7 - - - - 278, 315

Wedderburn *v.* Wedderburn, 22 Beav. 84; 25 L. J. Ch. 710; 2 Jur. N. S. 674; 28 L. T. O. S. 4; Dig. 139 - - - - 322

Wedekind *v.* General Electric Co., 14 P. R. 190 - - - - 609

Wedgwood *v.* Smith, Dig. 96 - - - - - - - 29, 30

Weed *v.* Peterson, 12 Abb. Pr. N. S. 178; Dig. 387 - 29, 102, 103, 120, 171, 220, 232, 240, 277

Weener *v.* Brayton, 152 Mass. 101; 53 U. S. Pat. Gaz. 272 - 62, 85, 351, 638

Weinstock, Lubin & Co. *v.* Marks, 109 Cal. 529; 50 Am. St. Rep. 57 - 130, 270

Wei—Wil PAGE

Weisert Bros., *Ex parte*, 16 U. S. Pat. Gaz. 680 - - - 349, 638
Welch *v.* Knott, 4 K. & J. 747; 4 Jur. N. S. 330; Dig. 157 - 31, 144, 166
Weldon *v.* Dicks, 10 Ch. D. 247; 48 L. J. Ch. 201; 39 L. T. N. S. 467; 27 W. R. 639; Dig. 638 - - - - 111, 205, 297, 298
Wellcome, *In re*, 32 Ch. D. 213; 3 P. R. 76; 55 L. J. Ch. 542; 54 L. T. N. S. 493; 34 W. R. 453 - - 9, 98, 201, 300, 343, 366, 374
Wellman & Dwire Tobacco Co. *v.* Ware Tobacco Works, 46 Fed. Rep. 289 - - - - - - - - - 133, 135
Western Counties Manure Co. *v.* Lawes Chemical Manure Co., L. R. 9 Ex. 218; 43 L. J. Ex. 171; 23 W. R. 5 - - - - 279
Weston *v.* Hemmons, 2 V. L. R. Eq. 121; Dig. 517 31, 68, 288, 289, 522
Weston *v.* Ketcham (1), 39 N. Y. Super. Ct. 54; Dig. 455 - 9, 29, 31, 102, 106, 109, 115, 187, 188, 201, 206, 290, 300, 319, 321, 342
Weston *v.* Ketcham (2), 51 How. Pr. 455; Dig. 487 - 9, 29, 31, 102, 105, 106, 109, 115, 187, 188, 201, 319, 342
Wheeler *v.* Johnston, 3 L. R. Ir. 284 - 5, 9, 18, 19, 21, 73, 74, 88, 109, 121, 128, 166, 178, 181, 223, 237, 271, 284, 355, 357, 527
Wheeler & Wilson Manufacturing Co. *v.* Shakespear, 39 L. J. Ch. 36; Dig. 322 - - - - - 55, 111, 202, 286, 529
White *v.* Mellin. See Mellin *v.* White.
White *v.* Schlecht, 14 Phila. 88 - - - - - - - 20
White, G. G., Co. v. Miller, 50 Fed. Rep. 277 - - - 135, 205
"White Rose" Trade Mark, *In re*. See Sone & Fleming Manufacturing Co., *In re*.
Whiteley, *In re*, 43 L. T. N. S. 627; 29 W. R. 235; Dig. 641 - 97, 131, 141, 347
Whitfield *v.* Loveless, 64 U. S. Pat. Gaz. 442 - - - 75, 272
Whitney *v.* Hickling, 5 Grant, Up. Can. Ch. 605 - 123, 135, 284, 288
Whitstable (Free Fishers and Dredgers of) *v.* Elliott, W. N. 1888, p. 27 - 48, 66, 74, 178
Whittaker *v.* Howe, 3 Beav. 383; Dig. 66 - - - 304, 313
Whittier *v.* Dietz, 66 Cal. 78 - - - - - - 358, 643
Whyte, *In re*, U. S. Pat. Comm., Dec. 1871, 304; Dig. 380 - - 634
Wiesel, *Ex parte*, 36 U. S. Pat. Gaz. 689 - - - 61, 634
Wilcox & Gibbs Sewing Machine Co. *v.* Gibbons' Frame, 21 Bl. C. C. 431; 17 Fed. Rep. 623 - - - - - - 56, 81, 637
Wilder *v.* Wilder, cited 2 Sawy. 78, 89; Dig. 372 - - 25, 31, 122
Wilkie *v.* McCulloch, Ct. of Sess. Cas. 1st Ser. II. 413 (new ed. 369) - 6, 30
Wilkinson *v.* Griffiths, 8 P. R. 370 - - - 131, 132, 134
Wilkinson, W., & Sons, Limited, *In re*. See Burgon & Wilkinson, *In re*.
Willett *v.* Blanford, 1 Hare, 253; 11 L. J. Ch. 182; 6 Jur. 274; Dig. 70 - 322
William Dixon, Limited, *In re*, Jessel, M. R., April 4th, 1879 - - 345
William Rogers Manufacturing Co. *v.* Rogers & Spurr Manufacturing Co., 11 Fed. Rep. 495 - - - - 88, 122, 221, 222, 261
William Rogers Manufacturing Co. *v.* Rogers, R. W., Co., 66 Fed. Rep. 56; 70 Fed. Rep. 1017; 73 U. S. Pat. Gaz. 970 - - - 261
William Rogers Manufacturing Co. *v.* Simpson, 54 Conn. 527 - - 261
Williams *v.* Adams, 8 Biss. 452 - - - - - 60, 111, 205
Williams *v.* Brooks, 50 Conn. 278; 47 Amer. Rep. 642 - 119, 128, 135, 221, 222

Wil—Woo PAGE

Williams *v.* Hodge & Co., 84 L. T. (Journal) 134; 4 Times L. R. 175 - 276

Williams *v.* Johnson, 2 Bos. 1; R. Cox, 214; Dig. 150 - - 60, 68, 123, 139, 222

Williams *v.* Osborne, 13 L. T. N. S. 498; Dig. 254 - 120, 235, 240, 241, 254, 270, 293

Williams *v.* Spence, 25 How. Pr. 366; R. Cox, 305; Dig. 225 - 60, 68

Williams *v.* Williams (1), 3 Mer. 157; Dig. 26 - - - 288, 294

Williams *v.* Williams (2), 2 Swanst. 253; 1 Wils. 473; Dig. 29 - - 313

Williams *v.* Wilson, 4 Sandf. Ch. 379 - - - 308, 313, 319

Wills, *In re* (1), Kekewich, J., (1892) 3 Ch. 201; 9 P. R. 346; 61 L. J. Ch. 546; 66 L. T. N. S. 494. C. A.—(1892) 3 Ch. 207; 9 P. R. 349; 67 L. T. N. S. 453 - - - - - - 132, 226

Wills, *In re* (2), (1893) 2 Ch. 262; 10 P. R. 269; 62 L. J. Ch. 545; 68 L. T. N. S. 793 - - 4, 111, 145, 210, 212, 220, 350, 356, 372

Wilmer *v.* Thomas, 74 Md. 485 - - - - 100, 299, 320

Wilson *v.* Maxfield, L. J. N. of C., 1875, p. 51; Dig. 459 - 120, 128, 181

Wilson *v.* Singer Manufacturing Co., 16 U. S. Pat. Gaz. 1091 - 215, 218, 390

Winser & Co. Limited *v.* Armstrong & Co., 16 P. R. 167 - 51, 52, 56, 220, 252

Winsor *v.* Clyde, 9 Phila. 513; Dig. 396 - - 166, 186, 274

Witt *v.* Corcoran, Seton, 5th ed. 590; 2 Ch. D. 69; 45 L. J. Ch. 603; 34 L. T. N. S. 550; 24 W. R. 501; Dig. 423 - 265, 266, 268, 527, 529

Witthaus *v.* Braun, 44 Md. 303; 22 Amer. Rep. 44; Dig. 492 - 9, 99, 109, 115, 176, 186, 201, 290, 299, 300

Wittman *v.* Oppenheim, 27 Ch. D. 260; 54 L. J. Ch. 56; 50 L. T. N. S. 713; 32 W. R. 766 - - - - - - - - 609

Wolf, *Ex parte*, 80 U. S. Pat. Gaz. 1271 - - - - - 645

Wolfe *v.* Alsop, 10 V. L. R. (E.) 41; 12 *ib.* 421, 887 - 52, 58, 81, 89, 123, 178, 201, 269, 284, 332, 356

Wolfe *v.* Barnett, 24 La. Ann. 97; 13 Amer. Rep. 111; Dig. 390 - 13, 204, 222

Wolfe *v.* Burke, N. Y. Sup. Ct.—7 N. Y. Sup. Ct. 151; 2 U. S. Pat. Gaz. 441. N. Y. Ct. of App.—56 N. Y. 115; Dig. 434 - 207, 210, 281

Wolfe *v.* Goulard, 18 How. Pr. 64; R. Cox, 226; Dig. 179 - 58, 67, 112, 122, 123, 139

Wolfe *v.* Hart, 4 V. L. R. Eq. 125; Dig. 653 - 58, 122, 130, 136, 178

Wolfe *v.* Lang & Co., 13 V. L. R. 752 - 52, 58, 89, 201, 207, 332, 356

Wolmershausen *v.* O'Connor, 36 L. T. N. S. 921; Dig. 552 - 269, 313, 324, 325

Wolmershausen *v.* Wolmershausen, G. S., & Co. Limited, W. N. 1892, p. 87 - - - - - - - - - - 524

Wood, *In re.* See Wood *v.* Lambert.

Wood *v.* Burgess, 24 Q. B. D. 162; 59 L. J. M. C. 11; 61 L. T. N. S. 593; 38 W. R. 331 - - - - - 144, 147, 561, 563

Wood *v.* Lambert, Pearson, J.—32 Ch. D. 247; 3 P. R. 81; 54 L. T. N. S. 314. C. A.—32 Ch. D. 257; 3 P. R. 88; 55 L. J. Ch. 377; 54 L. T. N. S. 317 - 3, 4, 40, 47, 48, 49, 52, 64, 89, 113, 145, 209, 210, 332, 339, 350, 356, 368, 369, 372

Woodman *v.* United States, 15 Ct. of Cl. 541 - - - - 634

Woods *v.* Sands, Codd. Dig. 50; Dig. 467 - 102, 273, 284, 313, 315

Woodward *v.* Lazar, 21 Cal. 448; 82 Amer. Dec. 751; R. Cox, 300; Dig. 212 - - - - - - - - 166, 272, 308

Woo—Zwa PAGE

Woolf *v.* Woolf, 43 Sol. J. 127 - - - - - - 224, 243

Woollam *v.* Ratcliff, 1 H. & M. 259; Dig. 217 - 121, 127, 140, 198, 235, 286, 287

Woolley *v.* Broad, 9 P. R. 429 - - - - - - - 609

Worral *v.* Hand, Peake, 105; Dig. 6 - - - - - - 306

Worthington & Co., *In re*, 14 Ch. D. 8; 49 L. J. Ch. 646; 42 L. T. N. S. 563; 28 W. R. 747; Dig. 655 - 35, 126, 128, 130, 131, 338, 348, 349

Wotherspoon & Co. *v.* Currie, V.-C.—22 L. T. N. S. 260; 18 W. R. 562. C. A.—42 L. J. Ch. 130; 23 L. T. N. S. 443; 18 W. R. 942. H. L.—L. R. 5 H. L. 508; 42 L. J. Ch. 130; 27 L. T. N. S. 393; Dig. 329 - 34, 72, 73, 121, 123, 130, 134, 136, 138, 139, 197, 221, 222, 236, 250, 515

Wotherspoon & Co. *v.* Gray & Co., Ct. of Sess. Cas. 3rd Ser. II. 38; Dig. 227 - - - - - - - - 58, 181, 285

Wragg, *In re*, 29 Ch. D. 551; 54 L. J. Ch. 391; 52 L. T. N. S. 467 - 52, 89, 332, 339, 347, 353, 354, 356, 368, 370

Wren *v.* Weild, L. R. 4 Q. B. 730; 38 L. J. Q. B. 88; 20 L. T. N. S. 277 - - - - - - - - - 279

Wright *v.* Simpson, 15 U. S. Pat. Gaz. 968 - 68, 106, 113, 206, 634, 640

Wright, Crossley & Co., *In re*, Romer, J.—15 P. R. 131. C. A.—15 P. R. 377 - - - - - - - 28, 368, 370, 372

Wright, Crossley & Co. *v.* William Dobbin & Co., 15 P. R. 21 - 154, 216, 219, 390

Wylam *v.* Clarke, W. N. 1876, p. 68; Dig. 488 - - 128, 236, 238

Y.

Yale Cigar Manufacturing Co. *v.* Yale, 30 U. S. Pat. Gaz. 1183 - 4, 61, 68, 86, 88, 105, 145, 186, 357, 634, 639, 640, 643, 645, 646, 654

Youatt *v.* Winyard, 1 Jac. & W. 394; Dig. 31 - - - 121, 288

Young, *Ex parte*, Dig. 537 - - - - - 10, 77, 104, 299

Young *v.* Jones Bros. & Co., 3 Hughes, 274 - 29, 102, 106, 299, 317, 322, 323

Young *v.* Macrae, 9 Jur. N. S. 322; Dig. 205 - 5, 50, 51, 55, 58, 66, 67, 112

Younger, *In re*, Stirling, J., June 22nd, 1888 - - - 377, 380

Z.

Zimmermann *v.* Erhard, 83 N. Y. 74 - - - - - - 309

Zwack, *Ex parte*, 76 U. S. Pat. Gaz. 1855 - - - 65, 533, 645

TABLE OF DEFENDANTS.

ABBOTT—R. *v.*
Abbott—Siegert *v.*
Abrahams—Hier *v.*
Accident, Disease, and General Insurance Corporation, Limited—Accidental Insurance Co., Limited *v.*
Accountants, Limited, Corporation of—Accountants, Society of, in Edinburgh *v.*
Adams—Hostetter *v.*
Adams—Priestley *v.*
Adams—Williams *v.*
Alaska Imperial Co.—Alaska Packers' Association *v.*
Alcorn—Columbia Mill Co. *v.*
Aleploglu—Gout *v.*
Alexander—Jurgensen *v.*
Allen—Kinney *v.*
Allen—Osgood *v.*
Allen—Rockingham Rail. Co. *v.*
Allen—Stokes *v.*
Allen—Wamsutta Mills *v.*
Alley—Walker *v.*
Alsop—Wolfe *v.*
Alter & Julian Co.—French *v.*
Alvord—Newman *v.*
American Grocery Co.—Godillot *v.*
American Leather Cloth Co.—Leather Cloth Co. *v.*
American Tobacco Co.—Hanfstaengl *v.*
Ames & Sons—Collins & Co. *v.*
Ananiadi—R. *v.*
Anchor Brand Remedy Co.—Richter *v.*
Anchor Tube Co.—Selby *v.*
Anderson—Liebig's Extract of Meat Co. *v.*
Andrews—Sherwood *v.*
Anglo-American Telegraph Co.—Piggott *v.*
Anglo-Indian Tea Co., Limited—Simpson *v.*
Anthony—American Solid Leather Button Co. *v.*
Anthony—McCann *v.*
Apollinaris Co.—Fisher *v.*
Apollinaris Co.—Saxlehner *v.*
Ardley—R. *v.*
Armistead—Blackwell *v.*
Armit—Armstrong *v.*
Armitage—Clark Thread Co. *v.*
Armstrong—Wilmer & Co., Limited *v.*
Army & Navy & Civil Service Co-operative Society of India, Limited—Army & Navy Co-operative Society, Limited *v.*
Ashford—Graves *v.*
Ashton—Taylor *v.*
Astral Refining Co., Limited—Pratt Manufacturing Co. *v.*
Atkins—Schweitzer *v.*
Atkinson—Atkinson *v.*
Atkinson—Rosing *v.*
Atlas Metal Co.—Magnolia Metal Co. *v.*
Australian and New Zealand Mortgage Co.—Australian Mortgage, Land and Finance Co. *v.*
Autran—Grezier *v.*
Avery—R. *v.*
Ayres—Waterman *v.*

BABCOCK Printing Press Manufacturing Co.—Cottrell *v.*
Bachof—Frese *v.*
Badger—Emerson *v.*
Badman—Pinto *v.*
Baeder—Baeder *v.*
Bailey—Gardner *v.*
Bailey—Johnson *v.*
Baird—Bayer *v.*
Baird—Colladay *v.*
Baker—Lawrie *v.*
Baker—Myers *v.*
Baker—Selchow *v.*
Baker—Shackle *v.*
Baker—Walter Baker & Co. *v.*
Bakers' and Confectioners' Tea Association—Abbott *v.*
Balfour—Hooper *v.*
Ball—R. *v.*

Balls—Gaskin *v.*
Balmer—Lamplough *v.*
Baltz, J. & P., Brewing Co.—Kaiserbrauerei Beck & Co. *v.*
Bandey—Ripley *v.*
Banham—Reddaway *v.*
Bank of London—Lawson *v.*
Bank of Whitehaven—Dawson *v.*
Banker—Deverall *v.*
Banks—R. *v.*
Barham—Power *v.*
Barlow—Broadhurst *v.*
Barnett—Wolfe *v.*
Barrett—Leggott *v.*
Barrow—Barrow *v.*
Barrows—Hall *v.*
Basch—Kinney *v.*
Bassett—McAndrew *v.*
Bastendorff—Heinrichs *v.*
Bastian—Bergamini *v.*
Batchellor—Batchellors *v.*
Bate—Olin *v.*
Bauer—Johnson *v.*
Baumbach—Moxie Nerve Food Co. *v.*
Baxter—Société Anonyme des Mines et Fonderies de Zinc de la Vieille Montagne *v.*
Beachim—Braham *v.*
Beadle—Munro *v.*
Beall—Quartz Hill Consolidated Gold Mining Co. *v.*
Bean—Loog (Hermann), Limited *v.*
Becker—Hostetter Co. *v.*
Beddow—Beddow *v.*
Bedford—Bury *v.*
Bedingfield—Lever *v.*
Beedzler—Lamplough *v.*
Beeson—Dawson *v.*
Beeton—Bradbury *v.*
Beeton—Ward *v.*
Belcher—McIntyre *v.*
Belford—Clemens *v.*
Belford, Clark & Co.—Estes *v.*
Bell—Arundell *v.*
Bell & Co.—Bell, Black & Co. *v.*
Bell (R. W.) Manufacturing Co.—Fairbank (N. K.) Co. *v.*
Bemis—Taylor *v.*
Benbow—Edmonds *v.*
Benkert—Feder *v.*
Bennett—Hudson *v.*
Bensel—Linde *v.*
Bent—Singer Manufacturing Co. *v.*
Bent's Brewery Co., Limited—Thompson *v.*
Bentall—Ransome *v.*
Bentham Hemp Spinning Co.—Reddaway *v.*
Bentley—Ainsworth *v.*
Beresford—Schrauder *v.*
Berger—Samuel *v.*
Bernard—Crawford *v.*
Berndes—Hinrichs *v.*
Berry—Robertson *v.*
Beshore — Kohler Manufacturing Co. *v.*
Betts—Neilson *v.*
Bevill—Thornbury *v.*
Billings—Marsh *v.*
Bingham—Licensed Newspaper Co. *v.*
Binning—Day *v.*
Birmingham Vinegar Brewery Co.—Powell *v.*
Bishop—Hoeb *v.*
Bishop—State *v.*
Blackman—Filkins *v.*
Blackwell—Armistead *v.*
Blackwell—Braun & Co. *v.*
Blackwell—McElwee *v.*
Blake—Jacobsohn *v.*
Blanford—Willett *v.*
Blood Balm Co.—Foster *v.*
Bloomer—Bloss *v.*
Bloomingdale—New Home Sewing Machine Co. *v.*
Blumberg—Hutchinson *v.*
Boehm—Mouson & Co. *v.*
Bohmer—Duwel *v.*
Bolles—Fenn *v.*
Bolton—Kinahan *v.*
Bolton—Singleton *v.*
Boston Rubber Co.—Boston Rubber Shoe Co. *v.*
Bostwick—Lockwood *v.*
Bothin—Taylor *v.*
Bottomley—Lloyd *v.*
Boulton—Brower *v.*
Bouyon—Probasco *v.*
Bower—Hostetter Co. *v.*
Bowker—Carver *v.*
Bowles—Brett *v.*
Boyd—Beddow & Sons *v.*
Boyd—Punch *v.*
Boyes—R. *v.*
Boyington—Tucker Manufacturing Co. *v.*
Boys—Austen *v.*
Bradley—Coe *v.*
Brain—Purser *v.*
Brakell—Scheile *v.*
Bramble, Wilkins & Co.—Marcovitch *v.*
Brand—Dence *v.*
Brand—Metcalfe *v.*
Braun—Witthaus *v.*
Brayton—Weener *v.*
Breidenbach—Rowland *v.*
Brendel—McVey *v.*
Brett—Stephens *v.*
Brewster—Constable & Co. *v.*

Brinsmead—Brinsmead *v.*
British North Borneo Cigar Co.—Jarrett *v.*
British Tea and Trading Association, Limited—Hanson *v.*
Britten—Sen Sen Co. *v.*
Broad—Woolley *v.*
Broadaway—Baumgarten *v.*
Brooklyn Chemical Works—Keasbey *v.*
Brooks—Dicks *v.*
Brooks—Williams *v.*
Brotherhood—Halsey *v.*
Broughton—Broughton *v.*
Brown—Babbit *v.*
Brown—Collins Co. *v.*
Brownrigg—Day *v.*
Broxburn Oil Co., Limited—Burland & Co. *v.*
Brueggeman Reinert Distillery Co.—Hostetter Co. *v.*
Brunton—Coffeen *v.*
Brush Midland Electric Light and Power Co.—Midland Electric Light and Power Co. *v.*
Bryan—Curtis *v.*
Bryan—R. *v.*
Bullock—Reynolds *v.*
Bulmer—Rolt *v.*
Burckhardt—Burckhardt *v.*
Burgess—Burgess *v.*
Burgess—Wood *v.*
Burke—Wolfe *v.*
Burleson—Butler *v.*
Burns—Lyman *v.*
Bustard—Braham *v.*
Butterfield—Munsey *v.*
Butterfield—Tompkins *v.*
Butterworth—Moodie *v.*
Byles—Kelly *v.*

Campbell—Charleson *v.*
Canada Publishing Co.—Gage *v.*
Capital and County Deposit Bank—Capital and Counties Bank, Limited *v.*
Capital Microbe Destroyer Co.—Radam *v.*
Capitol City Manufacturing Co.—Collins Chemical and Manufacturing Co. *v.*
Carbon Metallic Paint Co.—Prince Metallic Paint Co. *v.*
Carey—Southern White Lead Co. *v.*
Cargill—Walker *v.*
Carlan—Stone *v.*
Carlier—Rillet *v.*
Carlile—Cartier *v.*
Carpenter—Taylor *v.*
Carron—Smith *v.*
Carter—R. *v.*
Case—Morrison *v.*
Cassin—Burke *v.*
Caswell—Hazard *v.*
Cathery—Farina *v.*
Cellonite Manufacturing Co.—Celluloid Manufacturing Co. *v.*
Central City Soap Co.—O'Rourke *v.*
Central Lard Co.—Fairbank (N. K.) Co. *v.*
Chadsey—Genin *v.*
Chadwick—Coats *v.*
Chadwick—Covell *v.*
Chandler—Cocks *v.*
Chaney—Hoxie *v.*
Chapman—Bullock *v.*
Chapman—Simpson *v.*
Chappell—Franke *v.*
Charbonnel—Robineau *v.*
Chatto & Windus—Poulett *v.*
Cheltenham Railway Co.—Gordon *v.*
Chemists' Co-operative Society, Ld.—Liebig's Extract of Meat Co. *v.*
Child—Filley *v.*
Chilworth Gunpowder Co.—Starey *v.*
Chooneeloll Mullick—Orr-Ewing *v.*
Christie—Christie *v.*
Clark—Canal Co. *v.*
Clark—Clark *v.*
Clark—Fennessy *v.*
Clarke—Anheuser Busch Brewing Association *v.*
Clarke—Rawlinson *v.*
Clarke—Spottiswoode *v.*
Clarke—Tipping *v.*
Clarke—Wylam *v.*
Cleave—McNair *v.*
Clements—Shipwright *v.*
Cleveland Stone Co.—Pike Manufacturing Co. *v.*
Closs—R. *v.*
Clybouw—Moet *v.*
Clyde—Winsor *v.*
Cocks—Brooks *v.*
Cohen—Choynski *v.*
Cohen—R. *v.*
Coker—Hitchcock *v.*
Cole—Popham *v.*
Cole—R. *v.*
Coleman—Radway *v.*
Collender—Phelan *v.*
Colley—Hart *v.*
Collicott—Hart *v.*
Collingridge—Cook *v.*
Collins—Crawshay *v.*
Colt's Patent Fire Arms Manufacturing Co.—Gally *v.*
Commander—Handy *v.*

Commerce—Miller Tobacco Manufactory *v.*
Commissioners of Inland Revenue—Potter *v.*
Comptroller-General—R. *v.*
Condy—Sanitas Co., Limited *v.*
Conhaim—Cigar Makers' Protective Union *v.*
Connecticut Mutual Life Insurance Co.—Barker *v.*
Connell—Bayer *v.*
Connolly—Baxter *v.*
Conservative Newspaper Co., Limited—Marks *v.*
Cooke—British Tea & Trading Association, Limited *v.*
Cooke Brewing Co.—Beadleston & Woerz *v.*
Cooper—Hennessy *v.*
Cooper & Co.—Ginesi *v.*
Cope—Dakin *v.*
Copeman's Patent Seat Raft and Marine Life-Saving Association, Limited—Roper's Patent Seat-Raft and Marine Life-Saving Apparatus Co. *v.*
Coplay—New York & Rosendale Cement Co. *v.*
Corcoran—Witt *v.*
Cordingley—Lyric Theatre, Limited *v.*
Cornwell—Morse *v.*
Coulson & Co.—Coulson & Sons *v.*
Courtenay—Mogford *v.*
Couston—Moet *v.*
Covell—Chadwick *v.*
Covert—Hutchinson *v.*
Cowen—Collins Co. *v.*
Cowie—Newton *v.*
Crabb—Blackwell *v.*
Crampton—R. *v.*
Craven—Moore *v.*
Crichton—Russell *v.*
Crowley—Thornton *v.*
Crowley—Walton *v.*
Crump—Colman *v.*
Cumston—Hallett *v.*
Curling—England *v.*
Currey—Robinson *v.*
Currey—Upmann *v.*
Currie—Wotherspoon *v.*
Cuthbert—Somervell Bros. *v.*
Cutter—Hardy *v.*

D'Albuquerque—Nunn *v.*
Daily—Thomson & Co. *v.*
Dalton—Oakey & Sons *v.*
Daly—Corwen *v.*
Daly—Isaacs *v.*
Daly—Wagner *v.*
Dane—Ottoman Cahvey Co. *v.*
Daniel—Rutter *v.*
Daniell & Sons' Breweries, Limited—Paine *v.*
Dannenhoffer—Huwer *v.*
Dark—R. *v.*
Darley—Hagg *v.*
Darling—Barsalou *v.*
Dart—Milliken *v.*
Davidson—Chappell *v.*
Davies—Dawes *v.*
Davis—Caswell *v.*
Davis—Davis *v.*
Davis—Mallan *v.*
Davis—Royal Baking Powder Co. *v.*
Davol Mills—Ferguson *v.*
Dawber—Bass *v.*
Dawson—Labouchere *v.*
Day—Clayton *v.*
Day—Croft *v.*
Day—Day *v.*
Day—Emperor of Austria *v.*
Day—Fennessy *v.*
Day—Goodyear Rubber Co. *v.*
Deakin—Lea *v.*
Dean—Civil Service Supply Association *v.*
Decker—Decker *v.*
De Conto—Stephens *v.*
Deere & Co.—Candee, Swan & Co. *v.*
De Lee—American Fibre Chamois Co. *v.*
De Long Hook & Eye Co.—De Long *v.*
Denham—Hirst *v.*
Denicke—Reeves *v.*
Dennis—Edwards *v.*
Depatie—Boudier *v.*
De Tasted—Brown *v.*
Devlin—Devlin *v.*
Dewes—Chissum *v.*
Dey—Swift *v.*
Diamond Steel Co.—Pittsburgh Crushed Steel Co. *v.*
Diaper—Orr *v.*
Dibrell—Blackwell *v.*
Dicey—Sayer *v.*
Dick—Mauger *v.*
Dickens—Bradbury *v.*
Dickerman—Manitowoc Manufacturing Co. *v.*
Dicks—Weldon *v.*
Dobell—Newling *v.*
Dobinson—Investor Publishing Co. of Massachusetts *v.*
Donald & Co.—Montgomerie & Co. *v.*
Dorflinger—Consolidated Fruit Jar Co. *v.*
Dorr—Iowa Seed Co. *v.*

Douglas—Churton *v.*
Douglas—Hammond *v.*
Downman—Motley *v.*
Downs—England *v.*
Drat—Ward *v.*
Dreyfus—Funke *v.*
Dubbins—Patching *v.*
Du Boulay—Du Boulay *v.*
Duncan—Hoffman *v.*
Duncans—Lipton Limited *v.*
Dundas—R. *v.*
Dunlop Lubricant Co., Limited—Dunlop Pneumatic Tyre Co. *v.*
Dunlop-Truffault Cycle & Tube Manufacturing Co.—Dunlop Pneumatic Tyre Co. *v.*
Dunn—Eno *v.*
Dunn—Thompson *v.*
D'Utassey—Faber *v.*

Eagle—Pillsbury-Washburn Flour Mills Co. *v.*
Easterbrook—Saxby *v.*
Edelsten—Edelsten *v.*
Eddy—Hubinger (J. C.) Bros. Co. *v.*
Edgington—Edgington *v.*
Edgington (J.) & Co.—Edgington (B.), Limited *v.*
Edmonton—Clegg *v.*
Edwards—Apollinaris Co. *v.*
Ehlers—Siegert *v.*
Ehrhart—Lee *v.*
Eichele—Peltz *v.*
Einstein—Stewart *v.*
Electrolibation Co.—Sanche *v.*
Eli Pettijohn Cereal Co.—American Cereal Co. *v.*
Elkan—Edwards *v.*
Elkan—Upmann *v.*
Ellinger & Co.—Twentsche Stoom Bleekery Goor *v.*
Elliott—Whitstable (Free Fishers and Dredgers of) *v.*
Elsworth—R. *v.*
Elvery—De la Branchardière *v.*
Emery—Mickle *v.*
Emmott—Jaffray *v.*
Emmott—Walter *v.*
Employers' Liability Insurance Co.—Employers' Liability Assurance Corporation *v.*
Era Omnibus Association—London Road Car Co. *v.*
Erhard—Zimmerman *v.*
Ertheiler—Carroll *v.*
Escobal—Lacroix *v.*
Estcourt Hop Essence Co.—Estcourt *v.*
Esterbrook—Gillott *v.*
Eureka Chemical, &c. Co.—Sterling Remedy Co. *v.*
Evans—Brook *v.*
Evans—Cope *v.*
Evans—Lamb *v.*
Evans—Ratcliffe *v.*
Evans—Rose *v.*
Evans—Turner *v.*
Evening Post, Limited—Borthwick *v.*
Everett—Smith *v.*
Everitt—Price's Patent Candle Co. *v.*

Faber—Faber *v.*
Fadettes—Messer *v.*
Fair—Smith *v.*
Famous Shoe & Clothing Co.—Merriam *v.*
Farlow—Bozon *v.*
Farren—New Haven Patent Rolling Spring Bed Co. *v.*
Farrow & Co.—Colman (J. J.), Limited *v.*
Fassett—Filley *v.*
Fawcus—Dixon *v.*
Feder—Benkert *v.*
Fehr—Reiners Von Laer & Co. *v.*
Fellows—Dover Stamping Co. *v.*
Feltham & Co.—Slazenger & Sons *v.*
Felton—London General Omnibus Co., Limited *v.*
Fenwick—Featherstonhaugh *v.*
Field—Bonner *v.*
Field—Schauer *v.*
Finch—Day *v.*
Findlater—Raggett *v.*
Findlater—Siegert *v.*
Finlay—Battle & Co. *v.*
Finlay—Robinson *v.*
Finzer—Liggett & Myers Tobacco Co. *v.*
Fisher—People *v.*
Fisher—Seeley *v.*
Fitzgerald—R. *v.*
Flanagan—Matsell *v.*
Fleece Hygienic Underwear Co.—Jaros Hygienic Underwear Co. *v.*
Fleischmann—Fleischmann *v.*
Fleming—McLean *v.*
Fleming—Ralli *v.*
Flint—Leidersdorf *v.*
Floyd—Bowman *v.*
Folgham—Green *v.*
Footman—Blank *v.*
Footman, Pretty & Co.—Symington & Co. *v.*
Forester—Upmann *v.*
Foster—Burrows *v.*
Foster—Ford *v.*

Foster—R. *v.*
Foster Brewing Co., Limited—Christie *v.*
Fox—Millington *v.*
Français—Hobbs *v.*
Franks—Pierce *v.*
Frash—Von Mumm *v.*
Frazer Lubricator Co.—Frazer *v.*
Freeman—Browne *v.*
Freeman—Clark *v.*
Fries—Hostetter *v.*
Fullwood—Fullwood *v.*

Gallon—Edge & Sons, Limited *v.*
Gallus—Little *v.*
Game, Harrison & Larner, Limited—Hanson *v.*
Ganton—Lemoine *v.*
Gardner—Harrison *v.*
Garlick—R. *v.*
Garner—Amoskeag Manufacturing Co. *v.*
Garner—Merrimack Manufacturing Co. *v.*
Garnhart—McCartney *v.*
Garrett (T. H.) & Co.—Garrett *v.*
Gartner—Giron *v.*
Gateley—Reveliere *v.*
Gato—El Modello Cigar Manufacturing Co. *v.*
Gaubert—Ansell *v.*
Gebhardt—Farina *v.*
Geisendorf—Sohl *v.*
General Electric Co.—Wedekind *v.*
General Newspaper Co.—Dale *v.*
General Reversionary Co., Limited—Bumsted *v.*
German Mutual Fire Insurance Co.—Clark *v.*
Gertcken—Cory *v.*
Gibbings—Lee *v.*
Gibbons' Frame—Wilcox & Gibbs' Sewing Machine Co. *v.*
Gibbs—Missouri (State of) *v.*
Gibson—Banks *v.*
Gillard—Cotton *v.*
Gillespie—Parsons *v.*
Gillet—Kenny *v.*
Gillies—Taylor *v.*
Gladstone—Steuart *v.*
Glenn—Dunbar *v.*
Glover—Leahy *v.*
Gobindram—Barlow *v.*
Godts—Nichol *v.*
Goetze—Carter *v.*
Gomm—Barrett *v.*
Goodall—Pirie *v.*
Goodbody—Lewis's *v.*
Goodrich Co.—Keller *v.*
Goodwin—Lever *v.*
Goodyear India Rubber Glove Manufacturing Co.—Goodyear Rubber Co. *v.*
Goss—Carey *v.*
Goss—R. *v.*
Goulard—Wolfe *v.*
Gould—Corbin *v.*
Graef—Saxlehner *v.*
Graham—Ransome *v.*
Grand Junction Railway Co.—Pickford *v.*
Grant, Smith & Co.—Orr-Ewing *v.*
Gratz—Hohner *v.*
Graves—Smale *v.*
Gray—Bullock, Lade & Co. *v.*
Gray—Wotherspoon *v.*
Gray & Gosling—R. *v.*
Great Northern Railway Co.—North London Railway Co. *v.*
Green—Duke *v.*
Greene—Symonds *v.*
Grieb—Gessler *v.*
Griffith—Chappell *v.*
Griffiths—Chubb *v.*
Griffiths—Corns *v.*
Griffiths—Wilkinson *v.*
Griffiths Cycle Corporation, Limited—Eastman Photographic Materials Co., Limited *v.*
Grocer Publishing Co.—American Grocer Publishing Association *v.*
Grosvenor—Seabury *v.*
Grosvenor Gallery Co.—Hoby *v.*
Guardian and General Assurance Co., Limited—Guardian Fire and Life Assurance Co. *v.*
Guénin—Grillon *v.*
Guest—American Tobacco Co. *v.*
Guggenheim—Dixon Crucible Co. *v.*
Guggenheimer—Parlett *v.*
Guittard—Pierce *v.*
Gullian—Dadirrian *v.*
Guy—Bunn *v.*

Haish—Washburn and Moen Manufacturing Co. *v.*
Haley—Lee *v.*
Hall—Gillis *v.*
Hall—Glen & Hall Manufacturing Co. *v.*
Hall—Hall *v.*
Hall—Haslam *v.*
Hall—Morse *v.*
Hall—R. *v.*
Hall & Co.—Perks *v.*
Hallam—Vernon *v.*
Halworth—Jones *v.*
Hamblin—Lehigh Valley Coal Co. *v.*

Hamel—Sarazin v.
Hamilton—Cooper v.
Hamilton—Dwight v.
Hampshire and North Wilts Bank—London and County Banking Co. v.
Hanbury—Liebig's Extract of Meat Co. v.
Hand—Worral v.
Harbord—Perry Davis & Son v.
Harper—Blackwell v.
Harper—Sparks v.
Harris—Godillot v.
Harris—Keene v.
Harris—Palmer v.
Harris—Smith v.
Harrison—Edge v.
Harrison—Flavel v.
Hart—Colley v.
Hart—Low v.
Hart—Wolfe v.
Hart-Davis—Hill v.
Hately—Burgess v.
Hawkins—Parkland Hills Blue Lick Waters Co. v.
Hawkins—Marshall v.
Hawley—Fielding v.
Hawxhurst—Walker v.
Hayward—Parsons v.
Hayward & Sons—Hayward & Co. v.
Hazard—Caswell v.
Hazard—Electro-Silicon Co. v.
Hazard—Godillot v.
Head—Walter v.
Heap—Guinness v.
Hecht—Klotz v.
Hegeman—Hegeman & Co. v.
Heinsfurter—Centaur Co. v.
Heisel—Adams v.
Helleley—Johnson v.
Helmbold Manufacturing Co.—Helmbold v.
Helsby—Coventry Machinists Co., Limited v.
Hemmons—Weston v.
Hendrickx—Laferme (Compagnie) v.
Henley—Rose v.
Henriques—Howard v.
Henry—Alexander & Co. v.
Henry—Mitchell v.
Henshaw—Ihlee v.
Henshaw—Steinway & Sons v.
Herbert—Cowie v.
Herbert & Co.—Upper Assam Tea Co. v.
Herrfeldt—Apollinaris Co. v.
Hertz—Salomon v.
Heyde—Bryant & May v.
Hickling—Whitney v.
Higgins Soap Co.—Charles S. Higgins Co. v.
High Rocks Congress Spring Co.—Congress and Empire Spring Co. v.
Highmoor—Caruncho v.
Hill—Batty v.
Hill—Blanchard v.
Hill—Thorneloe v.
Hills—Burgess v.
Hine—Portal v.
Hink—Eggers v.
Hinks—Rollins v.
Hirsch & Co.—Hirsch v.
Hirschfeld—Leather Cloth Co. v.
Hitchcock—Hopkins v.
Hockstaeder—Hiram Walker & Sons v.
Hodgart's Trustees—Donald v.
Hodge & Co.—Williams v.
Hodgson—Davies v.
Hodgson—Matthews v.
Hoffman—Sanders v.
Hogan—Hennessy v.
Hoge—Moorman v.
Hogg—Clowes v.
Hogg—Harrison v.
Hogg—Maxwell v.
Holbrook—Coats v.
Holden—Dixon v.
Hollender—Luyties v.
Hollins—Campbell v.
Holloway—Holloway v.
Holloway Publishing Co.—Merriam v.
Holmes, Booth & Atwood Manufacturing Co.—Holmes, Booth & Haydens v.
Holt—Aubin v.
Holt—Ryder v.
Home and Colonial Assurance Co.—Colonial Life Assurance Co. v.
Hood—Converse v.
Hood—Cooper v.
Hooper—Kelly v.
Hooper—Lavergne v.
Hoopes—Merry v.
Hoosier Drill Co.—Julian v.
Horn—Sawyer v.
Horowitz—Van Wyck v.
Horton Manufacturing Co.—Horton Manufacturing Co. v.
Houghton—Rowley v.
How—Pidding v.
How—Southern v.
Howard—Social Register Association v.
Howe—Whittaker v.
Howe Machine Co.—Howe v.
Hoxie—Chaney v.
Hoyt—Hoyt v.
Hubbard—Sawyer Crystal Blue Co. v.

Hughes—Bewlay & Co. *v.*
Hughes—Evans *v.*
Hulme—Heathcote *v.*
Hulton—Cowen *v.*
Humphrey—Peterson *v.*
Hunkele—Enoch Morgan's Sons' Co. *v.*
Hunnewell—Gilman *v.*
Hunt—Richards *v.*
Hunt—Trego *v.*
Hunter—R. *v.*
Huntington—Rudderow *v.*
Hutton—Kelly *v.*
Hygeia Sparkling Distilled Water Co. — Waukesha Hygeia and Mineral Springs Co. *v.*
Hynes—Liggett & Myers' Tobacco Co. *v.*

Imperial French Dye Cleaning and Dyeing Co., Limited—Thompson *v.*
Improved Fig Syrup Co.—California Fig Syrup Co. *v.*
Imus—Smith *v.*
Ingels—Hoosier Drill Co. *v.*
International Guide Syndicate &c.—Reuter's Telegram Co., Limited *v.*
International Loan & Trust Co.—International Trust Co. *v.*
Isaacson—Chatteris *v.*

Jackson—Dicks *v.*
Jackson—Dixon *v.*
Jacob Henkell Co.—Cuervo *v.*
Jacobus—Fairbanks *v.*
James—James *v.*
James—Newbery *v.*
James—Oldham *v.*
James—Spicer *v.*
Jamieson—Jamieson & Co. *v.*
Jaques—Jollie *v.*
Jarrett—Booth *v.*
Jay—Attenborough *v.*
Jebsen & Co.—Vulcan Match Manufacturing Co. *v.*
Jeffery—Spratt *v.*
Jenkins—Wade *v.*
Jennings—Jennings *v.*
Johnson—Edge *v.*
Johnson—Kidd *v.*
Johnson—Sohier *v.*
Johnson—Williams *v.*
Johnson & Co.—Ascough *v.*
Johnson & Co.—Barlow & Jones, Limited *v.*
Johnston—Byron (Lord) *v.*
Johnston—Wheeler *v.*
Johnston & Co.—Orr-Ewing & Co. *v.*
Jonas—Hirsch *v.*
Jones—Canham *v.*
Jones—R. *v.*
Jones—Symonds *v.*
Jones Brothers & Co.—Young *v.*
Jorss—Henderson *v.*
Joseph R. Peebles' Sons' Co.—Krauss *v.*
Joseph Uhrig Brewing Co.—Conrad *v.*
Joshua—Mitchell & Co. *v.*
Judges—Talbot *v.*
June—Singer Manufacturing Co. *v.*
Junior Army and Navy Stores, Limited—Army and Navy Co-operative Society, Limited *v.*

Kahn—Cohn *v.*
Kalamazoo Buggy Co.—Myers *v.*
Kass—Hawloetz *v.*
Kaufmann—Hazzopulo *v.*
Keating—Stevens *v.*
Keen—Mellersh *v.*
Kellogg—Sawyer *v.*
Kendall—Davis *v.*
Kennedy—Davis *v.*
Kennett—Hennessy *v.*
Kerr, Dods & Co.—Graham & Co. *v.*
Ketcham—Weston *v.*
Kettle—Gillott *v.*
Kiechele—Buck's Stove and Range Co. *v.*
Kilburn & Co.—Balfour & Co. *v.*
Kimball — Singer Manufacturing Co. *v.*
Kimpton—Nicholls *v.*
Kinahan—Kinahan *v.*
King & Co.—Strachan & Co. *v.*
King & Co.—Wallace & Co. *v.*
Kinney—Hornbostel *v.*
Kinney Tobacco Co.—Ginter *v.*
Kirby—Hogg *v.*
Kirk—Copley *v.*
Klapproth—Lewis *v.*
Kleinhaus—Armstrong *v.*
Knight—Barrows *v.*
Knight, Stocks & Co.—Berliner Brauerei Gesellschaft Tivoli *v.*
Knos & Co.—Vulcan Match Manufacturing Co. *v.*
Knott—Prudential Assurance Co. *v.*
Knott—Welch *v.*
Knowles—Primrose Press Agency *v.*
Koch—Gray *v.*
Kraft, Meyer & Co.—Curtis, Harvey & Co. *v.*

Kutnow—Carlsbad *v.*
Kynoch, Ld.—Hodgson *v.*

La Belle Wagon Works—Fish Bros. Wagon Co. *v.*
Labrot—Pepper *v.*
Ladler—Jay *v.*
Laidlaw—Bass, Ratcliff & Gretton, Limited *v.*
Laight—Shrimpton *v.*
Lamar—Brewer *v.*
Lamb—Deiz *v.*
Lambert—Wood *v.*
Landauer—Cuervo *v.*
Landgraff—Stokes *v.*
Landon—Watkins *v.*
Landreth—Landreth & Sons *v.*
Lang & Co.—Wolfe *v.*
Langdon—Lewis *v.*
Langford & Co.—Great Tower Street Tea Co. *v.*
Larned — Lowell Manufacturing Co. *v.*
Larsen—Singer Manufacturing Co. *v.*
Lart—Hine *v.*
Latham & Co.—Blakey & Sons *v.*
Latimer—Carmichel *v.*
Lawes Chemical Manure Co.—Western Counties Manure Co. *v.*
Lawrence—Siegert *v.*
Lazar—Woodward *v.*
Lazarus—Rock *v.*
Lazenby—Lazenby *v.*
Lea—Foot *v.*
Leach—Clark *v.*
Le Barron—Magee Furnace Co. *v.*
Le Boutilliere—Jaeger's Sanitary Woollen System Co. *v.*
Lee—Kennedy *v.*
Lee—R. *v.*
Lennox—Crawford's Trustees *v.*
Le Page—Russia Cement Co. *v.*
Leslie—Estes *v.*
Leuchars—Barnett *v.*
Levine & Wood—R. *v.*
Levinstein—Renard *v.*
Levy—Electro-Silicon Co. *v.*
Levy—Fenton *v.*
Lewis—Field *v.*
Lewis—Larrabee *v.*
Lewis—Lewis's *v.*
Lewis—R. *v.*
Libby—Harrington *v.*
Libby—Hilsen *v.*
Liebig's Extract of Meat Co.—Anderson *v.*
Lincoln Gas Light and Coke Co.—Beverley *v.*
Lindner—Pneumatic Rubber Stamp Co., Limited *v.*
Linotype Co., Limited—Empire Type-Setting Machine Co. of New York *v.*
Lipton—R. *v.*
Liverpool Vinegar Co., Limited—Birmingham Vinegar Brewery Co., Limited *v.*
Lloyd—Hovenden *v.*
Lloyd—R. *v.*
Locke—Bell *v.*
Lockett—Lockett *v.*
Lockwood—Hill *v.*
Loftus—Rose *v.*
London and Provincial Joint Stock Life Assurance Co.—London and Provincial Law Assurance Society *v.*
London and Provincial Provident Association, Limited—Provident Association of London, Limited *v.*
London and Westminster Assurance Corporation—London Assurance *v.*
Loog—Singer Manufacturing Co. *v.*
Lopes & Co.—Jacoby & Co. *v.*
Lorsont—Leather Cloth Co. *v.*
Loveless—Whitfield *v.*
Lovett, J. T., & Co.—Hoyt *v.*
Low—Benbow *v.*
Lowell—Lawrence Manufacturing Co. *v.*
Lucas—Budd *v.*
Lucy—Falkinburg *v.*
Ludemann—Glen Cove Manufacturing Co. *v.*
Luke—Hop Bitters Manufacturing Co. *v.*
Lumphinnans Iron Co.—Lochgelly Co., Limited *v.*
Lund—Axmann *v.*
Lye—Cruttwell *v.*

McAdam—Morgan *v.*
McArthur—Lohmann *v.*
McBride—Smith *v.*
McCubbin—McCormick *v.*
McCulloch—Wilkie *v.*
McDonald—Hildreth *v.*
McGowan — McGowan Brothers' Pump and Machine Co. *v.*
McKernan—Howe *v.*
McKinley—Bennett *v.*
McMaster & Co.—Dickson *v.*
McNish—Cochrane *v.*
McNulty—Powell *v.*
McPherson—Potter *v.*
Macarthy—Allen *v.*

Mack—Shaw Stocking Co. *v.*
Mackinnon—Thompson *v.*
Mackintosh—Scott *v.*
Maclaughlin & Co.—Kirby *v.*
Macrae—Young *v.*
Maddick—Clement *v.*
Mahalaxmi Spinning and Weaving Co., Limited — Manockji Petit Manufacturing Co. *v.*
Maison Pinet—Pinet *v.*
Major—Turner *v.*
Malcolm, Brunker & Co.—Hammond *v.*
Malings—Slazenger *v.*
Maller—Kinney Tobacco Co. *v.*
Maneckji Shapurji Kabrak — Badische Anilin & Soda Fabrik *v.*
Manico—Barber *v.*
Maniere—Hunt *v.*
Mann — Great North of Scotland Railway Co. *v.*
Manoukion—R. *v.*
Marble—United States *v.*
Marks—Weinstock Lubina Co. *v.*
Marlborough Awl and Needle Co — New England Awl and Needle Co. *v.*
Marsh—Post *v.*
Marshall—Collard *v.*
Marshall—Gillespie & Co. *v.*
Marshall—Knott *v.*
Marshall—Marshall *v.*
Martien — Martha Washington Creamery Buttered Flour Co. *v.*
Martin—Morse *v.*
Mason—Denco *v.*
Mason—Mossop *v.*
Mason—Smith *v.*
Massam — Thorley's Cattle Food Co. *v.*
Masury — Brooklyn White Lead Co. *v.*
Mathie—Boswell *v.*
Maxfield—Wilson *v.*
Maxton & Murray—Cellular Clothing Co., Limited *v.*
Maxwell—Hogg *v.*
May—Cartier *v.*
May—Lacroix *v.*
Mayer—Del Valle *v.*
Mayo—Chase *v.*
Mège—Hatchard *v.*
Megevand—Foster *v.*
Meikle—Avery *v.*
Melachrino Egyptian Cigarette Co.—Melachrino (M.) & Co. *v.*
Melachrino (R.) & Co.—Melachrino (M.) & Co. *v.*
Mellis—Lichtenstein *v.*
Menck—Partridge *v.*
Meneely—Meneely *v.*
Menendez—Holt *v.*
Mercer—Brown *v.*
Merchant—Fetridge *v.*
Merchants' Joint Stock Bank, Limited—Merchant Banking Co. of London *v.*
Meriden Britannia Co. — Boardman *v.*
Meriden Britannia Co.—Goodman *v.*
Merkel—St. Louis Piano Manufacturing Co. *v.*
Merrick Thread Co.—Coats *v.*
Merrill—American Order of Scottish Clans *v.*
Messler—Curtiss *v.*
Metcalf — Anglo-Swiss Condensed Milk Co. *v.*
Metcalf—Cassidy *v.*
Metropolitan Board of Works—Cooper *v.*
Metropolitan Collar Co.— Union Paper Collar Co. *v.*
Meyer—Brown Chemical Co. *v.*
Meyer—India Rubber Comb Co. *v.*
Micalovitch, Fletcher & Co.—Société Anonyme de la Distillerie de la Bénédictine *v.*
Middleton—Vogeler Co. *v.*
Midland Railway Co.—King *v.*
Mihalovitch—Gilka *v.*
Mikolas—Hiram Walker & Sons *v.*
Milbourn—Bond *v.*
Millar—Lea *v.*
Miller—Cowan *v.*
Miller—Potter Drug and Chemical Co. *v.*
Miller—Scheuer *v.*
Miller—Thompson *v.*
Miller—White, G. G., Co. *v.*
Miller & Co.—Hurricane Patent Lantern Co. *v.*
Mills—Tweed *v.*
Mills, Johnson & Co.—Kidd & Co. *v.*
Mitchell—Condy *v.*
Mitchell—Garde *v.*
Mitchell—Rammelsberg *v.*
Mitchell—Rowland *v.*
Moat—Morison *v.*
Moffatt & Paige—Besant *v.*
Monne—Portuondo *v.*
Montague—Hendriks *v.*
Montgomery—Thompson *v.*
Moonelis—Strasser *v.*
Moore—Coppen *v.*
Moore—Hothersall *v.*
Moore—Merryweather *v.*
Moore—Montague *v.*
Moore—Tallcott *v.*
Morgan—Knott *v.*

Morgan—R. *v.*
Morley—Houlston *v.*
Morris—R. *v.*
Morris—United States *v.*
Morse—Alexander *v.*
Morson—Carnrick *v.*
Mortimer—Prowett *v.*
Moss—Boon *v.*
Moss—Morris *v.*
Mottram—Walker *v.*
Mowling—Neva Stearine Co. *v.*
Mudie—Avanzo *v.*
Mulligan—Littlejohn & Son *v.*
Munn's Patent Maizena & Starch Co.—National Starch Manufacturing Co. *v.*
Munro—Bain *v.*
Munsford & Gorman—Porter *v.*
Murphy—Christy *v.*
Myer—Brown Chemical Co. *v.*
Myers—Cave *v.*
Myers—Pennsylvania Salt Manufacturing Co. *v.*
Myers—Taendsticksfabriks Aktiebolaget Vulcan *v.*

Nairn — Linoleum Manufacturing Co. *v.*
Napper—Jackson & Co. *v.*
Nashawannuck Manufacturing Co. Bailly *v.*
National Folding Box Co., Limited—National Folding Box & Paper Co. *v.*
Neale—Day *v.*
New Incandescent Gas Lighting Co., Limited—Incandescent Gas Light Co., Limited *v.*
New York Publishing Co.—England *v.*
Newton—Fleming *v.*
Nine—Nebraska Loan & Trust Co. *v.*
Noah—Snowden *v.*
Norfolk—Peabody *v.*
Norman—Radde *v.*
Norris—Rivero *v.*
Norrish—Apollinaris Co. *v.*
North Cheshire & Manchester Brewery Co.—Manchester Brewery Co. *v.*
North Eastern News Association—South Hetton Colliery Co. *v.*
Norton—Bradley *v.*
Norton—Geary *v.*
Nowill—Rodgers *v.*

Oakes—Skinner *v.*
O'Brien—R. *v.*
O'Byrne—Hegeman & Co. *v.*
O'Connor—Wolmershausen *v.*
Ogden—Phillips *v.*
Ogden—R. *v.*
Ogg—Harris *v.*
O'Hanlon—Watt *v.*
Ohio Coffee & Spice Co.—Lown *v.*
O'Meara—Reed *v.*
Oppenheim—Wittman *v.*
Oregon Central Railway Co.—Newby *v.*
Orr-Ewing & Co.—Johnston & Co. *v.*
Osborne—Hudson *v.*
Osborne—Williams *v.*
Osgerby—Hudson *v.*
Otard de Montebello Cognac Co., Limited—Otard, Dupuy & Co. *v.*
Owens—Bodega Co., Limited *v.*
Owl Cigar Co.—Cuervo *v.*

Paarl Berg Wine & Spirit Co.—Martell *v.*
Paine—Stevens *v.*
Pape—Curtis, Harvey & Co. *v.*
Parker—Meriden Britannia Co. *v.*
Parry—James *v.*
Parton, Son & Co.—Osborne, Garrett & Co. *v.*
Pastor Kneip Medicine Co.—Kathreiner's Malz Kaffee Fabriken, &c. *v.*
Payne—Blofeld *v.*
Peacock—Richardson *v.*
Peake—Boulnois *v.*
Pearce—Farr *v.*
Pearson—Harper *v.*
Pearson—Pearson *v.*
Peck—Jarvis *v.*
Peck—McCardel *v.*
Peck Bros. & Co.—Adee *v.*
Peek—Derry *v.*
Peel—Stephens *v.*
Pelsall Coal & Iron Co.—Barrows *v.*
Pemberton—R. *v.*
People—Cohn *v.*
Percival—Bassett *v.*
Perhamus—Morgan *v.*
Peters—Swift *v.*
Peterson—Weed *v.*
Peto—Ponsardin *v.*
Petter—Crookes *v.*
Petter—Mack *v.*
Phalon—Burnett *v.*
Philp—Rodgers *v.*
Philp's Executor—Philp's Executor *v.*
Photographic Co.—Pollard *v.*
Pickering—Moet *v.*
Piggott, Cockson & Co. — Anglo-Swiss Condensed Milk Co. *v.*

Piggott, Cockson & Co.—Schnitzer v.
Pigott—Slazenger v.
Pile—Pile v.
Pillow—Barnard v.
Pillsbury-Washburn Flour Mills Co.—Pillsbury v.
Pinkham—Marshall v.
Pinto—Newman v.
Pinto-Leite—Carver v.
Piper—Aikins v.
Pirie & Sons, Limited — Towgood Bros. v.
Piza — Anheuser Busch Brewing Association v.
Plant—Hipkins v.
Plate—Derringer v.
Plate—Graham v.
Pollard, Graham & Co. — Derby Photographic Dry Plate Co. v.
Ponce—Stachelberg v.
Pond—Stimpson v.
Pope—Frankau v.
Porter—Hecht v.
Pottage—Hookham v.
Potter—Heywood v.
Powell—Seltzer v.
Pozo—Solis Cigar Co. v.
Premier Tube Co., Limited—Premier Cycle Co., Limited v.
Prescott—Van Beil v.
Price—Henry v.
Pride—Lorillard v.
Priestley—R. v.
Prince—Goodfellow v.
Prince Manufacturing Co.—Prince Metallic Paint Co. v.
Prince Metallic Paint Co.—Prince Manufacturing Co. v.
Pritchard—Gee v.
Provezende—Seixo v.
Pullar—Pullar v.
Putnam — Californian Fig Syrup Co. v.

QUEEN—Mason v.
Quiddington—Robertson v.

RABBITS & SON—Fennessy v.
Radam—Alff v.
Ragg—R. v.
Randall (H. E.) Limited—Gamage (A. W.) Limited v.
Ratcliff—Woollam v.
Rawson—Baker v.
Ray—Ledger v.
Raylton—Johnson v.
Raymond—Royal Baking Powder Co. v.
Read—Celluloid Manufacturing Co., Limited v.
Read—Giblett v.
Read—Mitchell v.
Reading Biscuit Co.—Huntley & Palmer v.
Reed—Connell v.
Reed—Milner v.
Reeves—Collins Co. v.
Reeves—Peru (Republic of) v.
Registrar of Trade Marks—Orr-Ewing v.
Rehder & Co.—Compania General de Tabacos v.
Reid—Davis v.
Reid Tobacco Co.—Liggett & Myers Tobacco Co. v.
Rendle & Co.—Rendle v.
Reynolds—Richter v.
Reynolds—Rosenthal v.
Reynolds—Smith v.
Reynolds—Southorn v.
Richards—Allen v.
Richardson—McDonald v.
Richardson & Co.—Read Bros. v.
Ridgway—R. v.
Riley—Cellular Clothing Co. Ld. v.
Riley—Singer Manufacturing Co. v.
Riley—Springhead Spinning Co. v.
Rindskopf—Frost v.
Roberts—Briton Life Association, Limited v.
Roberts—R. v.
Robertson—Thompson & Co. v.
Robinson—Atlantic Milling Co. v.
Robinson—Ward v.
Roche—United States v.
Rockwood—Osgood v.
Rodgers—Rodgers v.
Roebuck—R. v.
Roffey—Nixey v.
Rogers—Davis v.
Rogers—Morgan v.
Rogers—Rogers v.
Rogers & Spurr Manufacturing Co.—William Rogers Manufacturing Co. v.
Rogers (R. W.) Co.—William Rogers Manufacturing Co. v.
Rohmann, Osborne & Co.—Hennessy v.
Rolfe—Rolfe v.
Rollason—Heath v.
Rooke—Green v.
Rorke—Société des Huiles d'Olive v.
Ross—Cook & Bernheimer Co. v.
Ross—Marshall v.
Rottgen—Rodgers & Sons, Limited v.

Rouch—Burfield v.
Rouss—Philadelphia & Novelty Manufacturing Co. v.
Rowland—Atlantic Milling Co. v.
Rowland—Scott v.
Royden—Clover v.
Rubber Comb and Jewelry Co.—India Rubber Comb Co. v.
Ruffner—Dausman and Drummond Tobacco Co. v.
Rugby & Newbold Portland Cement Co.—Rugby Portland Cement Co., Limited v.
Rushton—Ayer v.
Russell—Londonderry (Marquis of) v.
Russia Cement Co.—Le Page v.
Rutherford—Llewellyn v.
Ruthin Soda Water Co.—Ellis & Sons v.
Rylands—Davenport v.

Salem Flouring Mills—Oliphant v.
Salmon—Morison v.
Salmon & Gluckstein—Kirshenboim v.
Samson—Steinthal v.
Sanders—Koehler v.
Sands—Woods v.
Sanitary Engineering and Ventilation Co.—Weaver v.
Sargood, Ewen & Co.—Moses v.
Saunders—Correspondent Newspaper Co. v.
Saunders—Walter Baker & Co. v.
Savournin—Tetlow v.
Schapp—Clotworthy v.
Schembri—Somerville v.
Scherer—Apollinaris Co. v.
Schlecht—White v.
Schmidt—Vonderbank v.
Schmincke—Schove v.
Schuckmann—Fleischmann v.
Schultz—Cady v.
Schultz—Carlsbad v.
Schultz—République Française v.
Schultz & Co.—Lautz Brothers v.
Schuyler—Morgan v.
Schwachhofer—Enoch Morgan's Sons' Co. v.
Schwenke—Schumacher & Ettlinger v.
Scott—Insurance Oil Tank Co. v.
Scott—Scott v.
Scott—Scott Stamp Coin Co. v.
Scottish Val de Travers Paving Co., Limited—Stuart & Co. v.
Searing—Howe v.
Sellers—Fulton v.
Senate—Sedon v.
Sewage Manure Co.—Native Guano Co., Limited v.
Seymour—South Carolina v.
Shakespear — Wheeler & Wilson Manufacturing Co. v.
Sharp—Clark v.
Sharpe Bros. Co.—Freeman Bros. v.
Shaver—Shaver v.
Shaw—Delondre v.
Shaw—Farina v.
Sheard—Chappell v.
Sheard—Hutchings v.
Sheffield Gas Consumers' Co.—Attorney-General v.
Sheldon—Roberts v.
Shepherd—Green v.
Sheppard—Chance v.
Sherrill — Royal Baking Powder Co. v.
Sherwood—R. v.
Shipman—Waterman v.
Shove—Thynne v.
Shuttleworth — McSymons' Stores, Limited v.
Shuttock—Crawford v.
Sibbald—Reid v.
Silver—Shendy v.
Silverlock—Farina v.
Silversides—R. v.
Simmons—Simmons Medicine Co. v.
Simms—Colburn v.
Simons—Jaros Hygienic Underwear Co. v.
Simpson—William Rogers Manufacturing Co. v.
Simpson—Wright v.
Sims—Coles v.
Sinclair—Hodgson v.
Singer Manufacturing Co.—Brill v.
Singer Manufacturing Co.—Nähmaschinen Fabrik, &c. v.
Singer Manufacturing Co.—Wilson v.
Sixbury—Smith v.
Slack—Ellen v.
Slade—Jeudwine v.
Sleep—R. v.
Sleeper—Frank v.
Sloan—American Grocery Co. v.
Smaggasgale—Davis v.
Smith—Burt v.
Smith—Dale v.
Smith—Evans v.
Smith—George v.
Smith—Glenny v.
Smith—Gray v.
Smith—Great Tower Street Tea Co. v.
Smith—Hargreaves v.
Smith—Helmore v.

Smith—Holt *v.*
Smith—Liverpool Household Stores Association *v.*
Smith—McMurdo *v.*
Smith—Munro *v.*
Smith—R. *v.*
Smith—Russell & Sons, Limited *v.*
Smith—Smith *v.*
Smith—Wedgwood *v.*
Smithson—Dale *v.*
Smithson—Stewart *v.*
Snook—Apollinaris Co. *v.*
Soares—Beazley *v.*
Société des Huiles d'Olive—Rorke *v.*
Sœurs de l'Asile de la Providence—Kerry *v.*
Somborn—Actien Gesellschaft Apollinaris Brunnen *v.*
Souvazoglu—Harter *v.*
Spalding—Reinhardt *v.*
Spear — Amoskeag Manufacturing Co. *v.*
Spear—Fowle *v.*
Spence—Singer Manufacturing Co. *v.*
Spence—Williams *v.*
Stanage — Singer Manufacturing Co. *v.*
Starkey—Fleischmann *v.*
Starkweather—Cook *v.*
Stearns—Californian Fig Syrup Co. *v.*
Steffens—United States *v.*
Stephens—Eno *v.*
Stephenson—Caruncho *v.*
Stephenson—Gamble *v.*
Stetson—Town *v.*
Stevens—Hunt *v.*
Stevens—R. *v.*
Stewart (F. G.) Co.—Stuart *v.*
Stiff—Ingram *v.*
Stiff & Sons—Weaver *v.*
Stitt—Gebbie *v.*
Stock—Blair *v.*
Stoddart—Champlin *v.*
Stonebraker—Stonebraker *v.*
Strange—Albert (Prince) *v.*
Stratton—Burton *v.*
Stribolt & Co.—Davis & Co. *v.*
Stuart & Peterson—Sheppard & Co. *v.*
Stucky—Harris Drug Co. *v.*
Sturgess & Co.—Packham & Co., Limited *v.*
Such—Clement *v.*
Sullivan—Byass *v.*
Sullivan, Powell & Co.—Benedictus *v.*
Sun Life Assurance Co. of Canada—Saunders *v.*
Sunley—R. *v.*
Suter & Coulson—R. *v.*
Sweet—Archbold *v.*
Swezey & Dart—Josselyn *v.*
Swinborne—Gridley *v.*
Swiss Condensed Milk Co.—Anglo-Swiss Condensed Milk Co. *v.*
Sykes—Sykes *v.*
Symonds—Thompson *v.*

Taintor—Rogers *v.*
Tandem Smelting Co. — Magnolia Metal Co. *v.*
Taper Sleeve Pulley Works—Gray *v.*
Tapper—Tetlow *v.*
Tarrant & Co.—Hoff *v.*
Tate—Burnett *v.*
Taylor—Backus *v.*
Taylor—Harrison *v.*
Taylor—Taylor *v.*
Taylor & Co.—Condy & Mitchell *v.*
Taylor Drug Co.—Californian Fig Syrup Co. *v.*
Taylor Drug Co.—Humphries *v.*
Teede—India & China Tea Co. *v.*
Temperley—Jarrahdale Timber Co., Limited *v.*
Tennessee Manufacturing Co.—Lawrence Manufacturing Co. *v.*
Texas Siftings Publishing Co.—Merriam *v.*
Thackeray—Carlsbad *v.*
Thalheimer—Sternberger *v.*
Thayer — Airbrush Manufacturing Co. *v.*
Theal—McCall *v.*
Thedford—Chattanooga Medicine Co. *v.*
Theodorian—Dadirrian *v.*
Thomas—Chinn *v.*
Thomas—Colton *v.*
Thomas—Wilmer *v.*
Thompson—Carbolic Soap Co. *v.*
Thompson—Crawshay *v.*
Thompson—Isaacson *v.*
Thompson—Mackinnon *v.*
Thomson—Batchelor *v.*
Thorley's Cattle-Food Co.—Massam *v.*
Tibbetts—Carlsbad *v.*
Till—Coslake *v.*
Todd—Partlo *v.*
Toland—Scoville *v.*
Toler—Bischop *v.*
Tonsey—Munro *v.*
Tonsmierre—Oakes *v.*
Toupin—Kerry *v.*
Townsend—Page *v.*
Trades & Labour Unions (Shipping, &c.) Federation—Pink *v.*
Trainer—Amoskeag Manufacturing Co. *v.*
Trask—Electro-Silicon Co. *v.*

Trester—Labbatt v.
Tripp—Longman v.
Triticine, Limited—Meaby & Co. v.
Trott—Pinto v.
Troxell—Enoch Morgan's Sons' Co. v.
Truefitt—Perry v.
Trust—Gouraud v.
Trustees of Port of Bombay—Shepherd v.
Tudor—Tudor v.
Tuerk — Tuerk Hydraulic Power Co. v.
Turnbull—Gravel Roofers' Exchange v.
Turner—Beard v.
Turpin—Dent v.
Turton—Turton & Sons, Limited v.
Tussaud—Tussaud v.
Tylor—Davis v.
Tynberg—Messerole v.

Uhler—Glendon Iron Co. v.
Ullmer—Guinness v.
Union Bank of Spain and England—Street v.
Union Playing Card Co.—New York Consolidated Card Co. v.
United States, Woodman v.
Ury—Carson v.

Valencia Cigar Factory—McVeagh v.
Valentine—Valentine v.
Van Dulken—De Kuyper v.
Van Nostrand—Dougherty v.
Van Schaick—Marten v.
Van Vorst—Hostetter Co. v.
Venning—Goodwin v.
Vick—Edelsten v.
Vining—Nuthall v.
Virasami—Taylor v.
Von Laer—Evans v.

Wackerbarth—Gail v.
Wadsworth—Hiram Holt Co. v.
Wagner—Lumley v.
Waitt—Levy v.
Walker—Allsopp v.
Walker—Cheavin v.
Walker—Collins Co. v.
Walker—Levy v.
Walker—Reynolds & Son v.
Wallace—Cleveland Stone Co. v.
Wallis—R. v.
Wallis—Wallis v.
Walls—Day v.
Walmsley—Ainsworth v.
Walter—Polhill v.
Ward—Colnaghi v.
Ward—Idris & Co. v.
Ward—Mulkern v.
Ward—Tonge v.
Ward & Co.—Spratt's Patent v.
Ware Tobacco Works—Wellman & Dwire Tobacco Co. v.
Waring—Wason v.
Warner—Warner v.
Warren Thread Co.—Warren v.
Waters—Buckingham v.
Watson—Cooper v.
Watson—Marshall v.
Wattles—Binninger v.
Way—Goodman v.
Weaver—Franks v.
Webber—Angier v.
Webley—Talbot v.
Webster—Lucke v.
Webster—Routh v.
Webster—Webster v.
Wedderburn—Wedderburn v.
Weeks—Lafean v.
Weild—Wren v.
Welch—Vickery v.
Weller—Fradella v.
Wells—Fetridge v.
Wells & Co.—Leonard & Ellis v.
Welsh—Sorg v.
Wendover—Enoch Morgan's Sons' Co. v.
Wenz—Humphreys' Specific Homœopathic Medicine Co. v.
Westcott—Hanford v.
Western Distilling Co.—Société Anonyme v.
Western Distilling Co.—Société Anonyme de la Distillerie de la Liqueur Bénédictine, &c. v.
Western Electric Co.—Leclanche Battery Co. v.
Westhead—Cartier v.
Westlake—Watson v.
Wharton—Hop Bitters Manufacturing Co. v.
Wheatcroft—Allsopp v.
Wheeler—Hennessy v.
Wheeler—Lauferty v.
Whelan—Goldstein v.
Whitaker—Darbey v.
White—Barrett v.
White—Comstock v.
White—Hennessy v.
White—Lazenby v.
White—Mellin v.
White—R. v.
White's Golden Lubricator Co.—Leonard & Ellis v.
Whitehead—Bryson v.

Whitehouse—Daniel *v.*
Whiteman—Degraves *v.*
Whitmore—Jacoby *v.*
Whitwell—Standish *v.*
Wight—Lorillard *v.*
Wilcox—Popham *v.*
Wilder—Laird *v.*
Wilder—Wilder *v.*
Wilkes—Dayton *v.*
Wilkes—Roworth *v.*
Wilkinson—Goodall *v.*
Wilkinson, Heywood & Clark, Limited —Hubbuck & Sons, Limited *v.*
William Dobbin & Co.—Wright, Crossley & Co. *v.*
William Listman Milling Co.—Listman Mill Co. *v.*
William Rogers Manufacturing Co. —Rogers *v.*
Williams—Elsas *v.*
Williams—Estes *v.*
Williams—McCord *v.*
Williams—Schneider *v.*
Williams—Thomas *v.*
Williams—Williams *v.*
Williams Manufacturing Co.—Nocra *v.*
Williamson—Richards *v.*
Willis—R. *v.*
Willmett—R. *v.*
Wilson—Apollinaris Co. *v.*
Wilson—Singer Manufacturing Co. *v.*
Wilson—Williams *v.*
Winchester—Graveley *v.*
Winchester—Longman *v.*
Winchester—Thomson *v.*
Winkup—Showell *v.*
Winsor—Stetson *v.*
Winyard—Youatt *v.*
Witteman—De Kuyper *v.*
Wittemann—Von Mumm *v.*
Wittkowski—Heyde *v.*
Wolmershausen, G. S., & Co., Limited—Wolmershausen *v.*
Wood—Manhattan Medicine Co. *v.*
Wood—Metzler *v.*
Woodhouse—Green *v.*
Woodruff—Smith *v.*
Woodside—Alleghany Fertiliser Co. *v.*
Woodward—Stoughton *v.*
Woolf—Lea *v.*
Woolf—Woolf *v.*
Worden, E., & Co.—Californian Fig Syrup Co. *v.*
Worrell—Morse *v.*
Worth—Pierce *v.*
Worthington—Estes *v.*
Wright—Blackwell *v.*
Wright—Heath *v.*
Wright—Martin *v.*
Wright—Phalon *v.*
Wright—Simpson *v.*
Wright & Butler Lamp Manufacturing Co., Limited—John Harper & Co., Limited *v.*
Wright, Crossley & Co.—Royal Baking Powder Co. *v.*

YACUBIAN—Dadirrian *v.*
Yale—Yale Cigar Manufacturing Co. *v.*
Yates—Dicks *v.*
Young—Dreydoppel *v.*
Young & Sons—Dunnachie *v.*

ZEILEN & Co.—Ellis *v.*
Ziemer—Grezier *v.*

TABLE OF ABBREVIATIONS.

Abbreviation	Meaning
A. C. (preceded by 1891, or as the year may be).	Law Reports, Appeal Cases (current series).
A. J.	Australian Jurist.
A. L. T.	Albany (Australia) Law Times.
Abb. N. C....................	Abbott's New Cases (New York).
Abb. P. R.....................	Abbott's Practice Reports (New York).
Act. Comm.	Acting Commissioner.
Ad. & E......................	Adolphus and Ellis.
Alb. L. J.	Albany (New York) Law Journal.
Allen	Allen (Massachusetts).
Am. L. Reg.	American Law Register.
Am. L. Rev.	American Law Review.
Am. L. T.	American Law Times.
Am. St. Rep................	American State Reports.
Amer. Dec.	American Decisions.
Amer. Rep.	American Reports.
App. Cas.	Appeal Cases.
App. Div. N. Y.	Appeal Division (New York) Reports.
Asst. Comm.	Assistant Commissioner.
Atk...........................	Atkins.
B. & Ad......................	Barnewall and Adolphus.
B. & Cr......................	Barnewall and Cresswell.
Barb. Ch.	Barbour's Chancery Reports (New York).
Barb. S. C. or Barb.......	Barbour's Supreme Court Reports (New York).
Barnard......................	Barnardiston.
Beav.	Beavan.
Bell	Bell's Crown Cases.
Beng. L. R. App.	Bengal Law Reports, Appendix.
Bing.	Bingham.
Biss.	Bissell (U. S. Circuit Court).
Bl. C. C......................	Blatchford (U. S. Circuit Court).
Bomb.	Bombay.
Bond	Bond (U. S. Circuit Court).
Bos.	Bosworth (New York).
Bos. & P. N. R.	Bosanquet and Puller's New Reports.
Brews.	Brewster (Pennsylvania).
Browne	Browne (Massachusetts).
Bush	Bush (Kentucky).
C. A.	Court of Appeal.
C. B.	Common Bench.
C. C. C.	Central Criminal Court.
C. C. C. Sess. Pap.	Central Criminal Court Sessions Papers.
C. C. R.	Court of Crown Cases Reserved.
C. & M.	Carrington and Marshman.

C. & P.	Carrington and Payne.
C. L. Rep.	Common Law Reports.
C. P.	Common Pleas.
C. P. Coop.	C. P. Cooper.
C. P. D.	Common Pleas Division.
Cab. & Ell.	Cababé and Ellis (Nisi Prius).
Cal.	California Reports.
Calc.	Calcutta.
Camp.	Campbell.
Can.	Canada.
Can. Leg. News	Canada Legal News.
Cass. Dig.	Cassell's Canadian Digest.
Ch. (preceded by 1891, or as the year may be).	Law Reports, Chancery Division (current series).
Ch. D.	Chancery Division.
Chitty Gen. Pr.	Chitty's General Practice.
Cinc.	Cincinnati Reports.
Cinc. L. B.	Cincinnati Legal Bulletin.
Cl. & Fin.	Clark and Finnelly.
Codd. Dig.	Coddington's American Digest of Trade Mark Cases.
Col.	Colorado Reports.
Comm.	Commissioner.
Comm. of App.	Commission of Appeals (New York).
Conn.	Connecticut Reports.
Coop.	Cooper.
Cor.	Coryton (Bengal).
Cox	Cox's Criminal Cases.
R. Cox	R. Cox's American Trade Mark Cases.
Cro.	Croke.
Cro. Jac.	Croke's King's Bench Reports temp. James I.
Ct. of App.	Court of Appeal.
Ct. of Cl.	Court of Claims (U. S.).
Ct. of Sess. Cas.	Court of Session Cases (Scotch).
Curtis	Curtis (U. S. Circuit Court).
Cush.	Cushing (Massachusetts).
D. & B.	Dearsley and Bell.
D. & R.	Dowling and Rylands.
Daly	Daly (New York).
Deady	Deady (U. S. Circuit Court).
De G. F. & J.	De Gex, Fisher and Jones.
De G. & J.	De Gex and Jones.
De G. J. & S.	De Gex, Jones and Smith.
De G. M. & G.	De Gex, Macnaghten and Gordon.
De G. & Sm.	De Gex and Smale.
Den.	Denison, Crown Cases.
Dig.	Sebastian's Digest of Cases of Trade Mark, &c.
Dill.	Dillon (U. S. Circuit Court).
Dorion	Quebec Q. B. Reports.
Doug.	Douglas.
Dr.	Drewry.
Dr. & Sm.	Drewry and Smale.
Duer	Duer (New York).
E. & B.	Ellis and Blackburn.
East P. C.	East's Pleas of the Crown.
Ell. & Ell.	Ellis and Ellis.
Eq. Rep.	Equity Reports.
Esp. N. P. C.	Espinasse, Nisi Prius Cases.
Ex.	Exchequer.
F. & F.	Foster and Finlason.

Fed. Rep.	Federal Reporter (U. S.).
Fla.	Florida Reports.
Foster Cr. Cas.	Foster, Crown Cases.
Ga.	Georgia Reports.
Giff.	Giffard.
Grant, Up. Can. Ch.	Grant, Upper Canada, Chancery.
Green	Green, New Jersey.
H. & M.	Hemming and Miller.
H. & N.	Hurlstone and Norman.
H. & Tw.	Hall and Twells.
H. & W.	Harrison and Wollaston.
H. L.	House of Lords.
H. L. C.	House of Lords Cases.
Hand	Hand (New York).
Hilt.	Hilton (New York).
Hoff.	Hoffman (New York).
Holmes	Holmes (U. S. Circuit Court).
Hopk.	Hopkins (New York).
How. App. Cas.	Howard's Appeal Cases (New York).
How. Pr.	Howard's Practice Cases (New York).
Hughes	Hughes (U. S. Circuit Court).
Hun	Hun (New York).
Hyde	Hyde (Bengal).
Ill.	Illinois.
Ind.	Indiana Reports.
Ind. L. R.	Indian Law Reports.
Iowa	Iowa State Reports.
I. R. (preceded by 1894, or as the year may be).	Irish Reports (current series).
Ir. Ch.	Irish Chancery.
Ir. Eq.	Irish Equity.
Ir. Jur.	Irish Jurist.
J. & H.	Johnson and Hemming.
J. & S.	Jones and Spencer (New York).
J. P.	Justice of the Peace.
Jac.	Jacob.
Jac. & W.	Jacob and Walker.
Johns.	Johnson.
Journ. of Jurisp.	Journal of Jurisprudence (Scotch).
Jur.	Jurist.
K. & J.	Kay and Johnson.
Keyes	Keyes (New York).
Ky.	Kentucky Reports.
Kyshe	Straits Settlements Reports.
L. C.	Lord Chancellor.
L. JJ.	Lords Justices.
L. J. Bkptcy.	Law Journal, Bankruptcy.
L. J. Ch.	Law Journal, Chancery.
L. J. C. P.	Law Journal, Common Pleas.
L. J. Ex.	Law Journal, Exchequer.
L. J. K. B.	Law Journal, King's Bench.
L. J. M. C.	Law Journal, Magistrate's Cases.
L. J. N. of C.	Law Journal, Notes of Cases.
L. J. P. C.	Law Journal, Privy Council.
L. J. Q. B.	Law Journal, Queen's Bench.
L. R. Ch.	Law Reports, Chancery Appeals.
L. R. C. P.	Law Reports, Common Pleas.
L. R. Eq.	Law Reports, Equity.
L. R. Ex.	Law Reports, Exchequer.

L. R. H. L. .... Law Reports, House of Lords (English and Irish).
L. R. Ir. .... Irish Law Reports.
L. R. P. C. .... Law Reports, Privy Council.
L. R. Q. B. .... Law Reports, Queen's Bench.
L. T. .... Law Times Reports.
L. T. (Journal) .... Law Times Notes of Unreported Cases.
L. & C. .... Leigh and Cave, Crown Cases.
La. Ann. .... Louisiana Annual Reports.
Lans. .... Lansing (New York).
Lath. .... Lathrop (Massachusetts).
Leach .... Leach, Crown Cases.
Leg. Obs. .... Legal Observer.
M. M. A. .... Merchandise Marks Act, 1887.
M. R. .... Master of the Rolls.
M. & Rob. .... Moody and Robinson.
M. & W. .... Meeson and Welsby.
Mac. & G. .... Macnaghten and Gordon.
McCrary .... McCrary (U. S. Circuit Court).
McLean .... McLean (U. S. Circuit Court).
Mad. .... Madras.
Madd. .... Maddock.
Man. & G. .... Manning and Granger.
Mass. .... Massachusetts Reports.
Md. .... Maryland.
Me. .... Maine.
Mer. .... Merivale.
Mich. .... Michigan Reports.
Mich. C. C. .... Michigan Circuit Court.
Mich. N. P. .... Michigan Nisi Prius Reports.
Minn. .... Minnesota Reports.
Mo. .... Missouri Reports.
Mo. App. .... Missouri Appeals Reports.
Mod. .... Modern Reports.
Mont. D. & De G. .... Montague, Deacon and De Gex.
Monthly L. R. .... Monthly Law Reports (Boston).
Moo. P. C. .... Moore's Privy Council Cases.
My. & Cr. .... Mylne and Craig.
N. C. *or* N. Car. .... North Carolina Reports.
N. J. (Eq.) .... New Jersey (Equity).
N. P. .... Nisi Prius.
N. R. .... New Reports.
N. S. .... New Series.
N. S. W. Rep. (E.) ...... New South Wales Reports, Equity.
N. Y. .... New York Court of Appeals Reports.
N. Y. Sup. Ct. .... New York Supreme Court Reports.
N. Y. Super. Ct. .... New York Superior Court Reports.
N. Z. .... New Zealand Reports.
N. & M. .... Neville and Manning.
N. & P. .... Neville and Perry.
Neb. .... Nebraska Reports.
O. S. .... Old Series.
Ohio St. .... Ohio State Reports.
Ont. .... Ontario Reports.
Oreg. .... Oregon Reports.
P. R. .... Patent Office Reports.
Pa. *or* Penn. St. .... Pennsylvania State Reports.
Pac. C. L. J. .... Pacific Coast Law Journal.
Paige .... Paige (New York).

Peake	Peake, Nisi Prius Cases.
Pemb.	Pemberton on Judgments.
Penn. L. J.	Pennsylvania Law Journal.
Ph.	Phillips.
Phila.	Philadelphia Reports.
Pick.	Pickering (Massachusetts).
Post	Post (Missouri).
Q. B.	Queen's Bench.
Q. B. (preceded by 1891, or as the year may be).	Law Reports, Queen's Bench Division (current series).
Q. B. D.	Queen's Bench Division.
Queens. L. J. Rep.	Queensland Law Journal Reports.
R. I.	Rhode Island Reports.
R. & M.	Russell and Mylne.
Robertson	Robertson (New York).
Russ.	Russell.
Ry. Cass.	Railway Cases.
S. & S.	Simons and Stuart.
Sandf. Ch.	Sandford's Chancery Reports (New York).
Sandf. S. C.	Sandford's Supreme Court Reports (New York).
Sawy.	Sawyer (U. S. Circuit Court).
Scot. L. Rep.	Scottish Law Reporter.
Scott, N. R.	Scott's New Reports.
Seton	Seton on Decrees.
Sickels	Sickels (New York).
Sim.	Simons.
E. D. Smith	E. D. Smith (New York).
Sol. J.	Solicitor's Journal.
St. Dig.	Stephens' Digest of Canadian Cases.
Story	Story (U. S. Circuit Court).
Sup. Ct.	Supreme Court.
Super. Ct.	Superior Court.
Swanst.	Swanston.
T. M. A.	Trade Marks Registration Act.
T. R.	Term Reports.
Tex.	Texas Reports.
Thomp. & C.	Thompson and Cook (New York).
Trade Marks	British and Foreign Journal of Commerce, Trade Marks, and International Exhibitions.
Trans. App.	Transcript Appeals (New York).
U. S.	United States Supreme Court Reports.
U. S. C. C., Dt. of—	United States Circuit Court, District of —.
U. S. Pat. Comm. Decis.	Decisions of the U. S. Commissioner of Patents.
U. S. Pat. Gaz.	United States Official Patent Gazette.
U. S. Sup. Ct.	United States Supreme Court.
V. & B.	Vesey and Beames.
V.-C.	Vice-Chancellor.
V. L. R. Eq.	Victoria Law Reports (New Series) Equity.
V. R. Eq.	Victoria Reports (First Series) Equity.
Va.	Virginia Reports.
Ves.	Vesey.
Vt.	Vermont Reports.
W. N.	Weekly Notes.
W. R.	Weekly Reporter.
W. Va.	West Virginia Reports.
W. & W. (I. E. & M.)	Wyatt and Webb's Victoria Reports (Insolvency, Ecclesiastical and Matrimonial).
W. W. & A'B. Eq.	Wyatt, Webb and A'Beckett's Victoria Reports (Equity).

W. A'B. & W. Eq.	Webb, A'Beckett and Williams' Victoria Reports (Equity).
Wallace	Wallace (U. S. Supreme Court).
Wall., Jr.	Wallace, Junior (U. S. Circuit Court).
Washb.	Washburn (Vermont).
Webs. P. C.	Webster, Patent Cases.
Wend.	Wendell (New York).
West. L. J.	Western Law Journal.
Wils.	Wilson.
Wils. (Ind.)	Wilson's Indianapolis Reports.
Wisc.	Wisconsin Reports.
Wood. & M.	Woodbury and Minot (U. S. Circuit Court).
Y. & C. Ch.	Younge and Collyer's Chancery Reports.

THE

LAW OF TRADE MARKS.

CHAPTER I.

GENERAL INTRODUCTION.

General principle of trade mark law.

The general principle upon which the Courts exercise jurisdiction in the case of trade marks is, that "a manufacturer who produces an article of merchandise which he announces as one of public utility, and who places upon it a mark by which it is distinguished from all other articles of a similar kind, with the intention that it may be known to be of his manufacture, becomes the exclusive owner of that which is henceforth called his trade mark. By the law of this country—and the like law prevails in most other civilised countries—he obtains a property in the mark which he so affixes to his goods. The property thus acquired by the manufacturer, like all other property, is under the protection of the law, and for the invasion of the right of the owner of such property the law affords a remedy similar in all respects to that by which the possession and enjoyment of all property is secured to the owners" (a). "A man is not to sell his own goods under the pretence that they are the goods of another man; he cannot be permitted to practise such a deception, nor to use the means which contribute to that end. He cannot, therefore, be allowed to use names, marks, letters, or other *indicia* by which he may induce purchasers to believe that the goods which he is selling are the manufacture of another person" (b). "Supposing the rival trader to have obtained celebrity in his manufacture, he is entitled to all the advantages of that celebrity, whether resulting from the greater demand for his goods, or from the higher price which the

(a) *Per* Bacon, V.-C., in *Ransome* v. *Graham*, 51 L. J. Ch. 897.

(b) *Per* Lord Langdale, M. R., in *Perry* v. *Truefitt*, 6 Beav. 66.

public are willing to give for them, rather than for the goods of other manufacturers whose reputation is not so high. Where, therefore, a manufacturer has been in the habit of stamping the goods which he has manufactured with a particular mark or brand, so that thereby persons purchasing goods of that description know them to be of his manufacture, no other manufacturer has a right to adopt the same stamp. By doing so he would be substantially representing the goods to be of the manufacture of the manufacturer who had previously adopted the stamp or mark in question, and so would or might be depriving him of the profit he might have made by the sale of the goods which, *ex hypothesi*, the purchaser intended to buy. The law considers this to be wrong towards the person whose mark is thus assumed, for which wrong he has a right of action, or, which is the more effectual remedy, a right to restrain by injunction the wrongful use of the mark thus pirated" (*a*).

Function of trade mark.

The function of the trade mark is to give the purchaser a satisfactory assurance of the make and quality of the article he is buying. Thus, it was said by Lord Cottenham, C. (*b*), "take a piece of steel: the mark of the manufacturer from whom it comes is the only indication to the eye of the customer of the quality of the article; so it is of blacking, or any other article of manufacture the particular quality of which is not discernible by the eye." It is on the faith of the mark being genuine, and representing a quality equal to that which he has previously found a similar mark to indicate, that the purchaser makes his purchase. "That, in truth," said James, L. J. (*c*), "is the meaning and object of a trade mark. It indicates this—that you may take this as a warranty that it has come from the particular manufacturer of the goods with which you have been hitherto pleased." So, again, it was said by Kay, J. (*d*)—"What does a trade mark mean? It means the mark under which a particular individual trades, and

(*a*) *Per* Lord Cranworth, C., in *Seixo* v. *Provezende*, L. R. 1 Ch. 192. And see *per* the United States Supreme Court in *Canal Co.* v. *Clark*, 80 U. S. 311; *McLean* v. *Fleming*, 96 U. S. 245; and *Amoskeag Manufacturing Co.* v. *Trainer*, 101 U. S. 51; and *per* Molesworth, J., in the Supreme Court of Victoria in *In re Bremner*, 2 W. & W. 12; and *per* Levinge, J., in the High Court of Bengal, in *Orr-Ewing & Co.* v. *Grant, Smith & Co.*, 2 Hyde, 185.

(*b*) In *Spottiswoode* v. *Clarke*, 2 Ph. 154. And see *Sohl* v. *Geisendorf*, 1 Wils. (Ind.) 60; *Kidd* v. *Johnson*, 100 U. S. 617.

(*c*) *Massam* v. *J. W. Thorley's Cattle Food Co.* (2), 14 Ch. D. 748. And see *Amoskeag Manufacturing Co.* v. *Trainer*, 101 U. S. 51; *Liggett and Myers Tobacco Co.* v. *Hynes*, 20 Fed. Rep. 883; *Holt* v. *Menendez*, 128 U. S. 182.

(*d*) *In re Australian Wine Importers, Ld.*, 41 Ch. D. 278. And see *In re Kinahan*, 10 P. R. 393.

which indicates the goods to be his goods—either goods manufactured by him, or goods selected by him, or goods which in some way or other pass through his hands in the course of trade. That is the meaning of a trade mark. It is a mode of designating goods as being the goods which have been, in some way or other, dealt with by the person who owns the trade mark." Similarly, Bowen, L. J. (*a*), has described the function of a trade mark as being "to give an indication to the purchaser or possible purchaser as to the manufacture or quality of the goods—to give an indication to his eye of the trade source from which the goods come, or the trade hands through which they pass on their way to the market."

Mere statement of quality, no trade mark.

Yet, while the object of the trade mark is to indicate quality, a mere English adjective, or word in common use (*b*), which indicates quality and nothing more, not serving to connect the goods with any particular manufacturer or seller, cannot be appropriated as a trade mark; for no person can be permitted to exclude others from the use of words common to all, even in their application to goods; and without such exclusive appropriation, the mark is a mere statement, offering no guarantee and making no one responsible for its correctness. And in the same way the use of a mark which has for its object the enabling purchasers to divide into equal pieces the substance to which it is applied, cannot deprive other makers of the right to use other somewhat similar marks with the same object (*c*).

Exception.

Marks, however, which do serve to indicate the production of a certain manufacturer, though at the same time subject to variation for the purpose of denoting different qualities, are entitled to protection (*d*). And it may be observed that a symbol or word

(*a*) *In re Powell* (2), (1893) 2 Ch. 388.

(*b*) *Braham* v. *Bustard*, 1 H. & M. 447; *Raggett* v. *Findlater*, L. R. 17 Eq. 29; *In re Barrows*, 5 Ch. D. 353; *Spottiswoode* v. *Clarke*, 1 Coop. 264; *Gillott* v. *Esterbrook*, R. Cox, 353; *Osgood* v. *Allen*, 1 Holmes, 185; *In re Eagle Pencil Co.*, 10 U. S. Pat. Gaz. 981; *Lawrence Mfg. Co.* v. *Tennessee Mfg. Co.*, 138 U. S. 537; *Columbia Mill Co.* v. *Alcorn*, 150 U. S. 460; *Liggett and Myers' Tobacco Co.* v. *Reid Tobacco Co.*, 104 Mo. 53; 43 Am. St. Rep. 313; *Listman Mill Co.* v. *William Listman Milling Co.*, 88 Wisc. 334; 43 Am. St. Rep. 907.

(*c*) *Dausman and Drummond Tobacco Co.* v. *Ruffner*, 15 U. S. Pat. Gaz. 559.

(*d*) *Hirst* v. *Denham*, L. R. 14 Eq. 542; *Ransome* v. *Graham*, 51 L. J. Ch. 897; *Moses* v. *Sargood*, Dig. 636; *Sohl* v. *Geisendorf*, 1 Wils. (Ind.) 60; *Godillot* v. *Harris* (*per* Danforth, J.), 81 N. Y. 263. See *Stokes* v. *Landgraff*, 17 Barb. 608; R. Cox, 137; *Gillott* v. *Kettle*, 3 Duer, 624; R. Cox, 148; *Gillott* v. *Esterbrook*, 47 Barb. 455; R. Cox, 340; 48 N. Y. 374; *Amoskeag Manufacturing Co.* v. *Trainer*, 101 U. S. 51; *Merry* v. *Hoopes*, 111 N. Y. 415; *Ralli* v. *Fleming*, Ind. L. R. 3 Calc. 417. And see *Wood* v. *Lambert*, 32 Ch. D. 247.

indicating quality in one class of goods need not necessarily do so in another (*a*).

Trade mark not always indicative of actual manufacturer.

The use of the trade mark is not in all cases to designate the maker of the substance to which it is attached (*b*), though that is usually so; it may indicate some other person who has expended labour on the article, so that, as finished, it owes some portion of its value to him. Thus, in a case in the Supreme Court of New York (*c*) it was held that, where one person manufactured cotton cloths, and another printed them, the mark was indicative of the printer and not of the original manufacturer. So a trade mark has been recognized as indicating the bleacher who finished the goods which another person had manufactured (*d*); and in the same way, one may serve to denote the importer (*e*) or exporter (*f*) of manufactured goods.

May be indicative of selector.

Again, a trade mark may be so composed as to indicate that the goods have been examined and selected by a person of known ability, so that they have attributed to them such value as his approval can give, and his reputation depends upon their corresponding to their alleged quality. In such a case, therefore, the trade mark belongs to the selector and not to the manufacturer (*g*).

May indicate natural products.

To go farther, it is not necessary that the goods to which the mark is affixed should be manufactured goods at all; it is sufficient if the vendors, whose property the trade mark is, have alone the opportunity of procuring the article in question, so that the trade mark indicates accurately the source from which the article is derived. This is particularly the case with mineral waters and

(*a*) *In re English*, U. S. Pat. Comm. Decis. 1870, 142; *In re Dick & Co.*, 9 U. S. Pat. Gaz. 538.

(*b*) See *per* Bacon, V.-C., in *Ford* v. *Foster*, L. R. 7 Ch. 611. See, also, *Knott* v. *Marshall*, W. N. 1894, 214.

(*c*) *Amoskeag Manufacturing Co.* v. *Garner*. 55 Barb. 151; R. Cox, 541. See *Amoskeag Manufacturing Co.* v. *Garner* (2), 54 How. Pr. 298; and *Wamsutta Mills* v. *Allen*, 12 Phila. 535.

(*d*) *In re Sykes*, 43 L. T. N. S. 626.

(*e*) *Godillot* v. *Hazard*, 44 N. Y. Super. Ct. 427; *Ralli* v. *Fleming*, Ind. L. R. 3 Calc. 417; *Taylor* v. *Virasami*, Ind. L. R. 6 Mad. 108; *In re Apollinaris Co.*, (1891) 2 Ch. 186, 226, 230.

(*f*) *Robinson* v. *Finlay*, 9 Ch. D. 487, though it was held on appeal that in that particular instance this was not the case.

(*g*) *Hirsch* v. *Jonas*, 3 Ch. D. 584; *In re Australian Wine Importers, Ld.*, 41 Ch. D. 278; *In re Apollinaris Co.*, (1891) 2 Ch. 186, 226, 230; *Leahy* v. *Glover*, 10 P. R. 141; *Benedictus* v. *Sullivan, Powell & Co.*, 12 P. R. 25; *Thomson & Co.* v. *Robertson*, Ct. Sess. Cas. 4th Ser. XV, 880; *Yale Cigar Manufacturing Co.* v. *Yale*, 30 U. S. Pat. Gaz. 1183; *Holt* v. *Menendez*, 128 U. S. 182; *Levy* v. *Waitt*, 56 Fed. Rep. 1016; 61 Fed. Rep. 1008. And see *Wood* v. *Lambert*, 32 Ch. D. 247; and *In re Wills* (2), (1893) 2 Ch. 262.

similar productions (*a*). A mere name, however, for a natural product which is available by all the world, cannot be exclusively appropriated by an individual, who possesses no exclusive access to its source (*b*).

Advantages of use of trade marks.

The benefits derivable from the recognition of the exclusive right of a trader to his trade mark are apparent from the consideration that the "trade mark is both a sign of the quality of the article and an assurance to the public that it is the genuine product of his manufacture. It thus often becomes of great value to him, and in its exclusive use the Court will protect him against attempts of others to pass off their products upon the public as his. This protection is afforded, not only as a matter of justice to him, but to prevent imposition upon the public" (*c*).

The protection of trade marks is, therefore, beneficial to the public, since it enables them to buy with confidence—that they are getting what they require; while at the same time it is beneficial to the manufacturer, since it affords him the means of securing the benefit of the custom which he deserves and which is intended for him. When the owner of a trade mark is asserting his exclusive rights, "monopoly is not the thing for which the one party struggles and which the other resists. On the contrary, fair trading is all for the protection of which the law is invoked; and the public, as well as the manufacturer or merchant, are concerned that infringement of trade marks and trade designations should be prevented. For there is a double wrong: the public are or may be deceived, and the trader whose trade mark or trade designation is infringed is or may be injured" (*d*). So advantageous did the

(*a*) *Apollinaris Co.* v. *Norrish*, 33 L. T. N. S. 242; *Apollinaris Co.* v. *Edwards*, Seton, 5th ed. 537 (Apollinaris Water); *Radde* v. *Norman*, L. R. 14 Eq. 348 (Leopoldshall Kainit); *Congress and Empire Spring Co.* v. *High Rock Congress Spring Co.*, 57 Barb. 526; R. Cox, 599 (Congress Spring Water); *Wheeler* v. *Johnston*, 3 L. R. Ir. 284 (Cromac Springs Water); *Dunbar* v. *Glenn*, 42 Wisc. 118 (Bethesda Mineral Water); *Carlsbad* v. *Tibbetts*, 51 Fed. Rep. 852; *Carlsbad* v. *Thackeray*, 57 Fed. Rep. 18; *Carlsbad* v. *Kutnow*, 68 Fed. Rep. 794; 71 Fed. Rep. 167; *Carlsbad* v. *Schultz*, 78 Fed. Rep. 469 (Carlsbad Salts); *République Française* v. *Schultz*, 57 Fed. Rep. 37 (Vichy Water); *Parkland Hills Blue Lick Water Co.* v. *Hawkins*, 95 Ky. 502; 44 Am. St. Rep. 254 (Blue Lick Water). And see the coal cases—*Braham* v. *Beachim*, 7 Ch. D. 848; *Davis* v. *Tylor*, Jessel, M. R., April 24th, 1879; *Lochgelly Co., Ld.* v. *Lumphinnans Iron Co.*, Ct. Sess. Cas. 4th Ser. VI. 482.

(*b*) *Young* v. *Macrae*, 9 Jur. N. S. 322 (Paraffin Oil); *Canal Co.* v. *Clark*, 80 U. S. 311 (Lackawanna Coal); *Montgomerie* v. *Donald & Co.*, Ct. Sess. Cas. 4th Ser. XI. 506 (Water of Ayr Stone); *Hoyt* v. *J. T. Lovett & Co.*, 71 Fed. Rep. 173 (Green Mountain Grapes).

(*c*) *Per* U. S. Sup. Ct. in *Manhattan Medicine Co.* v. *Wood*, 108 U. S. 218. And see *Amoskeag Manufacturing Co.* v. *Spear*, 2 Sandf. S. C. 599.

(*d*) *Per* Lord Craighill in *Dunnachie* v.

adoption of a trade mark speedily prove to be that, in 1742, Lord Hardwicke, C., said that "every particular trader had some particular mark or stamp" (*a*).

Southern v. *How.*

In the earliest case on record (*b*) damages were given for the infringement of a mark on cloth, though it is not clear from the reports whether the plaintiff was a clothmaker whose mark had been pirated, or a purchaser who had been deceived into buying the wrong goods.

Blanchard v. *Hill.*

In *Blanchard* v. *Hill* (*c*), however, in 1742, Lord Hardwicke refused to protect the "Great Mogul" stamp on cards, deciding, in effect, that there was no right of property in a trade mark, though actual fraud might be restrained or punished, as in *Southern* v. *How* (*d*). The decision seems in great measure to have been founded upon a dread of setting up a monopoly, the distinction between a trade mark and a patent not being clearly present to his lordship's mind.

Singleton v. *Bolton.*

In *Singleton* v. *Bolton* (*e*), in the Court of King's Bench (1783), Lord Mansfield, C. J., said that if the defendant had sold a medicine of his own under the plaintiff's name or mark, that would be a fraud for which an action would lie; but the name of an original inventor being the trade mark in question, evidence was necessary of the medicine having been sold as if prepared by the plaintiff, a distinction being thus drawn between the transmissibility of a name and that of other trade marks, which has since been removed (*f*).

Sykes v. *Sykes.*

In Scotland an interdict was granted in 1823 to restrain the infringement of a trade mark (*g*), but in England it was for the first time perceived, in 1824, that goods sold with a pirated mark attached, though they might not deceive an immediate purchaser, yet might deceive an ultimate purchaser, who might have no notice of the fraud (*h*).

Requisites to entitle to damages at Common Law.

This case marks the last stage of development in the law of trade marks as recognised at Common Law (*i*); and the requisites neces-

Young & Sons, Ct. Sess. Cas. 4th Ser. X. 874. And see *State of Missouri* v. *Gibbs*, 56 Mo. 133; and *Blackwell* v. *Wright*, 73 N. Car. 310.

(*a*) *Blanchard* v. *Hill*, 2 Atk. 484, 485.

(*b*) *Southern* v. *How*, Poph. 144; 3 Cro. 471; 2 Rolle, 28.

(*c*) 2 Atk. 484.

(*d*) Poph. 144.

(*e*) 3 Doug. 293.

(*f*) See *Leather Cloth Co.* v. *American Leather Cloth Co.*, 1 H. & M. 271; 4 De G. J. & S. 137; 11 H. L. C. 523, and cases collected at p. 101, note (*c*).

(*g*) *Wilkie* v. *McCulloch*, Ct. Sess. Cas. 1st Ser. II. 413.

(*h*) *Sykes* v. *Sykes*, 3 B. & Cr. 541.

(*i*) See *per* Sir G. Mellish, L. J., in *Singer Manufacturing Co.* v. *Wilson*, 2 Ch. D. 434, 454.

sary to entitle a plaintiff to recover damages were, in accordance with the judgment of Sir T. Wilde, C. J., in *Rodgers* v. *Nowill* (a), that he should have been accustomed to use a certain mark upon goods of his manufacture to denote that that was so, that that mark was known in the trade (b), and that the defendant had imitated the mark and sold goods bearing it, as and for the plaintiff's goods, with intent to defraud (c).

Lord Blackburn in *Singer Manufacturing Co.* v. *Loog.*

Lord Blackburn, discussing the history of trade mark law in *Singer Manufacturing Co.* v. *Loog* (d), said: "The original foundation of the whole law is this—that when one, knowing that goods are not made by a particular trader, sells them as and for the goods of that trader, he does that which injures that trader. At first it was put upon the ground that he did so when he sold inferior goods as and for the trader's; but it is established, alike at law and in equity, that it is an actionable injury to pass off goods known not to be the plaintiff's as and for the plaintiff's, even though not inferior. The modes in which goods may be passed off as and for the plaintiff's vary. The most usual is where a particular mark on the goods, or on the packages in which they are sold, has been used to denote that they are made by a particular firm to such an extent that it is understood in the market to bear that meaning. The law as to those trade marks is now regulated by statutes, but before there was any legislation on the subject it was well settled that when any one adopted a mark so closely resembling the trade mark of the plaintiff that it would be likely to be mistaken for it, and put it on his goods and sold them, knowing that though the persons to whom he sold them were well aware that they were not the plaintiff's make, yet that they were meant to be sold to others who would see only the trade mark, and were likely to be deceived by its resemblance to that of the plaintiff, he might be properly found to have knowingly and fraudulently sold the goods as and for the plaintiff's goods. And, so far, there was no difference between law and equity.

"But at law it was necessary to prove that an injury had been

(a) 5 C. B. 109.

(b) Application for registration, provided the connection with the goodwill of the business is observed, is now equivalent to public use of a mark: Patents Act, 1883, § 75, as amended by the Act of 1888; and see Trade Marks Act, 1875, § 2. This was held to be so also in America under the U. S. Statute of 1870: *In re The Dutcher Temple Co*, U. S. Pat. Comm. Decis. 1871, 248. And see § 7 of the U. S. Act of 1881.

(c) See, however, the Judicature Act of 1873, § 25, by which the rules of equity prevail.

(d) 8 App. Cas. 29.

actually done; in equity it was enough to show that the defendant threatened to do, and would, if not prevented, do that injury. But there is a further question on which there may be a difference between law and equity." The difference to which allusion is here made arises from the fact that in equity the protection to the manufacturer and the public was carried a stage farther in 1833 by the decision of Lord Cottenham, C., in *Millington* v. *Fox* (a), since which time it has not been necessary to prove an actual fraudulent intention, the remedy being obtainable if the defendant's conduct has been such as to produce the effects of fraud, though he may, in fact, have acted in perfect innocence.

Equity—*Millington* v. *Fox*.

Limits to Court's interposition.

It is, however, "no part of the duty of the Court to enforce the observance of the dictates of morality" (b), and therefore, if a defendant "has an abstract right to do what he has done, the Court must permit it, however opposed to one's moral sense" (c). The Court will not interfere, simply on the ground that there is a misrepresentation, unless some right belonging to the plaintiff has been interfered with (d).

Acquisition of trade marks.

The mode of acquiring a right to a trade mark was, from 1875 to 1883, regulated by the Trade Marks Registration Acts, 1875—1877 (e). The trade mark was required to accord with the definition contained in section 10 of the Act of 1875 (f), and not to be obnoxious to the restrictions of section 6; and it had to be registered, or, if it had been used before the passing of the Act, application must have been made for registration, and have been refused, in which case a certificate of refusal could be obtained from the registrar (g), unsuccessful applicants thus retaining whatever rights might have been theirs before the Act. For a mark to have been used before the Act, it was sufficient for a

(a) 3 My. & Cr. 338. In *Gout* v. *Aleploglu*, 5 Leg. Obs. 496, the Vice-Chancellor of England held that "the plaintiff had acquired by long previous usage *the exclusive right*" to his trade marks, but the report is too brief to show whether that expression was employed in its full meaning. *Hogg* v. *Kirby*, 8 Ves. 215 (1803); and *Day* v. *Binning*, C. P. Cooper, 489; and 1 Leg. Obs. 205 (1831), were cases of fraudulent competition; and in *Henry* v. *Price*, 1 Leg. Obs. 364 (1831), there were circumstances of fraud.

(b) *Per* Wood, V.-C., in *Batty* v. *Hill*, 1 H. & M. 264. And see *Roper's, &c. Co.* v. *Copeman's, &c. Association, Limited*, 28 Sol. J. 218; *Native Guano Co.* v. *Sewage Manure Co.*, 8 P. R. 125; *Schneider* v. *Williams*, 44 N. J. (Eq.) 391.

(c) *Braham* v. *Bustard*, 1 H. & M. 447.

(d) See *Batty* v. *Hill*, *ubi supra*.

(e) 38 & 39 Vict. c. 91; 39 & 40 Vict. c. 33; 40 & 41 Vict. c. 37.

(f) Which was so restricted as to exclude from registration some marks previously recognized: *Ex parte Stephens* (2), 3 Ch. D. 659; *In re Mitchell* (1), 7 Ch. D. 36. See *Rose* v. *Evans*, 48 L. J. Ch. 618.

(g) § 2 of Amendment Act, 1876.

vendible article to have been actually in the market, bearing the mark in question; it was not necessary for this to have been the case for any length of time, so long as there was some user (*a*).

The Trade Marks Acts, 1875-7, are now repealed, and replaced by the Patents Acts, 1883-8 (*b*), which contain a wider and more comprehensive definition of a trade mark (*c*), but are in other respects substantially identical, so far as concerns the acquisition of trade marks, with the repealed Acts (*d*).

Appropriation to special classes of goods.

A trade mark must, under the present Acts, as under the repealed Acts, be registered as belonging to particular goods or classes of goods (*e*), according to the classification of goods contained in the Rules; and trade marks used before the Act of 1875 can only be protected in respect of the same classes of goods as those to which they have been habitually applied, for no man could be so deceived as to suppose that he was buying A.'s linen because he saw the same mark as A's on B's iron (*f*).

Assignment and transmission.

A trade mark is assignable and transmissible, but only in connection with the goodwill of the business concerned with the goods or classes of goods to which it relates (*g*). A trade mark cannot exist in gross and unattached to specific articles (*h*), for, if that could be so, the mark might come to be an instrument of deception, instead of a guarantee of genuineness (*i*). In an assignment of

(*a*) *Per* Lord Westbury, C., in *McAndrew* v. *Bassett*, 4 De G. J. & S. 380; *Wheeler* v. *Johnston*, 3 L. R. Ir. 284; *In re Simpson, Davies & Sons* (2), Jessel, M. R., Jan. 12, 1881; *Somerville* v. *Schembri*, 12 App. Cas. 453; and other cases.

(*b*) 46 & 47 Vict. c. 57; 48 & 49 Vict. c. 63; 51 & 52 Vict. c. 50.

(*c*) See § 64 of the Act of 1883 as amended by § 10 of the Act of 1888.

(*d*) See §§ 62—74.

(*e*) Trade Marks Act, 1875, § 2; Patents Act, 1883, § 65.

(*f*) *Hall* v. *Barrows*, 4 De G. J. & S. 150; *Ainsworth* v. *Walmsley*, L. R. 1 Eq. 518; *Merchant Banking Co.* v. *Merchants' Bank*, 9 Ch. D. 560; *Société Anonyme des Mines, &c.* v. *Baxter*, 14 Bl. C. C. 261; *Colman* v. *Crump*, 70 N. Y. 573; *Hart* v. *Colley*, 44 Ch. D. 193.

(*g*) Patents Act, 1883, § 70. And see Trade Marks Act, 1875, § 2; *Hall* v. *Barrows*, 4 De G. J. & S. 150; *Edwards* v. *Dennis*, 30 Ch. D. 454; *In re Wellcome*, 32 Ch. D. 213; *In re Bolonachi's Empire Chocolate Co.*, 89 L. T. Jo. 273; *Thorneloe* v. *Hill*, (1894) 1 Ch. 569; *Dixon Crucible Co.* v. *Guggenheim*, 2 Brews. 321; R. Cox, 559; *Smith* v. *Fair*, 14 Ont. Rep. 729; *McVeagh* v. *Valencia Cigar Factory*, 32 U. S. Pat. Gaz. 1124. And see *Hammond* v. *Malcolm Brunker & Co.*, 9 P. R. 301, where an assignment of a trade mark with such portion of the goodwill as related to the goods to which the trade mark applied was held valid; and *In re Magnolia Metal Co.*, (1897) 2 Ch. 371, where the goodwill was only indirectly connected with the goods for which the trade mark was registered.

(*h*) *McAndrew* v. *Bassett*, 4 De G. J. & S. 380; *Leather Cloth Co.* v. *American Leather Cloth Co.*, *ib.* 137; 11 H. L. C. 523; *Dixon* v. *Guggenheim*, *ubi supra*; *Wheeler* v. *Johnston*, 3 L. R. Ir. 284; *Kidd* v. *Johnson*, 100 U. S. 617; *Weston* v. *Ketcham* (1), 39 N. Y. Super. Ct. 54; *S. C.* (2), 51 How. Pr. 455.

(*i*) *Cotton* v. *Gillard*, 44 L. J. Ch. 90; *Pinto* v. *Badman*, 8 P. R. 181; *Hammond* v. *Malcolm, Brunker & Co.*, 9 P. R. 301. See *Witthaus* v. *Braun*, 44 Md. 303.

the business and goodwill, the trade mark, in the absence of any indication to the contrary (*a*), passes as a matter of course (*b*), or, if specially excepted, must cease to be available by the vendor. On the death of a registered proprietor, his legal personal representative acquires the title to the mark. Subsequent registered proprietors stood in the same position, under § 4 of the Trade Marks Act of 1875, as if their title were a continuation of the title of the first registered proprietor (*c*). And this will still be so, though the section has not been re-enacted in the present Acts.

Bankruptcy.

It has been held in bankruptcy that a trade mark passes to a trustee in bankruptcy, as being "goods and chattels" within § 15, sub-s. 5, of the Bankruptcy Act, 1869 (*d*).

Trade mark lost.

Apart from the special provisions of the Patents Act, 1883, a trade mark may be lost, as by its coming to be commonly applied to a special article, in which case it becomes *publici juris*; thus "Worcestershire sauce," which might at one time have been protected, could no longer be so when it had come into common use (*e*). But for general user to render a mark of common right, it must be used on the same goods as those for which an exclusive right to it is claimed (*f*). It was also held, before the passing of the Registration Acts, that if a person abandons a suit which he has undertaken to restrain infringement, he abandons his exclusive right (*g*).

Infringement.

When once a person has acquired a right in the trade mark, any infringement of that right will form a ground for the interference of the Court. For the Court to interfere there must be fraud, for

(*a*) *In re Roger* (2), 12 P. R. 149; *Currie* v. *Currie*, 15 P. R. 339.

(*b*) *Shipwright* v. *Clements*, 19 W. R. 599. And see cases collected at p. 100, note (*a*).

(*c*) And see *Walton* v. *Crowley*, 3 Bl. C. C. 440; R. Cox, 166.

(*d*) *Ex parte Young; Re Lemon, Hart & Son*, Dig. 537. And see *Kelly* v. *Hutton*, L. R. 3 Ch. 703; *Hudson* v. *Osborne*, 39 L. J. Ch. 79; and cases at p. 104, note (*m*); also the Bankruptcy Act, 1883, § 44 (iii). In America it has been considered a disputable question whether property in a trade mark is the subject of attachment or levy under execution (*Hegeman & Co.* v. *Hegeman*, 8 Daly, 6), or whether it will pass under a general assignment (*Milliken* v. *Dart*, 33 N. Y. Sup. Ct. 24).

(*e*) *Lea* v. *Millar*, Dig. 513. And so "Maizena"—*National Starch Manufacturing Co.* v. *Munn's Patent Maizena and Starch Co.*, (1894) A. C. 275; "Kaiser" spring water—*Luyties* v. *Hollender* (2), 24 Bl. C. C. 353; "Gold Leaf" Tobacco —*Partlo* v. *Todd*, 12 Ont. Rep. 171; "Imperial Cough Drops"—*Watson* v. *Westlake*, 12 Ont. Rep. 449. And see *per* Sir G. Mellish, L. J., in *Ford* v. *Foster*, L. R. 7 Ch. 611; adopted by Lord Macnaghten in *Leahy* v. *Glover*, 10 P. R. 141. Also *Neva Stearine Co.* v. *Mowling*, 9 V. L. R. Eq. 98; *Portuondo* v. *Monne*, 28 Fed. Rep. 16; *Lawrence Manufacturing Co.* v. *Tennessee Manufacturing Co.*, 138 U. S. 537.

(*f*) *Somerville* v. *Schembri*, 12 App. Cas. 453.

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

where there is no fraud there is no wrong to be redressed and no remedy applicable. But it is not necessary that there should be fraud in the sense that the infringer knowingly and wilfully makes a fraudulent attempt to appropriate to himself the fruits of another's reputation; if he acts so that custom intended for another is diverted to himself, and that the public buy and pay for one thing while intending to buy and pay for another, so that both vendor and purchaser are injured, there is fraud, and the animus of the infringer is unimportant (*a*). Even if the purchaser is told that the goods are the goods of the actual seller, but the imitated mark is upon them, there is ground for interference, since the goods may be resold bearing the mark, but without the information necessary to correct the statement thereby made (*b*). There is infringement if ordinary purchasers purchasing with ordinary caution are likely to be misled (*c*): on the one hand, the Court will not strain its jurisdiction to protect fools and idiots (*d*); on the other hand, it will not require such minuteness of imitation as to deceive persons of unusual sagacity and information.

Remedies for infringement.

Infringement is criminally punishable under an indictment for obtaining money by false pretences (*e*), or in accordance with the special provisions of the Merchandise Marks Act, 1887 (*f*), expressly enacted to prevent such practices. The Common Law remedy is by an action on the case for damages caused by the offender's fraud (*g*). The equitable remedy is by injunction, together with an account, or damages, if preferred. The greater suitability of this form of remedy has occasioned the adjudication in Chancery of the great majority of trade mark cases, and the carrying into operation of the Trade Marks Registration Acts was specially entrusted to the Chancery Division (*h*).

Fraudulent intention.

At Common Law, at all events until the Judicature Acts, it was necessary to prove knowledge of the plaintiff's rights and intentional deception on the part of the defendant (*i*); to obtain an

(*a*) See cases collected at p. 166, note (*a*).

(*b*) *Sykes* v. *Sykes*, 3 B. & Cr. 541; and cases at p. 158.

(*c*) *Seixo* v. *Provezende*, L. R. 1 Ch. 192.

(*d*) *Singer Manufacturing Co.* v. *Wilson*, 2 Ch. D. 434, 447; *Blackwell* v. *Wright*, 73 N. Car. 310.

(*e*) See Ch. 5.

(*f*) 50 & 51 Vict. c. 28.

(*g*) An injunction may now form part of the relief.

(*h*) Trade-marks Rule 42 of 1876.

(*i*) *Rodgers* v. *Nowill*, 5 C. B. 109.

injunction in Chancery this has not been required since *Millington* v. *Fox* (*a*), in 1833. It may, however, be material with reference to the extent of the relief to be granted, since a plaintiff has been thought to be only entitled to an account in respect of such user of his trade mark by the defendant as has been subsequent to the latter becoming aware of the prior ownership, or at least of the prior existence as a trade mark of the mark used by him (*b*).

Plaintiff disentitled to relief.

A plaintiff who in other respects would be entitled to obtain a remedy against an infringer may yet be deprived of his right by reason of some fraudulent statement contained in his own trade mark (*c*), for "*ex turpi causâ non oritur actio*, and if the trade mark contains a false representation calculated to deceive the public, a man cannot by using that which is in itself a fraud obtain any right at all in the mark" (*d*).

When not disentitled.

A mere collateral misrepresentation, not contained in the trade mark itself, and therefore not repeated at every transfer of the article, is not sufficient to disentitle the trade mark to protection (*e*).

Unauthorised use of word "patent," &c.

A particular form of misstatement which has proved fatal in several cases has been the insertion or retention in a trade mark of the words "patent" or "patented," so as to indicate the protection of an existing patent, to which the article bearing the trade mark is not in fact entitled (*f*).

Distinction between trade mark and patent.

"Trade marks have sometimes been likened to letters patent and sometimes to copyrights, from both of which they differ in many respects" (*g*). "There is this difference between the case of a trade mark and that of a patent: in the former case the article sold is open to the whole world to manufacture, and the only right the plaintiff seeks is that of being able to say—'Don't sell any goods under my mark.' He may find his customers fall off in consequence of the defendant's manufacture; but it does not necessarily follow that the plaintiff can claim damages for every article manufactured by the defendant, even though it be under that mark. On the other hand, every sale without licence of a patented article

(*a*) 3 My. & Cr. 338.

(*b*) *Edelsten* v. *Edelsten*, 1 De G. J. & S. 185; *Cartier* v. *Carlile*, 31 Beav. 292; *Moet* v. *Couston*, 33 Beav. 578.

(*c*) See *Pidding* v. *How*, 8 Sim. 477; *Perry* v. *Truefitt*, 6 Beav. 66; and other cases in Ch. 7.

(*d*) *Per* Sir G. Mellish, L. J., in *Ford* v. *Foster*, L. R. 7 Ch. 611.

(*e*) *Ford* v. *Foster*, *ubi supra*.

(*f*) See the cases in Ch. 7.

(*g*) *Per* Lord Blackburn, in *Johnston* v. *Orr-Ewing*, 7 App. Cas. 219, 228.

must be a damage to the patentee" (*a*). In the case of a trade mark, "the property and right to protection is in the device or symbol which is invented and adopted to designate the goods to be sold, and not in the article which is manufactured and sold" (*b*). The broad difference between a patent and a trade mark is, therefore, that the public are prohibited and restrained from manufacturing any article protected by the former, so long as the protection exists, whereas the public are at full liberty to manufacture an unpatented article (*c*), and that according to the identical original process, and to say that they are so doing, and this is so whether the original makers use, or do not use, a trade mark upon their goods. What the subsequent manufacturers may not do is to put upon their goods the mark used by the original makers, so as to represent that such goods are the actual goods of the original makers, and not merely equivalent goods made by others. The benefit conferred upon the public by the communication of a new invention, which after a limited period all can use, is the consideration in respect of which a monopoly of the invention is granted to the inventor for that limited period (*d*). Any attempt, therefore, to prolong the term of the patent by means of a trade mark will be discouraged (*e*).

Trade mark distinguished from copyright.

As a trade mark is not the same thing as a patent, so it is not the same as a copyright (*f*). The difference between them is in fact so wide that the United States statute of 1870, by which the registration of trade marks was authorised and regulated, was held to be unconstitutional and invalid on the express ground that the

(*a*) *Per* Wood, V.-C., in *Davenport* v. *Rylands*, L. R. 1 Eq. 302.

(*b*) *Per* Monell, C. J., in *Godillot* v. *Hazard*, 49 How. Pr. 5. And see *McLean* v. *Fleming*, 96 U. S. 245; and *Swift* v. *Peters*, 11 U. S. Pat. Gaz. 1110.

(*c*) This is quite clear in America as well as in this country. See *Thomson* v. *Winchester*, 36 Mass. 214; R. Cox, 7; *Coffeen* v. *Brunton* (1), 4 McLean, 516; R. Cox, 82; *Davis* v. *Kendall*, 2 R. I. 566; R. Cox, 112; *Comstock* v. *White*, 18 How. Pr. 421; R. Cox, 232; *Phalon* v. *Wright*, 5 Phila. 464; R. Cox, 307; *Falkinburg* v. *Lucy*, 35 Cal. 52; R. Cox, 448; *Cook* v. *Starkweather*, 13 Abb. Pr. N. S. 392; *Godillot* v. *Hazard*, 44 N. Y. Super. Ct. 427; *Hardy* v. *Cutter*, 3 U. S. Pat. Gaz. 468; *Frese* v. *Bachof* (2), 14 Bl. C. C. 432; *Manhattan Medicine Co.* v. *Wood*, 4 Cliff. 461. So also in Scotland, *Singer Manufacturing Co.* v. *Kimball and Morton*, Ct. Sess. Cas., 3rd Ser. XI. 267.

(*d*) *Cheavin* v. *Walker*, 5 Ch. D. 850, 863.

(*e*) See *per* Sir G. Mellish, L. J., in *Singer Manufacturing Co.* v. *Wilson*, 2 Ch. D. 434, 456.

(*f*) *Farina* v. *Silverlock*, 6 De G. M. & G. 214; *Collins Co.* v. *Cowen*, 3 K. & J. 428; *Correspondent Newspaper Co.* v. *Saunders*, 11 Jur. N. S. 540; *Kelly* v. *Hutton*, L. R. 3 Ch. 703; *Dicks* v. *Yates*, 18 Ch. D. 76; *Taylor* v. *Carpenter*, 11 Paige, 292; 2 Sandf. 603; R. Cox, 45; *Wolfe* v. *Barnett*, 24 La. Ann. 97; 13 Amer. Rep. 111; *Munro* v. *Beadle*, 62 N. Y. Sup. Ct. 312; *Munro* v. *Smith*, 62 N. Y. Sup. Ct. 419; *Munro* v. *Tonsey*, 129 N. Y. 38.

clause in the Constitution empowering the Legislature to regulate patents and copyrights conferred upon it no authority to make a statute for the regulation of trade marks. A copyright, like a patent, relates to the substance of an article, but differs in that it has reference to a literary instead of a material production. A trade mark does not protect the substance of the article to which it is attached from being imitated, but it identifies an article and indicates the source to which that article is to be attributed. Trade mark not being copyright, registration of a trade mark, or, what comes to be much the same thing, a title of a book or paper, under the Copyright Acts, is unnecessary and useless (*a*).

The difference between trade mark and copyright is well illustrated by *Schauer* v. *Field* (*b*), where the defendants registered as a trade mark a photograph of a German picture in which there was copyright in Germany but not in England. After the English copyright had been acquired by the plaintiff under the International Copyright Act, 1886, the defendants reproduced their trade mark in various sizes and colours on show cards and price lists for purposes of advertisement. Chitty, J., refused to grant an injunction on the ground that the interest which, by the saving clause of the International Copyright Act, 1886 (*c*), was reserved to the defendants as proprietors of the trade mark extended to advertising their trade mark as well as to using it. "This interest in the defendants," said the learned judge, "is wholly unconnected with any copyright in the defendants; they have none and claim none; it arises from or in connection with their trade mark alone"; he therefore thought it immaterial to consider when any particular show card or advertisement of the trade mark was first produced. But, of course, the fact that a picture is used by a trader to advertise his goods does not of itself prevent such use from being an infringement of copyright (*d*).

Trade marks of aliens protected.

Since trade marks are recognised throughout the world, and not merely in the manufacturer's own country, as indicative of his goods, so that the subjects of any country are liable to be defrauded by goods bearing an imitation of a foreign trade mark, and any manufacturer is liable to suffer by the forgery of his

(*a*) *Maxwell* v. *Hogg*, L. R. 2 Ch. 307; *Kelly* v. *Hutton*, L. R. 3 Ch. 703; *Hirsch* v. *Jonas*, 3 Ch. D. 584; *Scoville* v. *Toland*, 6 West. L. J. 84; *Barlow & Jones, Ld.* v. *Johnson & Co.*, 7 P. R. 395, 399.

(*b*) (1893) 1 Ch. 35.

(*c*) § 6.

(*d*) See *Hanfstaengl* v. *American Tobacco Co.*, (1895) 1 Q. B. 347.

marks abroad, the right of property in a trade mark is not limited by territorial bounds (*a*), though a limitation may be imposed by means of an exception of specified places by the assignor of a trade mark on assignment (*b*), and aliens' marks are protected in the English Courts in precisely the same manner as if they belonged to British subjects (*c*). The same is the case in the United States (*d*), in India (*e*), Canada (*f*), and elsewhere.

Conflict of laws.

No direct conflict of laws has as yet arisen in the English Courts with respect to trade marks (*g*), though on some occasions such has appeared likely to be the case. In *Farina* v. *Cathery* (*h*) the question was raised whether a Prussian manufacturer could be restrained in this country from using a trade mark which he was entitled to use under Prussian law. It was held, however, that the mark was not identical with that to which a right had been acquired in Prussia. In *Compagnie Laferme* v. *Hendrickx* (*i*) there was a question whether a German manufacturer could acquire a right in England to the exclusive use of a trade mark consisting of the word "Laferme," a mere word not being allowed in Germany to constitute a trade mark; but as the plaintiff failed to satisfy the Court that he had been the first to use the word in Germany, no decision was given on the point. In *In re Farina* (2) (*k*), registration was refused to a German mark on the ground of too great a similarity existing between it and a previously registered German mark, notwithstanding that the German Court of Appeal, reversing the decision of the Court of First Instance, had held that there was no such similarity as to prevent the registration in that country of the second mark (*l*). And in

(*a*) *Derringer* v. *Plate*, 29 Cal. 292; R. Cox, 325.

(*b*) *Manhattan Medicine Co.* v. *Wood*, 108 U. S. 218.

(*c*) *Collins Co.* v. *Cowen*, 3 K. & J. 428; and cases at p. 84, note (*a*).

(*d*) *Taylor* v. *Carpenter* (1), 3 Story, 458; R. Cox, 14; and cases at p. 84, note (*a*).

(*e*) *Orr-Ewing* v. *Chooneeloll Mullick*, Cor. 150.

(*f*) *Davis* v. *Kennedy*, 13 Grant Up. Can. Ch. 523.

(*g*) Unless the refusal to register in England trade marks already registered in the United States is to be considered as such. See *In re Californian Fig Syrup Co.*, 40 Ch. D. 620; *In re Carter Medicine Co.*, (1892) 3 Ch. 472.

(*h*) L. J. N. of C. 1867, p. 134.

(*i*) Dig. 512. In the United States registration of a single word has been granted to a German, though he could not obtain registration in his own country, it being shown that registration of a single word had been granted in Germany to citizens of the United States. *Ex pte. Portland Cement Fabrik, &c.*, 64 U. S. Pat. Gaz. 858.

(*k*) 27 W. R. 456.

(*l*) With regard to the effect of a decision in a trade mark case in one country upon the jurisdiction of another country to entertain a similar action, it has been held in America that it is not an answer to an action in that country to restrain an infringement of a trade mark by the sale in America of the article alleged to be an infringement

Rodgers & Sons, Ld. v. *Rottgen* (*a*), a German defendant was restrained from using a trade mark which he had registered in Germany, but which resembled the plaintiff's mark. For registration in this country a title good in English law must be shown (*b*). It has also been held that user abroad is not such user as will bring the person using within the three-mark rule (*c*), and that a person who has not even an intention of using a trade mark in England cannot be a person aggrieved by a wrongful entry on the register (*d*); but the latter decision was reversed (*e*). Sections 103 and 104 of the Patents Act provide for the grant of privileges to foreigners and colonists in cases in which their governments give protection to British subjects.

Cases analogous to trade mark cases.

Besides cases of infringement of trade marks proper, there are some other classes of cases nearly akin to the former, but differing from them in some important particulars, which yet require notice in connection with the subject of trade marks, as where there is an unfair competition in trade contrived, not by imitation of trade marks, but by other forms of representation that one man's goods are another's. Such cases are governed by substantially identical principles with those which regulate the law of trade marks, the decision of the Court of Appeal to the contrary (*f*) having been overruled by the House of Lords (*g*). But the injunction granted differs in being abstract in form.

Trade names.

In imitations of trade names, again, used as such and not as trade marks on goods, there is a difference from trade mark cases proper: there is a false representation, but it is a representation, not that certain goods are certain other goods, but that a certain

that an injunction had been refused against the defendant's principal in Germany, first, because the question whether the alleged infringement was likely to impose upon the public depended upon the circumstances of the place, and, secondly, because the particular subject-matter of the two actions was not identically the same. *Hohner* v. *Gratz*, 50 Fed. Rep. 3. And see *Carlsbad* v. *Kutnow*, 68 Fed. Rep. 794; *Kaiserbrauerei Beck & Co.* v. *J. & P. Baltz Brewing Co.*, 71 Fed. Rep. 695; 74 Fed. Rep. 222; *Walter Baker & Co.* v. *Sanders*, 80 Fed. Rep. 889. Cf. *Jaros Hygienic Underwear Co.* v. *Fleece Hygienic Underwear Co.*, 65 Fed. Rep. 424, where an injunction was refused on the ground of *res judicata*; *Prince Metallic Co.* v. *Prince Manufacturing Co.*, 17 U. S. App. 145.

(*a*) 6 Times L. R. 678.

(*b*) *Pinto* v. *Badman*, 8 P. R. 181, 192, 193; *In re Californian Fig Syrup Co.*, 40 Ch. D. 620; *In re Carter Medicine Co.*, (1892) 3 Ch. 472.

(*c*) *In re Münch*, 50 L. T. N. S. 12. And see *Berliner Brauerei Gesellschaft Tivoli* v. *Knight, Stocks & Co.*, W. N. 1883, p. 70; *Jackson & Co.* v. *Napper*, 35 Ch. D. 162; *Newman* v. *Pinto*, 4 P. R. 508 (*per* Kekewich, J.); *In re Meeus*, (1891) 1 Ch. 41; and the Canadian case of *Smith* v. *Fair*, 14 Ont. Rep. 729.

(*d*) *In re Riviere & Co.*, 53 L. J. Ch. 455.

(*e*) 26 Ch. D. 48.

(*f*) *Singer Manufacturing Co.* v. *Wilson*, 2 Ch. D. 434.

(*g*) S. C. 3 App. Cas. 376.

establishment is a certain other establishment, the object being that the one establishment should obtain custom intended for the other. Such cases are not cases of trade mark, not being concerned with marks placed on vendible articles in the market (*a*), but still the Court has to proceed on much the same lines.

Goodwill.

All such cases, whether of trade mark, or trade name, or other unfair use of another's reputation, are concerned with an injurious attack upon the goodwill of a rival business; customers are diverted from one trader to another, and orders intended for one find their way to the other. Trade marks are really a branch of the goodwill of the business with which they are connected, representing it in the market, while the trade name over the shop represents it to the passer-by. It is by the devolution of the goodwill that that of the trade marks is regulated (*b*); they are in fact included in, and valued as part of, the goodwill (*c*); severed from it they cannot exist (*d*).

(*a*) *McAndrew* v. *Bassett*, 4 De G. J. & S. 380.

(*b*) § 70 of Patents Act, 1883. And see Rule 38, also § 2 of Trade Marks Act, 1875, and Rule 27 of the Trade Marks Rules, 1876.

(*c*) *Hall* v. *Barrows*, 4 De G. J. & S. 150.

(*d*) *Thorneloe* v. *Hill*, (1894) 1 Ch. 569.

CHAPTER II.

WHAT IS A TRADE MARK?

What is a trade mark?

THE first point which has to be considered in regard to the law of trade marks is, "What is a trade mark?" With what class of objects is this branch of law concerned? On the answer to this question must necessarily depend the principles to be applied in any given case.

A true trade mark must be affixed to the article.

The most important criterion by which a case of trade mark may be distinguished from a case of false representation not amounting to an infringement of trade mark, was thus described by Sir G. Jessel, M. R. (a): "The cases which have come before the Courts may, I think, be conveniently divided into two classes. The first class, which is the more numerous, consists of cases where the goods manufactured are distinguished by some description or device in some way or other affixed to the article sold. It may be descriptive—that is, it may consist of a name or names or a lengthy description consisting of names with superadded words—and that description may be either affixed to, or impressed upon, the goods themselves by means of a stamp or an adhesive label, or it may be made to accompany the goods by being impressed or made to adhere to an envelope or case containing the goods (b).

"An illustration of the first class would be the common trade mark, which is either the name or the image of some known or unknown thing, actually impressed upon, or worked into, the material, or made to adhere to the surface of the material; or it may be not what is commonly known as a trade mark, a distinguishing mark which, perhaps, to a legal mind would be a trade mark, but some form of the material itself." His lordship then

(a) *Singer Manufacturing Co.* v. *Wilson*, 2 Ch. D. 434, 440.

(b) See the definition by the V.-C. of Ireland in *Wheeler* v. *Johnston*, 3 L. R. Ir. 284; also *Jay* v. *Ladler*, 40 Ch. D. 649; *St. Louis Piano Manufacturing Co.* v. *Merkel*, 1 Mo. App. 305; *Metcalfe* v. *Brand*, 86 Ky. 331; 9 Am. St. Rep. 282.

instanced a case recently before him in which the trade mark consisted of certain lines woven into the fringe of a certain make of cloth, and continued:—

"Sometimes you do not find anything put on the goods themselves, the reason often being that the goods are not capable of it; for instance, when these are liquids, upon which, of course, you cannot put a mark, and therefore a mark is put on the bottle containing the liquid, or on the cork which is in the bottle and helps to retain the liquid. These are again true trade marks, whether affixed in the shape of a label on a bottle of liquid, or in the shape of a device on the cork, or in the case of other goods, such as cigars, affixed to the box which contains the cigars, or the string which encircles them,—they are in some way or other attached to the goods, and go along with the goods on sale. That I call the first class."

As to the second class, his lordship said that "they are cases where the defendant, without putting any trade mark at all on his goods, or putting a trade mark which is admittedly different in substance from the trade mark, if any, of the plaintiff on the goods, has represented the goods as being goods manufactured by the plaintiff. Here, again, the Court has to try the question of representation. What the defendant has said or has 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. What amount of representation will be sufficient for that purpose must again depend, of course, on the facts of each particular case."

Registration equivalent to public use.

For a trade mark to be entitled to protection, it must therefore not only be applicable, but be actually applied to a "vendible article" (*a*) in the market; the registration, however, of a trade mark under the Patent Acts, 1883—1888, as under the Trade Marks Acts of 1875—1877, is equivalent to public use of the same (*b*).

(*a*) See *per* Lord Westbury, C., in *McAndrew* v. *Bassett*, 4 De G. J. & S. 380; also *Maxwell* v. *Hogg*, L. R. 2 Ch. 307; *Civil Service Supply Association* v. *Dean*, 13 Ch. D. 512; *In re Simpson, Davies & Sons*, Jessel, M. R., Jan. 12th, 1881; *Wheeler* v. *Johnston*, 3 L. R. Ir. 284; *Candee* v. *Deere*, 54 Ill. 439; *Avery & Sons* v. *Meikle & Co.*, 27 U. S. Pat. Gaz. 1027; *Ex parte Roy & Nourse*, 54 U. S. Pat. Gaz. 1267, where an unsuccessful attempt was made to register a trade-mark for land.

(*b*) 38 & 39 Vict. c. 91, § 2; 46 & 47 Vict. c. 57, § 75. By 51 & 52 Vict. c. 50, § 17, application for registration is substituted for actual registration, but it would appear that this must be followed by registration. See § 77 of the Act of 1883. See also *Edwards* v. *Dennis*, 30 Ch. D. 454; *In re Batt & Co.*, (1898) 2 Ch. 432. And this is so also in the United States. See *In re Dutcher Temple Co.*, U. S. Pat. Comm. Decis. 1871, 248.

Not every mark applied can be a trade mark.

But it is not everything that can be marked on goods that will constitute a valid trade mark: a mere descriptive adjective, for instance, cannot be appropriated from the rest of the world (*a*); it is necessary, therefore, to distinguish true trade marks from other marks, which, though affixed to goods, yet cannot be claimed as the exclusive trade marks of any individual.

Name and address of proprietor need not be stated.

In some American cases (*b*) a difficulty has been raised with regard to a supposed requirement for a trade mark to contain an indication of the name and address of its proprietor. This requirement, however, which appears to have been based on a misconstruction of the language of Duer, J., in *Amoskeag Manufacturing Co.* v. *Spear* (*c*), has in practice been disregarded, and the reasoning of the U. S. Commissioner of Patents, when admitting the number "140" to registration as a trade mark for umbrellas (*d*), seems to be conclusive. "A trade mark," he says, "must be of such a character as, when attached to the applicant's goods in the market, will distinguish them as to origin from other goods of the same class. To do this, it need not necessarily give the name of the person owning the said mark, nor the place where the goods are made or sold. It is enough if the mark is of such a character as to indicate to the purchaser that all articles bearing it come from one and the same source. The object a man has in view in adopting a trade mark is to secure to himself the benefits arising from the superior merits of his goods over others of the same class. To do this he puts upon them a peculiar mark, that purchasers may be able to distinguish them in the market. It matters not to him nor to others whether the purchasers know either his name or place of

(*a*) Cf. *Raggett* v. *Findlater*, L. R. 17 Eq. 29; *Braham* v. *Bustard*, 1 H. & M. 447; *In re Brandreth*, Dig. 626; *Fulton* v. *Sellers*, 4 Brews. 42; *Hoeb* v. *Bishop*, 49 U. S. Pat. Gaz. 1845; *Ex parte Peyser & Co.*, 62 U. S. Pat. Gaz. 588, and other cases. As to trade marks composed of an essential particular with an addition varied to indicate different qualities or other matters, and how such marks should be registered, see *infra*.

(*b*) *E.g.*, *Ferguson* v. *Davol Mills*, 2 Brews. 314; *Dixon Crucible Co.* v. *Guggenheim*, 7 Phila. 408; *White* v. *Schlect*, 14 Phila. 88.

(*c*) 2 Sandf. S. C. 599; R. Cox, 87. The passage alluded to runs thus:—"The owner of an original trade mark has an undoubted right to be protected in the exclusive use of all the marks, forms, or symbols that were appropriated as designating the true origin or ownership of the article or fabric to which they are affixed; but he has no right to an exclusive use of any words, letters, figures, or symbols which have no relation to the origin or ownership of the goods, but are only meant to indicate their name or quality. He has no right to appropriate a sign or symbol which, from the nature of the fact which it is used to signify, others may employ with equal truth, and therefore have an equal right to employ for the same purpose."

(*d*) *Ex parte Dawes and Fanning*, 1 U. S. Pat. Gaz. 27.

business, provided that his goods have some mark by which they may be designated and inquired for." Again, "If a trade mark possesses the evidence upon its face that it is put forth or given out as a distinguishing mark of the goods to which it is attached—that is, distinguishing as to origin, and not as to kind or quality—it may have all the requisites of a valid trade mark without naming the person or place whence it came" (*a*). In short, if a trade mark is properly distinctive—a condition which is indispensable (*b*)—no further particularity can be required, unless under the provisions of some statutory enactment.

Non-restraint of mark, no presumption in favour of mark.

The fact that an action to restrain the use of a particular trade mark has been successfully defended raises no presumption that the defendant's mark is a valid trade mark or capable of registration, for the action may have failed on such grounds as, *e.g.*, that the plaintiff's and defendant's marks were alike descriptive (*c*).

Definition of trade mark in Merchandise Marks Act, 1862.

For the purposes of the Merchandise Marks Act, 1862 (*d*), a very wide definition was adopted for the words "trade marks," a definition too little precise to be of much practical use outside of that Act, although it was adopted by the V.-C. of Ireland in *Wheeler* v. *Johnston* (*e*). The Merchandise Marks Act, 1887 (*f*), extends to all trade marks registered under the Patents Act, 1883.

Definition in Patents Acts, 1883—1888.

The Trade Marks Registration Act of 1875 (*g*), however, contained a definition, which was not only valuable in itself, but was of great practical importance, qualifying as it did, for registration and the accompanying advantages, all marks which satisfied its requirements. This definition was repeated, in a somewhat amplified form, in the Patents Act, 1883 (*h*), and has been still further enlarged by the Patents Act, 1888 (*i*).

The definition in question, as it stands for marks tendered for registration since the last Act came into force, is as follows:—

"(1) For the purposes of this Act a trade mark must consist of or contain at least one of the following essential particulars:—

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

(*a*) *Per* U. S. Commissioner in *In re Dutcher Temple Co.*, U. S. Pat. Comm. Decis. 1871, 248.

(*b*) See *Lavergne* v. *Hooper*, Ind. L. R. 8 Mad. 148, and many other cases.

(*c*) *In re Anderson*, 26 Ch. D. 409; 54 L. J. Ch. 1084 (App.).

(*d*) 25 & 26 Vict. c. 88, § 1.

(*e*) 3 L. R. Ir. 284.

(*f*) 50 & 51 Vict. c. 28.

(*g*) § 10.

(*h*) § 64.

(*i*) § 10.

(b) A written signature, or copy of a written signature, of the individual or firm applying for registration thereof as a trade mark; or

(c) A distinctive device, mark, brand, heading, label or ticket; or

(d) An invented word or invented words; or

(e) A word or words having no reference to the character or quality of the goods, and not being a geographical name.

(2) There may be added to any one or more of the essential particulars mentioned in this section any letters, words, or figures, or combination of letters, words, or figures, or any of them; but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

(3) Provided as follows:—

(i.) A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business; but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof;

(ii.) Any special and distinctive word or words, letter, figure, or combination of letters or figures (*a*), or of letters and figures, used as a trade mark before the 13th day of August, 1875, may be registered as a trade mark under this part of this Act" (*b*).

And by § 74 of the Act of 1883 further provision is made for the registration of additions to registered trade marks.

Effect of this definition.

The effect of this definition is to restrict the variety of marks now capable of adoption for the first time by a manufacturer, for he cannot register or obtain protection under the Act for a new mark which does not comply with this definition by containing some one of the five first-mentioned essential particulars, although previously to the Act it would have been perfectly good. "There

(*a*) "Figures" means "numerals." *Ex parte Stephens*, 3 Ch. D. 659.

(*b*) And see the definitions in *McLean* v. *Fleming*, 96 U. S. 245, and *Avery & Sons* v. *Meikle & Co.*, 27 U. S. Pat. Gaz. 1027. The House of Lords appears to have considered that it was the essential elements that constituted the trade mark, not the whole label with all the minor and immaterial additions: *Orr-Ewing* v. *Registrar of Trade Marks*, 4 App. Cas. 479.

was obviously much more difficulty," said Lord Blackburn (*a*), referring to the Act of 1875, "in dealing with existing trade marks, in which there was a vested right of property, than in dealing with new trade marks, as to which no one as yet had a vested right. According to the usual course of legislation in this country, vested rights of property are to be respected, and not interfered with farther than is necessary; but as to rights to be acquired hereafter, it is merely a question of expediency what conditions the Legislature may think fit to attach to the acquiring of those rights." The Act of 1883 went beyond the Act of 1875 in admitting to registration as a new trade mark "a fancy word or fancy words,"—an expression for which sub-clauses (d) and (e) of the amended § 64 (1) have now been substituted,—but there are still some marks incapable of registration as new ones which would have been protected before the Act of 1875. However, a manufacturer is entitled under § 64 to register any distinctive mark used as such *before* the passing of the Act of 1875, and which is within the wording of § 64 (*b*), so obtaining for it the benefits of the Act, or, in case of registration being refused, to demand a certificate of such refusal (*c*), the possession of which will place him in a position to exercise whatever rights he may have had before and independently of the Acts.

First class of trade marks.—A name.

In accordance with the above definition, the first species of trade marks consists of a name of an individual or firm, printed, impressed, or woven in some particular and distinctive manner, to which essential particular may be added any letters, words, or figures, or combination of letters, words, or figures, or of any of them.

How names differ from other trade marks.

There is between a name of an individual or firm used as a trade mark, and a fancy name or arbitrary symbol used for the same purpose, a broad distinction, which was early perceived, and which caused some difficulty in the universal acceptance of a name as an efficacious trade mark. This difference is that a name is in its very nature generic, and is properly applied to designate, not one individual in the world, but, it may be, many thousands, to all of

(*a*) *Orr-Ewing* v. *Registrar of Trade Marks*, 4 App. Cas. 495.

(*b*) This is wider than the wording of § 10 of the Act of 1875, and a single distinctive letter or figure may now be registered as an old trade mark, though this was not so under the Act of 1875: *In re Mitchell* (1), 7 Ch. D. 36.

(*c*) Patents Act, 1883, § 77.

whom it is equally appropriate. The addition of the Christian to the surname does, indeed, diminish the number of persons to whom the appellation belongs; but the Christian name is commonly abbreviated to an initial letter, and, in any case, the surname is the important part of the name, beyond which many persons do not care to investigate.

Consequently the right in a name used as a trade mark is less complete.

The impossibility of a single manufacturer being allowed to arrogate to himself the exclusive use of a name which he shares in common with many other persons is apparent; and from this circumstance the rule was deduced that while, as against persons bearing a different name, a manufacturer's right in his name trade mark is absolute and exclusive, as against persons bearing the same name no such exclusive right can be set up (a). Thus in *Dence* v. *Mason* (b), Malins, V.-C., held that during the continuance of the partnership between two persons named Mason and Brand they could not be prevented from using the latter's name in their business, notwithstanding that it was well known in connection with a similar old-established business; and the Court of Appeal held (c) that the same would be the case if a new *bonâ fide* partnership should be formed. This rule must, however, be qualified by the statement that where a person uses his own name for the purpose of fraud, and satisfactory evidence of fraudulent intention can be produced, such unfair conduct will be restrained, even though the free use of the man's own name may be thereby hindered (d). And the Criminal Law also admits of the punishment of such fraudulent user of a man's own name (e).

(a) *Burgess* v. *Burgess*, 3 De G. M. & G. 896, and *infra*, p. 27; *Faber* v. *Faber*, 49 Barb. 357; R. Cox, 401; *Meneely* v. *Meneely*, 62 N. Y. 427. See *Howe* v. *Howe Machine Co.*, 50 Barb. 236; R. Cox, 421; *Lazenby* v. *White* (1), 41 L. J. Ch. 354; *Massam* v. *Thorley's Cattle Food Co.* (1), 6 Ch. D. 574; *Turton* v. *Turton*, 42 Ch. D. 128; *Tussaud* v. *Tussaud*, 44 Ch. D. 678; *Jamieson & Co.* v. *Jamieson*, 15 P. R. 169; *Valentine* v. *Valentine*, 31 L. R. Ir. 488; *McLean* v. *Fleming*, 96 U. S. 245; *Binninger* v. *Wattles*, 28 How. Pr. 206; *Gilman* v. *Hunnewell*, 122 Mass. 139; *Prince Metallic Paint Co.* v. *Carbon Metallic Paint Co.*, Dig. 573; *Helmbold* v. *Helmbold Manufacturing Co.*, 53 How. Pr. 453; *Aikins* v. *Piper*, 15 Grant Up. Can. Ch. 581; *Decker* v. *Decker*, 52 How. Pr. 218; *Hardy* v. *Cutter*, 3 U. S. Pat. Gaz. 468; *In re Consolidated Fruit Jar Co.*, 14 U. S. Pat. Gaz. 269; *Marshall* v. *Pinkham*, 52 Wisc. 572; *Frazer* v. *Frazer Lubricator Co.*, 121 Ill. 147; *Brown Chemical Co.* v. *Meyer*, 139 U. S. 540; *Pratt's Appeal*, 117 Pen. St. 401. And in the same way it seems that a manufacturer may put his address, the name of his mill, on his goods, though it may resemble the address on another man's goods: *Carmichael* v. *Latimer*, 11 R. I. 395.

(b) Dig. 534.

(c) 41 L. T. N. S. 573.

(d) *Holloway* v. *Holloway*, 13 Beav. 209, and *infra*; *Rodgers* v. *Nowill*, 6 Hare, 325; 5 C. B. 109; *Taylor* v. *Taylor*, 23 L. J. Ch. 255; *James* v.

(e) *R.* v. *Dundas*, 6 Cox, 380.

A valuable statement of the law was made by Lord Craighill in the Scottish Court of Session, in *Dunnachie* v. *Young & Sons* (*a*), in which he said:—"The name of a person may be a trade mark; there may be other manufacturers of goods of the same description, and the latter are not precluded from placing their own names on their goods by reason of the fact that this name has already become the trade mark of another manufacturer. The only condition they must fulfil is that the name as used by them shall be accompanied with something which shall be a distinction, if the bare name would lead to the deception of the public and the injury of the trader on whose goods the name first appeared as a trade mark." And in the New York case of *England* v. *New York Publishing Co.* (*b*), Daly, C. J., said:—"The fact that a man has used his own name to designate the article he produces, and that the name has become valuable to him through the article becoming extensively known, gives him no right to exclude any other man of the same name from affixing his name upon the same kind of article, if he manufactures it. The test is whether he uses the name honestly and fairly in the ordinary prosecution of his business, or dishonestly, to palm off his own commodity as the production of another."

Statements on this point.

In *Holloway* v. *Holloway* (*c*), the defendant, Henry Holloway, sold pills and ointment in packets and pots, similar to those in which his brother, Thos. Holloway, sold his, and the defendant also affixed to his packets and pots similar labels and wrappers, but with "H. Holloway," instead of simply "Holloway." Thomas Holloway having filed a bill for an injunction, Lord Langdale, M.R., granted the injunction, saying, on the evidence, that it was as clear and as plainly avowed a fraud as he ever knew. He, however, expressly stated that, "the defendant's name being Holloway, he had a right to constitute himself a vendor of

Holloway v. *Holloway.*

James, L. R. 13 Eq. 421; *Fullwood* v. *Fullwood*, W. N. 1873, pp. 93, 185; *Fullwood* v. *Fullwood* (2), 9 Ch. D. 176; *Massam* v. *Thorley's Cattle Food Co.* (2), 14 Ch. D. 748; *Pullar* v. *Pullar*, Fry, J., April 9th, 1883; *Warner* v. *Warner*, 5 Times L. R. 359; *Tussaud* v. *Tussaud*, 44 Ch. D. 678; *In re Hopkinson*, (1892) 2 Ch. 116; *Gillis* v. *Hall*, R. Cox, 596; *Stonebraker* v. *Stonebraker*, 33 Md. 252; *McLean* v. *Fleming*, 96 U. S. 245; *Devlin* v. *Devlin*, 69 N. Y. 212; *Wilder* v. *Wilder*, Dig. 372; *Peltz* v. *Eichele*, 62 Mo. 171; *Rogers* v. *Taintor*, 97 Mass. 291; *In re Consolidated Fruit Jar Co.*, 14 U. S. Pat. Gaz. 269; *Shaver* v. *Shaver*, 52 Iowa, 208; *India Rubber Comb Co.* v. *Rubber Comb and Jewelry Co.*, 45 N. Y. Super. Ct. 258, and see cases collected at p. 261.

(*a*) Ct. Sess. Cas. 4th Ser. X. 874.

(*b*) 8 Daly, 375.

(*c*) 13 Beav. 209.

Holloway's pills and ointment," and that he, the M. R., "did not intend to say anything tending to abridge such right"; the defendant had, nevertheless, no right to do so with such additions to his own name as to deceive the public and make them believe that he was selling the plaintiff's pills and ointment.

Burgess v. *Burgess.*

The case of *Burgess* v. *Burgess* (*a*) was somewhat similar. There the plaintiff's father, to whose business the plaintiff had succeeded, had invented "Burgess' Essence of Anchovies." He employed his two sons as his assistants, and the business was conducted by him and them at 107, Strand. After a time one of the sons, W. H. Burgess, took a house in King William Street, and setting up for himself, put on his shop front, "W. H. Burgess, late of 107, Strand." He also headed his labels, "36, King William Street, City, London (Royal Arms), late of 107, Strand, Burgess' Essence of Anchovies"; plaintiff's labels being headed, "107 (Royal Arms), Strand, corner of the Savoy Steps, John Burgess and Son, Original and Superior Essence of Anchovies." Sir R. T. Kindersley, V.-C., granted an injunction as to "late of 107, Strand," and the continuance on the sides of the defendant's shop door of a plate with the words "Burgess' Fish Sauce Warehouse, late of 107, Strand"; but the part of the motion which referred to the use of the words "Burgess' Essence of Anchovies," being refused, the plaintiff appealed, and the Lords Justices then distinctly refused to deny a man the use of his own name. Sir J. L. Knight-Bruce, L. J., said, "All the Queen's subjects have a right to sell their articles in their own names, and not the less so that they bear the same name as their fathers (*b*). The defendant carries on business in his own name, and sells his essence of anchovies as 'Burgess' Essence of Anchovies,' which, in truth, it is"; and Sir G. Turner, L. J., added that, "where a person was selling goods under a particular name, and another person, not having that name, was using it, it might be presumed that he so used it to represent the goods sold by himself as the goods of the person whose name he used (*c*); but that where the defendant

(*a*) 3 De G. M. & G. 896.

(*b*) And see *Hardy* v. *Cutter*, 3 U. S. Pat. Gaz. 468. However, a son has no right to deceive the public by using his father's new name, after the father has assumed a different name from that to which the son is entitled: *Gouraud* v. *Trust*, 10 N. Y. Sup. Ct. 627; but if the son has assumed the same fictitious name with the father, by the father's desire, the latter cannot afterwards interfere with the honest use of the fictitious name by the son: *England* v. *New York Publishing Co.*, 8 Daly, 375.

(*c*) See *Perks* v. *Hall & Co.*, W. N. 1881, p. 111.

sold goods under his own name, and it did happen that the plaintiff had the same name, it did not follow that the defendant was selling his goods as the goods of the plaintiff" (*a*); if, however, a fraudulent intention had been proved, both judges agreed that the case would have been different.

Ainsworth v. *Walmsley.*

The fact that according to these cases a man might with impunity, in the absence of proof of actual fraud, sell the same goods as another, under the same name, provided that his own name was the same as that of the rival manufacturer, who had been in the habit of using his name as his trade mark, not unnaturally produced doubts whether a trade mark which was not capable of protection against infringement in all cases could rightly be termed a trade mark at all; and in *Ainsworth* v. *Walmsley* (*b*), where the defendant had affixed to thread not of the plaintiff's make labels with the words "Ainsworth's Thread," it was argued that such a case was no case of trade mark, and that, this being so, it became necessary for the plaintiff to prove the *scienter* on the part of the defendant. Sir W. P. Wood, V.-C., however, declined to adopt that argument, and intimated that in his opinion a man's name was "as strong an instance of trade mark as could be suggested," adding that it was subject "only to this inconvenience—that if a Mr. Jones or a Mr. Brown relied on his name, he might find it a very inadequate security, because there might be several other manufacturers of the same name."

A name may be a true trade mark.

The decision in this case finally established the principle that the name of an individual or firm duly appended to the vendible article is a valid trade mark (*c*), subject to the inconvenience mentioned above.

A name now first used as a trade mark must be in a distinctive form.

That inconvenience has now been removed as to new marks by the requirement for the name claimed as a trade mark to be "printed, impressed, or woven in some particular and distinctive manner" (*d*). For the future, a new trade mark consisting of a

(*a*) In *Massam* v. *J. W. Thorley's Cattle Food Co.* (2), 14 Ch. D. 748, James, L. J., expressed the opinion that the language of Turner, L. J., was to be preferred to that of Knight-Bruce, L. J., the terms used by the latter being somewhat calculated to mislead; and this view has since been adopted by Lord Herschell in *Reddaway* v. *Banham*, (1896) A. C. 199. See also *Richards* v. *Butcher*, (1891) 2 Ch. 522, and *In re Hopkinson*, (1892) 2 Ch. 116. Compare *Turton* v. *Turton*, 42 Ch. D. 128.

(*b*) L. R. 1 Eq. 518.

(*c*) See *per* Lord Kingsdown, in *Leather Cloth Co.* v. *American Leather Cloth Co.*, 11 H. L. C. 523, where he treats a name as a good trade mark. Cf. *Brown Chemical Co.* v. *Meyer*, 139 U. S. 540.

(*d*) Patents Acts, 1883-8, § 64; Trade Marks Act, 1875, § 10. And see *In re*

name will be available against all the world, without exception, for with the mere collocation of letters there is to be combined some further element, in respect of colour, pattern, or some other such differentia, which shall effectually distinguish the trade mark from even a similar succession of letters from which that further characteristic shall be absent (*a*). The effect of this provision is to render necessary for the future a precaution which many manufacturers have already voluntarily adopted; and the employment of a mode of printing, the imitation of which would furnish an almost irrefutable presumption of fraud, may be instanced from *Stephens* v. *Peel* (*b*), in which case the labels on the bottles containing the plaintiff's ink were printed in letters which are described as being in part white on a red ground, in part white on a blue ground, and in part blue on a white ground. This requirement, however, does not apply to old marks (*c*), and a manufacturer may still obtain protection for his name as an old mark though not printed in any particular or distinctive manner (*d*).

The name need not be that of the actual manufacturer.

There is no provision, either in the Act of 1875 or in the Act of 1883, which requires that the name selected as the trade mark shall be the name of the individual or firm by whom the goods to which the trade mark is to be attached are actually manufactured. Neither was this the case before the passing of those Acts. In many instances, it is true, the name was that of the actual manufacturer: thus, the words "Ainsworth's Thread" (*e*) and "Taylor's Persian Thread" (*f*) were used as trade marks on thread produced by those makers, "Ramsay" was used on bricks by G. H. Ramsay (*g*), Thomas Holloway placed "Holloway's Pills" and "Holloway's

Gianaclis, 6 P. R. 467; *In re Hannay*, 7 P. R. 46; also *In re Price's Patent Candle Co.*, 27 Ch. D. 681; *In re Edge*, 8 P. R. 207; *In re Bradley*, 9 P. R. 205; *In re Carroll*, 16 P. R. 82.

(*a*) See *per* Jessel, M. R., in *In re Horsburgh & Co.*, 53 L. J. Ch. 237. In the same way, the United States Statute of 1870, § 79, provided that the Commissioner of Patents should not receive and record any proposed trade mark which was 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. And the Statute of 1881, now in force, provides by § 3, that "no alleged trade mark shall be registered which is merely the name of the applicant." See the decisions in *In re India Rubber Comb Co.*, 8 U. S. Pat. Gaz. 905, and *In re Rowe & Post*, 9 U. S. Pat. Gaz. 496, under the Act of 1870, and other cases noted against the Act.

(*b*) 16 L. T. N. S. 145. See *Royal Baking Powder Co.* v. *Davis*, 26 Fed. Rep. 293.

(*c*) Patents Acts, 1883—1888, § 64; Trade Marks Act, 1875, § 10.

(*d*) *In re Hopkinson*, (1892) 2 Ch. 116, and see *In re Wright, Crossley & Co.*, 15 P. R. 131, 377.

(*e*) *Ainsworth* v. *Walmsley*, L. R. 1 Eq. 518.

(*f*) *Taylor* v. *Taylor*, 23 L. J. Ch. 255.

(*g*) *Dixon* v. *Fawcus*, 3 Ell. & Ell. 537.

Ointment" on his boxes and pots (*a*), and so in many cases more (*b*).

A name become a trade mark may pass with the business.

But where a name has once become a trade mark by registration, or, if used before the passing of the Trade Marks Registration Act of 1875, by actual user on a vendible article (*c*), since followed by registration or the procurement of a certificate of refusal to register, it is assignable (*d*), subject to a connection with the goodwill of the business (*e*), and may easily pass to and become the property of a person or firm whose own name is widely different. Thus the trade mark "William Ash" in *Bury* v. *Bedford* (*f*), "1847, Rogers Bros. A. 1," in *Meriden Britannia Co.* v. *Parker* (*g*), "Thorley's Cattle Food" in *Massam* v. *J. W. Thorley's Cattle Food Co.* (2) (*h*), "D. Simmons" in *Weed* v. *Peterson* (*i*), "Pepper's Signal Oil" in *Weston* v. *Ketcham* (1), (2) (*k*), "Dr. C. McLane's Pills" in *McLean* v. *Fleming* (*l*), "Smith, Snyder & Co." in *Young* v. *Jones Bros. & Co.* (*m*), "Oakes' Candies" in *Probasco* v. *Bouyon* (*n*). But it is a fraudulent act to purchase the right to use the name of a small maker because it happens to be identical with that of a maker of reputation (*o*).

Names of fancy personages.

Among trade marks used before the passing of the Trade Marks Act of 1875, instances are not unusual of marks consisting of a name which neither is nor ever has been borne by the present or any past manufacturer, but which either belongs to some person who actually exists or has existed, or to some imaginary or symbolical personage, or character from a book. Thus, the names "Victoria," "Albert," &c., are very commonly used on a great variety of articles; thus "Bismarck" denoted paper collars (*p*), and "Roger Williams" long cloth (*q*), "Dave Jones" whiskey (*r*),

(*a*) *Holloway* v. *Holloway*, 13 Beav. 209.

(*b*) *Burgess* v. *Burgess*, 3 De G. M. & G. 896; *Wedgwood* v. *Smith*, Dig. 96; *Collins Co.* v. *Brown*, 3 K. & J. 423; *Stephens* v. *Peel*, 16 L. T. N. S. 145, &c.

(*c*) *McAndrew* v. *Bassett*, 4 De G. J. & S. 380.

(*d*) *Hall* v. *Barrows*, 4 De G. J. & S. 150; *The Leather Cloth Companies' case*, 1 H. & M. 271 (V.-C. Wood), and 11 H. L. C. 523 (Lords Cranworth and Kingsdown); *Rogers* v. *Taintor*, 97 Mass. 291; *Emerson* v. *Badger*, 101 Mass. 82.

(*e*) Trade Marks Registration Act, 1875, § 2. Patents Act, 1883, § 70.

(*f*) 32 L. J. Ch. 741; and 4 De G. J. & S. 352.

(*g*) 39 Conn. 450; 12 Amer. Rep. 401.

(*h*) 14 Ch. D. 748.

(*i*) 12 Ab. Pr. N. S. 178.

(*k*) 39 N. Y. Super. Ct. 54; 51 How. Pr. 455.

(*l*) 96 U. S. 245.

(*m*) 3 Hughes, 274.

(*n*) 1 Mo. App. 241.

(*o*) *Perks* v. *Hall & Co.*, W. N. 1881, p. 111.

(*p*) *Messerole* v. *Tynberg*, 4 Abb. Pr. N. S. 410; R. Cox, 479. In the U. S. Patent Office it has been held that one man may register as his trade mark another man's name with the latter's written consent: *Ex parte Sullivan & Burke*, 16 U. S. Pat. Gaz. 765; *Ex parte Pace, Talbott & Co.*, *ib.* 909.

(*q*) *Barrows* v. *Knight*, 6 R. I. 434; R. Cox, 238.

(*r*) *Kidd & Co.* v. *Mills, Johnson & Co.*, 5 U. S. Pat. Gaz. 337.

"Lone Jack" tobacco (*a*); so too "Britannia," "Dolly Varden," &c. All such names, when of fictitious characters, will properly be classed under sub-clause (e) of the amended § 64 (1) (*b*).

Name sometimes used alone.

In some cases the name constituting the trade mark is used alone, as "Wilkie" in *Wilkie* v. *McCulloch* (*c*), "Dent" in *Dent* v. *Turpin* (*d*), "Ramsay" in *Dixon* v. *Fawcus* (*e*), "Howe" in *Howe* v. *Howe Machine Co.* (*f*), "Wedgwood" in *Wedgwood* v. *Smith* (*g*), "Derringer" in *Derringer* v. *Plate* (*h*), "Jules Jurgensen" in *Jurgensen* v. *Alexander* (*i*), "A. W. Faber" in *Faber* v. *Faber* (*k*), "Hopkinson" and "J. J. Hopkinson" in *In re Hopkinson* (*l*).

Sometimes in combinations.

In other cases the name is used in combination with other letters, words, or figures, or combinations of letters, words, or figures; and the name of an inventor, discoverer, manufacturer, &c., "may make words distinctive which, without the name, would not be so" (*m*). Thus "Chubb's Patent-Lock Fire-proof Safe" (*n*), "Collins & Co. Hartford Cast Steel, Warranted" (*o*), "Taylor's Persian Thread" (*p*), "Stephens' Blue Black Writing Fluid" (*q*), "Thorley's Cattle Food" (*r*), "Coe's Super-phosphate of Lime" (*s*), "Wolfe's Aromatic Schiedam Schnapps" (*t*), "Mrs. Winslow's Soothing Syrup" (*u*), "1847, Rogers Bros., A. 1" (*v*), "Meneely's West Troy, N.Y." (*w*). Again, "J. Rodgers & Sons" was coupled with a crown between the initials of the sovereign (*x*), and "Ransomes & Co." was followed by "H. H. 6" (*y*).

(*a*) *Carroll* v. *Ertheiler*, 1 Fed. Rep. 688.

(*b*) See *In re Holt & Co.*, (1896) 1 Ch. 711 ("Trilby"); see *In re Banks & James*, 12 P. R. 333 ("Shakespeare"); *In re Carroll*, 16 P. R. 82 ("Princess Christian").

(*c*) Ct. Sess. Cas. 1st Ser. II. 413.

(*d*) 2 J. & H. 139.

(*e*) 3 Ell. & Ell. 537.

(*f*) 50 Barb. 236; R. Cox, 421.

(*g*) Dig. 96.

(*h*) 29 Cal. 292; R. Cox, 324.

(*i*) 24 How. Pr. 269; R. Cox, 298.

(*k*) 49 Barb. 357; R. Cox, 401.

(*l*) (1892) 2 Ch. 116. And see *Richards* v. *Williamson*, 30 L. T. N. S. 746; *Fullwood* v. *Fullwood*, W. N. 1873, pp. 93, 185; *Tonge* v. *Ward*, 21 L. T. N. S. 480; *Fullwood* v. *Fullwood* (2), 9 Ch. D. 176; *Bowman* v. *Floyd*, 85 Mass. 76; *Rogers* v. *Taintor*, 97 Mass. 291; *Emerson* v. *Badger*, 101 Mass. 82; *Sohier* v. *Johnson*, 111 Mass. 238; *Sherwood* v. *Andrews*, 3 Am. L. Reg. N. S. 588; *In re India Rubber Comb Co.*, 8 U. S. Pat. Gaz. 905; *India Rubber Comb Co.* v. *Meyer*, *ib.* 905; *India Rubber Comb Co.* v. *Rubber Comb & Jewelry Co.*, 45 N. Y. Super. Ct. 258; *In re Rubber Clothing Co.*, 10 U. S. Pat. Gaz. 111; *In re Coggin, Kidder & Co.*; 11 U. S. Pat. Gaz. 1109; *In re Hall & Co.*, 13 U. S. Pat. Gaz. 229; *Carmichel* v. *Latimer*, 11 R. I. 395.

(*m*) *Fulton* v. *Sellers*, 4 Brews. 42.

(*n*) *Chubb* v. *Priest*, 1 L. T. 142.

(*o*) *Collins Co.* v. *Brown*, 3 K. & J. 423; *Collins Co.* v. *Cowen*, *ib.* 428.

(*p*) *Taylor* v. *Taylor*, 23 L. J. Ch. 255.

(*q*) *Stephens* v. *Peel*, 16 L. T. N. S. 145.

(*r*) *Massam* v. *J. W. Thorley's Cattle Food Co.* (2), 14 Ch. D. 748.

(*s*) *Bradley* v. *Norton*, 33 Conn. 157; R. Cox, 331.

(*t*) *Burke* v. *Cassin*, 45 Cal. 467; 13 Amer. Rep. 204.

(*u*) *Curtis* v. *Bryan*, 2 Daly, 212; R. Cox, 434.

(*v*) *Meriden Britannia Co.* v. *Parker*, 39 Conn. 450; 12 Amer. Rep. 401.

(*w*) *Meneely* v. *Meneely*, 62 N. Y. 427.

(*x*) *Rodgers* v. *Nowill*, 6 Hare, 325; 5 C. B. 109; 3 De G. M. & G. 614.

(*y*) *Ransome* v. *Bentall*, 3 L. J. Ch.

But the mere combination of a name in the genitive case and in ordinary type with ordinary descriptive words does not constitute a registrable new trade mark. Thus "Gianaclis' Cigarettes" (*a*), "Edge's Filtered Blue" (*b*).

Second class of trade marks.—A signature.

The second class of trade marks to which the Act allows registration is really little else than a subdivision of the first class, consisting as it does, of "a written signature, or copy of a written signature of the individual or firm applying for registration thereof as a trade mark," to which there may be added, as before, "any letters, words, or figures, or combination of letters, words, or figures, or of any of them." The signature of an individual or firm is in fact the name of the individual or firm printed or written in a "particular and distinctive manner," and as such, even before the Registration Acts, necessarily exhibited characteristics which could hardly be copied without the presumption being irresistible that the imitation was fraudulent and intended to invade the rights of the person whose signature was in question. In the cases of *Farina* v. *Silverlock* (*c*) and *Welch* v. *Knott* (*d*) the signature formed an important part of the trade mark concerned, and in America the signatures of individuals and firms have been ad-

161. And see *Green* v. *Folgham*, 1 S. & S. 398; *James* v. *James*, L. R. 13 Eq. 421; *Lazenby* v. *Lazenby*, Dig. 160; *Gillis* v. *Hall*, R. Cox, 596; also *Wilder* v. *Wilder*, Dig. 372 ("J. B. Wilder & Co.'s Stomach Bitters"); *Weston* v. *Hemmons*, 2 V. L. R. Eq. 121 ("Weston's Wizard Oil"); *Filkins* v. *Blackman*, 13 Bl. C. C. 440 ("Dr. J. Blackman's Genuine Healing Balsam"); *Gouraud* v. *Trust*, 10 N. Y. Sup. Ct. 627 ("Gouraud's Oriental Cream or Magical Beautifier"); *Weston* v. *Ketcham* (1) and (2), 39 N. Y. Super. Ct. 54; 51 How. Pr. 455 ("Capt. S. Pepper's Extra Signal Oil"); *In re Rohland*, 10 U. S. Pat. Gaz. 980 ("Dr. Lobenthal's Essentia Antiphthisica"); *Swift* v. *Peters*, 11 U. S. Pat. Gaz. 1110 ("The John C. Ragsdale Ammoniated Dissolved Bone"); *McLean* v. *Fleming*, 96 U. S. 245 ("Dr. C. McLane's Liver Pills"); *Davis* v. *Kennedy*, 13 Grant Up. Can. Ch. 523 ("Perry Davis' Vegetable Pain-Killer"); *Fulton* v. *Sellers*, 4 Brews. 42 ("Dr. J. M. Lindsey's Improved Blood Searcher"); *Manhattan Medicine Co.* v. *Wood*, 4 Cliff. 461 ("Atwood's Physical Vegetable Jaundice Bitters"); *Hostetter* v. *Vowinkle*, 1 Dill. 329; and *Hostetter* v. *Anderson*, 1 V. R. Eq. 7 ("Hostetter's Celebrated Stomach Bitters"); *Radway* v. *Coleman*, 15 Grant Up. Can. Ch. 50 ("Radway's Ready Relief"); *Chinn* v. *Thomas*, 5 V. L. R. Eq. 188 ("Hood & Co.'s Soluble Sheep Dip"); *Hanford* v. *Westcott*, 16 U. S. Pat. Gaz. 1181 ("Hanford's Chestnut Grove Whiskey"); *Morgan* v. *Rogers*, 26 *ib.* 1113 ("Dr. Haynes' Arabian Balsam"); *Funke* v. *Dreyfus*, 34 La. Ann. 80 ("Boker's Stomach Bitters"); *Hoxie* v. *Chaney*, 143 Mass. 592 ("A. N. Hoxie's Mineral Soap"), ("A. N. Hoxie's Pumice Soap"); *Frost* v. *Rindskopf*, 42 Fed. Rep. 408 ("Warren Hose Supporter" coupled with a picture of a hose supporter).

(*a*) *In re Gianaclis*, 6 P. R. 467.

(*b*) *In re Edge*, 8 P. R. 207. And see *Pirie* v. *Goodall*, (1892) 1 Ch. 35; cf. *In re Colman*, (1894) 2 Ch. 115.

(*c*) 1 K. & J. 509; 6 De G. M. & G. 214; 4 K. & J. 650.

(*d*) 4 K. & J. 747. See *Massam* v. *Thorley's Cattle Food Co.* (1), 6 Ch. D. 574; *In re Farina* (2), 27 W. R. 456; *In re Farina* (3), Dig. 654; *In re Maignen*, 28 W. R. 759.

mitted to registration on the same principle. Under the Act of 1875, § 10, there was no necessity for the signature to be that "of the individual or firm applying for registration thereof as a trade mark," but that is now required by § 64, both as originally contained in the Act of 1883, and as amended by the Act of 1888; so that an individual or firm will not in the future be able to register the signature of the person or firm to whose business he or they succeeded, unless that is an old mark, having been used as such before the passing of the Act of 1875. However, when the signature is once registered as a trade mark, whether with or without additions, it will descend and be assignable just as any other trade mark, without its new owner being liable to any imputation of representing the person whose signature is employed to be still in charge of the business, although formerly the use of a mark of this description might not improbably have been held to convey some such representation to the public. To a case of this description Lord Cranworth's observations very directly apply, when, speaking of a buyer of a business using the name of a former maker, he said (a), "the question in every such case must be whether the purchaser in continuing the use of the original trade mark would, according to the ordinary usages of trade, be understood as saying more than that he was carrying on the same business as had been formerly carried on by the person whose name constituted the trade mark. In such a case I see nothing to make it improper for the purchaser to use the old trade mark, as the mark would in such a case indicate only that the goods so marked were made at the manufactory which he had purchased." The provision in the Acts of 1875 (b) and 1883 (c) that a trade mark "shall be assigned and transmitted only in connexion with the goodwill of the business" will enable the purchaser to use the trade mark so acquired by him without his motives being open to question, and will at the same time insure that marked goods purchased by the public shall, except in cases of punishable infringement, be produced at the works from which they purport to have come.

Third class of trade marks.—A distinctive device, &c.

The third class of marks comprises "a distinctive device, mark, brand, heading, label, or ticket," to which again may be added

(a) *Leather Cloth Co.* v. *American Leather Cloth Co.*, 11 H. L. C. 523.

(b) § 2.

(c) § 70.

"any letters, words, or figures, or combination of letters, words, or figures, or of any of them."

Distinctiveness required.

The important feature which is absolutely necessary in all the varieties of trade marks included in this class is that of distinctiveness (a): each mark must be such that, if a question of infringement arises, it shall be perfectly clear what it is that is being infringed, and that this something is quite different from all other marks used upon the same class of goods.

Composition of trade mark, and manner of use alluded to.

Of the words "device, mark, brand, heading, label, or ticket," some point more directly to the matter of which the trade mark is composed, others to the manner in which it is affixed to the vendible article.

"Device" and "mark."

"Device" and "mark" seem, at first sight, wide enough to include any of the symbols or combinations of which a trade mark could consist. It has, however, been held, under the Act of 1875, that they do not include a mere word, or collocation of letters or figures, however strangely combined, or singular in their application (b), and the decision seems to be equally applicable to the Acts of 1883—1888.

Mode of application indicated by them.

When used as indicative of the mode of application of the trade mark, these words will include such cases as where the mark is stamped on shirts (c) or other cotton goods (d), or imprinted on sticks of liquorice (e) or sealing wax (f), and, generally, any cases which do not come within the remaining and more exact terms.

"Brand."

"Brand" refers to cases in which the trade mark is branded on metal goods (g), or on wine casks (h), or corks (i), and it may possibly include a water mark woven into the texture of paper (k).

"Heading."

"Heading" possibly applies to cases where, in addition to the ordinary label on the goods, there is a separate label affixed above it, on which the special mark is exhibited (l). But it more especially

(a) See *per* Cotton, L. J., in *Waterman* v. *Ayres*, 39 Ch. D. 33; and *per* Chitty, J., in *Burland & Co.* v. *Broxburn Oil Co., Ld.* (2), 42 Ch. D. 274.

(b) *Ex parte Stephens*, 3 Ch. D. 659.

(c) *Ford* v. *Foster*, L. R. 7 Ch. 611.

(d) *Henderson* v. *Jorss*, Dig. 198; *Carver* v. *Pinto Leite*, L. R. 7 Ch. 90; *Broadhurst* v. *Barlow*, W. N. 1872, p. 212; *Carver* v. *Bowker*, Dig. 581.

(e) *McAndrew* v. *Bassett*, 4 De G. J. & S. 380.

(f) *In re Hyde & Co.*, 7 Ch. D. 724.

(g) *Motley* v. *Downman*, 3 My. & Cr. 1; *Millington* v. *Fox*, *ib.* 338; *Crawshay* v. *Thompson*, 4 M. & G. 357; *Hall* v. *Barrows*, 32 L. J. Ch. 548; and 4 De G. J. & S. 150, &c.

(h) *Seixo* v. *Provezende*, L. R. 1 Ch. 192; *Moet* v. *Couston*, 33 Beav. 578; *Ponsardin* v. *Peto*, 33 Beav. 642, &c.

(i) *Moet* v. *Clybouw*, Dig. 533; *Moet* v. *Pickering*, 8 Ch. D. 372.

(k) *Pirie* v. *Goodall*, (1892) 1 Ch. 35.

(l) *Ex parte Stephens*, 24 W. R. 963.

applies to the kind of marks applicable to the case of textile fabrics, in which a heading of special pattern is inwoven into the edge of the goods (*a*).

"Label."

"Label" indicates an impression of a trade mark upon a piece of paper, or some other thin substance, which is made to adhere to the goods to which it is applied, or to the vessel containing them. Thus, in *Wotherspoon* v. *Currie* (*b*), the label was affixed to packets of starch; in *Bass* v. *Dawber* (*c*) to bottles of beer; in *Blackwell* v. *Crabb* (*d*), *Cocks* v. *Chandler* (*e*), *Cotton* v. *Gillard* (*f*), and other cases, to bottles of pickle.

"Ticket."

"Ticket" points to a mark also impressed upon a separate material, but only loosely attached to the goods the make of which it indicates. Thus the trade mark of a wire manufacturer consisted of an anchor stamped on the tallies, or metal labels, attached to the bundles of his wire (*g*); the trade mark of a clothier was imprinted on a ticket pinned on to his wares (*h*). In the case of textiles the "ticket" is gummed on to the fabric. Mere words do not constitute a distinctive heading (*i*), or label, or ticket (*j*).

Composition of trade mark.

The question, "What is a trade mark?" is, however, less directed to the manner in which the trader's symbol is attached to his goods than to its composition, and the varieties of mark which will merit and receive protection.

"Device."

The original form of trade mark was probably the representation of some animal, or other natural object, or mathematical figure, as the Hall mark of the lion or leopard's head, the Freemasons' square and compasses (*k*), or the Government broad arrow. Such a mark would be independent of language, and would serve to distinguish goods of a certain make, even for the illiterate.

(*a*) *Harter* v. *Souvazoglu*, W. N. 1875, pp. 11, 101; *Carver* v. *Bowker*, Dig. 581; *Robinson* v. *Finlay*, 9 Ch. D. 487; and see *per* Sir G. Jessel, M. R., in *Singer Manufacturing Co.* v. *Wilson*, 2 Ch. D. 434.

(*b*) L. R. 5 H. L. 508. See *Gilman* v. *Hunnewell*, 122 Mass. 139.

(*c*) 19 L. T. N. S. 626.

(*d*) 36 L. J. Ch. 504.

(*e*) L. R. 11 Eq. 446.

(*f*) 44 L. J. Ch. 90.

(*g*) *Edelsten* v. *Edelsten*, 1 De G. J. & S. 185.

(*h*) *Hirst* v. *Denham*, L. R. 14 Eq. 542.

(*i*) *Leonard & Ellis* v. *Wells & Co.*, 26 Ch. D. 288.

(*j*) *Great Tower St. Tea Co.* v. *Smith*, 6 P. R. 165.

(*k*) As to this Freemasons' emblem, it has been held in the United States that it is so generally appropriated to a special purpose as not to be registrable by a private firm, even in combination: *In re Tolle*, 2 U. S. Pat. Gaz. 415. But this decision was not followed in *In re Thomas*, 14 U. S. Pat. Gaz. 821, or *Ex parte King* (2), 46 U. S. Pat. Gaz. 119, though in *Ex parte Smith* (3), 16 U. S. Pat. Gaz. 764, registration was refused to the word "Masonic."

Such marks are still frequently employed, and this clause specially includes them. To this class belong the marks of an anchor (*a*), an eagle (*b*), a lion (*c*), an elephant (*c*), a cross (*d*), a pyramid (*e*), a bell (*f*), a hand (*g*), a cock (*h*), a rising sun (*i*), or a triangle (*j*).

Examples.

A crest is just as capable of becoming a trade mark as any other arbitrary device (*k*). In *Beard* v. *Turner* (*l*) Sir W. P. Wood, V.-C., said, "I am not prepared to say or hold that a man putting his crest should not so put it as to establish his right to say, 'Nobody shall use my crest.' It is incumbent on him, as on every plaintiff, to show that the crest is an essential part of his trade mark." The readiest way of proving this is now by reference to the Register of Trade Marks.

A crest.

The portrait of a person whose name has become descriptive of the goods, is not sufficiently distinctive to be registered as a good trade mark (*m*). The portrait of a public character has, however, been allowed to be registered in America (*n*), and even in this country in ordinary cases a trader may obtain registration of his own portrait as a trade mark (*o*).

Portrait.

Before the Trade Marks Act of 1875 a trade mark might consist of initials, either alone or in combination with other ingredients (*p*). Now, however, it would be difficult to assert that initials alone, printed in the usual manner, and without any distinguishing peculiarities of shape, colour, &c., could be described as "a distinc-

Initials.

(*a*) *Edelsten* v. *Edelsten*, 1 De G. J. & S. 185.

(*b*) *Standish* v. *Whitwell*, 14 W. R. 512.

(*c*) *Henderson* v. *Jorss*, Dig. 198.

(*d*) *Cartier* v. *Carlile*, 31 Beav. 292; *Cartier* v. *Westhead*, Dig. 199; *Cartier* v. *May*, Dig. 200.

(*e*) *Bass* v. *Dawber*, 19 L. T. N. S. 626.

(*f*) *Bell, Black & Co.* v. *Bell & Co.*, Dig. 514.

(*g*) *Allsopp* v. *Walker*, Dig. 545.

(*h*) *In re Walkden Aërated Waters Co.*, 54 L. J. Ch. 394.

(*i*) *Morse* v. *Worrell*, 10 Phila. 168.

(*j*) *In re Worthington*, 14 Ch D. 8.

(*k*) In *Steinthal* v. *Samson*, Dig. 546, the trade mark consisted of the crest, arms, and motto of the plaintiff's family. See *Robinson* v. *Finlay*, 9 Ch. D. 487; *Hargreaves* v. *Smith*, Dig. 338; *In re Rosing*, 54 L. J. Ch. 975; *In re Farina* (1), 26 W. R. 261; *In re Farina* (3), Dig. 654; *Godillot* v. *Hazard*, 81 N. Y. 263; *Mackinnon* v. *Thompson*, 5 Can. Leg. News, 396, also Instructions as to royal, national, municipal, &c., arms.

(*l*) 13 L. T. N. S. 746. In *Standish* v. *Whitwell*, 14 W. R. 512, the defendant was restrained from using what he alleged to be his own crest as his trade mark. So in *Mackinnon* v. *Thompson*, 5 Can. Leg. News, 396, where the trade mark, consisting of the defendant's name and arms, had been sold to the plaintiff.

(*m*) *In Re Anderson*, 26 Ch. D. 409; 54 L. J. Ch. 1084 (App.).

(*n*) *Ex parte Sullivan & Burke*, 16 U. S. Pat. Gaz. 765; *Ex parte Pace, Talbott & Co.*, *ib.* 909.

(*o*) *Rowland* v. *Michell*, (1897) 1 Ch. 71; and see *Richmond Nervine Co.* v. *Richmond*, 159 U. S. 293; *Kathreiner's Malz Kaffee Fabriken, &c.* v. *Pastor Kneip Medicine Co.*, 82 Fed. Rep. 321.

(*p*) See pp. 76, 77, *infra*.

tive device, mark, brand, heading, label, or ticket." Where the letters are combined together into the form of a monogram, or enclosed within a distinctive border, or are in any other way used in such a combination as to be distinguishable from the same letters used in the plain ordinary way, it might have been supposed that a device or mark would be constituted capable of registration; but in *Lucke* v. *Webster* (a), Sir G. Jessel, M. R., while admitting to registration as an old mark a monogram on a shield, suggested that he could not have done so if it had been a new mark. In the American case of *United States* v. *Marble* (b), the Commissioner of Patents considered that the letters "W. G." in a monogram were registrable as a trade mark.

Marks with a mechanical purpose.

Marks which have a mechanical purpose, *e.g.*, to serve as guides for the equal division of the article to which they are applied, cannot deprive other manufacturers of the right to use somewhat similar marks for the same purpose (c).

Marks representing the article.

In some American cases it has been held or suggested that a device which represents the article to which it is intended to be applied must be treated as descriptive and incapable of appropriation, in the same way as words which are descriptive of the article to which they are applied are refused recognition as distinctive names. Thus the representation of a pig, attached to packages of lard (d); the representation of a fish, for fishing-lines (e); the representation of a bed made under a special patent, for beds so made (f); the representation of a barrel composed of alternate light and dark staves, for barrels of flour so made up (g); the representation of a twig with three leaves and a plum, for medicated prunes (h). But there is no English authority in favour of such devices being incapable of appropriation, and it is very doubtful whether the principle would be recognised in this country. In the case of the descriptive name, the right to use it could hardly be separated from the right to make and sell the article; but there

(a) Jessel, M. R., April 4th, 1879.
(b) 22 U. S. Pat. Gaz. 1366.
(c) *Dausman and Drummond Tobacco Co.* v. *Ruffner*, 15 U. S. Pat. Gaz. 559.
(d) *Popham* v. *Wilcox*, 66 N. Y. 59.
(e) *In re Pratt & Farmer*, 10 U. S. Pat. Gaz. 866.
(f) *Tucker Manufacturing Co.* v. *Boyington*, 9 U. S. Pat. Gaz. 455.
(g) *Ex parte Halliday Brothers*, 16 U. S. Pat. Gaz. 500.
(h) *Ex parte Smith* (2), 16 U. S. Pat. Gaz. 679; and see *Merriam* v. *Famous Shoe and Clothing Co.*, 47 Fed. Rep. 411; *Merriam* v. *Texas Siftings Publishing Co.*, 49 Fed. Rep. 944. But this rule does not appear to be of universal application. See *Frost* v. *Rindskopf*, 42 Fed. Rep. 408; *Harris Drug Co.* v. *Stucky*, 46 Fed. Rep. 624. Cf. *Fish Brothers Wagon Co.* v. *La Belle Wagon Works*, 82 Wisc. 546; 33 Am. St. Rep. 72.

is no imperative necessity that every one who has the latter right should also be entitled to sell the article under a mark containing a representation of it. If the trade are entitled to sell the article, and to sell it by its appropriate name, their requirements appear to be satisfied. However, the question would probably be treated as being, to some extent at least, one of degree. In *In re James* (*a*) an application was made for the removal from the register of a trade mark for black lead, which consisted of the representation of a dome-shaped cylinder of black lead, on the ground that the trade mark was simply a pictorial description of the goods in the form in which they were usually sold; but the decision of Pearson, J., allowing the application, was reversed by the Court of Appeal. This was principally on the ground that the black lead was not necessarily sold in that shape, and that the mark had sometimes been applied and might properly be applicable to blocks of black lead in any shape; and the Court did not actually decide what would be done if the trade mark had consisted of a pictorial representation of the goods in the only shape in which they could be made, but the inclination of the Court of Appeal would appear to have been rather in the direction above suggested. The Comptroller-General has now signified his intention not to accept as trade marks pictorial representations of the goods to which they are to be applied (*b*).

"Heading." *Harter* v. *Souvazoglu.*

In *Harter* v. *Souvazoglu* (*c*) the trade mark consisted of a certain combination of purple, pink, and green threads, nine stripes in three gradations, which were woven as a heading into cotton goods, which were forwarded to the markets of Turkey and the Levant. The owners of this mark having filed a bill for an injunction against a rival trader who had copied the mark, Sir C. Hall, V.-C., held "that a heading could be the subject of a trade mark, that the evidence in the case showed that this heading was distinguished from others in Turkey, and that it had become a trade mark, although it was sometimes associated with stamps on the goods, of the lion and the sun, and other devices. Customers had bought goods because of this particular heading, and he therefore considered that the plaintiffs who had adopted it were entitled to the protection they asked, and that no other persons could use it" (*d*).

(*a*) 33 Ch. D. 392. And see *Ripley* v. *Bandey*, 14 P. R. 591, compromised on appeal, *ib.* 944.

(*b*) See *In re Sphincter Grip Armoured Hose Co.*, 10 P. R. 84.

(*c*) W. N. 1875, pp. 11—101.

(*d*) And see *per* Sir G. Jessel, M. R., in *Singer Manufacturing Co.* v. *Wilson*,

Fancy words.

Besides the varieties of marks to which reference has already been made, the third class of registrable trade marks under § 64 of the Patents Acts, 1883, before its amendment by the Act of 1888, also included "a fancy word or words not in common use." This was not so under the Trade Marks Registration Acts, 1875—1877, which entirely excluded fancy words from registration as new marks, and only admitted such as had been used before the Act of 1875. This exclusion was, however, found to cause great annoyance and inconvenience, since a fancy name is of all trade marks the most useful, seeing that it affords so easy a mode of inquiring for and obtaining goods produced by the precise manufacturer whose production is desired. For this reason the use of such words as trade marks has been more general than that of any other description of mark, and during the period of exclusion from registration recourse was had to all kinds of contrivances for obtaining the registration and at least partial protection of fancy names.

Requirements.

For words to be capable of exclusive appropriation under this provision of the Act of 1883, which is still operative with respect to words registered under it, they had to comply with three requirements. First, they had to be fancy words; secondly, they had to be distinctive; and, thirdly, they had to be not in common use. Each of these requirements has been the subject of decision under the Act.

Fancy words defined.

As to what is meant by "a fancy word or fancy words," it was at first very generally supposed, and was so held by Chitty, J. (*a*), and Bacon, V.-C. (*b*), that the term would include any word fancifully applied, such as would have been protected by the Courts irrespective of any Registration Act. The Court of Appeal, however, took a more stringent view of the meaning of the phrase, and the effect to be given to it is now ascertained with reasonable clearness. Thus, in the leading case on the subject (*c*), Cotton, L. J., said, "To be registered, the word must be a 'fancy word'; and in order to come within that description it must be a word which obviously cannot have reference to any description or designation of where the article is made, or of what its character

2 Ch. D. 434. Also *Carver* v. *Bowker*, Dig. 581, and *Robinson* v. *Finlay*, 9 Ch. D. 487, where a heading of coloured threads formed a part of the combination mark, though not mentioned in the report. The heading is practically always an element in the combination of markings on cotton piece goods.

(*a*) *In re Stapley & Smith*, 29 Ch. D. 877.

(*b*) *In re Van Duzer*, 34 Ch. D. 623; *In re Leaf, Sons & Co.*, 34 Ch. D. 632.

(*c*) *In re Van Duzer*, 34 Ch. D. 623.

is"; and Lindley, L. J., said, "To be a 'fancy word' the word must either have to ordinary English people, to whom the Act is addressed, no meaning, like the word 'Eureka,' or the word 'Aeilyton,' or, if it has any meaning at all, it must be obviously [non-descriptive] (*a*) when used as a trade mark." And Lopes, L. J., added, "A word to be a 'fancy word' must be obviously meaningless as applied to the article in question. It must be a word fanciful in its application to the article to which it is applied, in the sense of being so obviously and notoriously inappropriate as neither to be deceptive nor descriptive, nor calculated to suggest deception or description. Further than that, the word must have an innate and inherent character of fancifulness, which must not depend on evidence (*b*), and cannot be supported by evidence, to show that in fact it is neither deceptive nor descriptive, nor calculated to be deceptive or descriptive. A fancy word must speak for itself: it must be a fancy word of its own inherent strength." Again, in *Waterman* v. *Ayres* (*c*), Fry, L. J., after expressing his concurrence in the definitions given above, added further, "That which is the only name of a thing cannot, it seems to me, be a fancy word with regard to it. The word 'spade' describes the thing. You can never take the word 'spade' and call it a fancy word for the thing." And in another case (*d*) Chitty, J., said that, "in reference to an article produced in a foreign country and imported into England, where it was previously unknown and without a name, the word used in that foreign country as the common term to describe or denote the article is not a fancy word within the meaning of the Act."

The effect of these statements has been so to narrow and restrict the meaning of the phrase that in nearly all the cases in which the question of "fancy word" has been brought before the Court the decision has been adverse to the claimant. In fact, in only five cases (*e*), one of which has since been disapproved (*f*), has the word been upheld; whereas in many cases it has been disallowed

(*a*) See 34 Ch. D. 645. See also *In re Bovril Trade Mark*, (1896) 2 Ch. 600, 605, 607.

(*b*) And see *Hodgson* v. *Sinclair*, 9 P. R. 22.

(*c*) 39 Ch. D. 29.

(*d*) *In re Davis & Co.*, 6 P. R. 207.

(*e*) *In re Stapley & Smith*, 29 Ch. D. 877 ("Alpine" cotton); *Slazenger* v. *Malings*, W. N. 1885, p. 124 ("The Lawford" racquet); *In re Burgoyne*, 6 P. R. 227 ("Oomoo" wine); *In re Densham*, (1895) 2 Ch. 176 ("Mazawattee" tea); *In re Bovril Trade Mark*, (1896) 2 Ch. 600 ("Bovril").

(*f*) *In re Stapley & Smith* in *In re Van Duzer*, 34 Ch. D. 623.

on the ground of descriptiveness or suggestion of descriptiveness (*a*). It is, however, to be observed that the recent 'Mazawattee' and 'Bovril' decisions might well have been adverse to the trade mark owners if the Courts had been disposed to show as great severity as in some of the previous cases, so that the greater leniency shown in these cases may possibly imply that marks will be expunged with less frequency in future.

"Distinctive."

As to the requirement that a fancy word shall be distinctive, it seems that the meaning to be placed upon this is that the word must be one which serves to distinguish the goods of one maker or dealer from the goods of all others (*b*), and that it cannot be distinctive if a word of similar sound, though different in spelling, is in use in the trade (*c*).

"Not in common use."

The further requirement that fancy words shall be "not in common use" has been interpreted by Chitty, J. (*d*), to mean that

(*a*) Words which have been held not to be "fancy words": *In re Price's Patent Candle Co.*, 27 Ch. D. 681 ("National Sperm" candles); *In re Friedlander*, W. N. 1885, p. 85 ("Zephyr Asiatic Walnut Pipe"); *In re Harden Star, &c. Co., Ld.*, 3 P. R. 132 ("Hand Grenade Fire Extinguisher"); *In re Van Duzer*, 34 Ch. D. 623 ("Melrose Favourite Hair Restorer"); *In re Leaf, Sons & Co.*, 34 Ch. D. 632 ("Electric Velveteen"); *In re Arbenz*, 35 Ch. D. 248 ("Gem" air-guns); *Lever* v. *Goodwin*, 36 Ch. D. 1 ("The Self-Washer"); *Towgood Bros.* v. *Pirie & Sons, Ld.*, 4 P. R. 67 ("The Jubilee Note" paper); *In re Ainslie & Co.*, 4 P. R. 212 ("Ben Ledi" whiskey); *In re Laing*, L. J. N. of C. 1887, p. 102 ("Glengowrie Blend of Fine Old Highland Whiskey"); *In re Hanson*, 37 Ch. D. 112 ("Red, White, and Blue" label tea); *In re Sanitas Co., Ld.*, 4 P. R. 533 ("Sanitas" medicines); *In re Waterman*, 39 Ch. D. 29 ("Reversi" game); *In re Davis & Co.*, 6 P. R. 207 ("Bokōl" beer); *Humphries* v. *Taylor Drug Co.* (2), 59 L. T. N. S. 820 ("Herbalin" medicine); *In re Californian Fig Syrup Co.*, 40 Ch. D. 620 ("Syrup of Figs"); *In re Jackson & Co.*, 6 P. R. 80 ("Kokoko" cotton piece goods); *In re Thompson & Co.*, 6 P. R. 213 ("Manor" tin plates); *In re Grossmith*, 6 P. R. 180 ("Emollio" toilet cream); *Great Tower Street Tea Co.* v. *Smith*, 6 P. R. 165 ("Tower Tea"); *Burland & Co.* v. *Broxburn Oil Co., Ld.* (2), 42 Ch. D. 274 ("Washerine" soap); *In re Vignier*, 6 P. R. 490 ("Monobrut" champagne); *In re Batt & Co.*, 6 P. R. 493 ("The Brymbo Special" iron); *In re Hannay*, 7 P. R. 46 ("Electroid" anti-fouling composition); *Stuart & Co.* v. *Scottish Val de Travers Paving Co., Ld.*, Ct. Sess. Cas. 4th Ser. XIII. 1 ("Granolithic" artificial stone); *In re Apollinaris Co.*, (1891) 2 Ch. 186, 221 ("Apollinaris," "Friedrichshall," and "Hunyadi Janos" mineral waters and products); *In re Edge*, 8 P. R. 207 ("Filtered Blue"); *Pirie* v. *Goodall*, (1892) 1 Ch. 35 ("Parchment Bank" paper); *Hodgson* v. *Sinclair*, 9 P. R. 22 ("Britannia" soap); *In re Paine* (1), 9 P. R. 130 ("John Bull Brand" beer); but see *Paine* v. *Daniells*, (1893) 2 Ch. 567; *In re Harris*, 9 P. R. 492 ("Beatrice" shoes); *In re Lloyd*, 10 P. R. 281 ("Carnival" cigarettes); *In re Talbot*, 11 P. R. 77 ("Emolliolorum" saddle paste); *In re Banks & James*, 12 P. R. 333 ("Shakspere" cigars); *In re Thompson*, 13 P. R. 35 ("Roadster" boots); *In re Davis*, 14 P. R. 903 ("Compactum" umbrellas); *Meaby & Co.* v. *Triticine, Ld.*, 15 P. R. 1 ("Triticumina" food).

(*b*) See *Wood* v. *Lambert*, 32 Ch. D. 257; *Waterman* v. *Ayres*, 39 Ch. D. 29; *In re Jackson & Co.*, 6 P. R. 80; *In re Apollinaris Co.*, (1891) 2 Ch. 186; *In re Magnolia Metal Co.*, (1897) 2 Ch. 371.

(*c*) *Per* Kay, J., in *In re Jackson & Co.*, 6 P. R. 80. And see *In re Ripley*, 15 P. R. 151.

(*d*) *In re Stapley & Smith*, 29 Ch. D. 877; *In re Burgoyne*, 6 P. R. 272.

they must not be in common use in the trade with respect to which it is sought to appropriate them; and though other judges have rather avoided expressing an opinion as to the meaning of the phrase, it would appear that this is the true meaning to be attached to it. The fact that a word may have been generally used and have acquired a descriptive signification in one trade may well leave it "obviously meaningless" in another. In Scotland, Lord Craighill (*a*) seems to have taken substantially the same view as Chitty, J., for he says that the term "'common use,' as employed in the statute, does not necessarily import that the word must have been used commonly by all members of the community, or by people in all parts of the country. What is enough, in my opinion, to establish common use, in the sense of the statute, is this: if it shall be shown that the word has been commonly used by persons who had occasion to use it, and who are connected more or less directly with the use of the commodity to which the word has been applied." Conversely it has been laid down by Kekewich, J., that if words are in common use generally, they are in common use within the meaning of the Statute (*b*).

Fourth class of trade marks.—Invented words.

The fourth class of marks comprises "an invented word or invented words," to which, as in other cases, additions may be made. The introduction of this expression into the Act was generally considered to have been intended to bring within its scope, and to render registrable as new marks, such words as "Washerine" (*c*) and "Monobrut" (*d*), which were rejected as fancy words, or as "Pectorine" (*e*), "Lactopeptine" (*f*), "Valvoline" (*g*), which were not submitted to that test. The judges were, however, unable to remove from their minds the impression produced upon them by the rigidity with which the term "fancy word" had been construed, and which had been carried so far as to exclude from registration, not merely words which contained direct statements as to the character or quality of the goods, but even invented words which had never been heard of before, but which

Compare *Great Tower Street Tea Co.* v. *Smith*, 6 P. R. 165; and *In re Banks & James*, 12 P. R. 333.

(*a*) In *Stuart & Co.* v. *Scottish Val de Travers Paving Co., Ld.*, Ct. Sess. Cas., 4th Ser. XIII. 1.

(*b*) *In re Paine* (1), 9 P. R. 130.

(*c*) *Burland & Co.* v. *Broxburn Oil Co.* (2), 42 Ch. D. 274.

(*d*) *In re Vignier*, 6 P. R. 490.

(*e*) *Smith* v. *Mason*, W. N. 1875, p. 62.

(*f*) *Carnrick* v. *Morson*, L. J. N. of C. 1877, p. 71.

(*g*) *Leonard & Ellis* v. *Wills & Co.*, 26 Ch. D. 288.

were supposed to contain some remote suggestion of descriptiveness. Under the influence of this impression, they applied to this class of "invented words" the same prohibition of any reference to the character or quality of the goods which was contained in the succeeding clause of the Act relating to existing words, and having so introduced this prohibition they construed it with no less strictness than had previously been adopted in the case of "fancy words." In this way "Satinine" was rejected as a trade mark for starch, soap, blue, and similar goods (*a*), "Emolliolorum" for saddle paste (*b*), "Somatose" for an extract of meat (*c*). On the other hand "Mazawattee" was approved for tea (*d*), and "Kynite" for explosives (*e*). Finally the refusal of the Courts to register the invented word "Solio" for photographic paper (*f*) led to the question being submitted to the House of Lords, with the result that a decision was obtained from the highest tribunal that the term "invented word" in the later Act is to be construed without reference to the decisions on "fancy word" in the earlier Act, and that the prohibition of descriptiveness is not to be extended from the clause of the statutory definition relating to known words, where it was placed by the Legislature, to the clause relating to "invented words," where the Legislature omitted it. In fact in such cases the only question which has to be determined is, as stated by Lord Herschell in the "Solio" case, "whether the word sought to be registered is an invented word." In one of the cases on this subject, Lord Justice Kay said: "There is extremely little invention in the matter. It may be that the word 'Satinine,' which was there in question, was objectionable on other grounds; but if the word be an 'invented' one, I do not think the *quantum* of invention is at all material. An invented word is allowed to be registered as a trade mark, not as a reward of merit, but because its registration deprives no member of the community of the rights which he possesses to use the existing vocabulary as he pleases. It may no doubt sometimes be difficult to determine whether a word is an invented word or not. I do not think the combination of two English words is an invented word, even although the combination may not have been in use before, nor do I think that

(*a*) *In re Meyerstein*, 43 Ch. D. 604.
(*b*) *In re Talbot*, 11 P. R. 77.
(*c*) *In re Farbenfabriken*, (1894) 1 Ch. 645.
(*d*) *In re Densham*, (1895) 2 Ch. 176.
(*e*) *In re Kynoch*, 14 P. R. 905.
(*f*) *In re Eastman Photographic Materials Co., Ld.*, (1898) A. C. 571.

a mere variation of the orthography or termination of a word would be sufficient to constitute an invented word, if to the eye or ear the same idea would be conveyed as by the word in its ordinary form. Again, I do not think that a foreign word is an invented word, simply because it has not been current in our language. At the same time, I am not prepared to go so far as to say that a combination of words from foreign languages so little known in this country that it would suggest no meaning except to a few scholars might not be regarded as an invented word."

It is apprehended, however, that this decision does not affect such decisions as that in *In re British Electrozone Co.* (*a*), where it was held that a word known in an English-speaking country (the United States) could not be an invented word, or that in *In re Ripley* (*b*), where it was held that a new word "Pirle," identical in sound with a common and well-known word "Pearl," though differently spelt, could not be registered as an invented word.

Fifth class of trade marks. —Non-descriptive words.

The fifth class of marks comprises "a word or words having no reference to the character or quality of the goods, and not being a geographical name," with or without additions. This seems designed to include such terms as "Pharaoh's Serpents" toys (*c*), "United Service" soap (*d*), and "Charter Oak" stoves (*e*). Geographical words remain excluded (*f*), as they had already been under the meaning given by the Courts to the term "fancy words."

The question what is a geographical word is, however, not always easy of solution. Thus, in *In re Salt* (*g*), the word "Eboline" was held to be geographical, as being the name of the Italian town of "Eboli" with an ordinary suffix, though the word had been composed in ignorance of the existence of the town. Again, many words are used as names of places, while their original signification has no geographical reference at all. Such a case was that of "Magnolia" (*h*), which was the name of many small American towns and villages, yet was considered to be registrable, the geographical allusion not being generally understood in this

(*a*) 13 P. R. 447.

(*b*) 15 P. R. 151.

(*c*) *Barnett* v. *Leuchars*, 13 L. T. N. S. 495.

(*d*) *Field* v. *Lewis*, Seton, 5th Ed. 537.

(*e*) *Filley* v. *Fassett*, 44 Mo. 173.

(*f*) See *In re Apollinaris Co.*, (1891) 2 Ch. 186, 221 ("Apollinaris," "Friedrichshall," and "Hunyadi Janos" mineral waters and products).

(*g*) (1894) 3 Ch. 166.

(*h*) *In re Magnolia Metal Co.*, (1897) 2 Ch. 371. See also *In re Apollinaris Co., Ld.*, (1891) 2 Ch. 186.

country. The effect of this decision appears to be that a word is not to be regarded as geographical unless its primary signification is geographical, or unless it has become recognised in this country as a geographical word.

With reference to existing words free from any geographical meaning, the question still remains whether they have or have not any reference to the character or quality of the goods. That this question will be looked into very closely may be assumed from the cases cited above with respect to "invented words." And this seems very reasonable, for the right of the public to use descriptive words in a descriptive sense ought to be strictly maintained, as was pointed out by Lord Herschell in the "Solio" case (*a*). Whether it was necessary to discover a descriptive allusion in all the cases in which the Court discovered it may perhaps be doubted, but it is clear from the decision of the House of Lords that no non-invented word which really is descriptive will be allowed to be registered as a new trade mark (*b*). Where, however, a name which is not naturally descriptive, such as "Magnolia," has been given to a new article, that application of the word does not necessarily cause it to have reference to the character or quality of the goods, though if the word has come to be known as the name of the article, irrespective of the manufacturer, it may become open to objection on the ground that it has ceased to be distinctive (*c*).

The names of imaginary persons, such as the characters in books, *e.g.*, "Trilby," fall within this class of words (*d*).

Sixth class of trade marks. —Old marks.

Marks which come within any of the above five classes are capable of registration, whether they were used before the passing of the Trade Marks Registration Act, 1875, or not; but many valuable trade marks adopted and used before any precise definition was provided are not included in any of these five classes, and would consequently be deprived of the benefits of the Act, unless some special provision were made for their protection. To meet this case it is provided, by § 64 (3) (ii), that "any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures, used as a trade mark before the 13th day of August, 1875, may be registered as a trade mark under this part of this Act."

(*a*) *In re Eastman Photographic Materials Co., Ld.*, (1898) A. C. 571.

(*b*) See *In re Linotype Co.*, 14 P. R. 900 ("Typograph").

(*c*) *In re Magnolia Metal Co.*, (1897) 2 Ch. 371.

(*d*) *In re Holt*, (1896) 1 Ch. 711.

Old word-marks.

By far the most important description of marks included in this class is that defined as "any special and distinctive word or words used as a trade mark before the 13th day of August, 1875," which brings within the scope of the Act the numerous varieties of words which were used as old marks, whether they come within the definitions applicable to new marks or not. With respect to them, two conditions are prescribed. First, the word or words must be "special and distinctive"; and, secondly, they must have been used as a trade mark before the passing of the Act of 1875.

"Used as a trade mark."

Passing over for the moment the question what words can be properly regarded as special and distinctive, it seems convenient first to consider here the further requirement that the word or words shall have been "used as a trade mark before the 13th day of August, 1875," a requirement which, it will be observed, applies also to the other varieties of old marks comprised in § 64 (3) (ii).

The expression "used as a trade mark" was much considered in the case of *Richards* v. *Butcher* (2) (*a*), where Kay, J., said that "'user as a trade mark' means, not what the person who uses has in his own mind about it, not what he has registered in a foreign country, but what the public would understand, when the trade mark or so called trade mark is impressed upon the goods, or upon some wrapper or case containing the goods, to be the trade mark. That is the trade mark proper; and 'user as a trade mark' means, and must necessarily mean, the impressing of those words either upon the goods, or upon some wrapper or case containing the goods, in such a way that the public would necessarily understand those words to be, and alone to be, the trade mark of the person who uses them." Again in *In re Powell* (2) (*b*), where the question was as to the use of the words "Yorkshire Relish" on packing cases containing bottles of the sauce of that name, Bowen, L. J., said, "although it is perfectly possible that a mark on a packing case may be intended to be used as a trade mark, it can only, as a rule, be so when the packing case is intended to sell the goods, and the packing case is intended to be the thing shown to the purchaser."

There must, then, have been user of the word or other mark before August 13th, 1875, and such user must have been user as a

(*a*) (1891) 2 Ch. 522, 532. (*b*) (1893) 2 Ch. 388; affirmed (1894) A. C. 8.

trade mark, and not as a descriptive term relating to the character or pattern of the goods or the like (*a*). The word or other mark must have been used *per se*, and not as part of a mark which included other elements (*b*); and if it has always been used with such other elements, it cannot, apart from them, be claimed as an old mark, even though in some cases some of the elements comprising the entire trade mark have been used on one side of the article and the remainder on the other side (*c*). Moreover, it is not sufficient that there has been user on price lists, bill heads, or other trade documents; for user as a trade mark there must have been user on the goods themselves (*d*), or on the boxes or wrappers containing them (*e*),—though slight user is sufficient (*f*), unless the claim is for registration under the three-mark rule (*g*),—and the user before August 13th, 1875, must have been within the United Kingdom; for foreign user (*h*) or registration (*i*) is immaterial, and the mere passage through England of marked goods, without any sale or exposure for sale, is not user of the mark (*j*). And even if all these conditions have been complied with, the old user only gives a right to registration in respect of the goods with relation to which the old user existed, and not to registration as an old mark in respect of any other goods (*k*).

"Special and distinctive."

As to the requirement that the word or words shall be "special

(*a*) *Leonard & Ellis* v. *Wells & Co.*, 26 Ch. D. 288; *In re Harrison, McGregor & Co.*, 42 Ch. D. 691; *Richards* v. *Butcher* (2), (1891) 2 Ch. 522; *In re Powell* (2), (1893) 2 Ch. 388; (1894) A. C. 8.

(*b*) *In re Palmer* (3), 24 Ch. D. 504; *In re Royal Baking Powder Co.*, W. N. 1880, p. 49; *In re Hayward & Sons*, 54 L. J. Ch. 1003; *In re Chorlton & Dugdale*, 53 L. T. N. S. 337; *In re Perry Davis & Son*, 15 App. Cas. 316; *In re Grossmith*, 6 P. R. 180; *In re Dunn*, 41 Ch. D. 439; *In re Apollinaris Co.*, (1891) 2 Ch. 186; *In re Kinahan*, 10 Pr. 393; *In re Powell* (2), (1893) 2 Ch. 388; (1894) A. C. 8. The same rule applies to a device claimed as an old mark; *Baker* v. *Rawson*, 45 Ch. D. 519, 528, 532; *In re Fuente*, (1891) 2 Ch. 166.

(*c*) *In re Spencer*, 54 L. T. N. S. 659; *Richards* v. *Butcher* (2), (1891) 2 Ch. 522.

(*d*) *In re Palmer* (3), 24 Ch. D. 504; *In re Chorlton & Dugdale*, 53 L. T. N. S. 337; *In re Perry Davis & Son*, 5 P. R. 333; 15 App. Cas. 316; *Thompson* v. *Montgomery*, 41 Ch. D. 35; (1891) A. C. 217.

(*e*) *Jay* v. *Ladler*, 40 Ch. D. 649. And see *Richards* v. *Butcher* (2), (1891) 2 Ch. 522.

(*f*) *In re Chorlton & Dugdale*, 53 L. T. N. S. 337.

(*g*) *In re Hodson & Co.*, 26 Sol. J. 43.

(*h*) *In re Münch*, 50 L. T. N. S. 12; *In re Riviere & Co.*, 26 Ch. D. 48; *Leonard & Ellis* v. *Wells & Co.*, 26 Ch. D. 288 (*per* Fry, L. J.); *Berliner Brauerei Gesellschaft Tivoli* v. *Knight, Stocks & Co.*, W. N. 1883, p. 70; *Jackson & Co.* v. *Napper*, 35 Ch. D. 162; *Smith* v. *Fair*, 14 Ont. Rep. 729. But see *In re Eastman*, W. N. 1880, p. 128.

(*i*) *Richards* v. *Butcher* (2), (1891) 2 Ch. 522, 532.

(*j*) *Jackson & Co.* v. *Napper*, 35 Ch. D. 162; *Newman* v. *Pinto*, 4 P. R. 508 (*per* Kekewich, J.); *In re Meeus*, (1891) 1 Ch. 41.

(*k*) *In re Jelley, Son & Jones*, 51 L. J. Ch. 639; *Edwards* v. *Dennis*, 30 Ch. D. 454. And see *per* Pearson, J., in *In re Lyndon*, 32 Ch. D. 109; and *Phillips* v. *Ogden*, 12 P. R. 325, 331.

and distinctive," it has been said by an Irish judge (*a*) that "special" means that the words must not ordinarily be applied to goods of the class in respect of which they are used, and that "distinctive" means that they must be suitable for distinguishing the particular goods as to which they are used from other goods of the same class. And in *Wood* v. *Lambert* (*b*), Fry, L. J., said: "It appears to me that to satisfy the requirements of the definition (*c*), the word or words must be distinctive in this sense, that they distinguish the manufacture of the person who has registered the trade mark from the manufacture of all other persons. I say 'manufacture,' but of course there may be cases in which they distinguish, not the manufacture, but the selection, or some other operation upon the goods. But in all cases the word or words must distinguish the product of the person claiming the trade mark from the product of all other persons, and it appears to me that it must have that distinctive character at the time of the registration" (*d*). And in the same case Lindley, L. J., said, "What is meant by a 'distinctive' trade mark? It must mean some mark which distinguishes the goods to which it is attached as those made or sold by the person who uses the mark." So in *In re Perry Davis & Son* (*e*), Lopes, L. J., stated that "the authorities are clear to show that it" (*i.e.*, a word claimed as an old mark) "must be a word distinguishing the article manufactured by one person from a similar article manufactured by another person, and not a word that is merely descriptive of the article itself" (*f*); and in the same case Lord Halsbury said in the House of Lords (*g*), "The word 'distinctive' means distinguishing a particular person's goods from somebody else's goods—not a quality attributed to the particular article, but distinctive in that respect—that it means that it is a manufacture of his as distinguished from somebody else's. The manufacture may or may not be new, but that is the sort of distinction contemplated by the statute."

(*a*) Chatterton, V.-C. of I., in *Bodega Co., Ld.* v. *Owens*, 6 P. R. 236.

(*b*) 32 Ch. D. 247.

(*c*) The definition there referred to is that contained in the Trade Marks Act, 1875, § 10 (3), with which, for this purpose, the present words are identical.

(*d*) This definition, Fry, L. J., repeated in substance in *In re Perry Davis & Son*, 5 P. R. 333. And see *Barlow & Jones, Ld.* v. *Johnson & Co.*, 7 P. R. 395, 400.

(*e*) 5 P. R. 333.

(*f*) And see *per* Fry, L. J., in *Waterman* v. *Ayres*, 39 Ch. D. 29; *Richards* v. *Butcher* (2), (1891) 2 Ch. 522; *In re Hopkinson*, (1892) 2 Ch. 116; *In re Magnolia Metal Co.*, (1897) 2 Ch. 371.

(*g*) 15 App. Cas. 316, 320.

Wood v. *Lambert.*

In *Wood* v. *Lambert* (*a*) the word "Eton," which was registered as a trade mark by the plaintiffs, had been habitually used by them in conjunction with names of imaginary firms; and the Court of Appeal held that such user had destroyed whatever distinctiveness the word might otherwise have possessed. Fry, L. J., in whose views the other Lords Justices concurred, laid down that "when a person uses a name and represents that name to be applicable to the product of a manufacturer or manufacturers other than himself, so as to induce the belief that the goods are the manufacture of that third person or persons, he cannot say that the word is distinctive of his own manufacture. Nor do I think that that principle applies the less because the plaintiff may be false in the assertion that there is any such firm or firms as the manufacturer represents. He who has made the goods has taken upon himself to represent two things: in the first place, that they are not his manufacture, but somebody else's; in the second place, that a firm exists which does not exist at all."

Leniency of Courts.

In the majority of the cases in which the validity and right to registration of a word claimed as an old mark have been considered, the question has turned on the user or non-user as a trade mark before the 13th of August, 1875; but when the question has turned on the words being distinctive or otherwise, the Courts have shown themselves far more leniently disposed than in the case of "fancy words," and words which must have been refused registration as "fancy words" have been recognised as registrable in the character of "special and distinctive words" (*b*). In fact, in some of these cases the words have been so far descriptive as to cause a reasonable doubt whether the leniency shown was not excessive.

(*a*) 32 Ch. D. 247.

(*b*) The following words have been recognised as special and distinctive words: *Reinhardt* v. *Spalding*, 49 L. J. Ch. 57 ("Family Salve"); *Talbot* v. *Webley*, 3 P. R. 276 ("Baffle" stoves); *Leonard & Ellis* v. *Wells & Co.*, 26 Ch. D. 288 ("Valvoline" oil); (but compare *In re Horsburgh*, 53 L. J. Ch. 237); *In re Eastman*, W. N. 1880, p. 128 ("Kitchen Crystal Soap"); *Blair* v. *Stock*, 52 L. T. N. S. 123 ("Strathmore" whiskey); *Compania General de Tobacos* v. *Rehder & Co.*, 5 P. R. 61 ("Cavite" cigars); *Free Fishers and Dredgers of Whitstable* v. *Elliott*, W. N. 1888, p. 27 ("Whitstable native oysters"); *B. Edgington, Ld.* v. *J. Edgington & Co.*, 6 P. R. 513 ("Frigi Domo" canvas); and see *Evans* v. *Smith*, 3 Times L. R. 390 ("Montserrat" lime-juice); *In re Grossmith*, 6 P. R. 180 ("Emollio" toilet cream); *Thompson* v. *Montgomery*, 41 Ch. D. 35 ("Stone Ales"). In *In re Perry Davis & Son*, 58 L. T. N. S. 695; 15 App. Cas. 315, the term "Pain-Killer" medicines seems to have been thought too descriptive, though there were other reasons for invalidating the trade mark.

Although there may be questions as to the application of the principle in particular cases, there can be no doubt that, as was clearly laid down in *Wood* v. *Lambert* (*a*), descriptiveness is fatal to a word claimed as an old trade mark, though it will not be invalidated for such a mere suggestion or suspicion of descriptiveness as has in some instances proved fatal to words claimed as "fancy words" (*b*). The intention of the proviso admitting old word marks to registration is evidently to give protection to words used as trade marks, and which would have been protected as such before the first Trade Marks Registration Act; and it may probably be said that words which would have been recognised as trade marks before 1875 will now be recognised as coming within the statutory proviso in favour of old marks. "The Legislature in the Act of 1875 did no more than adopt the language of the cases, by reducing them into a compressed form, and say really that what the Court would have held to be a trade mark independently of the Act should now be capable of registration as a trade mark under the Act, provided only that the mark had been used as a trade mark before the passing of the Act" (*c*).

Descriptiveness fatal.

When, however, a word is purely descriptive, that is to say, when it expresses accurately and appropriately the material or mode of composition of the goods to which it is affixed, then, unless the exclusive manufacture of such goods is protected by a patent, and the same result cannot be attained without infringement of the patent, all the world has the right to make and sell such goods; and further, when the goods are manufactured and in course of sale, the vendor not only has the right, but is in duty bound to describe them, for the proper information and protection of the public, in such manner as will convey the most correct idea. Hence the original maker can claim no exclusive right in the properly descriptive name; nor would it be in accordance with the principles of equity that he should be able to do so, for, as was well said by Mr. Justice Strong, in the Supreme Court of the United States (*d*), "Equity will not enjoin against telling the truth."

Descriptive words.

(*a*) 32 Ch. D. 247.

(*b*) *E.g.*, in *Waterman* v. *Ayres*, 39 Ch. D. 29; *In re Sanitas Co., Ld.*, 4 P. R. 533; *Burland & Co.* v. *Broxburn Oil Co., Ld.* (2), 42 Ch. D. 274; *In re Vignier*, 6 P. R. 490; *Stuart & Co.* v. *Scottish Val de Travers Paving Co., Ld.*, Ct. Sess. Cas. 4th Ser. XIII. 1.

(*c*) *In re Hopkinson*, (1892) 2 Ch. 116, *per* Kekewich, J.

(*d*) *Canal Co.* v. *Clark*, 80 U. S. 311; cf. *Reddaway* v. *Banham*, (1896) A. C. 199, 212.

Young v. *Macrae.*

The reasoning of Wood, V.-C., in *Young* v. *Macrae* (*a*), affords a good example of the just way of considering cases of this description. In that case the plaintiffs, who held a patent for manufacturing a kind of oil which they called "Paraffin oil," filed a bill against the defendant, who sold a substance which he styled "Kerosene oil," or "American Paraffin oil." The case coming on on motion for injunction, the Vice-Chancellor said, "In the patent the process is described as 'a distillation of coal so as to obtain oil containing paraffin, and from this oil I obtain paraffin.' So he calls it paraffin oil because it contains paraffin. Here is a well-known substance called 'paraffin.' A chemist discovers that by the same process by which paraffin is produced, an oil containing paraffin, and from which paraffin can again be produced, is obtainable. Therefore, it being an oil containing paraffin, and producing paraffin, he calls it 'paraffin oil.' It is not a fanciful or whimsical name, but it describes the thing which he has produced. A man cannot take out a patent for a natural substance, but he can take out a patent for arriving at that natural substance, and he may christen it, putting aside all other people having called it by that name." The Vice-Chancellor then put the case of a man extracting sugar from beet-root by a patented process, and calling the extract "beet-root sugar" for a period of ten years. In such a case, when beet-root sugar was asked for, it would be known that his was meant, because he was the only man who made it. "The name," the Vice-Chancellor said, "does not become a trade mark, but it gets fixed to his sugar simply because nobody else could make it. Then, suppose that another man found out another method of making sugar from beet-root, and so extracted it, not wanting to patent it, and described it as 'beet-root sugar,' may he not call it 'beet-root sugar' because the other gentleman for ten years has been the manufacturer of it, and sold it as such? I think the question of the fancifulness of the name is a question whether it is taken by way of trade mark or not. All he (*i.e.*, the plaintiff) has done here is this: he has found out an article which is a natural product, and he has given that natural product a name. . . . This is not like the case of the 'Medicated Mexican Balm,' which is a name extravagantly ridiculous. I therefore should not assume *mala fides* against a person who calls the thing

(*a*) 9 Jur. N. S. 322.

what it is. It is paraffin and it is oil, therefore paraffin oil. There is paraffin in it, and paraffin to be obtained from it, and it is American." Injunction refused.

In a later case (a) the same Vice-Chancellor referred to the above case of *Young* v. *Macrae* (b), and remarked that "if the evidence had gone to show that the plaintiff had been the first to apply the name 'paraffin' to the oil, he would have granted an injunction (c); but that he had there had it proved that the name 'paraffin oil' had long been known as the scientific name of the article, and that the defendant could not well have called it anything else."

Name becomes *publici juris*.

Again, a word which was first applied to, or was even invented for the sole and express purpose of designating a substance or composition may prove, on investigation, to have ceased to retain the characteristic, which it once possessed, of conveying the idea of the goods being of a particular manufacture; in which case the person who first used the word, though its inventor, will cease to have any exclusive rights in it, since it will have become purely descriptive of an article which all may freely make (d). The name thus becomes *publici juris*, and not only can be, but ought to be, employed by all who manufacture and sell an article which they are at perfect liberty to manufacture and sell, and of which the name in question is generally recognized as the appropriate designation. This point is well stated by Lord Selborne, C.,

(a) *Braham* v. *Bustard*, 1 H. & M. 447. See also the remarks on *Young* v. *Macrae*, in *Reddaway* v. *Banham*, (1896) A. C. 199, in the House of Lords. See also *Powell* v. *Birmingham Brewery Co.*, (1896) 2 Ch. 54; (1897) A. C. 710; *Rockingham Rail. Co.* v. *Allen*, 12 Times L. R. 345; *Parsons* v. *Gillespie*, 15 P. R. 57; *Daniel* v. *Whitehouse*, (1898) 1 Ch. 685.

(b) 9 Jur. N. S. 322.

(c) So in *Eno* v. *Stephens*, Dig. 609, the term "Fruit Salt" was protected at the instance of the person who was the first to use it. And see *In re Dunn*, 41 Ch. D. 439; 15 App. Cas. 252; also *Siegert* v. *Findlater*, 7 Ch. D. 801; *Linoleum Manufacturing Co.* v. *Nairn*, 7 Ch. D. 834; *Grezier* v. *Autran*, 13 P. R. 1; *In re Bovril Trade Mark*, (1896) 2 Ch. 600; *Powell* v. *Birmingham Vinegar Brewery C* (1896) 2 Ch. 54; (1897) A. C. 710; *Rockingham Rail. Co.* v. *Allen*, 12 Times L. R. 345; *Parsons* v. *Gillespie*, 15 P. R. 57; *Daniel* v. *Whitehouse*, (1898) 1 Ch. 685; *Canal Co.* v. *Clark*, 80 U. S. 311; and *Schendel* v. *Silver*, 70 N. Y. Sup. Ct. 330, as to a name which is appropriated to an article.

(d) *E.g.*, "Worcestershire Sauce"—*Lea* v. *Millar*, Dig. 513; *Lea* v. *Deakin*, 11 Biss. 23; "Gem" air-guns, *In re Arbenz*, 35 Ch. D. 248; "Maizena," *National Starch Manufacturing Co.* v. *Munn's Patent Maizena and Starch Co.*, (1894) A. C. 275; "Magnolia" Metal, *Magnolia Metal Co.* v. *Atlas Metal Co.*, 14 P.R. 389; "Winser" (Sewer-trap) Interceptors, *Winser & Co., Ld.* v. *Armstrong & Co.*, 16 P. R. 167; "Neva Stearine" candles, *Neva Stearine Co.* v. *Mowling*, 9 V. L. R. Eq. 98; "Calhoun Plough," *In re Hall & Co.*, 13 U. S. Pat. Gaz. 229; "Holbrook's School Apparatus," *Sherwood* v. *Andrews*, 3 Am. L. Reg. N. S. 588; "Dr. Ward's Liniment," *Watkins* v. *Landon*, 52 Minn. 389; 38 Am. St. Rep. 560.

in *Singer Manufacturing Co.* v. *Loog* (3) (*a*), where he says, "The reputation acquired by machines of a particular form or construction is one thing; the reputation of the plaintiffs, as manufacturers, is another. If the defendant has no right under colour of the former to invade the latter, neither have the plaintiffs any right under colour of the latter to claim (in effect) a monopoly of the former. If the defendant has a right to make and sell, in competition with the plaintiffs, articles similar in form and construction to those made and sold by the plaintiffs, he must also have a right to say that he does so, and to employ for that purpose the terminology common in his trade, provided always that he does this in a fair, distinct and unequivocal way."

Effect of registration.

The registration as a trade mark of a name of this description will somewhat complicate the question, as registration of a trade mark is *primâ facie* evidence, and, after five years' registration, conclusive evidence of the right of the registered owner to the exclusive use of such trade mark (*b*); but the wording of the Act is entirely directed to the registration of "a trade mark," the exclusive use of "a trade mark," &c., and since a name which has become *publici juris*, whether registered or not, cannot be a "trade mark" within the definition section of the Act, because it contains nothing distinctive, it seems that, at all events within the five years, this enactment does not preclude a defence on the ground that the name so registered is in fact no trade mark, and was registered, or is continued on the register, by error. However, whether that be so or not, it has been repeatedly decided that five years' registration cannot protect a mark which has been registered as a trade mark, but is invalid by reason of its being descriptive or otherwise, from being removed from the register (*c*); and the remarks of Mellish, L. J., in *Ford* v. *Foster* (*d*), appear to be equally applicable since the Act as before it. "There is no doubt,

(*a*) 8 App. Cas. 27; and see *per* Mellish, L. J., in *Singer Manufacturing Co.* v. *Wilson*, 2 Ch. D. 434, 456. See also *Winser & Co., Ld.* v. *Armstrong & Co.*, 16 P. R. 167.

(*b*) Patents Act, 1883, § 76.

(*c*) *In re Palmer* (1) and (3), 21 Ch. D. 47; 24 *ib.* 504; *In re Lloyd & Sons*, 27 Ch. D. 646; *Edwards* v. *Dennis*, 30 Ch. D. 454; *In re Wragg*, 29 Ch. D. 551; *Wood* v. *Lambert*, 32 Ch. D. 247; *In re Spencer*, 54 L. T. N. S. 659; *In re Apollinaris Co.*, (1891) 2 Ch. 186; *Richards* v. *Butcher* (2), (1891) 2 Ch. 522. And it has been so held also in Victoria: *Lewis* v. *Klapproth*, 11 V. L. R. 214; *Wolfe* v. *Alsop* (2), 12 V. L. R. 421; *Wolfe* v. *Lang & Co.*, 13 V. L. R. 752. The wisest course to take in such a case is no doubt to apply to rectify the register by the removal of the offending mark—*e.g. Leonard & Ellis* v. *Wells & Co.*, 26 Ch. D. 288.

(*d*) L. R. 7 Ch. 611.

I think, that a word which was originally a trade mark, to the exclusive use of which a particular trader, or his successor in trade, may have been entitled, may subsequently become *publici juris*, as in the case which has been instanced of Harvey's Sauce (*a*). Then, what is the test by which a decision is to be arrived at whether a word which was originally a trade mark has become *publici juris*? I think the test must be, whether the use of it by other persons is still calculated to deceive the public, whether it may still have the effect of inducing the public to buy goods not made by the original owner of the trade mark as if they were his goods. If the mark has come to be so public and in such universal use that nobody can be deceived by the use of it, or can be induced from the use of it to believe that he is buying the goods of the original trader, it appears to me, however hard to some extent it may appear on the trader, yet practically, as the right to a trade mark is simply a right to prevent a trader from being cheated by other persons' goods being sold as his goods through the fraudulent use of the trade mark, the right to the trade mark must be gone" (*b*).

The three-mark rule. When the Trade Marks Registration Act, 1875, first came into operation, it was found that in many trades application was made by two or more traders for the registration of substantially identical marks—the fact being that the marks had not previously come into collision on account of their being used in different parts of the country—without any suspicion of want of *bona fides* on the part of any of the rival applicants. If the strict letter of the Act and Rules had been adhered to, much injustice would have been done to the later applicants, whose applications must have been refused; and the Commissioners of Patents therefore framed the rule that identical or similar *old* marks—*i.e.*, marks used before the 13th August, 1875—might be registered by different persons in the same trade up to the number of three, but not more; the rule providing that if the mark had been used *bonâ fide* by more than three persons it must be treated as common to the trade, and no registration at all be allowed. This rule was recognised by Courts

(*a*) With respect to this example, an injunction was granted by Sir J. Romilly, M.R., in 1858, to restrain a representation that the defendant's sauce was that of the inventor's successor in business. See *Lazenby* v. *Lazenby*, Dig. 160. But in *Lazenby* v. *White*, 41 L. J. Ch. 354, it was admitted that the name was common to the trade.

(*b*) For instances of marks proved to be common to particular trades, see note (*c*) to § 74 of the Patents Act, 1883, *infra*.

of First Instance in numerous cases (*a*); and in one case (*b*) three substantially identical marks, of which two were old and one was new, and in another case (*c*) three substantially identical *new* marks, were allowed to be registered for the same goods by different traders with consent of all the parties concerned. A provision derived from this rule is now to be found in § 74 of the Patents Act, 1883, by which it is enacted that any device which was before August 13th, 1875, publicly used by more than three persons on the same or a similar description of goods shall, for the purposes of the section (*i.e.*, for the purpose of registration as an addition to a trade mark, exclusive rights therein being disclaimed) be deemed common to the trade in such goods (*d*).

Name indicative of a principle of construction.

In the majority of cases in which the question has been raised whether a word was descriptive of the article to which it was applied, or distinctive of the maker by whom that article was made, the question has been whether the word, according to the ordinary usage of the English language, indicated correctly the nature or origin of the article. Thus, "Porous Plasters" (*e*), "Croup Tincture" (*f*), and so on. But in a considerable number of instances the question has been whether a word, which had no descriptive signification to persons unacquainted with the particular trade, did or did not indicate to persons versed in the trade an article prepared according to a definite process, or a machine constructed on a definite principle, the rule being that if the word indicates such a process or principle it is descriptive and incapable of exclusive appropriation.

Articles made according to a patented process.

This difficulty has especially arisen with respect to articles made under a patent, which can only be made by the patentee during the existence of the patent, and to which, consequently, his name or some other special name usually becomes attached. "Where a patented article is known in the market by any specific designation,

(*a*) *In re Walkden Co.*, 54 L. J. Ch. 394; *In re Powell* (1), Dig. 589; *In re Hyde & Co.*, 54 L. J. Ch. 395; *In re Leonardt*, Dig. 610; *In re Mitchell* (2), Dig. 611; *In re Jelley, Son & Jones*, 51 L. J. Ch. 639; *Ex parte Sales, Pollard & Co.*, Dig. 620; *In re Kuhn & Co.*, 53 L. J. Ch. 238; *In re Brook*, 26 W. R. 791; *In re Hodson & Co.*, 26 Sol. J. 43; *Benbow* v. *Low* (4), 44 L. T. N. S. 875; *In re Sone & Fleming Manufacturing Co.*, 30 Ch. D. 505; *Jackson & Co.* v. *Napper*, 35 Ch. D. 162; *In re Bancroft & Co.*, 5 P. R. 209.

(*b*) *In re Walkden Co.*, 54 L. J. Ch. 394.

(*c*) *In re Vergaras*, Hall, V.-C., June 3rd, 1881.

(*d*) Common user is not proved by the books containing applications for registration: *Orr-Ewing & Co.* v. *Johnston & Co.*, 13 Ch. D. 434; 7 App. Cas. 219.

(*e*) *In re Brandreth*, Dig. 626.

(*f*) *In re Roach*, 10 U. S. Pat. Gaz. 333.

whether of the name of the patentee or otherwise, every person at the expiration of the patent has a right to manufacture and vend the same under the designation thereof by which it was known to the public. . . . . The original patentee or his assignees have no right to the exclusive use of the designation as a trade mark. Their rights were under the patent, and expired with it" (*a*).

The sewing-machine cases.

Thus, in the case of *Wheeler & Wilson Manufacturing Co.* v. *Shakespeare* (*b*), James, V.-C., and in that of *Singer Manufacturing Co.* v. *Wilson* (*c*), Jessel, M. R. (affirmed by the Court of Appeal), refused to assist an attempt at continuing the monopoly in sewing machines which had been patented, after the expiration of the patent, by a claim to the exclusive use, by way of trade mark, of the name by which the peculiar principle of construction had come to be generally known. In the latter case the House of Lords declined to decide whether the name "Singer" was indicative of a maker or of a principle of construction, the defendant's evidence being incomplete; but it was assumed that if the latter had been proved, the defendant would have succeeded (*d*), and that result actually took place in *Singer Manufacturing Co.* v. *Loog* (3) (*e*). So in America, in *Singer Manufacturing Co.* v.

(*a*) *Per* Treat, J., in *Singer Manufacturing Co.* v. *Stanage*, 2 McCrary, 512. And see *Edelsten* v. *Vick*, 11 Hare, 78; *Young* v. *Macrae*, 9 Jur. N. S. 322; *Green* v. *Rooke*, W. N. 1872, p. 49; *Liebig's Extract of Meat Co.* v. *Hanbury*, 17 L. T. N. S. 298; *Same* v. *Anderson*, W. N. 1883, p. 185; *Lazenby* v. *White*, 41 L. J. Ch. 354; *Condy* v. *Mitchell*, 37 L. T. N. S. 766; *James* v. *James*, L. R. 13 Eq. 421; *Cheavin* v. *Walker*, 5 Ch. D. 850; *Massam* v. *Thorley's Cattle Food Co.* (1), 6 Ch. D. 574; *Siegert* v. *Findlater*, 7 Ch. D. 801; *Linoleum Manufacturing Co.* v. *Nairn*, 7 Ch. D. 834; *In re Ralph*, 25 Ch. D. 194; *In re Leonard & Ellis*, 26 Ch. D. 288, *per* Cotton, L. J.; *Native Guano Co., Ld.* v. *Sewage Manure Co.*, 8 P. R. 125; *Barlow & Jones, Ld.* v. *Johnson & Co.*, 7 P. R. 395, 400; *Magnolia Metal Co.* v. *Atlas Metal Co.*, 14 P. R. 289; *In re Davis*, 14 P. R. 903; *Meaby & Co.* v. *Triticine, Ld.*, 15 P. R. 1; *Magnolia Metal Co.* v. *Tandem Smelting Co.*, 15 P. R. 701; *In re Richardson*, 3 U. S. Pat. Gaz. 120; *Tucker Manufacturing Co.* v. *Boyington*, 9 U. S. Pat. Gaz. 455; *Canal Co.* v. *Clark*, 80 U. S. 323, *per* Strong, J.; *In re Kane & Co.*, 9 U. S. Pat. Gaz. 105; *In re Consolidated Fruit Jar Co.*, 14 U. S. Pat. Gaz. 269; *Ex parte Consolidated Fruit Jar Co.*, 16 *ib.* 679; *Fairbanks* v. *Jacobus*, 14 Bl. C. C. 337; *Burton* v. *Stratton*, 12 Fed. Rep. 696; *Green* v. *Woodhouse*, 38 U. S. Pat. Gaz. 1491; *Gally* v. *Colt's Patent Fire Arms Manufacturing Co.*, 30 Fed. Rep. 118; *Goodyear Rubber Co.* v. *Goodyear India Rubber Glove Manufacturing Co.*, 128 U. S. 598; *Adee* v. *Peck Bros. & Co.*, 48 U. S. Pat. Gaz. 823; *Leclanche Battery Co.* v. *Western Electric Co.*, 21 Fed. Rep. 538; *Goodyear Rubber Co.* v. *Day*, 22 Fed. Rep. 44; *Hiram Holt Co.* v. *Wadsworth*, 41 Fed. Rep. 34; *Coats* v. *Merrick Thread Co.*, 149 U. S. 562; *Chadwick* v. *Covell*, 151 Mass. 190; *Dover Stamping Co.* v. *Fellows*, 163 Mass. 191; *Air Brush Manufacturing Co.* v. *Thayer*, 79 U. S. Pat. Gaz. 683; *Centaur Co.* v. *Heinsfurter*, 84 Fed. Rep. 955. See *In re Eastman*, W. N. 1886, p. 128, in which registration was granted to a name which had been used for soap made under a patent. See also *Waterman* v. *Shipman*, 130 N. Y. 301.

(*b*) 39 L. J. Ch. 36.

(*c*) 2 Ch. D. 434.

(*d*) 3 App. Cas. 376.

(*e*) 8 *ib.* 15.

Larsen (a), *Singer Manufacturing Co.* v. *Stanage* (b), *Singer Manufacturing Co.* v. *Riley* (c), and *Brill* v. *Singer Manufacturing Co.* (d), though in the earlier Scotch case of *Singer Manufacturing Co.* v. *Kimball & Morton* (e), the decision was in favour of the company; and in the recent case of *Singer Manufacturing Co.* v. *Spence* (f), it was held, distinguishing *Singer Manufacturing Co.* v. *Loog* (g), that in the absence of any context the word "Singer" or "Singer's," as applied to sewing machines, *primâ facie* denoted to the public a machine of the company's manufacture, and an injunction was granted.

Where, during the continuance of a patent granted to one Foley the defendants had made articles in accordance with the patent and called them "Foley's Patent Valves," it was held in America that they had infringed the patent, but not any trade mark rights (h).

And it has further been decided in America that a patented instrument for distinguishing a manufacturer's goods—*e.g.*, a special tin tag or ticket—cannot be recognised as a trade mark during the continuance of the patent (i), and that the special shape of an article made under a patent is similarly incapable of individual appropriation (j).

New name for new article.

And even where no patent is obtained, "it is to be observed that the person who produces a new article, and is the sole maker of it, has the greatest difficulty (if it is not an impossibility) in claiming the name of that article as his own, because, until somebody else produces the same article, there is nothing to distinguish it from" (k). Thus it was held by the Court of Appeal that a firm who invented a new description of oil, and called it "Valvo-

(a) 8 Biss. 181.
(b) 2 McCrary, 512.
(c) 11 Fed. Rep. 706.
(d) 41 Ohio St. 127.
(e) Ct. Sess. Cas. 3rd Ser. XI. 267.
(f) 10 P. R. 297. And see *Singer Manufacturing Co.* v. *June Manufacturing Co.*, 75 U. S. Pat. Gaz. 1703; and *Singer Manufacturing Co.* v. *Bent*, 75 U. S. Pat. Gaz. 1713.
(g) 8 App. Cas. 376.
(h) *Adee* v. *Peck Bros. & Co.*, 48 U. S. Pat. Gaz. 823.
(i) *Lorillard* v. *Pride*, 28 Fed. Rep. 434.
(j) *Wilcox & Gibbs Sewing Machine Co.* v. *Gibbon's Frame*, 21 Bl. C. C. 431; *Brill* v. *Singer Manufacturing Co.*, 41 Ohio St. 127.
(k) *Per* Fry, J., in *Siegert* v. *Findlater*, 7 Ch. D. 801. And see *Linoleum Manufacturing Co.* v. *Nairn*, *ib.* 834; *Waterman* v. *Ayres*, 39 Ch. D. 29; *Barlow & Jones, Ld.* v. *Johnson & Co.*, 7 P. R. 395, 400; *Winser & Co., Ld.* v. *Armstrong & Co.*, 16 P. R. 167. So also in United States: *Leclanche Battery Co.* v. *Western Electric Co.*, 21 Fed. Rep. 538; *Dadirrian* v. *Yacubian*, 72 Fed. Rep. 1010; *Dadirrian* v. *Theodorian*, 74 U. S. Pat. Gaz. 1902; and in New Zealand: *Marshall* v. *Hawkins*, 4 N. Z. L. R. Sup. Ct. 59.

line." had no right of trade mark in the word (*a*); and so where the word "Albion" had been used to indicate metal goods of a particular pattern, and not to indicate a particular manufacturer (*b*). But where the article is not a new article, but only an improved form of an old article, the same considerations do not apply (*c*). The law has been thus summed up by Lord Justice Rigby, delivering the judgment of the Court of Appeal, in the recent case of *In re Magnolia Metal Co.* (*d*): "When the article is made under a secret process or its manufacture is protected by a patent, no person who has not acquired the secret or obtained a licence from the patentee can manufacture it. Accordingly, it is established as a general rule that, when an article is made under a secret process, or when the manufacturer of it is protected by a patent, the manufacturer or patentee cannot, by any means, entitle himself to a monopoly in the use, after the secret process has been discovered or the term of the patent has expired, of the name by which the manufactured article is exclusively known whilst the secret is undiscovered, or the term of the patent is unexpired."

Actual fraud.

This rule, however, will of course not enable rival traders after the expiration of the patent, or the discovery of the secret, to represent their goods as the goods of the original manufacturer, and the Court will, in the exercise of its general jurisdiction for the repression of fraud, award an injunction or damages in a case of fraud in which, but for the fraud, no remedy would have been given. Thus, for instance, in a case in which the infringer might have taken with impunity the name of an article invented by another, but, not content with so doing, described his own manufacture as "the original" article, he was restrained by injunction from the use of that misleading epithet (*e*).

Name merely

The general principle, however, is that where a name used by

(*a*) *In re Leonard & Ellis*, 26 Ch. D. 288. See *Leonard & Ellis* v. *White's Golden Lubricator Co.*, 48 U. S. Pat. Gaz. 1401.

(*b*) *In re Harrison, M'Gregor & Co.*, 42 Ch. D. 691. And see *Magnolia Metal Co.* v. *Atlas Metal Co.*, 14 P. R. 389.

(*c*) *Barlow & Jones, Ld.* v. *Johnson & Co.*, 7 P. R. 395, 403.

(*d*) (1897) 2 Ch. 371, 391.

(*e*) *Cocks* v. *Chandler*, L. R. 11 Eq. 446. And see *Reddaway* v. *Banham*, (1896) A. C. 199; *Powell* v. *Birmingham Vinegar Brewery Co.*, (1896) 2 Ch. 54; (1897) A. C. 710; *Frost* v. *Rindskopf*, 42 Fed. Rep. 408; *Merriam* v. *Famous Shoe & Clothing Co.*, 47 Fed. Rep. 411; *Merriam* v. *Texas Siftings Publishing Co.*, 49 Fed. Rep. 944; *Merriam* v. *Holloway Publishing Co.*, 43 Fed. Rep. 450; *Singer Manufacturing Co.* v. *June Manufacturing Co.*, 75 U. S. Pat. Gaz. 1703; *Singer Manufacturing Co.* v. *Bent*, 75 U. S. Pat. Gaz. 1713. The presumption of fraud may, however, be refuted, as by a fair statement of the maker's own name; *Browne* v. *Freeman*, 12 W. R. 305.

descriptive cannot be protected.

way of a trade mark either was originally, or has since come to be, merely descriptive of the article to which it is attached, so that while serving to indicate what the article is, it does not serve to connect it with any particular manufacturer or manufacturing establishment, that name cannot be protected as a trade mark (*a*)

Descriptive words.

(*a*) The following are cases in which words have been held to be descriptive:—*Thomson* v. *Winchester*, 36 Mass. 214 ("Thomsonian Medicines"); *Fetridge* v. *Wells*, R. Cox, 180 ("Balm of Thousand Flowers"); *Wolfe* v. *Goulard*, 18 How. Pr. 64 ("Schiedam Schnapps"); *Burke* v. *Cassin*, 45 Cal. 467 (do.); *Wolfe* v. *Hart*, 4 V. L. R. Eq. 125 (do.); *Wolfe* v. *Alsop* (1), 10 V. L. R. Eq. 41 (do.); (2) 12 V. L. R. 421 (do.); *Wolfe* v. *Lang & Co.*, 13 V. L. R. 752 (do.); *Corwin* v. *Daly*, 7 Bos. 222 ("Club House Gin"); *Young* v. *Macrae*, 9 Jur. N. S. 322 ("Paraffin Oil"); *Phalon* v. *Wright*, 5 Phila. 464 ("Extract of Night-Blooming Cereus"); *Binninger* v. *Wattles*, 28 How. Pr. 206 ("Old London Dock Gin"); *Liebig's Extract of Meat Co.* v. *Hanbury*, 17 L. T. N. S. 298 ("Liebig's Extract of Meat"); *Same* v. *Anderson*, W. N. 1883, p. 185 (do.); *Caswell* v. *Davis*, 58 N. Y. 223 ("Ferrophosphorated Elixir of Calisaya Bark"); *Town* v. *Stetson*, 4 Abb. Pr. N. S. 218 ("Desiccated Codfish"); *Canal Co.* v. *Clark*, 80 U. S. 311 ("Lackawanna" coal); *Choynski* v. *Cohen*, 39 Cal. 501 ("Antiquarian Book Store"); *Gray* v. *Koch*, 2 Mich. N. P. 119 ("Mammoth Wardrobe"); *In re Hauthaway* (1 and 2), U. S. Pat. Comm. Decis. 1871, 97, 284 ("Beeswax Oil"); *In re Roberts* (4), *ib.* 100 ("Razor Steel"); *In re Blakeslee & Co.*, *ib.* 284 ("Cundurango Ointment. C. O."); *Ex parte Palmer*, *ib.*, 289 ("Invisible Face Powder"); *Rowland* v. *Breidenbach*, Dig. 386 ("Macassar" oil); *James* v. *James*, L. R. 13 Eq. 421 ("Lieut. James' Horse Blister"); *Green* v. *Rooke*, W. N. 1872, p. 49 ("Golden Ointment"); *In re Johnson & Co.*, 2 U. S. Pat. Gaz. 315 ("Parsons' Purgative Pills, P. P. P." and "Johnson's American Anodyne Liniment, Established A.D. 1810"); *In re Graham*, 2 *ib.* 618 ("New Manny Harvester"); *In re Richardson*, 3 *ib.* 120 ("Richardson's Patent Union Leather-splitting Machine"); *In re The American Sardine Co.*, 3 *ib.* 495 ("American Sardines"); *Hardy* v. *Cutter*, 3 *ib.* 468 ("Old Bourbon" whiskey); *Tucker Manufacturing Co.* v. *Boyington*, 9 *ib.* 455 ("Tucker Spring Bed"); *Browne* v. *Freeman*, 12 W. R. 305 ("Chlorodyne"); *Bulloch, Lade & Co.* v. *Gray*, 19 Journ. of Jurisp. 218 ("Loch Katrine" whiskey); *Godillot* v. *Hazard*, 81 N. Y. 263 ("Julienne" soup); *In re Dick & Co.*, 9 U. S. Pat. Gaz. 538 ("Tasteless" drugs); *In re Lawrence & Co.*, 10 *ib.* 163 ("Für Familien Gebrauch," and "Lawrence Feiner Familien Flannel"); *In re Roach*, 10 *ib.* 333 ("Croup Tincture"); *Gilman* v. *Hunnewell*, 122 Mass. 139 ("Cough Remedy"); *In re Goodyear Rubber Co.*, 11 U. S. Pat. Gaz. 1062 ("Crack-proof" indiarubber); *In re Warburg & Co.*, 13 *ib.* 44 ("Cachemire Milano"); *Ayer* v. *Rushton*, 7 Daly, 9 ("Cherry Pectoral"); *Helmbold* v. *Helmbold Manufacturing Co.*, 53 How. Pr. 453 ("Highly Concentrated Compound Fluid Extract of Buchu"); *In re Dole Brothers*, 12 U. S. Pat. Gaz. 939 ("Egg Macaroni"); *Siegert* v. *Findlater*, 7 Ch. D. 801; and *Siegert* v. *Abbott*, 79 N. Y. Sup. Ct. 243 ("Angostura Bitters"); *In re Horsburgh*, 53 L. J. Ch. 237 ("Valvoline" oil); but see *Leonard & Ellis* v. *Wells & Co.*, 26 Ch. D. 288; *In re Rader & Co.*, 13 U. S. Pat. Gaz. 596 ("Ironstone" water-pipes); *In re Saunion & Co.*, Dig. 625 ("Anglo-Portugo" oysters); *In re Brandreth*, Dig. 626 ("Porous" plasters); *Ex parte Safety Powder Co.*, 16 U. S. Pat. Gaz. 136 ("Safety" powder); *Fairbanks* v. *Jacobus*, 14 Bl. C. C. 337 ("Fairbanks' Patent"); *Linoleum Manufacturing Co.* v. *Nairn*, 7 Ch. D. 834 ("Linoleum"); *Lazenby* v. *White*, 41 L. J. Ch. 354 ("Harvey's Sauce"); *Wotherspoon & Co.* v. *Gray & Co.*, Ct. Sess. Cas. 3rd Ser. II. 38 ("Victoria" lozenges); *Popham* v. *Wilcox*, 66 N. Y. 69 ("Prime Leaf" lard); *Sherwood* v. *Andrews*, 3 Amer. L. Reg. N. S. 588 ("Holbrook's School Apparatus"); *Alleghany Fertiliser Co.* v. *Woodside*, 1 Hughes, 115 ("Ammoniated Bone Superphosphate of Lime"); *Frese* v. *Bachof* (2), 14 Bl. C. C. 432 ("Hamburg" tea); *Ex parte Alden*, 15 U. S. Pat. Gaz. 389 ("Evaporated" articles of food); *Ex parte Marsching & Co.*, 15 *ib.* 294 ("French" paints); *Ex parte Cohn* (1), 16 *ib.* 680 ("Standard A" cigars); *Ex parte Cohn* (2), 16 *ib.* 680 ("Druggists' Sundries"

or registered as special and distinctive. The Act establishing registration "takes nothing away from anybody. It confers, upon certain conditions and under particular circumstances, rights which,

cigars); *Ex parte Smith* (2), 16 *ib.* 679 ("Medicated Prunes"); *Ex parte Thompson, Derby & Co.*, 16 *ib.* 137 ("Swing" scythe-sockets); *Ex parte Smith* (3), 16 *ib.* 764 ("Masonic" cigars); *Ex parte Waeferling*, 16 *ib.* 764 ("Granulated Dirt-killer Soap"); *Lamplough* v. *Beedzler*, C. A., Nov. 12th, 1880 ("Pyretic Saline"); *Day* v. *Neale*, Bacon, V.-C., May 24th, 1881 ("White Chemical Extract," "Brown Chemical Extract," "Red Paste," "Red Drench," "Gaseous Fluid," &c.); *In re Price's Patent Candle Co.*, 27 Ch. D. 681 ("National Sperm" candles); *In re Hudson*, 32 Ch. D. 311 ("Carbolic Acid Soap Powder"); *In re Atkins Filter & Engineering Co., Ld.*, 3 P. R. 164 ("The Sanitary Filter, easily cleaned"); *Native Guano Co., Ld.* v. *Sewage Manure Co.*, 8 P. R. 125 ("Native Guano"); *Schove* v. *Schmincke*, 33 Ch. D. 546 ("Castle Album"); *Watt* v. *O'Hanlon*, 4 P. R. 1 ("Old Innishowen" whiskey); *Symington & Co.* v. *Footman, Pretty & Co.*, 56 L. T. N. S. 696 ("Guaranteed Corset"); *In re Perry Davis & Son*, 5 P. R. 333; 15 App. Cas. 316 ("Pain-Killer" medicines); *In re Dunn*, 41 Ch. D. 439; 15 App. Cas. 252 ("Fruit Salt"); *In re Ralph*, 25 Ch. D. 194 ("The Home-washer"); *Roberts* v. *Sheldon*, 8 Biss. 398 ("Parabola"—eye needles); *Van Beil* v. *Prescott*, 82 N. Y. 630 ("Rye and Rock" liquor); *Marshall* v. *Pinkham*, 52 Wisc. 572 ("Old Dr. S. Marshall's Celebrated Liniment"); *Hostetter* v. *Adams*, 20 Bl., C. C. 326 ("Celebrated Stomach Bitters"); *Ex parte Brigham*, 20 *ib.* 891 ("Satin Polish" boots and shoes); *Ex parte Ams*, 23 *ib.* 344 ("Albany Beef"); *Ex parte Strasburger & Co.*, 20 *ib.* 155 ("Time-keeper" watches); *Ex parte Kipling*, 24 *ib.* 899 ("Cristalline" brilliants); *Electro-Silicon Co.* v. *Levy*, 59 How. Pr. 469 ("Silicon" polishing powder); *Hegeman & Co.* v. *Hegeman*, 8 Daly, 1 ("Hegeman's Ferrated Elixir of Bark, or Elixir of Calisaya Bark with Iron," "Hegeman's Compound Fluid Extract of Buchu," "Hegeman's, formerly Velpeau's, Celebrated Remedy for Diarrhœa"); *Goodyear Rubber Co.* v. *Goodyear Indiarubber Glove Manufacturing Co.*, 128 U. S. 598 ("Goodyear Rubber"); *Moxie Nerve Food Co.* v. ——, 43 U. S. Pat. Gaz. 888 ("Nerve Food"); *Kerry* v. *Les Sœurs de l'Asile de la Providence*, 2 St. Dig. 726 ("Syrup of Red Spruce Gum"); *McCall* v. *Theal*, 28 Grant Up. Can. Ch. 48 ("Bazaar Patterns" for clothing); *Montgomerie* v. *Donald & Co.*, Ct. Sess. Cas. 4th Ser. XI. 506 ("Water of Ayr" stone); *Stuart & Co.* v. *Scottish Val de Travers Paving Co., Ld.*, Ct. Sess. Cas. 4th Ser. XIII. 1 ("Granolithic" artificial stone); *Lewis* v. *Klapproth*, 11 V. L. R. 214 ("Borax Soap"); *Dreydoppel* v. *Young*, 14 Phila. 226 (do.); *Hop Bitters Manufacturing Co.* v. *Luke*, 10 V. L. R. (Eq.) 234 ("Hop Bitters," said to be no more distinguishing than "Olive Oil" or "Buttermilk"); *Hop Bitters Manufacturing Co.* v. *Wharton*, 10 V. L. R. (L.) 337 (do.); *Larrabee* v. *Lewis*, 67 Ga. 561 ("Snowflake" biscuits); *Eggers* v. *Hink*, 63 Cal. 445 ("Philadelphia Beer"); *Ball* v. *Siegel*, 116 Ill. 137 ("Health Preserving" corset); *Humphreys' Specific, &c. Co.* v. *Wenz*, 14 Fed. Rep. 250 ("Homœopathic Specifics"); *Carbolic Soap Co.* v. *Thompson*, 25 Fed. Rep. 625 ("Cresylic Ointment"); *Pratt Manufacturing Co.* v. *Astral Refining Co., Ld.*, 27 Fed. Rep. 493 ("Astral Oil"); *Alden* v. *Gross*, 25 Mo. App. 123 ("Fruit" vinegar); *Trask Fish Co.* v. *Wooster*, 28 Mo. App. 408 ("Selected Shore Mackerel"); *Rumford Chemical Works* v. *Muth*, 35 Fed. Rep. 524 ("Acid Phosphate"); *Colgan* v. *Danheim*, 35 Fed. Rep. 150 ("Toffy Tolu"); *Clotworthy* v. *Schapp*, 42 Fed. Rep. 62 ("Rose" vanilla); *New York & Rosendale Cement Co.* v. *Coplay Cement Co.*, 44 Fed. Rep. 277; 45 Fed. Rep. 212 ("Rosendale" cement); *Jaros Hygienic Underwear Co.* v. *Fleece Hygienic Underwear Co.*, 65 Fed. Rep. 424 ("Hygienic" underwear); *Bennett* v. *McKinley*, 65 Fed. Rep. 505; 26 U. S. App. 496 ("Instantaneous" preparation of tapioca); *California Fig Syrup Co.* v. *Putnam*, 66 Fed. Rep. 750; 69 Fed. Rep. 740; *California Fig Syrup Co.* v. *Stearns*, 67 Fed. Rep. 1008; 73 Fed. Rep. 812 ("Fig Syrup"); (cf. *Improved Fig Syrup Co.* v. *California Fig Syrup Co.*, 54 Fed. Rep. 175, and *California Fig Syrup Co.* v. *E. Worden & Co.*, 86 Fed. Rep. 212;) *Dadirrian* v. *Yacubian*, 72 Fed. Rep. 1010 ("Matzoon" milk food); cf. *Dadirrian* v. *Theodorian*, 74 U. S. Pat. Gaz. 1902; *Beadleston & Woerz* v. *Cooke Brewing Co.*, 74 Fed. Rep. 229 ("Imperial" beer); *Ex parte Brand Stove Co., Ld.*, 62

but for the Act of Parliament, would not be as clearly asserted, but it takes nothing away. Any man who has a right to a trade mark has his trade mark just the same after the passing of the Trade

U. S. Pat. Gaz. 588 ("Famous" stoves); *Ex parte Stokes*, 64 U. S. Pat. Gaz. 437 ("Splendid" flour); *Ex parte Grove*, 67 U. S. Pat. Gaz. 1447 ("Bromo"-quinine); (cf. *Keasbey* v. *Brooklyn Chemical Works*, 142 N. Y. 467;) *Alff* v. *Radam*, 77 Tex. 530; 19 Am. St. Rep. 792; and *Radam* v. *Capital Microbe Destroyer Co.*, 81 Tex. 122; 26 Am. St. Rep. 783 ("Microbe Killer"); *Gessler* v. *Grieb*, 80 Wisc. 21; 27 Am. St. Rep. 20 ("Headache Wafers"); *Corbin* v. *Gould*, 133 U. S. 308 ("Tycoon" tea); *Brown Chemical Co.* v. *Meyer*, 139 U. S. 540 ("Iron bitters"); *Stuart* v. *F. G. Stewart Co.*, 85 Fed. Rep. 778 ("Dyspepsia Tablets"); *Von Mumm* v. *Wittemann*, *ib.* 966 ("Extra Dry" Champagne); *Parsons* v. *Gillespie*, 17 N. S. W. R. (Eq.) 227; (1898) App. Cas. 239 ("Flaked Oatmeal"); *Sparks* v. *Harper*, 3 Queensl. L. J. Rep. 158; *ib.* 201 ("French Coffee"). And see cases as to "fancy words," *supra*, p. 40.

Distinctive words.

In the following cases descriptiveness has either not been alleged or has been held not to be established, and the words have been treated as distinctive words:—*Pidding* v. *How*, 6 Sim. 477 ("Howqua's Mixture"); *Perry* v. *Truefitt*, 6 Beav. 66 ("Medicated Mexican Balm"); *Taylor* v. *Carpenter* (1), 3 Story, 458 ("Persian Thread"); S. C. (2), 2 Wood. & M. 1 (do.); S. C. (3), 2 Sandf. Ch. 603 (do.); *Taylor* v. *Taylor*, 2 Eq. Rep. 290 (do.); *Hine* v. *Lart*, 10 Jur. 106 ("Ethiopian" stockings); *Fowle* v. *Spear*, 7 Penn. L. J. 176 ("Wistar's Balsam of Wild Cherry"); *Coffeen* v. *Brunton* (1), (2), 4 McLean, 516; 5 *ib.* 256 ("Chinese Liniment"); *Davis* v. *Kendall*, 2 R. I. 566 ("Pain-Killer" medicine); *Davis* v. *Kennedy*, 13 Grant Up. Can. Ch. 523 (do.), (but see *In re Perry Davis & Son*, 5 P. R. 333; 15 App. Cas. 315); *R.* v. *Dundas*, 6 Cox, 380 ("Everett's Premier" blacking); *Heath* v. *Wright*, R. Cox, 154 ("Kathairon"); *Fetridge* v. *Merchant*, 4 Abb. Pr. 156 ("Balm of Thousand Flowers"); *Williams* v. *Johnson*, 2 Bos. 1 ("Yankee Soap"); *Williams* v. *Spence*, 25 How. Pr. 366 (do.); *Williams* v. *Adams*, 8 Biss. 452 (do.); *Comstock* v. *White*, 18 How. Pr. 421 ("Dr. Morse's Indian Root Pills"); *Braham* v. *Bustard*, 1 H. & M. 447 ("Excelsior" soap); *McAndrew* v. *Bassett*, 4 De G. J. & S. 380 ("Anatolia" liquorice); *Faber* v. *Hovey*, Dig. 481 ("Star" pencils); *Rillet* v. *Carlier*, 61 Barb. S. C. 435 ("Grenade" syrup); *Smith* v. *Woodruff*, 48 Barb. 438 ("Sweet Opoponax of Mexico" perfume); *Burnett* v. *Phalon*, 3 Keyes, 594 ("Cocoaine" hair oil); *Messerole* v. *Tynberg*, 4 Abb. Pr. N. S. 410 ("Bismarck" collars); *Rowley* v. *Houghton*, 2 Brews. 303 ("Hero" jars); *Palmer* v. *Harris*, 60 Penn. St. 156 ("Golden Crown" cigars); *Filley* v. *Fassett*, 44 Mo. 173 ("Charter Oak" stoves); *Filley* v. *Child*, 16 Bl. C. C. 376 (do.); *Lockwood* v. *Bostwick*, 2 Daly, 521 ("Bovilene" pomade); *Congress & Empire Spring Co.* v. *High Rock Congress Spring Co.*, 45 N. Y. 291 ("Congress Spring" water); *Allegheny Fertiliser Co.* v. *Woodside*, 1 Hughes, 115 ("Eureka" manure); *Ford* v. *Foster*, L. R. 7 Ch. 611 ("Eureka" shirts); *Seltzer* v. *Powell*, 8 Phila. 296 ("Silver Grove" whiskey); *In re Francis & Mallon*, U. S. Pat. Comm. Decis. 1871, 283 ("Beaverine" boots); *Blackwell* v. *Armistead*, 5 Am. L. T. 85 ("Durham" tobacco); *Armistead* v. *Blackwell*, 1 U. S. Pat. Gaz. 603 (do.); *Blackwell* v. *Wright*, 73 N. Car. 310 (do.); *Blackwell* v. *Dibrell*, 14 U. S. Pat. Gaz. 633 (do.); *Hirst* v. *Denham*, L. R. 14 Eq. 542 ("Turin," "Sefton," "Leopold," "Liverpool," cloth); *Sternberger* v. *Thalheimer*, 3 U. S. Pat. Gaz. 120 ("Centennial" clothing); *In re Bush & Co.*, 10 *ib.* 164 ("Centennial" wines); *Kidd & Co.* v. *Mills, Johnson & Co.*, 5 *ib.* 337 ("Magnolia," "Dave Jones" whiskey); *Morse* v. *Worrell*, 10 Phila. 168 ("Rising Sun" stove polish); *Cotton* v. *Gillard*, 44 L. J. Ch. 90 ("Licensed Victuallers' Relish"); *Smith* v. *Mason*, W. N. 1875, p. 62 ("Pectorine" medicine); *Gouraud* v. *Trust*, 10 N. Y. Sup. Ct. 627 ("Gouraud's Oriental Cream"); *In re Glines*, 8 U. S. Pat. Gaz. 435 ("Slate Roofing Paint"); *In re Green*, 8 *ib.* 729 ("German Sirup"); *In re Weaver*, 10 *ib.* 1 ("Lion" goods); *Grillon* v. *Guénin*, W. N. 1877, p. 14 ("Tamar Indien" lozenges); *Carnrick* v. *Morson*, Dig. 543 ("Lactopeptine" medicine); *In re Cornwall* (2), 12 U. S. Pat. Gaz. 312 ("Dublin" soap); *Eno* v. *Stephens*, Dig. 609 ("Fruit Salt"), but see *In re Dunn*, 41 Ch. D. 439; 15 App. Cas. 252; *Reinhardt* v. *Spalding*, 49 L. J. Ch. 57 ("Family

Marks Registration Act as he had before. Only, if the persons enjoying the trade mark have been so numerous that it is impossible to say that any of them, or all of them together, had an exclusive right to it, then they shall not have the benefit of the registration, which would give an exclusive right" (*a*). Common

Salve"); *Rosing* v. *Atkinson*, 27 Sol. J. 534 ("Edelweiss" perfume); *Berliner Brauerei Gesellschaft Tivoli* v. *Knight, Stocks & Co.*, W. N. 1883, p. 70 ("Tivoli" lager beer); *In re Porter Blanchard's Sons*, U. S. Pat. Comm. Decis. 1871, 97 ("Blanchard Churn"); *In re Rohland*, 10 U. S. Pat. Gaz. 980 ("Dr. Lobenthal's Essentia Antiphthisica"); *Sorg* v. *Welsh*, 16 U. S. Pat. Gaz. 910 ("Tidal Wave" tobacco); *In re Eastman*, W. N. 1880, p. 128 ("Kitchen Crystal Soap"); *Burton* v. *Stratton*, 12 Fed. Rep. 696 ("Twin Brothers" yeast); *Hier* v. *Abrahams*, 82 N. Y. 519 ("Pride" cigars); *Insurance Oil-tank Co.* v. *Scott*, 33 La. Ann. 946 ("Insurance" oil); *Smith* v. *Sixbury*, 32 N. Y. Sup. Ct. 232 ("Magnetic Balm"); *Ex parte Heyman*, 18 U. S. Pat. Gaz. 922 ("Invigorator" spring bed-bottoms); *Leonard & Ellis* v. *Wells & Co.*, 26 Ch. D. 288 ("Valvoline" oil); *Leonard & Ellis* v. *White's Golden Lubricator Co.*, 48 U. S. Pat. Gaz. 1401 (do.), (but see *In re Horsburgh*, 53 L. J. Ch. 237); *Atlantic Milling Co.* v. *Robinson*, 20 Fed. Rep. 217 ("Champion" flour); *Ex parte Wiesel*, 36 U. S. Pat. Gaz. 689 ("Kollerina"); *Yale Cigar Manufacturing Co.* v. *Yale*, 30 U. S. Pat. Gaz. 1183 ("Grand Master" cigars); *Holt* v. *Menendez*, 128 U. S. 182 ("La Favorita" flour); *Lyman* v. *Burns*, 47 U. S. Pat. Gaz. 660 ("Pigs in Clover" game); *Selchow* v. *Baker*, 93 N. Y. 59 ("Sliced Animals" toys); *Electro-Silicon Co.* v. *Hazard*, 36 N. Y. Sup. Ct. 369 ("Electro-Silicon" polishing powder); *O'Rourke* v. *Central City Soap Co.*, 26 Fed. Rep. 576 ("Anti-Washboard" soap); *Funke* v. *Dreyfus*, 34 La. Ann. 80 ("Boker's Stomach Bitters"); *Hoxie* v. *Chaney*, 143 Mass. 592 ("A. N. Hoxie's Mineral Soap," "A. N. Hoxie's Pumice Soap"); *Hecht* v. *Porter*, 9 Pac. C. L. J. 569 ("Ironclad" boots); *Sheppard & Co.* v. *Stuart & Peterson*, 13 Phila. 117 ("Excelsior" stoves); *Lauferty* v. *Wheeler*, 63 How. Pr. 488; 11 Daly, 194 ("Alderney" oleo-margarine); *Barlow & Jones, Ld.* v. *Johnson & Co.*, 7 P. R. 395 ("Osman" towels); *Hiram Holt Co.* v. *Wadsworth*, 41 Fed. Rep. 34 ("Lightning" hay knives); *Clotworthy* v. *Schapp*, 42 Fed. Rep. 62 ("Puddine" for uncooked pudding); *Battle & Co.* v. *Finlay*, 45 Fed. Rep. 796; 50 Fed. Rep. 106 ("Bromidia" medicine); *George* v. *Smith*, 52 Fed. Rep. 830 ("Epicene" salmon); *New Home Sewing Machine Co.* v. *Bloomingdale*, 59 Fed. Rep. 284 ("Home" sewing machine); *Social Register Assn.* v. *Howard*, 60 Fed. Rep. 270 ("Social Register" for directory); *N. K. Fairbank Co.* v. *Central Lard Co.*, 64 Fed. Rep. 133 ("Cottolene" for preparation of cotton oil); *American Fibre Chamois Co.* v. *De Lee*, 67 Fed. Rep. 329 ("Fibre Chamois" dress lining); *American Grocery Co* v. *Sloan* 68 Fed. Rep. 539 ("Momaja" for a blend of Mocha, Mazacaiba and Java coffee); *Royal Baking Powder Co.* v. *Raymond*, 70 Fed. Rep. 376; 85 Fed. Rep. 231; ("Royal" baking powder); *Kaiser Brauerei Beck & Co.* v. *J. & P. Baltz Brewing Co.*, 71 Fed. Rep. 695; 74 Fed. Rep. 222 ("Kaiser" beer); *Potter Drug & Chemical Co.* v. *Miller*, 75 Fed. Rep. 656 ("Cuticura" soap); *Pennsylvania Salt Manufacturing Co.* v. *Myers*, 79 Fed. Rep. 87 ("Saponifer" lye); *Sterling Remedy Co.* v. *Eureka Chemical & Manufacturing Co.*, 80 Fed. Rep. 105 ("Notobac" for a cure for the tobacco habit); *Stoughton* v. *Woodard*, 50 U. S. Pat. Gaz. 1297 ("Cough Cherries" for a confection for curing coughs); *Bailly* v. *Nashawannuk Manufacturing Co.*, 51 U. S. Pat. Gaz. 970 ("Hygienic" suspenders, the Court being of opinion that words inferentially or remotely descriptive might be regarded as fanciful or arbitrary in a legal sense); *Waterman* v. *Shipman*, 130 N. Y. 301 ("Ideal" fountain pen); *Keasbey* v. *Brooklyn Chemical Works*, 142 N. Y. 467; 40 Am. St. Rep. 623 ("Bromo-caffeine"). Cf. *Ex parte Grove*, 67 U. S. Pat. Gaz. 1447; *Listman Mill Co.* v. *William Listman Milling Co.*, 88 Wisc. 334; 43 Am. St. Rep. 907 ("Marvel" flour); *Tetlow* v. *Tapper*, 85 Fed. Rep. 774 ("Swan Down" face powder). Cf. *In re Magnolia Metal Co.*, (1897) 2 Ch. 371, where a word not *per se* descriptive was held not distinctive on the ground that it had become descriptive.

(*a*) *Per* Bacon, V.-C., in *Benbow* v. *Low* (4), 44 L. T. N. S. 875.

marks may, however, now be registered as additions to good trade marks, if an exclusive right in them is disclaimed (*a*). If the name is descriptive, the addition of "new" or "improved" does not better the case (*b*), nor that of initials representing the name of the goods (*c*), or of a mere oval border (*d*).

Name not distinctive.

Again, where a mark, though not descriptive, yet does not serve to distinguish the person using it from a number of other persons who use or are entitled to use it, it cannot be a valid trade mark, since it is common, if not to the whole world, at all events to a class of persons. Thus "prize medal" (*e*), "gold medal" (*f*). The objection, however, will not prevail where the class is very limited (*g*).

Adjective denoting quality only, no trade mark.

"Terms which designate merely the name, quality, kind, size, number, or elements of an article, or have become its proper appellation, or that merely describe it, or direct the mode of its use, purely generic and geographical terms, and the necessary and common uses in which the English language and arabic numerals are employed by people to express their ideas and feelings and to tell the truth, are common property which all may use, but which none may exclusively appropriate as a trade mark, or acquire as absolute individual property" (*h*). Consequently, an ordinary adjective in the common language of the country, descriptive of the quality of the article, and not designating it to be of the manufacture of a certain individual or establishment, as "superior" (*i*), "superfine" (*i*), "nourishing" (*k*), cannot be exclusively appro-

(*a*) Patents Act, 1883, § 74.

(*b*) *In re Graham*, 2 U. S. Pat. Gaz. 618. See *Gage* v. *Canada Publishing Co.*, 11 Can. Sup. Ct. 306; *Russia Cement Co.* v. *Le Page*, 147 Mass. 206; *Alexander* v. *Morse*, 14 R. I. 153; *Humphreys' Specific, &c. Co.* v. *Wenz*, 14 Fed. Rep. 250.

(*c*) *In re Blakeslee & Co.*, U. S. Pat. Comm. Decis. 1871, 284; *In re Dick & Co.*, 9 U. S. Pat. Gaz. 538.

(*d*) *In re Rader & Co.*, 13 U. S. Pat. Gaz. 596.

(*e*) *Batty* v. *Hill*, 1 H. & M. 264. See *Roper's, &c. Co.* v. *Copeman's, &c. Association, Ld.*, 28 Sol. J. 218; and *In re Bryant & May, Ld.*, 8 P. R. 69. And see *Schneider* v. *Williams*, 44 N. J. (Eq.) 391; *Ex parte Cigar Makers' Association*, 16 U. S. Pat. Gaz. 958; *Cigar Makers' Protective Union* v. *Conhains*, 40 Minn. 243; 12 Am. St. Rep. 726; *McVey* v. *Brendal*, 144 Penn. St. 235; 27 Am. St. Rep. 625; *Weener* v. *Brayton*, 152 Mass. 101; *Ex parte Kuppenheimer*, 60 U. S. Pat. Gaz. 439; *State* v. *Bishop*, 128 Mo. 373; 49 Am. St. Rep. 569; cf. *Strasser* v. *Moonelis*, 108 N. Y. 611; *Allen* v. *McCarthy*, 37 Minn. 347; *People* v. *Fisher*, 57 N. Y. Sup. Ct. 552; *Cohn* v. *People*, 149 Ill. 486; 41 Am. St. Rep. 304; *Carson* v. *Ury*, 49 U. S. Pat. Gaz. 411; *Gravel Roofers' Exchange* v. *Turnbull*, 64 U. S. Pat. Gaz. 441.

(*f*) *Taylor* v. *Gillies*, 59 N. Y. 331.

(*g*) *Dent* v. *Turpin*, 2 J. & H. 139. And see p. 108, note (*c*).

(*h*) *Per* Kentucky Court of Appeal in *Avery & Sons* v. *Meikle & Co.*, 27 U. S. Pat. Gaz. 1027.

(*i*) *Braham* v. *Bustard*, 1 H. & M. 447.

(*k*) *Rayget* v. *Findlater*, L. R. 17 Eq. 29; and see *Spottiswoode* v. *Clarke*, 1 Coop. 254; *Gillott* v. *Esterbrook*, R. Cox, 353; *Ex parte Palmer*, U. S. Pat. Comm. Decis. 1871, 289; *In re Dick & Co.*, 9 U. S. Pat. Gaz. 538; *In re Goodyear Rubber Co.*, 11 *ib.* 1062; *Fulton* v. *Sellers*,

priated as a trade mark. And the same is the case with a word or symbol which is understood generally, or in the trade, to indicate quality and not a special manufacturer. Thus "A, No. 1," "A X, No. 1" (*a*), "A 1" (*b*), "Best six-cord"—"200 yds." (*c*).

Marks denoting maker as well as quality.

But in some of the American cases this principle appears to have been carried to an extent which is unreasonable, and which has not been and would not be recognised in this country, the rule having been laid down too generally that every word or symbol which serves to indicate quality is incapable of appropriation as a trade mark, the qualification being omitted that, if such word or symbol also serves to indicate a particular manufacturer, the mark may be a good trade mark. In *Amoskeag Manufacturing Co.* v. *Trainer* (*d*) the Supreme Court of the United States itself appears to have decided in favour of the wider rule. There the plaintiff company manufactured cotton tickings, and sold the different qualities under different labels, of which the one affixed to the best quality of the goods bore a combination device, in which the prominent and conspicuous feature consisted of the letters "A. C. A." Those letters had for many years been recognised as indicating that the goods to which they were attached were of the plaintiff company's manufacture, and also of the best quality of the goods so manufactured, and the plaintiffs' user of the letters had been substantially exclusive. In an action, however, brought against defendants who had sold similar goods of their own manufacture under a label containing the same letters in a conspicuous place, the Supreme Court held that, the letters being indicative of quality, no protection could be given. All trade marks, however, which are of any value at all, denote that the goods to which they are attached are of good quality, and by far the greater number of large manufacturing firms use a variety of trade marks, which they

4 Brews. 42; *Ex parte Cohn* (1), 16 U. S. Pat. Gaz. 680; *Royal Baking Powder Co.* v. *Sherrill*, 93 N. Y. 331; *Smith* v. *Imus*, 32 Alb. L. J. 455; *Smith* v. *Walker*, 37 Mich. 456.

(*a*) *Candee, Swan & Co.* v. *Deere & Co.*, 54 Ill. 439; 5 Amer. Rep. 125; and see *Amoskeag Manufacturing Co.* v. *Spear*, 2 Sand. S. C. 599; R. Cox, 87; *Same* v. *Trainer*, 101 U. S. 51; *Burke* v. *Cassin*, 45 Cal. 467; 13 Amer. Rep. 204; *Stokes* v. *Landgraff*, 17 Barb. 608; R. Cox, 137; *Kinney* v. *Allen*, 1 Hughes, 106; *In re Eagle Pencil Co.*, 10 U. S. Pat. Gaz. 981; *Osgood* v. *Allen*, 1 Holmes, 185; *Carver* v. *Bowker*, Dig. 581; *Avery* v. *Meikle*, 27 U. S. Pat. Gaz. 1027; *Lawrence Manufacturing Co.* v. *Tennessee Manufacturing Co.*, 138 U. S. 537: *Barlow* v. *Gobindram*, Ind. L. R. 24 Calc. 364.

(*b*) *Rogers* v. *Rogers*, 53 Conn. 121.

(*c*) *Coats* v. *Merrick Thread Co.*, 45 U. S. Pat. Gaz. 347; 149 U. S. 562.

(*d*) 101 U. S. 51. And see *Royal Baking Powder Co.* v. *Sherrill*, 93 N. Y. 331.

apply to goods of different descriptions or qualities, or intended for different markets; and possibly the explanation of the decision may be that the Court really considered that the letters, though only used by the plaintiffs, indicated nothing beyond quality (*a*).

Such marks valid.

It seems clear that the English rule that combinations of letters, or words, or symbols, which indicate that the goods to which they are applied have been manufactured by a particular person or firm, may constitute valid and registrable trade marks, notwithstanding that they also indicate the quality or pattern of the goods as compared with other goods of the same makers (*b*), is preferable to that which appears to have been formulated in some of the American Courts. Thus, in *Hirst* v. *Denham* (*c*), different fancy patterns of the plaintiff's cloth were marked with different names, each of which was protected; in *Moses* v. *Sargood, Ewen & Co.* (*d*), the plaintiff's clothing was marked with a number of crowns, varying from one to six, according to quality; in *Ransome* v. *Graham* (*e*) the plaintiff's ploughs were marked with the letters "R. N." and an additional letter or numeral, varied according to pattern and quality (*f*). In the Indian case of *Taylor* v. *Virasami* (*g*) the plaintiff's shirtings were marked with scimitars, varying in number from two to five, according to quality. Even in some of the American Courts the English rule has been recognised, and it was well stated by the Supreme Court of Rhode Island (*h*) as follows:—"Undoubtedly, if it be assumed that a given mark indicates quality only, and not origin, it will follow that purchasers of goods so marked have not been misled thereby into the supposition that they were buying a plaintiff's goods, and hence he would show no cause for relief. . . . . But it by no means follows as a rule of law that marks indicating style or quality may not also indicate origin, and thus be a subject of trade mark. . . . . A person may have different symbols for different grades of goods, which will indicate both quality and origin with respect to the goods so marked. A

(*a*) See *American Solid Leather Button Co.* v. *Anthony*, 15 R. I. 338.

(*b*) *Ransome* v. *Graham*, 51 L. J. Ch. 897.

(*c*) L. R. 14 Eq. 542.

(*d*) Dig. 636.

(*e*) 51 L. J. Ch. 897.

(*f*) And see *In re Brook*, 26 W. R. 791; *Mitchell* v. *Henry*, 15 Ch. D. 181; *Ralli* v. *Fleming*, Ind. L. R. 3 Calc. 417; *Barlow & Jones, Ld.* v. *Johnson & Co.*, 7 P. R. 395, 412, 415; and *per* Pearson, J., in *Wood* v. *Lambert*, 32 Ch. D. 247; and the American cases of *Lawrence Manufacturing Co.* v. *Lowell*, 129 Mass. 325; *Godillot* v. *Hazard*, 81 N. Y. 263, *per* Danforth, J.; *Sohl* v. *Geisendorf*, 1 Wils. (Ind.) 60; *Merry* v. *Hoopes*, 111 N. Y. 415.

(*g*) Ind. L. R. 6 Mad. 108.

(*h*) In *American Solid Leather Button Co.* v. *Anthony*, 15 R. I. 338.

manufacturer may adopt such symbols, not simply to mark a style or quality, but *his* style and *his* quality as well. He is entitled to have his style and his quality protected from misrepresentation, and to have the benefit of any favourable reputation they may have gained."

Marks denoting quality in only one trade.

If a word or symbol is only indicative of quality in a particular trade, it seems that it may be used as a trade mark in a different trade (*a*).

Deceptive marks.

Again, a trade mark which contains false representations, so as to deceive the public, will not be protected in equity as a valid trade mark (*b*), and cannot be registered as such under the Patents Acts, 1883—1888 (*c*). In short, as was said by Wallace, J., in *Ginter* v. *Kinney Tobacco Co.* (*d*), "no principles are better settled in the law of trade marks than that a generic name, or a name merely descriptive of the ingredients, quality, or characteristics of an article of trade, cannot be the subject of a trade mark; and that the use of a name or term which is likely to deceive the public in reference to the components or nature of the article to which it is applied will not be tolerated." But mere collateral misrepresentations do not disqualify (*e*).

Marks which are either descriptive or deceptive.

An attempt has occasionally been made to meet the contention that a word claimed as a trade mark is incapable of appropriation by reason of its descriptiveness, by the allegation that the goods to which it is applied do not answer the description imported by the word, and therefore that the word is not, in fact, descriptive of the goods. But in cases where a word is used which is descriptive of qualities which the goods might reasonably be supposed to possess, if the goods do not possess those qualities the use of the word is deceptive, so that *quâcunque viâ* the claim fails. Thus, in *In re Saunion & Co.* (*f*), Sir G. Jessel, M.R., refused registration to the words "Anglo-Portugo Oysters," on the ground that if the oysters were Anglo-Portuguese the use of the term was descriptive, while, if they were not, it was deceptive. And the same view was

(*a*) *In re English*, U. S. Pat. Comm. Decis. 1870, 142.

(*b*) *Pidding* v. *How*, 8 Sim. 477; *Perry* v. *Truefitt*, 6 Beav. 66; *Flavel* v. *Harrison*, 10 Hare, 467; *Leather Cloth Co.* v. *American Leather Cloth Co.*, 4 De G. J. & S. 137; *Morgan* v. *McAdam*, 36 L. J. Ch. 228; *Lewis's* v. *Goodbody*, 67 L. T. N. S. 194; *In re Hill*, 10 P. R. 113; *Connell* v. *Reed*, 128 Mass. 477; *Ex parte Chichester Chemical Co.*, 52 U. S. Pat. Gaz. 1061; *Ex parte Zwack & Co.*, 76 U. S. Pat. Gaz. 1855; and see c. 7, *infra*.

(*c*) See § 73, and *In re Edge*, 8 P. R. 207.

(*d*) 12 Fed. Rep. 782.

(*e*) *Ford* v. *Foster*, L. R. 7 Ch. 611.

(*f*) Dig. 625.

adopted by Lopes, L. J., in *In re Van Duzer* (a). There are many American authorities to the same effect (b). But if the term claimed is one which is notoriously inappropriate to the article, it will not be treated as deceptive. Thus the name "Edelweiss" was allowed to be appropriated to scent not derived from that flower, it being well known that the edelweiss yields no perfume (c).

Extravagance an advantage in word trade marks.

It may be stated as a general rule that the more extraordinary and extravagant the name that is adopted by way of trade mark, the better will the object be attained, and the protection of the Courts and of the Registration Office secured; for the more uncommon the designation is, the less obnoxious is the exclusive claim of the manufacturer, and the more conclusive the evidence of fraud supplied by an infringement. Thus, Wood, V.-C., said, "I have not the least doubt that if the plaintiff (if I doubted I should be going quite contrary to the Mexican Balm case and other cases in which ridiculous names have been used) had invented a fanciful and ridiculous name—and the more ridiculous, the better it is for his purpose—and had used it for eight or ten years in his trade, the Court would take care that nobody else should use that absurd name; for such user could only be a user for the express purpose of imitating the plaintiff's, and so defrauding the plaintiff, by representing goods manufactured by one person to be goods manufactured by another" (d).

Words specially invented.

In many cases the word used as a trade mark is an entirely new word, invented for the occasion by the manufacturer of the material or composition to which it is applied, and such a name may be registered and otherwise treated as a valid trade mark (e). Thus

(a) 34 Ch. D. 631. Compare *Free Fishers & Dredgers of Whitstable* v. *Elliott*, W. N. 1888, p. 27; and see *In re Hannay*, 7 P. R. 46; *In re Edge*, 8 P. R. 207; *Parsons* v. *Gillespie*, 17 N. S. W. R. (Eq.) 227; (1898) A. C. 239.

(b) *Fairbanks* v. *Jacobus*, 14 Bl. C. C. 337 ("Fairbanks' Patent"); *In re American Sardine Co.*, 3 U. S. Pat. Gaz. 495 ("American Sardines"); *In re Dole Brothers*, 12 *ib.* 939 ("Egg Macaroni"); *In re Warburg & Co.*, 13 *ib.* 44 ("Cachemire Milano" silks); *Ex parte Marsching & Co.*, 15 *ib.* 294 ("French" paints); *Ex parte Knapp*, 16 *ib.* 318 ("London" animal foods); *Ex parte Farnum & Co.*, 18 *ib.* 412 ("Lancaster" tickings); *Ginter* v. *Kinney Tobacco Co.*, 12 Fed. Rep. 782 ("Straight-cut" cigarettes); *California Fig Syrup Co.* v. *Stearns*, 67 Fed. Rep. 1008; 73 Fed. Rep. 812; *California Fig Syrup Co.* v. *Putnam*, 66 Fed. Rep. 750; 69 Fed. Rep. 740 ("Fig Syrup"); *Ex parte Grove*, 67 U. S. Pat. Gaz. 1447 ("Bromo-Quinine"). With which compare *In re Green*, 8 U. S. Pat. Gaz. 729 ("German Sirup"); *In re Cornwall* (2), 12 *ib.* 312 ("Dublin" soap); *California Fig Syrup Co.* v. *Improved Fig Syrup Co.*, 51 Fed. Rep. 296; 54 Fed. Rep. 175; *Same* v. *E. Worden & Co.*, 86 Fed. Rep. 212.

(c) *Rosing* v. *Atkinson*, 27 Sol. J. 534. And see *In re Densham*, (1895) 2 Ch. 176.

(d) *Young* v. *Macrae*, 9 Jur. N. S. 322; and see *Fetridge* v. *Merchant*, 4 Abb. Pr. 156; R. Cox, 194.

(e) See Patents Act, 1883, § 64, as amended by the Act of 1888.

"Pectorine" (*a*) and "Lactopeptine" (*b*) were protected as names for medical compounds; "Cocoaine" (*c*) and "Bovilene" (*d*) for pomades. "Chlorodyne" (*e*) was only not protected because the proprietor, on a mistaken view of his rights, consented to have his bill for an injunction dismissed with costs. Invented words (*f*) were, however, occasionally refused registration as "fancy words" under § 64 of the Act of 1883, where they were considered to suggest a description of the article—*e.g.*, "Washerine" soap (*g*), "Monobrut" champagne (*h*); and Jessel, M. R., treated "Valvoline" oil as descriptive (*i*), though Lord Selborne (*k*) and a United States circuit judge (*l*) have thought differently.

Existing words composing a word trade mark.

In many other cases the trade mark consists, not of a newly coined word, but of a word, or a combination of words, already in common use, but which for the purpose of the trade mark, is or are used and applied in a manner quite different from the ordinary use and application, so different that it is seen at the first glance that the word or combination of words is or are being used quite out of the common signification, and in the nature of a fancy name designatory of the goods (*m*). Thus "Pharaoh's Serpents" (*n*),

(*a*) *Smith* v. *Mason*, W. N. 1875, p. 62.

(*b*) *Carnrick* v. *Morson*, L. J. N. of C. 1877, p. 71.

(*c*) *Burnett* v. *Phalon*, 9 Bos. 192; R. Cox, 376.

(*d*) *Lockwood* v. *Bostwick*, 2 Daly, 521; R. Cox, 555.

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

(*f*) *In re Francis & Mallon*, U. S. Pat. Comm. Decis. 1871, 283 ("Beaverine" boots and shoes); *Enoch Morgan's Sons' Co.* v. *Schwachhofer*, 55 How. Pr. 37, and *Same* v. *Hunkele*, 16 U. S. Pat. Gaz. 1092 ("Sapolio" soap); *Electro-Silicon Co.* v. *Trask*, 59 How. Pr. 189 ("Electro-silicon"); *Electro-Silicon Co.* v. *Hazard*, 36 N. Y. Sup. Ct. 369 (do.). And see *Young* v. *Macrae*, 9 Jur. N. S. 322, in which "Paraffin Oil," *Lamplough* v. *Balmer*, W. N. 1867, p. 293, in which "Pyretic saline," and *Wolfe* v. *Goulard*, 18 How. Pr. 64, R. Cox, 226, in which "Schiedam Schnapps," was not protected for special reasons only.

(*g*) *Burland & Co.* v. *Broxburn Oil Co., Ld.* (2), 42 Ch. D. 274.

(*h*) *In re Vignier*, 6 P. R. 490.

(*i*) *In re Horsburgh*, 53 L. J. Ch. 237.

(*k*) *Leonard & Ellis* v. *Wells & Co.*, 26 Ch. D. 288.

(*l*) *Leonard & Ellis* v. *White's Golden Lubricator Co.*, 48 U. S. Pat. Gaz. 1401.

(*m*) See *Newman* v. *Alvord*, R. Cox, 413, in which Daniels, J., said that "any member of the community, whose interests and business may be promoted by doing so, should be at liberty to apply even names and words in common use to the products of his industry, in such a manner as to indicate their origin or particular manufacture, where such application will not intrench upon and will be in no way included in their use by the public. By doing so, the rights of no member of the community can be in any manner infringed, and no public inconvenience whatever can be occasioned by it. The public will still be left at full liberty to use such words or terms as they were used before; while for a special purpose a new office or purpose may be imposed upon them;" *Osgood* v. *Allen*, 1 Holmes, 185, in which Shepley, J., said that "words or devices may be adopted as trade marks, which are not original inventions of the one who adopts and uses them. Words in common use may be adopted, if at the time of adoption they were not used to designate the same or similar articles of production;"

(*n*) *Barnett* v. *Leuchars*, 13 L. T. N. S. 495.

applied to a toy; "The Licensed Victuallers' Relish" (a), to a sauce; "Turin," "Sefton," "Leopold," and "Liverpool" (b), to cloth; "United Service" (c) and "Genuine Yankee" (d), to soap; "Sweet Opoponax of Mexico" (e) and "Balm of Thousand Flowers" (f), to perfume; and "Charter Oak" to stoves (g).

Inscriptions or advertisements.

Occasionally it has been sought to protect as a trade mark, and to claim exclusive rights in, an inscription or advertisement composed of ordinary English words, used in their ordinary sense, and only peculiar from the length of the sequence. Usually, indeed, there is in such cases some feature which might be really distinctive but of which the plaintiff, for some reason or other, is unable to avail himself; this failing, the whole inscription is claimed. Such cases, however, are in fact "advertisements of the character and quality of the goods" (h), in which advertisements no exclusive rights can be claimed, as was expressly decided by the Court of Appeal in *Cheavin* v. *Walker* (i), where the inscription was

Lea v. *Wolff*, 15 Abb. Pr. N. S. 1; *Ex parte Palmer*, U. S. Pat. Comm. Decis. 1871, 289; *M'Lean* v. *Fleming*, 96 U. S. 245; *Smith* v. *Woodruff*, 48 Barb. 438; and *Ex parte Halliday Brothers*, 16 U. S. Pat. Gaz. 500.

(a) *Cotton* v. *Gillard*, 44 L. J. Ch. 90.

(b) *Hirst* v. *Denham*, L. R. 14 Eq. 542.

(c) *Field* v. *Lewis*, Dig. 280.

(d) *Williams* v. *Johnson*, 2 Bos. 1; R. Cox, 214; *Williams* v. *Spence*, 25 How. Pr. 366; R. Cox, 305.

(e) *Smith* v. *Woodruff*, 48 Barb. 438; R. Cox, 373.

(f) *Fetridge* v. *Merchant*, 4 Abb. Pr. 156; R. Cox, 194. But see *Fetridge* v. *Wells*, 13 How. Pr. 385; R. Cox, 180.

(g) *Filley* v. *Fassett*, 44 Mo. 173; R. Cox, 530; *Filley* v. *Child*, 16 Bl. C. C. 376. And see *Weston* v. *Hemmons*, 2 V. L. R. Eq. 121 ("Wizard" oil); *Sternberger* v. *Thalheimer*, 3 U. S. Pat. Gaz. 120 ("Centennial" clothing); *Kidd & Co.* v. *Mills, Johnson & Co.*, 5 *ib.* 337 ("Magnolia" whiskey); *Kidd* v. *Johnson*, 100 U. S. 617 (do.); *In re Glines*, 8 U. S. Pat. Gaz. 435 ("Slate Roofing Paint"); *In re Kimball*, 11 *ib.* 1109 ("Vanity Fair" cigarettes); *Marcovitch* v. *Bramble, Wilkins & Co.*, Dig. 595 (do.); *Davis* v. *Kennedy*, 13 Grant Up. Can. Ch. 523 ("Pain-Killer" medicine); *Faber* v. *Hovey*, Dig. 481 ("Star" pencils); *Ex parte Peper*, 16 U. S. Pat. Gaz. 678 ("Corn" tobacco); *Wright* v. *Simpson*, 15 *ib.* 968 ("Pond Lily Wash"); *Crawford* v. *Shuttock*, 13 Grant Up. Can. Ch. 149 ("Imperial" soap); *Degraves* v. *Whiteman*, 5 V. L. R. Eq. 304 ("Cascade" ale); *Yale Cigar Manufacturing Co.* v. *Yale*, 30 U. S. Pat. Gaz. 1183 ("Grand Master" cigars); *Hecht* v. *Porter*, 9 Pac. C. L. J. 569 ("Iron-clad" boots). But where the name "Astral Lamp" had been long in use for a particular kind of oil lamp, it was held that no exclusive right could be acquired in the word "Astral" as applied to oil: *Pratt Manufacturing Co.* v. *Astral Refining Co., Ld.*, 27 Fed. Rep. 493.

(h) *Per* Lord Westbury, C., in *Leather Cloth Co.* v. *American Leather Cloth Co.*, 11 H. L. C. 523, which see.

(i) 5 Ch. D. 850. And see *Blackwell* v. *Crabb*, 36 L. J. Ch. 504; *Alleghany Fertiliser Co.* v. *Woodside*, 1 Hughes, 115 ("Ammoniated Bone Superphosphate of Lime"); *Helmbold* v. *Helmbold Manufacturing Co.*, 53 How. Pr. 453 ("Highly Concentrated Compound Fluid Extract of Buchu"); *In re Johnson & Co.*, 2 U.S. Pat. Gaz. 315 ("Johnson's American Anodyne Liniment, Established A.D. 1810"); *Gilman* v. *Hunnewell*, 122 Mass. 139 ("A sure remedy for chronic or common cough, sore throat, and other minor throat complaints, so often by neglect the forerunner of consumption"); *Cady* v. *Schultz*, 19 R. I. 193; 61 Am. St. Rep. 763 ("Scientific dentistry at moderate prices").

"G. Cheavin's improved patent, gold-medal, self-cleaning, rapid water filter, Boston, England," the name Cheavin having become indicative of a principle of construction. In *Shrimpton* v. *Laight* (a), the use of the words "graduated, grooveless, drill-eyed, ground-down" needles was also accompanied by that of the maker's name, and this being obviously imitated by the defendant, the injunction was granted.

Words taken from the dead languages.

Sometimes a word taken from a dead language has been applied to goods and protected as a valid trade mark, as the Latin word "Excelsior" in respect of soap (b), or stoves (c); or the Greek word "Eureka" on shirts (d), or on an agricultural compost (e).

Or from modern foreign languages.

In some instances words taken from modern foreign languages have been protected, though the precise extent to which trade marks so composed will be acknowledged has not yet been authoritatively decided. Where the name employed is a fancy name which happens to be in a foreign language, or framed in imitation of the forms of a foreign language, there is no doubt that there is just as good a trade mark as if it had been in English or framed on English forms; thus, "Flor Fina Prairie Superior Tabac" (f) was allowed to be a good trade mark, though the defendant was held not to have infringed; and "Tamar Indien" (g) was actually protected. In *In re Rotherham* (h), an Arabic word, used by way of a pun, was held to be entitled to registration as a good trade mark, though the Commissioners of Patents had directed the registrar to the contrary.

Foreign words in their ordinary signification.

When, however, the foreign words are used in their ordinary sense, or in a sense not widely remote therefrom, the case is

(a) 18 Beav. 164. And see *Boardman* v. *Meriden Britannia Co.*, 35 Conn. 402; R. Cox, 490, where an injunction was given. In *Roberts* v. *Sheldon*, 8 Biss. 398. the plaintiff used the words "Roberts' Parabola Gold-Burnished Sharps" on his needles, and the defendant was restrained from using the words "William Clark & Sons' Parabola Gold-Burnished Sharps." In *In re Roberts*, (1), (2), (3), U. S. Pat. Comm. Decis. 1871, 113, 100, 101, the following were registered as trade marks:—"A luxury — R. J. Roberts' Razor-Steel Scissors. The best in the world. The best is the cheapest. For sale here"; "An exquisite pleasure to shave with R. J. Roberts' Diamond-Edged Razors"; "R. J. Roberts' Diamond-Edge Razor. Every razor warranted."

(b) *Braham* v. *Bustard*, 1 H. & M. 447.

(c) *Sheppard & Co.* v. *Stuart & Peterson*, 13 Phila. 117.

(d) *Ford* v. *Foster*, L. R. 7 Ch. 611.

(e) *Alleghany Fertiliser Co.* v. *Woodside*, 1 Hughes, 115. See *Raggett* v. *Findlater*, L. R. 17 Eq. 29.

(f) *Cope* v. *Evans*, L. R. 18 Eq. 138.

(g) *Grillon* v. *Guénin*, W. N. 1877, p. 14. And see *Caruncho* v. *Stephenson*, 25 Sol. J. 929 ("Intimidad" cigars); *Holt* v. *Menendez*, 128 U. S. 182 ("La Favorita" flour).

(h) 14 Ch. D. 585.

Gout v. *Aleploglu.*

different. In *Gout* v. *Aleploglu* (a), the plaintiff was a maker of watches for the Turkish market. These watches he marked in Turkish with his own name (Ralph Gout) with the word "Pessendede" ("warranted"), with his initials "R. G." and a crescent, and also with a sprig and crescent. The defendant procured watches to be made, in which the minor features of the marks used by the plaintiff were omitted, but in which the main characteristics, the name ("Ralph Gout") and the word "Pessendede," in Turkish characters, were reproduced, the style of engraving being copied. Such watches were then sent by the defendant to Constantinople, and there sold, to the prejudice of the plaintiff's business. This was a clear case of fraud, and so it was held to be by the Vice-Chancellor of England, Sir L. Shadwell, who, however, did express an opinion that the plaintiff had acquired an exclusive right in the word "Pessendede" (b). But the point that had to be decided was not simply whether the word "warranted," in Turkish, could be protected; and, indeed, when it is considered that the watches were to be sold in Turkey, the case does seem to be just the same as if the word had been engraved in English on watches to be sold in this country, when such a proposition would be clearly untenable. But not only the word, but the manner of engraving it was copied, and not only that word, but the name of the maker; and what the Vice-Chancellor actually decided was that here there was a clear case of attempted fraud, which was quite sufficient ground for the issue of an injunction, without its being necessary to consider whether the imitation of one single feature would have been sufficient to entitle the plaintiff to that remedy. The use of the name "Ralph Gout" alone by the defendant, whose own name was entirely different, would indeed have been sufficient to entitle the plaintiff to an injunction (c), but the case with respect to "Pessendede" was different.

Broadhurst v. *Barlow.*

In *Broadhurst* v. *Barlow* (d), the case was again a far more complicated one than that of a single foreign word, or even a succession of words taken from the same foreign language. Here the plaintiffs were spinners and manufacturers at Manchester and

(a) 6 Beav. 69; 5 Leg. Obs. 496.

(b) 5 Leg. Obs. 496.

(c) See [illegible] Sir G. Turner, L. J., in *Burgess* v. *Burgess*, 3 De G. M. & G. 896; *Perks* v. [illegible] *& Co.*, W. N. 1881, p. 111.

(d) W. N. 1872, p. 212; and L. J. N. of C. 1872, p. 183. There have been numerous unreported cases with reference to cotton goods to the same effect.

Bolton, who exported to the East large quantities of pieces of Spanish shirting, which they marked with their proper trade mark, a lion in a border, and with the words "Spanish shirting" in a scroll, and "No. 120." To this they had added "exactly 12 yards," in Turkish, Armenian, and Greek, the same statement being repeated in the three languages, placed one below the other (*a*). The defendants were discovered to be preparing Spanish shirting for export, similarly marked, except that there were five lines instead of four, and that an elephant was used in place of the lion. Wickens, V.-C., held that "though an elephant was used by the defendants, the three sentences in the same languages in the same order was an infringement of the plaintiffs' rights," and he therefore granted the injunction to restrain the use of the words in the three languages in the order used by the plaintiffs.

Conclusion.

The true principle appears to be that, while foreign words employed in their ordinary signification may, even when used on goods intended for consumption in the country where that foreign language is spoken, form a part of a combination trade mark, the infringement of which will be restrained, the exclusive use of such words themselves, apart from fraud, will not be protected in this country, any more than that of an ordinary English adjective (*b*). In an American registration case (*c*) it was sought to register the German words "Für Familien Gebrauch," and "Lawrence Feiner Familien Flannel," meaning respectively "For Family Use" and "Lawrence Fine Family Flannel"; but the application was refused, on the ground of descriptiveness. In *Rillet* v. *Carlier* (*d*) it was indeed held that an American maker of pomegranate syrup had acquired an exclusive right in America to the term "Grenade Syrup," though "Grenade" was the ordinary French word for pomegranate, and the term "Grenade Syrup"

(*a*) In *Curtis* v. *Bryan*, 2 Daly, 212; R. Cox, 434, a label was used, with an inscription in English, French, German, and Spanish. And see *Siegert* v. *Findlater*, 7 Ch. D. 801; and *Siegert* v. *Ehlers*, Dig. 432; *Klotz* v. *Hecht*, 73 Fed. Rep. 822.

(*b*) This was so laid down with respect to words claimed as fancy words under the Patents Act, 1883, § 64, by Chitty, J., in *In re Davis & Co.*, 6 P. R. 207.

(*c*) *In re Lawrence & Co.*, 10 U. S. Pat. Gaz. 163. And see *Dadirrian* v. *Yacubian*, 72 Fed. Rep. 1010, where the word "Matzoon," the Armenian name for an article of food made from fermented milk, was held incapable of being monopolised in America by the person introducing the article into that country. Cf. *Dadirrian* v. *Theodorian*, 74 U. S. Pat. Gaz. 1902. And compare *In re Davis & Co.*, 6 P. R. 207 ("Bokōl" beer).

(*d*) 61 Barb. S. C. 435.

was in common use in France. In this case, however, there were elements of fraud, and actual fraud will always be restrained.

Geographical names.

Under the head of "distinctive words" should be included trade marks consisting of geographical names. For registration, it is indispensable to prove user as a trade mark before August 13th, 1875, for such words have never been allowed to be registered as new marks. This was so under the Act of 1875, because that Act did not allow any mere words to be registered as new marks (*a*), and under the Act of 1883, because the construction placed on the term "fancy word" was such as to exclude geographical names (*b*); and is still so under the Act of 1888, because such names are expressly excluded from registration as new marks (*c*). But it seems that where a geographical name has been used *per se* as a trade mark before August 13th, 1875, and is not in common use, it will be recognised as a "special and distinctive" word (*d*). When geographical names are used as trade marks they are in that application to be understood, not as ascribing the goods to which they are affixed to any special section of the earth's surface, but as expressing the works at which, or the manufacturer by whom, those goods have been produced. So Wood, V.-C., in the "Anatolia" liquorice case (*e*), said that "the plaintiffs had established beyond all doubt the connection of their name with that mark, that was beyond dispute," and that "he could not treat the word as being otherwise than a designation mark, which the plaintiffs had caused to be attached to that particular article of liquorice which they so manufactured, and which they had a right to consider, in that qualified sense, property." Lord Westbury, C., in that case strongly confirmed the opinion of the Vice-Chancellor; and in the later case of *Wotherspoon* v. *Currie* (*f*),

(*a*) Trade Marks Act, 1875, § 10.

(*b*) *In re Van Duzer*, 34 Ch. D. 623 ("Melrose Favourite Hair Restorer"); *In re Ainslie & Co.*, 4 P. R. 212 ("Ben Ledi" whiskey); *In re Laing*, L. J. N. of C. 1887, p. 102 ("Glengowrie Blend of Fine Old Highland Whiskey"); *In re Thompson & Co.*, 6 P. R. 213 ("Manor" tin plates) (as to which see *Pinto* v. *Badman*, 8 P. R. 181, 188, 191); *Great Tower Street Tea Co.* v. *Smith*, 6 P. R. 165 ("Tower Tea"); *In re Batt & Co.*, 6 P. R. 493 ("The Brymbo Special" iron goods); *Hodgson* v. *Sinclair*, 9 P. R. 22 ("Britannia" soap).

(*c*) Patents Act, 1888, § 10.

(*d*) *In re Van Duzer*, 34 Ch. D. 623 (*per* Cotton, L. J.); *Compania General de Tabacos* v. *Rehder*, 5 P. R. 61 ("Cavite" cigars); *Evans* v. *Smith*, 3 Times L. R. 390 ("Montserrat" lime juice). See *Thompson* v. *Montgomery*, 41 Ch. D. 35; (1891) A. C. 217.

(*e*) *McAndrew* v. *Bassett*, 33 L. J. Ch. 561; 4 De G. J. & S. 380 (App.).

(*f*) L. R. 5 H. L. 508. See also *Thompson* v. *Montgomery*, 41 Ch. D. 35; (1891) A. C. 217 ("Stone Ales"); *Huntley & Palmer* v. *Reading Biscuit Co.*, 10 P. R. 277 ("Reading" biscuits); *Powell* v. *Birmingham Vinegar Brewery Co.*, (1896) 2 Ch. 54; (1897) A. C. 710 ("Yorkshire

where the subject of dispute was the word "Glenfield" applied to starch, he stated that that word had acquired a secondary signification or meaning in connection with a particular manufacture: in short, it had become the trade designation of the starch made by the appellants. It was wholly taken out of its ordinary meaning, and in connection with starch had acquired that peculiar secondary signification to which he had referred. The word "Glenfield," therefore, as a denomination of starch, had become the property of the appellants. It was their right and title in connection with the starch.

Rules as to geographical names.

In some cases there is no pretence for saying that the name is used in its ordinary geographical sense. Thus no one could affirm that the use of the names "Persian thread" (*a*) or "Ethiopian stockings" (*b*) had induced him to suppose that the articles in question were imported from those countries. In other cases, however, the name is less purely arbitrary, and was originally, at least, indicative of local origin. For instance, the pipes marked with "E. Southorn, Broseley" (*c*), were manufactured at a village of that name; Glenfield starch (*d*), in the same manner, came from Glenfield; Anatolia liquorice (*e*), and Leopoldshall Kainit (*f*), from those respective places. This fact, however, does not deprive the trade mark of the right to protection. It is true that the name

Relish"); *Saxlehner* v. *Apollinaris Co.*, (1897) 1 Ch. 893 ("Hunyadi" water); *Bewlay & Co.* v. *Hughes*, 15 P. R. 290 ("Dindigul" cigars); *In re Clement & Cie.*, 16 P. R. 173 (Vin de "St. Raphael"). And see *Reddaway* v. *Banham*, (1896) A. C. 199; *Rockingham Rail. Co.* v. *Allen*, 12 Times L. R. 345.

(*a*) *Taylor* v. *Taylor*, 23 L. J. Ch. 255.

(*b*) *Hine* v. *Lart*, 10 Jur. 106. And see *In re Clement & Cie.*, 16 P. R. 173 (Vin de "St. Raphael"); *In re Cornwall* (2), 12 U. S. Pat. Gaz. 312 ("Dublin" soap); *Fleischmann* v. *Schuckmann*, 62 How. Pr. 92 ("Vienna" bread); *Lauferty* v. *Wheeler*, 63 *ib.* 488; 11 Daly, 194 ("Alderney" oleo-margarine).

(*c*) *Southorn* v. *Reynolds*, 12 L. T. N. S. 75.

(*d*) *Wotherspoon* v. *Currie*, L. R. 5 H. L. 508.

(*e*) *McAndrew* v. *Bassett*, 4 De G. J. & S. 380.

(*f*) *Radde* v. *Norman*, L. R. 14 Eq. 348. And see *Apollinaris Co.* v. *Edwards*, Seton, 5th ed. 537; and *Apollinaris Co.* v. *Norrish*, 33 L. T. N. S. 242 ("Apollinaris Water"); *Congress and Empire Spring Co.* v. *High Rock Congress Spring Co.*, 57 Barb. 526; R. Cox, 599 ("Congress Spring Water"); *Amoskeag Manufacturing Co.* v. *Garner* (1), 55 Barb. 151; R. Cox, 541; and S. C. (2), 54 How. Pr. 298 ("Amoskeag" cloths); *Newman* v. *Alvord*, 51 N. Y. 189 ("Akron"); *Lea* v. *Millar*, Dig. 513 ("Worcestershire Sauce"); *Powell* v. *McNulty*, Dig. 526, and *Powell* v. *Birmingham Vinegar Brewery Co.*, (1896) 2 Ch. 54; (1897) A. C. 710 ("Yorkshire Relish"): *Siegert* v. *Findlater*, 7 Ch. D. 801 ("Angostura Bitters"); *Kinney* v. *Basch*, Dig. 542 ("St. James' Cigarettes"); *Wheeler* v. *Johnston*, 3 L. R. Ir. 284 ("Cromac Springs"); *Davis* v. *Tylor*, Jessel, M. R., April 24th, 1879 ("Ferndale" coal); *Lochgelly Co., Ld.* v. *Lumphinnans Iron Co.*, Ct. Sess. Cas. 4th Ser. VI. 482 ("Lochgelly" coal); *Blair* v. *Stock*, 52 L. T. N. S. 123 ("Strathmore" whiskey); *Grezier* v. *Autran*, 13 P. R. 1 ("Chartreuse" liqueur); *Saxlehner* v. *Apollinaris Co.*, (1897) 1 Ch. 893 ("Hunyadi" water).

of an existent place cannot for all purposes be appropriated (*a*), and that any one who manufactures at a place the name of which has become another's trade mark, indicative of that other's productions, may still describe his goods as made on that spot (*b*). But by English law he cannot stamp that name on his goods in the character of a trade mark of his own. In *Seixo* v. *Provezende* (*c*), where it was urged by the defendants that parts of their vineyards were known by the name of Seixo, the Lord Chancellor (Lord Cranworth) said that even assuming that to be true, "that did not justify the defendants in adopting a device or brand, the probable effect of which was to mislead the public, when purchasing their wine, to suppose that they were purchasing wine produced from the vineyards, not of the defendants, but of the plaintiff. Cases might be imagined, though very unlikely to arise, in which a person bringing into the market for the first time the produce of a newly established manufacture, to come into competition with one already established, might really be embarrassed as to the mode in which he should describe it, so as not to interfere with the description adopted by a manufacturer who had been before him." And he added that if such a case should arise, it would have to be dealt with on its own merits.

McAndrew v. *Bassett.*

Again, in *McAndrew* v. *Bassett* (*d*), Lord Westbury, C., said, "I am told that the word 'Anatolia,' being a general geographical expression—being, in point of fact, the geographical designation of a whole country—is a word common to all, and that in it, therefore, there can be no property. That is nothing in the world more than a repetition of the fallacy which I have frequently had occasion to expose. Property in the word for all purposes cannot

(*a*) "Property in the word for all purposes cannot exist": *per* Lord Westbury, C., *McAndrew* v. *Bassett*, 4 De G. J. & S. 380. In *Watt* v. *O'Hanlon*, 4 P. R. 1, the words "Old Innishowen" were held to be descriptive of a particular quality of whiskey, and an injunction was refused. And see *Rugby Portland Cement Co.* v *Rugby & Newbold Portland Cement Co.*, 8 P. R. 241; 9 P. R. 46; *New York & Rosendale Cement Co.* v. *Coplay Cement Co.*, 44 Fed. Rep. 277; 45 Fed. Rep. 212.

(*b*) Thus, in *Braham* v. *Beachim* (1), 7 Ch. D. 848, an injunction was only granted to restrain the defendants from describing their coal as "Radstock" until they had some justification for so describing it, and when that justification could be produced, no relief was granted against them. And so in *Free Fishers & Dredgers of Whitstable* v. *Elliott*, W. N. 1888, p. 27. But this course was not taken in *Thompson* v. *Montgomery*, 41 Ch. D. 35; (1891) A. C. 217, *q. v.* See *Braham* v. *Beachim* (2), Dig. 633; *Siegert* v. *Findlater*, 7 Ch. D. 801; *Bewlay & Co.* v. *Hughes*, 15 P. R. 290.

(*c*) L. R. 1 Ch. 192.

(*d*) 4 De G. J. & S. 380. See *Wheeler* v. *Johnston*, 3 L. R. Ir. 284.

exist; but property in that word, as applied by way of stamp upon a stick of liquorice, does exist the moment the liquorice goes into the market so stamped, and obtains acceptance and reputation in the market, whereby the stamp gets currency as an indication of superior quality, or of some other circumstances that render the article so stamped acceptable to the public."

Geographical names in America.

In America, the rule prohibiting the appropriation of geographical names as trade marks appears to be more stringent than prevailed in England before the introduction of the registration system, as the Courts there deny that such names can constitute trade marks (*a*), and registration is, as a rule, refused to them (*b*); and the Scotch Courts appear inclined to take the same course (*c*). Where, however, the use of a geographical name is clearly fraudulent (*d*), or where it is used by a defendant whose residence and works are not situate in the locality the name of which he seeks to

(*a*) Thus, in *Canal Co.* v. *Clark*, 80 U. S. 311, the Supreme Court of the United States allowed the defendants to use the name "Lackawanna" on coal produced in that district, though the defendants had previously so used it. And see *Candee, Swan & Co.* v. *Deere & Co.*, 54 Ill. 439; 5 Amer. Rep. 125 ("Moline" ploughs); *Glendon Iron Co.* v. *Uhler*, 75 Penn. St. 467; 15 Amer. Rep. 599 ("Glendon" iron); *Carmichel* v. *Latimer*, 11 R. I. 395 ("Stillman Mill"); *Eggers* v. *Hink*, 63 Cal. 445 ("Philadelphia Beer"); *Evans* v. *Van Laer*, 32 Fed. Rep. 153 ("Montserrat" lime juice); *Osgood* v. *Allen*, 1 Holmes, 185; *Dunbar* v. *Glenn*, 42 Wisc. 118; *Burton* v. *Stratton*, 12 Fed. Rep. 696; *Anheuser Busch Brewing Association* v. *Piza*, 23 Bl. C. C. 245; *Lea* v. *Deakin*, 11 Biss. 23; *Pratt's appeal*, 117 Penn. St. 401; *Smith* v. *Imus*, 32 Alb. L. J. 455; *Smith* v. *Walker*, 37 Mich. 456; *Columbia Mill Co.* v. *Alcorn*, 150 U. S. 460 ("Columbia" flour); *New York & Rosendale Cement Co.* v. *Coplay Cement Co.*, 44 Fed. Rep. 277; 45 Fed. Rep. 212; ("Rosendale" cement); *Carlsbad* v. *Tibbetts*, 51 Fed. Rep. 852; *Genesee Salt Co.* v. *Burnap*, 67 Fed. Rep. 534; 73 Fed. Rep. 818; *Hoyt* v. *J. T. Lovett & Co.*, 71 Fed. Rep. 173; *Metcalfe* v. *Brand*, 86 Ky. 331; 9 Am. St. Rep. 282; *Nebraska Loan & Trust Co.* v. *Nine*, 9 Nebr. 507; 20 Am. St. Rep. 686; *Pillsbury-Washburn Flour Mills Co.* v. *Eagle*, 82 Fed. Rep. 816. But see Mr. R. Cox's note to *Glendon Iron Co.* v. *Uhler*, at 13 Am. L. Reg. N. S. 543, in which he disputes the decision that a geographical name cannot be a trade mark. Cf. *El Modello Cigar Manufacturing Co.* v. *Gato*, 25 Fla. 886; 23 Am. St. Rep. 537.

(*b*) *Armistead* v. *Blackwell*, 1 U. S. Pat. Gaz. 603 ("Durham" tobacco); *Blackwell* v. *Dibrell*, 14 *ib.* 633 (do.); *In re Tolle*, 2 *ib.* 415 ("Cherry St. Mills," "Market St. Mills"); *In re American Sardine Co.*, 3 *ib.* 495 ("American Sardines"); *In re Warburg & Co.*, 13 *ib.* 44 ("Cachemire Milano"); *Ex parte Marsching & Co.*, 15 *ib.* 294 ("French" paints); *Ex parte Knapp*, 16 *ib.* 318 ("London" animal foods); *Ex parte Farnum & Co.*, 18 *ib.* 412 ("Lancaster" tickings); *Ex parte Oliver*, 18 *ib.* 923 ("Raleigh" tobacco); *Ex parte Procter*, 51 *ib.* 1785 ("Cromarty" cured fish); *Ex parte American Saw Co.*, 58 *ib.* 521 ("Trenton" saws); *Ex parte Headley*, 72 *ib.* 1654 ("Cloverdale" canned fruits).

(*c*) *Montgomerie* v. *Donald & Co.*, Ct. Sess. Cas. 4th Ser. XI. 506 ("Water of Ayr" stone).

(*d*) *Kinney* v. *Basch*, Dig. 542 ("St. James' Parish" cigarettes); *Dunbar* v. *Glenn*, 42 Wisc. 118 ("Bethesda" mineral water); *Anheuser Busch Brewing Association* v. *Piza*, 23 Bl. C. C. 245; *Southern White Lead Co.* v. *Carey*, 25 Fed. Rep. 125; *Pike Manufacturing Co.* v. *Cleveland Stone Co.*, 35 Fed. Rep. 896; *Gebbie* v. *Stitt*, 89 N. Y. Sup. Ct. 93; *Whitfield* v. *Loveless*, 64 U. S. Pat. Gaz. 442.