

Double user.

It seems that under ordinary circumstances a geographical word which has been so used that it may mean the goods of either A. or B. will not be protected at the instance of either or both of them (a).

Fraud not necessary to be proved.

It was formerly sometimes supposed, and was held by Sir G. Jessel, M. R., and the Court of Appeal, in *Singer Manufacturing Co. v. Wilson* (b), that for an action to restrain the use of a trade name to be successful fraud must be proved, on the ground that, when a trade mark was once affixed to the goods, it passed with the goods from hand to hand, thus silently repeating to each successive purchaser the original misrepresentation of the original infringer, while the improper use of a name not affixed to the goods was not the necessary consequence of being in possession of marked goods, but was the individual act of each person who used it in respect of the goods; so that there might be held to be an infringement of a trade mark when, in analogous circumstances, there would be no infringement of a trade name. And when the case of *Singer Manufacturing Co. v. Wilson* was remitted by the House of Lords to the Court of First Instance (c), on the ground of insufficiency of evidence, some of the law peers seem to have thought that different principles of law might possibly be applicable to trade marks and trade names. But Lord Cairns, C. (d), said: "It may well be that if an imitated trade mark is attached to the article manufactured, there will from that circumstance be the certainty that it will pass into every hand into which the article passes, and be thus a continuing and ever present representation with regard to it; but a representation made by advertisements that the articles sold at a particular shop are articles manufactured by A. B. (if that is the legitimate effect of the advertisements, which is

(a) *Whitstable Oyster Fishery Co. v. Hayling Fisheries, Ltd.*, 17 P. R. 461; 18 P. R. 434; *Grand Hotel of Caledonia Springs v. Wilson*, (1904) A. C. 103, 110; *Hopton Wood Stone Firms, Ltd. v. Gething*, 27 P. R. 605. In *Worcester Royal Porcelain Co., Ltd. v. Locke*, 19 P. R. 479, the separate businesses had been united for a substantial time before action brought.

(b) 2 Ch. D. 434.

(c) 3 App. Cas. 376.

(d) *Ib.* 389. And see *Bodega Co., Ltd. v. Owens*, 6 P. R. 236; 7 *ib.* 31; *Reddaway v. Bentham Spinning Co.*, (1892) 2 Q. B. 639; *Powell v. Birmingham Vinegar Brewery Co.*, (1896) 2 Ch. 54;

(1897) A. C. 710. Though proof of fraudulent intent is not necessary it may have a great influence in convincing the Court that the name claimed to be distinctive is so in fact: *Cellular Clothing Co. v. Maxton & Murray*, (1899) A. C. 326, 334, 341. See also *S. Chivers & Sons v. S. Chivers & Co.*, 17 P. R. 420; *Ripley v. Griffiths*, 19 P. R. 590; *Plotzker v. Lucas*, 24 P. R. 551, 560; *H. F. Randall, Ltd. v. E. Bradley & Son*, 24 P. R. 773, 781. In many cases in which an injunction has been granted on the principle of *Reddaway v. Banham*, (1896) A. C. 199, a fraudulent intent has in fact been proved.

a separate question) must, in my opinion, be as injurious in principle, and may possibly be quite as injurious in operation, as the same representation made upon the articles themselves." And in *Singer Manufacturing Co. v. Loog* (a), Lord Blackburn took the view that the law of trade marks and trade names when not affected by legislation was the same.

Whether there is or is not property in a trade name, as Lord Blackburn suggested (b), it is a fraud on the part of one person to attract to himself the custom intended for another by a false representation, direct or indirect, that the business carried on by himself is identical with that of the other person by whose ability and exertions the name has acquired the reputation it possesses (c). The question is not whether the defendant's business is represented as being similar to the plaintiff's, but whether it is represented as being that very identical business (d). If such a false representation has been made, whatever may have been the motive of the persons making it, when proceedings are taken in consequence of it, "all the Court requires is to be satisfied that the names are so similar as to be calculated to produce confusion between the two—so calculated to do it that, when it is drawn to the attention of those adopting the name complained of that that would be the result, it is not honest for them to persevere in their intention, though originally the intention might not have been otherwise than honest" (e).

False representation sufficient.

"The question is this," said Cotton, L. J., in the Court of Appeal (f),—"whether the defendant has represented that the goods manufactured by him were manufactured by the plaintiffs, or whether he has done anything calculated so to represent. I quite agree that it is unnecessary that a fraudulent intention in issuing the circulars complained of should be established. If the

Act originally innocent may become fraudulent.

(a) 8 App. Cas. 15.

(b) And see *per* the Court of Session in *Singer Manufacturing Co. v. Kimball & Morton*. Ct. of Sess. Cas. 3rd Ser. XI. 267; also *Boulnois v. Peake*, 13 Ch. D. 513.

(c) *Lee v. Haley*, L. R. 5 Ch. 155.

(d) *Cruttwell v. Lye*, 17 Ves. 335; *Churton v. Douglas*, Johns. 174; *Civil Service Supply Association v. Dean*, 13 Ch. D. 512; *Hirsch v. Hirsch & Co.*, 80 L. T. (Journal) 283; *Magnolia Metal Co. v. Tandem Smelting Co.*, 17 P. R. 477. See *Manchester Brewery Co. v. North Cheshire & Manchester Brewery Co.*, (1898) 1 Ch. 539; (1899) A. C. 83, where an

injunction was granted restraining the defendant company from using a name which suggested that the plaintiff company had been amalgamated with them. And see *Army & Navy Co-operative Society, Ltd. v. Army, Navy & Civil Service Co-operative Society of South Africa, Ltd.*, 19 P. R. 574.

(e) *Per* James, L. J., in *Hendriks v. Montagu*, 17 Ch. D. 638. And see *Manchester Brewery Co. v. North Cheshire & Manchester Brewery Co.*, (1898) 1 Ch. 539; *Bayer v. Baird*, 15 P. R. 615.

(f) In *Singer Manufacturing Co. v. Loog* (3), 18 Ch. D. 417; and see *Carr & Sons v. Crisp & Co., Ltd.*, 19 P. R. 497.

natural consequence of those things, even in circumstances not known to him, is that they will represent the goods to be those of another person, it is wrongful, and, as this Court says, a fraud in him, to continue the user after those circumstances are brought to his knowledge. We must consider whether he has represented, or done that which is reasonably calculated to give that misrepresentation." In the same spirit, *Wood, V.-C.*, had laid down long previously (a) that if the plaintiffs had represented to the defendants that the course which the latter had been taking was calculated to deceive the public, and, "after such representation, the defendants persisted in continuing the use of the name in the same manner, then, on the plaintiffs' bringing the case before the Court, the Court would be justified in saying that that which was not fraudulent at first became so by the defendants' persisting in the same course, and that therefore the plaintiffs would be entitled to the relief they claimed."

But deception must be probable.

The circumstances must, however, be such as to satisfy the Court that deception is probable, and where that is not adequately made out, relief will be refused. Thus, in *Goodfellow v. Prince* (b), a London wine merchant agreed with a firm of French wine growers to import from them a particular growth of champagne under a label bearing the assumed name "Le Court et Cie, Reims," and sold considerable quantities of wine in England under the label, and another London wine merchant began to import champagne from a different French grower and to sell it in England under a label also bearing the assumed name of "Le Court et Cie"; and it was held by the Court of Appeal that, whether the use of the name by the defendant might or might

(a) In *Williams v. Osborne*, 13 L. T. N. S. 498. And see *McAndrew v. Bassett*, 4 De G. J. & S. 380; *Bodega Co., Ltd. v. Owens*, 6 P. R. 236; *Huntley & Palmer v. Reading Biscuit Co.*, 10 P. R. 277; *In re Paine* (2), (1893) 2 Ch. 567; *Pinet v. Maison Pinet* (2), (1898) 1 Ch. 179; *Bayer v. Baird*, 15 P. R. 615; *Birmingham Small Arms Co., Ltd. v. Webb & Co.*, 24 P. R. 27; *Magee Furnace Co. v. Le Barron*, 127 Mass. 115; and *Holt v. Menendez*, 128 U. S. 182.

(b) 35 Ch. D. 9. And see *California Fig Syrup Co. v. Taylor Drug Stores*, 14 P. R. 564; *Attenborough v. Jay*, 14 Times L. R. 439; *London General Omnibus Co. v. Lavell*, (1901) 1 Ch. 135; *Wolff v. Nopitsch*, 18 P. R. 27; *Cooper & McLeod v. Maclachlan*, 18 P. R. 380; 19 P. R. 27; *Goodwin v. Ivory Soap Co.*, 18 P. R.

387; *Findlater, Mackie, Todd & Co. v. Newman*, 19 P. R. 235; *Macmillan v. Ehrmann Bros., Ltd.*, 21 P. R. 357, 647; *Warwick Trading Co. v. Urban*, 21 P. R. 240; *Imperial Tobacco Co. of Great Britain and Ireland, Ltd. v. Purnell & Co.*, 21 P. R. 368, 598; *Neostyle Mfg. Co., Ltd. v. Ellam's Duplicator Company*, 21 P. R. 569; *Silicate Paint Co. v. Smith*, 23 P. R. 143; *Gawthorp v. Mason*, 23 P. R. 401; *Reddaway v. Irwell and Eastern Rubber Co., Ltd.*, 24 P. R. 203; *National Cash Register Co., Ltd. v. Theeman*, 24 P. R. 211; *Star Cycle Co., Ltd. v. Frankenburgs*, 24 P. R. 46, 405; *Burberrys v. Cording*, 26 P. R. 693; *Hunt, Roope & Co. v. Ehrmann*, 27 P. R. 512; *Griffiths v. Frankenburg*, 27 P. R. 733. Cf. *Richards v. Butcher* (1), 7 P. R. 288.

not represent that his wine was manufactured by the same French grower who manufactured the plaintiff's wine, there was nothing to show that it represented that the wine was imported by the same importer. And in *Bodega Co., Ltd. v. Owens (a)*, the V.-C. of Ireland held on motion that, there being in Ireland only one establishment of the plaintiff company known as a Bodega, which was in Dublin, there was no such probability of deception, if the defendant were allowed to open a "Bodega" in Belfast, as to call for an injunction to prevent the latter from so doing. But at the hearing of the action, on further evidence, an injunction was granted. A defendant is not responsible for improper conduct on the part of his predecessors in title which he has not himself repeated (*b*).

Lapse of time may be material in considering whether deception is probable. Thus, where the Marquis of Londonderry and his predecessors in title, owners of the Londonderry collieries in the county of Durham, had for many years been in the habit of selling their coal in London, wholesale but not retail, and the defendant, a coal merchant, had, with the knowledge of the Marquis and his predecessors in title, been in the habit, since 1861, of selling retail a particular quality of coal, not obtained from the Londonderry collieries, under the name of "Londonderry Wallsend," or "Londonderry W. E.," and the Marquis had begun in February, 1885, to sell retail in London coal got from a particular seam under the name of "Londonderry Wallsend," an injunction to restrain the defendant from selling his coal by the names which he had been accustomed to use was refused, on the ground that, having regard to the lapse of time, there was no misrepresentation, notwithstanding that the plaintiff's title formed part of the names, and that he was the owner of the Londonderry collieries (*c*).

This may be affected by lapse of time.

If in an action to restrain the use of a trade name the defendant's goods, on the face of them, and having regard to the surrounding circumstances, are calculated to deceive, "no evidence is required to prove the intention to deceive, nor ought time and money to be expended on any such defence. The sound rule is that a man must be taken to have intended the reasonable and natural consequences of his acts, and no more is wanted. If,

Evidence of intention to deceive, when superfluous.

(a) 6 P. R. 236; 7 *ib.* 31.

(b) *Paterson v. Kit Coffee Co.*, 27 P. R. 594.

(c) *Marquis of Londonderry v. Russell*, 3 Times L. R. 360. And see *Ford v.*

Foster, L. R. 7 Ch. 611, 628, *per Mellish*, L. J.; *Cropper Minerva Machines Co. v. Cropper, Charlton & Co.*, 23 P. R. 388; *London General Omnibus Co. v. Lavell*, (1901) 1 Ch. 135.

on the other hand, a mere comparison of the goods, having regard to the surrounding circumstances, is not sufficient, then it is allowable to prove from other sources that what is or may be apparent innocence is really intended to deceive" (a). In such cases it is important to examine the motive, because, as was said by Farwell, J., "it does not lie in the mouth of a rogue, when he is found to be a rogue in fact, to say that his roguery was so clumsy that it could not possibly succeed" (b). As has often been said, if a man is shown to be fraudulent, the Court may well adopt his own view that the steps which he himself thought sufficient to accomplish his object would be likely to do so.

What evidence admissible.

The question as to what evidence is admissible to satisfy the Court that the defendant's conduct is calculated to cause deception, has been much considered. Formerly it was usual for persons in the trade to be regarded as experts, and to be allowed to state their opinion as to what would be likely to happen. At the present time the prevailing view is that such persons cannot be treated as experts, and that mere statements of opinion are not admissible, as the question whether deception is likely to occur or not is for the Court. Evidence of persons in the trade is, however, admitted to prove the manner in which the trade is carried on, the class of customers, the points to which these are accustomed to look, and, in short, any matters of fact which may assist the Court in coming to its own conclusion (c). The language of the Merchandise Marks Act, 1887, s. 2 (2), is to prohibit the use of anything which is "reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they

(a) *Saxlehner v. Apollinaris Co.*, (1897) 1 Ch. 893, per Kekewich, J. And see *Martell & Co. v. Paarl Wine & Spirit Co.*, 12 Cape Good Hope, 326.

(b) *S. Chivers & Sons v. S. Chivers & Co., Ltd.*, 17 P. R. 420, 427. And see *Payton & Co., Ltd. v. Snelling, Lampard & Co.*, 17 P. R. 48; (1901) A. C. 308; *Iron-Ox Remedy Co., Ltd. v. Co-operative Wholesale Soc., Ltd.*, 24 P. R. 425; *Hennessy & Co. v. Keating*, 25 P. R. 125, 136; *Royal Insurance Co., Ltd. v. Midland Insurance Co., Ltd.*, 26 P. R. 95. See and compare *H. E. Randall, Ltd. v. British & American Shoe Co.*, (1902) 2 Ch. 354; and *H. E. Randall, Ltd. v. E. Bradley & Son*, 24 P. R. 771.

(c) See *North Cheshire & Manchester Brewery Co. v. Manchester Brewery Co.*, (1899) A. C. 83; *London General Omnibus Co. v. Lavell*, (1901) 1 Ch. 135; *Payton & Co., Ltd. v. Snelling, Lampard & Co.*, (1901) A. C. 308; *Alaska Packers' Association v. Crooks & Co.*, 18 P. R. 129; *Bourne v. Swan & Edgar*, (1903) 1 Ch. 211; *Cropper Minerva Machines Co. v. Cropper, Charlton & Co.*, 23 P. R. 388; *Hennessy & Co. v. Keating*, 25 P. R. 125, 361; *Royal Insurance Co., Ltd. v. Midland Insurance Co., Ltd.*, 25 P. R. 728; 26 P. R. 95; *St. Mungo Co. v. Viper Co.*, 27 P. R. 420; and many other cases. See also T. M. A. 1905, s. 43.

really are," and trade experience would usually assist the Court in deciding what is "reasonably calculated" to deceive.

When the name which is alleged to have been imitated is that of a company, and is composed of such words as are in ordinary use in the language, very clear evidence indeed of probability of deception will be required for an action for infringement to be successful. Thus, where a bill was filed by the London and Provincial Law Assurance Society against the London and Provincial Joint Stock Life Assurance Company (a), the injunction was refused, an action at law being directed; and in suits by the Colonial Life Assurance Company against the Home and Colonial Assurance Company, Limited (b), and by the London Assurance Company against The London and Westminster Assurance Corporation, Limited (c), the injunction was simply refused. In *Lee v. Haley* (d), the plaintiffs were coal merchants, trading under the name of The Guinea Coal Company, and having their business premises at No. 22, Pall Mall. The defendant had been in their service as manager, and on leaving them set up in business at Beaufort Buildings, Strand, under the name of the Pall Mall Guinea Coal Company. From Beaufort Buildings he removed to No. 48, Pall Mall. In that case fraud was held to be proved, and the injunction was granted; but the Court being of opinion that the only reasonable chance of successful deceit depended upon the residence of the defendant in Pall Mall, the injunction against the user by the defendant of his trade name as above was restricted to Pall Mall (e).

(a) *London & Provincial Law Assurance Society v. London & Provincial Joint Stock Life Assurance Co.*, 17 L. J. Ch. 37. In *Purser v. Brain*, 17 L. J. Ch. 141, it was held that the circulars of "The London Patent Manure Co." were clearly fraudulent imitations of those of "The London Manure Co.," but the case was sent to a jury for the purpose of deciding whether the plaintiffs' user of their title had been sufficiently long. And in *Lawson v. Bank of London*, 18 C. B. 84, a case at Common Law, the plaintiff was defeated on the ground of a want of averment in the declaration that he was a banker or had ever carried on that business; but Willes, J., remarked that "he was not prepared to say that the defendant would not be liable if the cause of complaint were properly alleged."

(b) *Colonial Life Assurance Co. v. Home*

& Colonial Assurance Co., 33 Beav. 548.

(c) *London Assurance Co. v. London & Westminster Assurance Corporation*, 32 L. J. Ch. 664.

(d) L. R. 5 Ch 155

(e) See *Churton v. Douglas, Johns*. Injunctions granted. 174. In *Hendriks v. Montagu*, 17 Ch. D. 638, an injunction was granted at the instance of "The Universal Life Assurance Society" to restrain the use of the name "The Universe Life Assurance Association, Ltd.," on the ground of similarity: in *Simpson v. Anglo-Indian Tea Co., Ltd.*, Bacon, V.-C., May 4th, 1883, the defendant company was not allowed to trade under the name which it had taken, which was the same as that under which the plaintiff was trading; in *Guardian Fire & Life Assurance Co. v. Guardian & General Insurance Co., Ltd.*, 50 L. J. Ch. 252, it was

Descriptive
name of
company.

In *Australian Mortgage, Land & Finance Co. v. Australian & New Zealand Mortgage Co. (a)*, the Court of Appeal pointed

held that the defendant company's name was likely to deceive, but that the name of "The Guardian Horse, Vehicle and General Insurance Co." might fairly be taken; in *Capital & Counties Bank, Ltd. v. Capital & County Deposit Bank*, Chitty, J., Feb. 9th, 1884, an injunction was granted to restrain the use of the latter name; in *Accident Insurance Co., Ltd. v. Accident, Disease & General Insurance Corporation, Ltd.*, W. N. 1884, p. 191, Pearson, J., granted an injunction, and on appeal an order was taken by consent, the defendants agreeing to place some other word than "Accident" at the head of their title: in *Thompson v. Improved French Dye-Cleaning & Dyeing Co., Ltd.*, 30 Sol. J. 753, the plaintiff was carrying on business at Brixton as "The French Dyeing & Cleaning Co.," and the defendants were carrying on business in Great Portland Street under the name above, and using the address "Brixton" on their trade papers, and an injunction was granted. So, also, in *Santitas Co., Ltd. v. Condy*, 4 P. R. 195, 533, in which the plaintiffs were "The Santitas Co., Ltd.," and the defendant began to trade as "The Condisantitas Co."

Injunctions were also granted in *Rendle v. Rendle & Co., Ltd.*, 63 L. T. N. S. 94; *Army & Navy Co-operative Society, Ltd. v. Army & Navy Civil Service Co-operative Society of India, Ltd.*, 8 P. R. 426, 472; *Premier Cycle Co., Ltd. v. Premier Tube Co., Ltd.*, 12 Times L. R. 481; *Brinsmead v. Brinsmead*, *ib.* 631; 13 *ib.* 3; *Dunlop Pneumatic Tyre Co., Ltd. v. Dunlop-Trussault Cycle & Tube Manufacturing Co.*, 40 Sol. J. 544; *Same v. Dunlop Lubricant Co.*, 16 P. R. 12; *Eastman Photographic Materials Co. v. Griffiths' Cycle Co.*, 15 P. R. 165, where the Kodak Cycle Co. were restrained from using "Kodak," which had become identified with the plaintiff company; *National Folding Box & Paper Co. v. National Folding Box Co.*, 43 W. R. 156, where the fact that the word "National" was intended to refer to different nations in the two cases was held immaterial, inasmuch as both companies sold their goods in this country; *Manchester Brewery Co. v. North Cheshire & Manchester Brewery Co.*, (1898) 1 Ch. 539; (1899) A. C. 83, where the defendant company succeeded to the business of the North Cheshire Brewery Company, and the ground of the decision was that the name of the defendant

company would induce the belief that it had been formed by an amalgamation of the plaintiff company with the North Cheshire Company, and that the plaintiff company had ceased to have any separate existence; *Valentine Meat Juice Co. v. Valentine Extract Co., Ltd.*, 17 P. R. 673; *La Société Anonyme des Anciens Etablissements Panhard Levassor v. Panhard Levassor Motor Co., Ltd.*, (1901) 2 Ch. 513; *Grant v. Levitt*, 18 P. R. 361; *H. E. Randall, Ltd. v. British & American Shoe Co., Ltd.*, (1902) 2 Ch. 354; *Army & Navy Co-operative Society, Ltd. v. Army, Navy & Civil Service Co-operative Society of South Africa, Ltd.*, 19 P. R. 574; *International Plasmon, Ltd. v. Plasmonade, Ltd.*, 22 P. R. 543; *Daimler Motor Co. (1904) Ltd. v. London Daimler Co., Ltd.*, 24 P. R. 379; *Fine Cotton Spinners & Doublers' Association, Ltd. v. Harwood, Cash & Co., Ltd.*, 24 P. R. 533; *Toms v. Merchant Service Guild, Ltd.*, 25 P. R. 474; *Resartus Co. v. Sartor Resartus Co.*, 25 P. R. 808; *Standard Bank of South Africa v. Standard Bank, Ltd.*, 26 P. R. 310; *Ouvah Ceylon Estates, Ltd. v. Uva Ceylon Rubber Estates, Ltd.*, 27 P. R. 645, affirmed C. A. Oct. 21, 1910; *Hopton Wood Stone Firms, Ltd. v. Gething*, 27 P. R. 605 (in which Parker, J., thought that prefixing the word "New" to the defendant's title would afford a sufficient distinction); *Boston Rubber Shoe Co. v. Boston Rubber Co. of Montreal*, 32 Can. Sup. Ct. 315; *Mount Balfour Copper Mines no Liability v. Mount Balfour Mines no Liability* (1909), V. L. R. 542. And see *Braham v. Beachim*, 7 Ch. D. 848 ("Radstock Colliery Proprietors"); *Campbell v. Hollins*, Dig. 548 ("Minton & Co.").

(a) W. N. 1880, p. 6. So, also, *per* the Supreme Court of the U. S. in *Goodyear Rubber Co. v. Goodyear India-rubber Glove Manufacturing Co.*, 128 U. S. 598. And see *Acrators, Ltd. v. Tollitt*, (1902) 2 Ch. 319, which shows that, speaking generally, the principles of *Reddaway v. Banham*, (1896) A. C. 199, as explained in *Cellular Clothing Co. v. Marton & Murray*, (1899) A. C. 326, apply as much to a name of a company as to a name given to a particular class of goods; *Plotzker v. Lucas*, 24 P. R. 551; *British Vacuum Cleaner Co., Ltd. v. New Vacuum Cleaner Co., Ltd.*, 24 P. R. 641; *H. E. Randall, Ltd. v. E. Bradley & Son*, 24 P. R. 773; *Boston Rubber Shoe Co. v. Boston Rubber Co. of Montreal*, 32 Can. Sup. Ct. 315.

out the difficulty of monopolising the exclusive use of a name which correctly described the nature of a company's business, or the locality of its operations. And in *India & China Tea Co. v. Teede (a)*, it was held that a firm of tea merchants were entitled to assume the name of "The India & China Packet Tea Co." notwithstanding that the name of the plaintiff company was as above, the name assumed by the defendants being simply descriptive, and there being no evidence of deception (b).

By § 8 of the Companies (Consolidation) Act, 1908, replacing § 20 of the Companies Act, 1862, it is enacted that "a company may not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved, and signifies its consent in such manner as the registrar requires: if any company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with

The Companies (Consolidation) Act, 1908.

(a) W. N. 1871, p. 241.

(b) In the following cases injunctions were refused:—*London & County Banking Co. v. Hampshire & North Wilts Bank*, Dig. 618, in which the defendant company was proposing to take the name of "The Capital & Counties Bank"; *Merchant Banking Co. of London v. Merchants' Joint Stock Bank, Ltd.*, 9 Ch. D. 560; *Army & Navy Co-operative Society, Ltd. v. Junior Army & Navy Stores, Ltd.*, Dig. 640; *Australian Mortgage, Land & Finance Co. v. Australian & New Zealand Mortgage Co.*, W. N. 1880, p. 6; *Midland Electric Light & Power Co. v. Brush Midland Electric Light & Power Co.*, 26 Sol. J. 465; *Provident Association of London, Ltd. v. London & Provincial Provident Association, Ltd.*, 30 Sol. J. 753; *Bumsted v. General Reversionary Co., Ltd.*, 4 Times L. R. 621, where the plaintiff sued on behalf of "The General Reversionary & Investment Co.," who carried on an extensive business in London, with country agents, and the defendants were setting up a small business at Liverpool; *California Fig Syrup Co. v. Taylor's Drug Co.*, 14 P. R. 564; *Montreal Lithographing Co. v. Sabiston*, (1899) A. C. 610; *Daimler Motor Car Co., Ltd. v. British Motor Traction Co., Ltd.*, 18 P. R. 465; *Aerators, Ltd. v. Tollitt*, (1902) 2 Ch. 319; *Dunlop Pneumatic Tyre Co. v. Dunlop Motor Co., Ltd.*, 23 P. R. 761;

National Cash Register Co., Ltd. v. Theeman, 24 P. R. 211; *Plotzker v. Lucas*, 24 P. R. 551; *H. E. Randall, Ltd. v. E. Bradley & Son*, 24 P. R. 657, 773; *British Vacuum Cleaner Co., Ltd. v. New Vacuum Cleaner Co., Ltd.*, 24 P. R. 641; *Electromobile Co., Ltd. v. British Electromobile Co., Ltd.*, 24 P. R. 688; 25 P. R. 258; *Scottish Union & National Insurance Co. v. Scottish National Insurance Co.*, 25 P. R. 560; 26 P. R. 105; *Royal Insurance Co., Ltd. v. Midland Royal Insurance Co., Ltd.*, 25 P. R. 728; 26 P. R. 95; *Meikle v. Williamson*, 26 P. R. 775; *Elliott v. Expansion of Trade, Ltd.*, 27 P. R. 54; *Bendigo & Country District Trustees & Executors Co., Ltd. v. Sandhurst & Northern District Trustees, Executors & Agency Co., Ltd.*, 9 C. L. R. 474; *Goodyear Rubber Co. v. Goodyear India-rubber Glove Manufacturing Co.*, 128 U. S. 598. And see *Condy v. Mitchell*, 37 L. T. N. S. 268, 766 ("Condy's Fluid Co."); *Massam v. Thorley's Cattle Food Co.*, 14 Ch. D. 748 ("Thorley's Cattle Food Co."); *Tussaud v. Tussaud*, 44 Ch. D. 678; *Saunders v. Sun Life Assurance Co. of Canada*, (1894) 1 Ch. 537, where the Sun Life Assurance Society failed to restrain the defendants from using their full name, but succeeded in restraining them from using any abbreviated form of it.

Injunctions refused.

that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name" (a). This section does not authorise a company to use or register a name so nearly resembling one previously used by another company as to be calculated to deceive, even though the name of the earlier company has not itself been registered (b); and, on the other hand, since the section only affects the registration of the name of a company, the rights of a company to a name which has been registered cannot be attacked *under the section*, whatever may be the rights outside the section of another company which has previously used the name (c).

Name of individual.

If the trade name which has been imitated is that of an individual, and this has been assumed by another person of different name, little is required to prove the fraud. In fact, the assumption of another's name is almost sufficient proof if taken alone (d). But in *Olin v. Bate* (e), the plaintiff Olin failed to succeed in restraining the defendant Bate from carrying on the same profession (the medical) in the same town as himself under the name of Olin, the defendant having so done before the plaintiff came to the town in question. And where "Liebig's Extract of Meat" had come to be the proper designation of an article first invented by Baron Von Liebig, Field, J., affirmed by the Court of Appeal and the House of Lords, declined to restrain a manufacturer of the article from styling his preparation "Baron Liebig's Extract of Meat," and placing on the pots a photograph of the Baron (f).

Assumed name.

Sometimes the plaintiff's name is itself an assumed or fanciful one: thus the use of the name "Christy's Minstrels" has been

(a) See *Manchester Brewery Co. v. North Cheshire & Manchester Brewery Co.*, (1898) 1 Ch. 539; *Daimler Motor Car Co., Ltd. v. British Motor Traction Co., Ltd.*, 18 P. R. 465; *Daimler Motor Co. (1904), Ltd. v. London Daimler Co., Ltd.*, 24 P. R. 379.

(b) *Hendriks v. Montagu*, 17 Ch. D. 638. See *Tussaud v. Tussaud*, 44 Ch. D. 678; *Société Anonyme des Anciens Etablissements Panhard et Levassor v. Panhard Levassor Motor Co., Ltd.*, (1901) 2 Ch. 513; *Toms v. Merchant Service Guild*, 25 P. R. 474.

(c) *Merchant Banking Co. of London v. Merchants' Joint Stock Bank, Ltd.*, 9 Ch. D. 560.

(d) Per Turner, L. J., in *Burgess v. Burgess*, 3 De G. M. & G. 896. See *Barber v. Manico*, 10 P. R. 93; *Pinet v. Maison Pinet*, (1898) 1 Ch. 179.

(e) 98 Ill. 55; 38 Amer. Rep. 78.

(f) *Liebig's Extract of Meat Co. v. Anderson*, W. N. 1882, p. 147; *ib.* 1883, p. 185; H. L., July 16th, 1885. Cf. *Richmond Nervine Co. v. Richmond*, 159 U. S. 293.

restrained (a); and that of the name "The Oldfield Lane Doctor" (b); and in *Isaacson v. Thompson* (c) the plaintiff kept a millinery establishment, as "Madame Elise," which name being imitated by the defendant, an injunction would have been awarded, had not the plaintiff's own delay disentitled her to relief.

In some cases the use of a man's own name may be such as to deceive, and where this is so the person aggrieved is entitled to obtain an injunction against such use of the name (d); but "it is a question of evidence in each case whether there is false representation or not" (e). It is not sufficient in such cases to show that the use of the name, though honest, may cause confusion. Thus, in *Turton & Sons, Ltd. v. Turton* (f) the plaintiffs carried on an old-established business in Sheffield

Man's own name. Use not restrained unless fraudulent.

(a) *Christy v. Murphy*, 12 How. Pr. 77; *R. Cox*, 164; *Montague v. Moore*, Seton, 6th ed. 629.

(b) *Milner v. Reed*, Dig. 328.

(c) 41 L. J. Ch. 101. And see *Davis v. Rogers*, 89 L. T. (Journal) 292.

(d) *Churton v. Douglas*, Johns. 174; *Burgess v. Burgess*, 3 De G. M. & G. 896; *Fullwood v. Fullwood*, W. N. 1873, pp. 93, 185; *Fullwood v. Fullwood* (2), 9 Ch. D. 176; *Holloway v. Holloway*, 13 Beav. 209; *Pullar v. Pullar*, Fry, J., April 9th, 1883; *Melachrino & Co. v. Melachrino Egyptian Cigarette Co.*, 4 P. R. 215; *M. Melachrino & Co. v. R. Melachrino & Co.*, Chitty, J., May 29th, 1888; *Nicholls v. Kimpton*, 3 Times L. R. 674; *Birmingham Vinegar Brewery Co., Ltd. v. Liverpool Vinegar Co., Ltd.*, 4 Times L. R. 613; *Atkinson v. Atkinson*, 85 L. T. (Journal) 229; *Warner v. Warner*, 5 Times L. R. 359; *Tussaud v. Tussaud*, 44 Ch. D. 678; *Rendle v. Rendle & Co.*, 63 L. T. N. S. 94; *Edge v. Harrison*, 8 P. R. 74; *Otard, Dupuy & Co. v. Otard de Montebello Cognac Co.*, 9 Times L. R. 295; 10 *ib.* 67; *Brinsmead v. Brinsmead*, 12 Times L. R. 631; 13 *ib.* 3; *Pinet v. Maison Pinet* (1), 14 P. R. 933; *Dunlop Pneumatic Tyre Co. v. Dunlop-Truffault Cycle and Tube Manufacturing Co.*, 40 Sol. J. 544; *Bayer v. Baird*, 15 P. R. 615, 627; *J. H. Brooks & Co., Ltd. v. Norfolk Cycle Co.*, 16 P. R. 523; *Valentine Meat Juice Co. v. Valentine Extract Co.*, 17 P. R. 393; *J. & J. Cash, Ltd. v. Cash*, 19 P. R. 181; *Van Oppen & Co., Ltd. v. Van Oppen*, 20 P. R. 617; *Rigden v. Jones*, 22 P. R. 417; *Joseph Rodgers & Sons v. Simpson*, 23 P. R. 297; *Joseph*

Rodgers & Sons v. Hearnshaw, 23 P. R. 349; *Jameson v. Dublin Distillers' Co.*, (1900) I. R. 43; *Gage v. Canada Publishing Co.*, 11 Can. Sup. Ct. 306. See *Christie v. Christie*, L. R. 8 Ch. 499.

(e) *Per Turner*, L. J., in *Burgess v. Burgess*, 3 De G. M. & G. 896. And see *Turton & Sons, Ltd. v. Turton*, 42 Ch. D. 128; *Reddaway v. Banham*, (1896) A. C. 199, 211; *Birmingham Vinegar Brewery Co. v. Powell*, (1897) A. C. 710; *Dunlop Pneumatic Tyre Co. v. Dunlop Motor Co.*, 23 P. R. 761. See *per Kay*, L. J., in *Powell v. Birmingham Vinegar Brewery Co.*, (1896) 2 Ch. 54; and other cases.

(f) 42 Ch. D. 128. And see *Saunders v. Sun Life Assurance Co. of Canada*, (1894) 1 Ch. 537; *Crawford v. Bernard*, 11 P. R. 580; *Valentine v. Valentine*, 32 L. R. Ir. 488; *Jamieson & Co. v. Jamieson*, 15 P. R. 169; *Attenborough v. Jay*, 14 Times L. R. 365; *ib.* 439; *Montreal Lithographing Co. v. Sabiston*, (1899) A. C. 610; *Chivers & Sons v. S. Chivers & Co., Ltd.*, 17 P. R. 420; *John Dewar & Sons, Ltd. v. Dewar*, 17 P. R. 341; *Marshall v. Sidebotham*, 18 P. R. 43; *H. P. Truesitt, Ltd. v. Idney*, 20 P. R. 321; *B. Warsop & Sons, Ltd. v. Warsop*, 21 P. R. 481; *Joseph Lucas, Ltd. v. Fabry Automobile Co., Ltd.*, 23 P. R. 261; *Cropper Minerva Machines Co. v. Cropper, Charlton & Co.*, 23 P. R. 388; *Dunlop Pneumatic Tyre Co. v. Dunlop Motor Co.*, 23 P. R. 761; *J. B. Williams Co. v. H. Bronnley & Co., Ltd.*, 26 P. R. 481, 765; *Rosher v. Young*, 17 Times L. R. 347; *Brown Chemical Co. v. Meyer*, 139 U. S. 540.

as Thomas Turton & Sons, Ltd., and the defendant John Turton, who had for some years carried on a similar business in the same town as John Turton & Co., took his two sons into partnership, and changed his trade name to John Turton & Sons; and although some confusion was proved, the Court of Appeal held that, the name adopted being a true statement of the composition of the firm, and there being no proof or even allegation of fraud, no injunction could be granted. Lord Esher, M. R., said: "If all that a man does is to carry on the same business (as another trader), and to state how he is carrying it on, that statement being the simple truth, and he does nothing more with regard to the respective names (*a*), he is doing no wrong. He is doing what he has an absolute right by the law of England to do; and you cannot restrain a man from doing that which he has an absolute right by the law of England to do." And Cotton, L. J., added: "The Court cannot stop a man from carrying on his own business in his own name, although it may be the name of a better known manufacturer, when he does nothing at all in any way to try and represent that he is that better known and successful manufacturer." Even if an injunction is granted, it will not absolutely restrain him from trading in his own name, but only from doing so in some particular way (*b*). Further, "if he has established a business in his own name, no element or suspicion of fraud attaches to him if he turns the business into a limited company, and applies to that limited company his own name with the word 'limited,' because the reason for so doing is obvious, that he desires to retain the goodwill which he has gained for that name" (*c*). But where a person has allowed another to use his name, and acquire a reputation under it, he will not afterwards be allowed himself to use his name so as to deceive, nor to empower others to use it so as to produce that result, nor will such others be permitted so to use it. Thus, where one Holbrook, an employé of the Birmingham Vinegar Brewery Co., Ltd., had allowed the company to use his name for twelve years as part of the title of their goods—*e.g.*, "Holbrook's

(*a*) See *Lewis's v. Lewis*, 45 Ch. D. 281, 284; and *Jamieson & Co. v. Jamieson*, 15 P. R. 169. Compare, however, *Reddaway v. Banham*, (1896) A. C. 199.

(*b*) *J. & J. Cash, Ltd. v. Cash*, 19 P. R. 181.

(*c*) *Per* Farwell, J., in *S. Chivers & Sons v. S. Chivers & Co.*, 17 P. R. 420. And see *J. & J. Cash, Ltd. v. Cash*, 19 P. R. 181; *Dunlop Pneumatic Tyre Co. Ltd. v. Dunlop Motor Co., Ltd.*, 24 P. R. 572.

Worcestershire Sauce," "Holbrook's London Relish," "Holbrook's Pure Pickles"—he was not allowed, on leaving their service and entering that of the Liverpool Vinegar Co., Ltd., to give the latter a right to use his name as part of the same titles, nor were they allowed so to use it (*a*). And a man may not add to his own name, *e.g.*, "and Sons," so as to create an unfair competition with another firm (*b*).

"There is no instance," said Kay, J., in *Rendle v. Rendle & Co.* (*c*), "in which it has been held that a man can lend his name to a third person, and can induce that third person to start business in opposition to someone else who is using that name, and has an established business under that name. Take a well-known name—that of 'Christie' for instance—can a man whose name is Christie, who has never carried on business as an auctioneer on a large scale, say to another man, not having the name of Christie, 'I will lend you my name, and then you can say the business is Christie's, and the justification for your doing so is that I have sold you my name'? As the law of England stands, that will not be allowed. And what is the difference between that—namely, lending your name to an individual—and lending your name to a joint stock company? The fraud is transparent" (*d*).

Lending name to third person.

Evidence of fraudulent intention was supplied in one case (*e*) by a removal by the defendant into the neighbourhood in which

Evidence of fraud.

(*a*) *Birmingham Vinegar Brewery Co., Ltd. v. Liverpool Vinegar Co., Ltd.*, 4 Times L. R. 613. And see *Pratten v. Peacock*, N. S. W. 20 L. R. Eq. 147; *Richmond Nervine Co. v. Richmond*, 159 U. S. 293.

(*b*) *Dickson v. Dickson*, (1909) 1 Ir. R. 185.

(*c*) 63 L. T. N. S. 94.

(*d*) And see *Tussaud v. Tussaud*, 44 Ch. D. 678; *Melachrino v. Melachrino Egyptian Cigarette Co.*, 4 P. R. 215; *Otard, Dupuy & Co. v. Otard de Montebello Cognac Co.*, 9 Times L. R. 295; 10 *ib.* 67; *Dunlop Pneumatic Tyre Co. v. Dunlop-Truffault Cycle & Tube Manufacturing Co.*, 40 Sol. J. 544; *Brinsmead v. Brinsmead*, 12 Times L. R. 631; 13 *ib.* 3; *Dunlop Pneumatic Tyre Co., Ltd. v. Dunlop Lubricant Co.*, 16 P. R. 12; *Valentine Meat Juice Co. v. Valentine Extract Co.*, 17 P. R. 673; *Pearks, Gunston & Tee, Ltd. v. Thompson, Talmey & Co.*, 18 P. R. 185; *Abel Morrall, Ltd. v. Hessin*, 19 P. R. 557; 20 P. R. 429; *Mappin & Webb v.*

Leapman, 22 P. R. 398; *Fine Cotton Spinners and Doublers' Association, Ltd. v. Harwood, Cash & Co., Ltd.*, 24 P. R. 533. Cf. *Attenborough v. Jay*, 14 Times L. R. 365; *ib.* 439.

(*e*) *Fullwood v. Fullwood*, W. N. 1873, pp. 93, 185. So where the plaintiff carried on business as "Newman & Co." and the defendant bought a similar business carried on as "H. Newman," and changed the name to "Newman & Co.": *Holt v. Smith*, 4 Times L. R. 329. And where the plaintiff dealt in "Warner's Safe Cures," and the defendant, who was also named Warner, bought the goodwill of "Ashton's Gout and Rheumatic Cure," and changed the name to "Warner's Gout and Rheumatic Cure": *Warner v. Warner*, 5 Times L. R. 359. And see *Valentine v. Valentine*, 31 L. R. Ir. 488, where the defendant set up a rival business in premises recently vacated by the plaintiffs. See, also, *Smith v. McBride*, Ct. Sess. Cas. 4th Ser. XVI. 36.

the plaintiff was carrying on his business, and the addition of "and Co." to the name "H. Fullwood," the plaintiff's trade name being "R. J. Fullwood & Co."; and in another case (*a*), in which the same person was plaintiff, by a representation that the business of M. Fullwood and E. Fullwood, trading as "E. Fullwood & Co.," had been established in 1785, and was carried on at Hoxton, those facts being true of the business of R. J. Fullwood & Co., but not of that carried on by the defendants. In a third case (*b*), the defendant, who had sold his business and the goodwill, including the name, "John Douglas & Co.," recommenced business, and employing the three managing men of his former business, styled his new business "John Douglas & Co.," and sent round circulars informing the public that his business was so well known that it was unnecessary to say anything about it; thus, in fact, "representing himself to be the owner of that which he had sold." So, too, it was held to be a fraud for a person who had recently come into the neighbourhood of the "Carriage Bazaar" in Baker Street, and set up a "Carriage Repository," to change that name to the "New Carriage Bazaar," with some incorrect additions (*c*). But where the plaintiff had been for eight years in the habit of engaging Dr. Richter to conduct concerts in London, which the plaintiff advertised and made popular by the name of "Richter Concerts," and in 1887 Dr. Richter declined to continue to act with the plaintiff, and agreed to conduct concerts in London for the defendant, who began to advertise them as "Richter Concerts," it was held that the name "Richter Concerts" meant concerts conducted by Dr. Richter, and was properly applied to the proposed concerts, and that no injunction could be granted (*d*).

Change of
name copied.

Where the plaintiff had changed his name to Frank Leslie, and his son had, by his orders, assumed the same name, and the

(*a*) *Fullwood v. Fullwood* (2), 9 Ch. D. 176. And see *Van Oppen & Co., Ltd. v. Van Oppen*, 20 P. R. 617; *Rigden v. Jones*, 22 P. R. 417; *Joseph Rodgers & Sons, Ltd. v. Simpson*, 23 P. R. 297; *Joseph Rodgers & Sons v. Hearnshaw*, 23 P. R. 319. Where Robert Minton Taylor, formerly a member of the firm of Minton, Hollins & Co., set up for himself as Robert Minton Taylor & Co., and, on being threatened with legal proceedings, undertook to trade only as

Robert Minton Taylor, it was held that a purchaser of R. M. Taylor's business could not carry it on under the style of "The Minton Brick & Tile Co.": *Campbell v. Hollins*, Dig. 548.

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

(*c*) *Boulnois v. Peake*, 13 Ch. D. 513. And see *Cave v. Myers*, Dig. 304; *Atkinson v. Atkinson*, 85 L. T. (Journal) 229; *Davis v. Rogers*, 89 *ib.* 292.

(*d*) *Franke v. Chappell*, 57 L. T. N. S. 141.

plaintiff had afterwards brought out "Frank Leslie's Illustrated News," and other publications of the titles of which his new name formed part, it was held, in America, that there was no ground for restraining the publication by the son of "Frank Leslie Junior's Sporting and Dramatic Times" (a). On the other hand, where Dr. Trust had changed his name to Gouraud, but his sons had not changed their name, the latter were restrained from selling a preparation with a statement that it was prepared by Dr. Gouraud's sons, there being a representation which, though not strictly false, was yet calculated to mislead (b).

Again, a fraudulent intention may be shown to exist by the production of deceptive circulars so framed by the defendant as to represent his business to be identical with or a continuation of that carried on by the plaintiff; and such a fraud will be restrained (c). Thus, in *Mogford v. Courtenay* (d), the defendant issued a circular of which the effect was to represent that he was carrying on the business which he had previously carried on in partnership with the plaintiff, although under the partnership articles the entire goodwill vested in the plaintiff on dissolution.

So, too, one person will not be allowed to defraud another by opening letters addressed to him, and executing orders intended for him (e). Where, however, various acts of misrepresentation by the defendant were alleged, pointing to an intention to simulate the plaintiff, but only one case was made out, in which the defendant had opened a letter addressed to the plaintiff, answered it in his own name, and endeavoured to obtain the custom offered by that letter to the plaintiff, it was held that, though this raised grave suspicion of the defendant's motives, yet it was not sufficient ground for an injunction. The defendant, however, was refused his costs (f).

Nor will fraud be permitted to be perpetrated under cover of a fraudulent partnership.

(a) *England v. New York Publishing Co.*, 8 Daly, 375.

(b) *Gouraud v. Trust*, 10 N. Y. Sup. Ct. 627.

(c) *Churton v. Douglas*, Johns. 174; *Stevens v. Paine*, 18 L. T. N. S. 600; *Purser v. Brain*, 17 L. J. Ch. 141; *Christie v. Christie*, L. R. 8 Ch. 499; *Burrows v. Foster*, 1 N. R. 156; *Graveley v. Winchester*, Seton, 6th ed. 695; *Selby v. Anchor Tube Co.*, W. N. 1577, p. 191;

Rendle v. Rendle & Co., 63 L. T. N. S. 94; *Rickerby v. Reay*, 20 P. R. 380; *Rigden v. Jones*, 22 P. R. 417.

(d) 45 L. T. N. S. 303.

(e) *Scheile v. Brakell*, 11 W. R. 796; Seton, 6th ed. 686, 687; *Witt v. Corcoran*, *ib.* 686; *England v. Curling*, 8 Beav. 129; *Vernon v. Hallam*, 34 Ch. D. 748.

(f) *Edgington v. Edgington*, 11 L. T. N. S. 299.

partnership got up for the purpose of fraud (a). Thus, in *Clayton v. Day* (b), an ironmonger's assistant named Day, and a general shopkeeper named Martin, were not allowed to carry on the business of blacking manufacturers under the name of "Day and Martin," though they were left free to trade as "Martin and Day." Similarly, in *Melachrino v. Melachrino Egyptian Cigarette Co.* (c), the plaintiff's cigarettes being well known as "Melachrino Cigarettes," a person named Poulides took a brother of the plaintiff into his service, under an agreement by which Poulides was to have the right to use his name, and Poulides then opened a business close to the plaintiffs under the name of "The Melachrino Egyptian Cigarette Co.," and used the name "Melachrino" in various ways calculated to deceive, and an injunction was granted. Again, in *M. Melachrino & Co. v. R. Melachrino & Co.* (d), Poulides, the defendant in the previous action, went to Egypt as soon as an interlocutory injunction had been granted in that action, and induced a person named Melachrino, who was not connected with the plaintiffs, but was a tobacconist in a small way of business in Alexandria, to enter into partnership with him and come to England to establish a business under the name of "R. Melachrino & Co.," the plaintiffs being "M. Melachrino & Co.," and they used various fraudulent devices. An injunction was again granted. Again, in *Edge v. Harrison* (e), where the plaintiff had taken out a patent for an invention for wrapping up soluble blue, and the defendants, R. & S. Harrison and Mrs. Edge, the mother-in-law of the latter, conspired together to take out a patent in the name of Mrs. Edge for a similar invention, and used other devices to enable them to pass off their blue as the plaintiff's, damages were awarded and an injunction granted, and an order was made for revocation of the defendants' patent.

Sale over
counter:
Substitution.
Trap-orders.

Where a retail dealer is in the habit of supplying over the counter, in response to orders for articles described by the use of words which indicate the goods of a particular manufacturer,

(a) *Croft v. Day*, 7 Beav. 84; *Moet v. Clybourn*, Dig. 533; *Schweitzer v. Atkins*, 37 L. J. Ch. 847; *Dence v. Mason*, Dig. 534; 41 L. T. N. S. 573; *Dence v. Brand*, W. N. 1881, p. 31; *Edge v. Harrison*, 8 P. R. 74; *Dunlop Pneumatic Tyre Co., Ltd. v. Dunlop Lubricant Co.*, 16 P. R. 12;

Smith v. McBride, Ct. Sess. Cas. 4th Ser. XVI. 36.

(b) 26 Sol. J. 43; 76 L. T. (Journal) 79.

(c) 4 P. R. 215.

(d) *Chitty, J.*, May 29th. 1888.

(e) 8 P. R. 74.

goods not made by him, the case is one of substitution, and the continuance of the practice will be restrained by injunction (*a*). Isolated instances of mistakes are, however, not sufficient to establish a wrongful practice (*b*), and in Scotland relief has been refused even where a number of such occurrences have taken place, but where the Court has not been satisfied of a fraudulent intention (*c*). Where a dealer is suspected of such practices it is legitimate to test his course of procedure by giving trap-orders, but when this is done it must be done fairly, and the Court must be satisfied that the dealer understood what was ordered. Written orders are preferable, and if the dealer describes the goods by the proprietary name in his invoices it will have a considerable influence on the result of the proceedings (*d*).

On the sale of the goodwill of a business, the vendor, in the absence of a special stipulation on the point, retains the right of recommencing business, even in his own name, however similar that may be to the trade name of the business the goodwill of which has been sold; provided that he scrupulously abstains from doing anything to induce the public to believe that his new business is in fact the old one which he has sold. If, however, he does anything calculated to induce the belief that his new business is not merely similar to, but is identical with, the old one, the purchaser of the old business is entitled to restrain him by injunction (*e*).

Vendor of business may recommence business.

On the dissolution of a partnership, if the whole concern and the goodwill are sold, the trade name is sold with them (*f*). But

Dissolution of partnership.

(*a*) *Kodak, Ltd. v. London Stereoscopic Co., Ltd.* 20 P. R. 337; *Burroughs, Wellcome & Co. v. Thompson & Capper*, 21 P. R. 69; *Purozone Co. v. Gibson*, 21 P. R. 317; *Havana Cigar and Tobacco Factories, Ltd. v. Tiffin*, (1905) *Ld.*, 26 P. R. 473. As to form of injunction, see *Kerfoot v. R. A. Cooper, Ltd.*, 25 P. R. 508. In *Godfrey Phillips, Ltd. v. Russell*, 26 P. R. 834, such a case was held to fail on the evidence.

(*b*) *Leahy v. Glover*, 10 P. R. 141; *Rutter v. Smith*, 18 P. R. 49; *Carr v. Crisp*, 19 P. R. 497; *Moseley v. Nathan*, 23 P. R. 345; *C. A. Peters, Ltd. v. Domestic Inventions Co.*, 25 P. R. 387; *Kodak, Ltd. v. Grenville*, 25 P. R. 416; *Armstrong Oiler Co., Ltd. v. Patent Axle-box Co., Ltd.*, 27 P. R. 362.

(*c*) *Bass v. Laidlaw*, Ct. Sess. Cas. 4th Ser. XIII. 898; *Thomson v. Robert-*

son, Ct. Sess. Cas. 4th Ser. XV. 880; *Edge & Sons v. Gallon*, 15 P. R. 689; *Montgomerie v. Young*, 21 P. R. 285; *Bass v. Laidlaw* (No. 2), 26 P. R. 211.

(*d*) *Carr v. Crisp*, 19 P. R. 497; *Ripley v. Griffiths*, 19 P. R. 590; *Truefitt v. Edney*, 20 P. R. 321; *Montgomerie v. Young*, 21 P. R. 285.

(*e*) *Cruttwell v. Lye*, 17 Ves. 335; *Churton v. Douglas*, Johns. 174; *Johnson v. Helleley*, 31 Beav. 63; *Hudson v. Osborne*, 39 L. J. Ch. 79; *Rickerby v. Reay*, 20 P. R. 380. *Tudor v. Tudor*, W. N. 1873, p. 72, depended on an express stipulation in the deed under which the plaintiff retired from the business.

(*f*) *Banks v. Gibson*, 34 Beav. 566. See *Hoffman v. Duncan*, Seton, 6th ed. 693, 787; *Witt v. Corcoran*, *ib.* 686.

if the partners merely divide the partnership assets, and there are no express stipulations in the articles as to the disposal of the trade name, then each is at liberty to use the whole name just as the partnership did before (*a*); at all events, if no injury will be thereby caused to a partner whose name the firm have used (*b*). Where there are express stipulations in a deed, the parties are of course bound. Thus, in *Day v. Finch* (*c*) a member of the dissolved firm of "Benjamin Finch & Co.," who had agreed to carry on business after the dissolution in his own name only, was restrained from continuing to use the words "and Co." after the name "Benjamin Finch." But where, on a dissolution of partnership, it was agreed that neither partner was to use the firm name, but that each was to be at liberty to manufacture the same articles as had been manufactured by the firm, and one of the partners set up in business on his own account and put up over his shop the name "Hodgson, late of Matthews & Hodgson," the words "late of" being in small type, it was held that no breach of the agreement had been committed (*d*); and where a business carried on as "Madame Élise" was purchased under an agreement which recited (inaccurately) that the business had been carried on as "Madame Élise & Co.," and gave the purchaser the right to use that name, it was held that the purchaser was not entitled to trade as "Madame Élise" simply (*e*).

Rights of
retiring
partner.

If, again, on the dissolution of partnership, one partner takes over the whole concern by arrangement, he must compensate the other partner for his interest in the trade name (*f*), and the retiring partner is at liberty to set up a similar business in his own name, even on adjoining premises (*g*).

Scott v. Scott.

In *Scott v. Scott* (*h*), R. & W. Scott carried on business in partnership in Nithsdale, and in Glasshouse Street, Regent Street,

(*a*) *Ib.* See *Clark v. Leach*, 32 Beav. 14; *Dence v. Mason*, Dig. 534; *Condy v. Mitchell*, 37 L. T. N. S. 268, 766; *Levy v. Walker*, 10 Ch. D. 436.

(*b*) *Scott v. Rowland*, 20 W. R. 508; *Levy v. Walker*, 10 Ch. D. 436; *Fenton v. Levy*, 29 Sol. J. 735; *Chappell v. Griffith*, 53 L. T. N. S. 459; *Gray v. Smith*, 43 Ch. D. 208; *Burchell v. Wilde*, (1900) 1 Ch. 551. See *Chatteris v. Isaacson*, 57 L. T. N. S. 177.

(*c*) 25 Sol. J. 354. And see *Tudor v.*

Tudor, W. N. 1873, p. 72; *Vernon v. Hallam*, 34 Ch. D. 748.

(*d*) *Matthews v. Hodgson*, 2 Times L. R. 899.

(*e*) *Chatteris v. Isaacson*, 57 L. T. N. S. 177. Compare *Rosher v. Young*, 17 Times L. R. 347.

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

(*g*) *Bond v. Milbourn*, 20 W. R. 197; *Moyford v. Courtenay*, 45 L. T. N. S. 303.

(*h*) 16 L. T. N. S. 143.

as "R. & W. Scott." The partnership being dissolved, the agreement for the dissolution contained no stipulation by either party not to continue the business, but neither of the parties was to use the name of the firm, except so far as might be necessary for winding up the partnership affairs. W. Scott retiring from the business, and setting up for himself in the neighbourhood of Nithsdale, R. Scott retained the London premises of the late firm, and made them over with his business to the defendants Scott & Nixon. The inscription used by the late firm over their house at Glasshouse Street having been "R. & W. Scott of Nithsdale," the defendants replaced this by "Scott and Nixon, late R. & W. Scott of Nithsdale." Upon this W. Scott filed a bill against them, and on motion for injunction, the injunction was granted to restrain the defendants from permitting that inscription to remain, and from representing their business to be in continuance of that carried on by the late partnership of R. & W. Scott (a).

The injury caused by the defendants to the plaintiffs is even greater than in an ordinary case of misappropriation of a trade name, when the representations made by the defendants go to show that the plaintiffs have retired from business, and that the defendants have succeeded to the business formerly carried on by them. Thus, where the defendants had acquired a lease of works at which the plaintiffs had formerly manufactured bricks, but not of the mines from which the brick-clay used by the plaintiffs had been obtained, and then issued cards and circulars styling themselves "E. J. & J. Pearson (late Harpers & Moore)," and otherwise representing themselves to have succeeded to the business of the plaintiffs, who were, as a matter of fact, carrying on their business on other works, the defendants were restrained by injunction from these misrepresentations (b); and Wood, V.-C., expressed an opinion that, on application by the owner of the mines of fire-clay used by the plaintiffs, but not by the defendants, the issue of an injunction would have been almost a matter of course.

Representations that plaintiff has retired.

(a) See *Selby v. Anchor Tube Co.*, W. N. 1877, p. 191.

(b) *Harper v. Pearson*, 3 L. T. N. S. 547; also *Scott v. Scott*, 16 L. T. N. S. 143; *Stevens v. Paine*, 18 L. T. N. S. 600. And as to a representation of one business being a continuation of another, see *Churton v. Douglas*, Johns. 174;

Burrows v. Foster, 1 N. R. 156; *Witt v. Corcoran*, Seton, 6th ed. 686; *Graveley v. Winchester*, *ib.* 695; *Montague v. Moore*, *ib.* 629; *Selby v. Anchor Tube Co.*, W. N. 1877, p. 191; *England v. Curling*, 8 Beav. 129; *Vernon v. Hallam*, 34 Ch. D. 748.

Former firm
or employer
may be stated.

A person who has been a member or employé of a firm of reputation, and who sets up in business on his own account, is entitled, unless he has contracted not to do so (a), to derive what benefit he may from a fair statement of the fact of his former employment (b), which is usually expressed by the addition after his own name of the name of his former firm or employer, with the words "late of," or "late with." But such statement must be made in an unambiguous way, and not in such a manner as to induce the belief that the tradesman in question is selling the goods of his former firm or employer (c). For the purposes of the plaintiff's right to relief, it is a matter of indifference whether or not the defendant has acted with a fraudulent intention; if what he has done is, though unintentionally, calculated to deceive "the unwary, the heedless, the incautious portion of the public" (d), the plaintiff is entitled to protection just as much as if there were intentional fraud.

Glenny v. Smith.

In *Glenny v. Smith* (e), the defendant, who had been in the plaintiff's service, opened a shop in Oxford Street, where he placed his own name over the door, but on the brass plates and on the awning the words "from Thresher & Glenny," "from" being in much smaller letters than the plaintiff's name. It further appeared that the defendant's own name over the door was quite hidden when the awning was let down. Kindersley, V.-C., granted an injunction (f).

Hookham v. Pottage.

In *Hookham v. Pottage* (g), the parties had been tailors in partnership at Oxford, the defendant having been formerly the plaintiff's manager, and afterwards taken into partnership by him. On the dissolution of the partnership it was arranged that the plaintiff was to continue the business, the defendant receiving

(a) *Wolmershausen v. O'Connor*, 36 L. T. N. S. 921.

(b) See *per Wood*, V.-C., in *Leather Cloth Co. v. American Leather Cloth Co.*, 1 H. & M. 271; also *Clark v. Leach*, 32 Beav. 14; *Goodman v. Way*, 36 Sol. J. 830; *Cundy v. Lerwill*, 99 L. T. N. S. 273; *Boswell v. Mathie*, Ct. Sess. Cas. 4th Ser. XI. 1072; *Wolfe v. Alsop* (1), 10 V. L. R. (E.) 41; and cases *infra*. But see *Selby v. Anchor Tube Co.*, W. N. 1877, p. 191.

(c) See *Worcester Royal Porcelain Co., Ltd. v. Locke & Co.*, 19 P. R. 479, 490; *Rickerby v. Reay*, 20 P. R. 380; *Rickett,*

Cockerell & Co., Ltd. v. Nevill, 21 P. R. 394; *Jefferson Dodd & Co. v. Dodd's Drug Stores*, 25 P. R. 16.

(d) V.-C. Kindersley, in *Glenny v. Smith*, 2 Dr. & Sm. 476. And see *Curtiss v. Messler*, 13 A. L. T. 127.

(e) 2 Dr. & Sm. 476.

(f) See, too, *Burgess v. Burgess*, 3 De G. M. & G. 896; *Dence v. Mason* (1), Dig. 534; *Boswell v. Mathie*, Ct. Sess. Cas. 4th Ser. XI. 1072; *Wolfe v. Alsop*, 12 Vict. L. R. (E.) 421; *Garde v. Mitchell*, 17 V. L. R. 209.

(g) L. R. 8 Ch. 91. And see *Selby v. Anchor Tube Co.*, W. N. 1877, p. 191.

from the plaintiff such an amount as should be found to be due to him. The plaintiff, in continuing the business, styled himself "Hookham & Co.," and the defendant setting up close to him put over his shop, "S. Pottage, from Hookham & Pottage." There was some evidence of deception, and Malins, V.-C., granted an injunction, which decision was upheld by the Court of Appeal.

In *Foot v. Lea* (a), an older case, the Master of the Rolls in Ireland was of opinion that there was no attempt to deceive on the part of the defendant, who had used show-boards and labels on which his own name was followed by "late of Lundy, Foot & Co.," the latter name being of equal size with the defendant's, and he accordingly refused the injunction, with leave to bring an action at law. In *Williams v. Osborne* (b), Wood, V.-C., was of a similar opinion, and dismissed the bill, and, on account of the extreme haste with which it had been filed, with costs. In a more recent case (c), the defendants, who had been forewomen in the plaintiff's shop in Paris, used on their window blinds in Bond Street, the words "Ex 1^{eres} de la," in small letters, followed by "Maison Boissier de Paris," in large letters, to signify their former employment; and although V.-C. Malins declined to restrain the use of those words, notwithstanding that they were not generally understood in London as equivalent to "from," he left the defendants to pay their own costs.

Deception of the same kind will be restrained when what is imitated is not a name of an individual or firm, but a designation of the place at which the business of an individual or firm is carried on, and by which it is known and recognised. Thus, "Osborne House" (d), "The Carriage Bazaar" (e), "The Bodega" (f), "The New York Dental Rooms" (g). But in such cases the plaintiff must prove that there is something distinctive in the appellation which he has given to his establishment, since no relief can be given him if that appellation is merely descriptive, as "The Antiquarian Book Store" (h), "The Mammoth Ward-

(a) 13 Ir. Eq. 490. And see *Mattheus v. Hodgson*, 2 Times L. R. 899.

(b) 13 L. T. N. S. 498.

(c) *Robineau v. Charbonnel*, W. N. 1876, p. 160.

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

(e) *Boulnois v. Peake*, 13 Ch. D. 513.

(f) *Bodega Co., Ltd. v. Owens*, 7 P. R. 31.

(g) *Sanders v. Utt*, 16 Mo. App. 322

(the rooms were in St. Louis, Mo.). See *Sanders v. Jacob*, 20 Mo. App. 96; *Cady v. Schultz*, 19 R. I. 193; 61 Am. St. Rep. 763.

(h) *Choynski v. Cohen*, 39 Cal. 501; R. Cox, 593. See, however, *Weinstock, Lubin & Co. v. Marks*, 109 Cal. 529, where the name "Mechanics' Store" was protected.

robe" (a), "The Tower Palace" (b), "Misfits Parlours" (c); and he must also prove that the result of the defendant's acts is to represent that his business is identical with that carried on by the plaintiff (d), as in *Cave v. Myers* (e), where the defendant, whose shop was in a corner house close to the establishment of the plaintiffs, Messrs. Cave, adopted for his shop the name of "Cavendish House," and had it so painted up that "Cave" appeared on the side of the street in which was the plaintiff's shop, and the remainder round the corner, and *Genin v. Chadsey* (f), where the plaintiff was the proprietor of "The Captain's Live-and-Let-Live Oyster and Dining Saloon," and the defendant set up "G. W. Chadsey & Co.'s Great Eastern Live-and-Let-Live Dining Saloon." On the other hand, it was held (g) that "Great I X L Auction Company" was not likely to be mistaken for "I X L General Merchandise Auction Store," and where the defendant had put up a sign with the words "Depôt of the Cherry Pectoral Company," and inside his premises a notice, "Ayer's Cherry Pectoral, One Dollar; Rushton's Cherry Pectoral, Fifty Cents. Which will you have?" it was held that the defendant had done no more than trade in fair competition with the plaintiff, as he was entitled to do (h); but when fraud is proved or admitted, it will be restrained (i).

Name of premises after sale.

Where the proprietor of a shop had his name carved in stone over the door it was held, upon the sale of the shop without the goodwill of the business, that the purchaser could not be compelled to remove the carving though he might be prohibited from using the name as a means of trading (k).

So, where the freehold of premises known as the "Black Swan Distillery," of which the sign was the figure of a black swan, was conveyed to B., and the goodwill of the business which had

(a) *Gray v. Koch*, 2 Mich. N. P. 119.
 (b) *Armstrong v. Kleinhaus*, 1 Ky. L. Rep. 112; 82 Ky. 303.
 (c) *Cohn v. Kahn*, 26 Alb. L. J. 342.
 (d) See *Lyric Theatre, Ltd. v. Cordingley*, 90 Ll. T. (Journal) 122 ("Lyric Theatre" and "Lyric Opera House"); *Cooper & M'Leod v. MacLachlan*, 18 P. R. 380; 19 P. R. 27 ("Castle Brewery," used in conjunction with the plaintiffs' and defendants' names respectively).
 (e) Dig. 391.
 (f) Cited in *Dixon Crucible Co. v. Guggenheim*, R. Cox, 567. And see

Hoby v. Grosvenor Library Co., 28 W. R. 386 ("Grosvenor Library"); *Wheeler v. Johnston*, 3 L. R. Ir. 284 ("Cromac Springs"); and *Glen & Hall Manufacturing Co. v. Hall*, 61 N. Y. 226; 19 Amer. Rep. 278 ("No. 10, South Water Street, Rochester, New York").
 (g) *Lichtenstein v. Mellis*, 8 Oreg. 464.
 (h) *Ayer v. Rushton*, 7 Daly, 9.
 (i) *Cohn v. Kahn*, 26 Alb. L. J. 342.
 (k) *Townsend v. Jarman*, (1900) 2 Ch. 698.

been carried on there was subsequently assigned to N., it was held that N. could not restrain B. from continuing to describe the premises as the "Black Swan Distillery," and keeping the sign up (a).

Again, where a firm of picture dealers owned a gallery known as the Goupil gallery, and sold it to their former manager, but without the goodwill of the business, and appointed him their agent, in England, for five years, and agreed not to carry on business themselves in England during that period, it was held that upon the termination of the agreement the purchaser, who had in the meantime acquired a reputation as a picture dealer at the gallery on his own account, was entitled to use the name of the gallery in connection with his business, and to restrain the original proprietors from using the name without clearly distinguishing their business from his (b).

In *Walker v. Alley* (c) it was decided that the name and sign of "The Golden Lion" was so connected with the plaintiff's dry goods business that it could not be taken by another trader; and the Chancellor of Upper Canada said that "where it is clear to the Court that the defendant himself intended an advantage by the use of a particular sign or mark in use by another, and believes he has obtained it, or, in other words, that the defendant himself thought the use of it was calculated to advertise him at the expense of the plaintiff, and this was his object in using it, and where such has been the effect of the user, I think the Court should say to him, 'Remove that sign; its use by you may, as you intend, damage the plaintiff. It cannot be necessary or valuable to you for any other purpose. You have your choice of many signs which, as a mere attraction, or to give your store a marked designation, must answer a fair business purpose equally well.'"

Apart from a business of some kind, no exclusive right can be acquired in the name of a house, any more than in the name of a person, and no right of action arises from the annoyance occasioned by a person re-naming his residence after a neighbouring residence of another householder (d). And where an abbreviated telegraphic address ("Street, London") had been used for many years by a business firm, and another firm of a different character

Signboard.

No right in name of private house or telegraphic address.

(a) *Nicholson v. Buchanan*, 19 P. R. 24 P. R. 665.

321. (c) 13 Grant, Up. Can. Ch. 366.

(b) *Boussod Valadon & Co. v. Marchant*, (d) *Day v. Brownrigg*, 10 Ch. D. 294.

afterwards adopted the same telegraphic address, it was held that the confusion which ensued was *damnum absque injuriâ*, and that no injunction could be granted (a).

Hotel.

The same principle which governs the names of business establishments has been extended to hotels, and a proprietor of one already established has been held entitled to protection against the setting up of hotels in the same neighbourhood under a similar title. Thus, "The Irving House" (b), "The What Cheer House" (c), "The McCardel House" (d), "The Palace Hotel" (e), and "The Columbia Hotel" (f), have been protected. In the last case the objection that the name was geographical was raised but was overruled.

Must be distinctive.

On the other hand, the Scotch Court of Session has held that the proprietor of "The Station Hotel" was not entitled to interfere with the use of the name "The Royal Station Hotel" for another hotel in the same neighbourhood, the plaintiff's name not being distinctive, and the defendant's name being sufficiently distinguished by the insertion of the word "Royal" (g).

Name goes with building.

But it seems that where a name has been attached to a building it passes with it, and cannot be retained or dealt with by the former owner apart from the building. Thus, in *Booth v. Jarrett* (h), the founder of "Booth's Theatre," who had gained a reputation for it by his skill in acting, and had named it after himself, attempted, without success, to prevent the continued use of the name by a person into whose possession the theatre had subsequently come, the name having passed to the defendant with the building and goodwill. Again, in *Mason v. Queen* (i), the proprietor of the "Waverley Hotel," Glasgow, sold his premises to a railway company, who compensated him for the removal. He afterwards assigned the goodwill of his business and trade

(a) *Street v. Union Bank of Spain & England*, 30 Ch. D. 156.

(b) *Howard v. Henriques*, 3 Sand. S. C. 725; R. Cox, 129.

(c) *Woodward v. Lazar*, 21 Cal. 448; R. Cox, 300; *Gamble v. Stephenson*, 10 Mo. App. 581.

(d) *McCardel v. Peck*, 28 How. Pr. 120; R. Cox, 312.

(e) *Great North of Scotland Rail. Co. v. Mann*, Ct. Sess. Cas. 4th Ser. XIX. 1035.

(f) *Whitfield v. Loveless*, 64 U. S. Pat. Gaz. 442.

(g) *Charleson v. Campbell*, Ct. of Sess. Cas. 4th Ser. IV. 149. See *Great North of Scotland Rail. Co. v. Mann*, *ib.* XIX. 1035; *Crawford's Trustees v. Lennox Co.*, *ib.* XXIII. 747; *Cooper & M'Leod v. MacLachlan*, 18 P. R. 380; 19 P. R. 27.

(h) 52 How. Pr. 169. And see *Nicholson v. Buchanan*, 19 P. R. 321; *Rickerby v. Reay*, 20 P. R. 380; *Boussod Valadon & Co. v. Marchant*, 24 P. R. 665.

(i) 23 Scot. L. R. 641. And see *Cowan v. Miller*, Ct. Sess. Cas. 4th Ser. XXII. 833.

name to the plaintiff, who was carrying on another hotel in a different part of Glasgow, the name of which was thereupon changed to the "Waverley." The railway company did not require the actual site of the old hotel for their purposes, and subsequently let it to the defendant, who re-opened the hotel under the name of the "Old Waverley Hotel," and it was held that the plaintiff was not entitled to restrain the defendant from so doing. In *Woods v. Sands* (a), it was held that the founder of "Woods' Hotel," who had sold and afterwards repurchased his interest in it, had recovered by the re-assignment his exclusive right in the name, and the use of it by another person was prohibited. So, in *Armstrong v. Kleinhaus* (b), the tenant of a business house which he had called "The Tower Palace," was held to have no right in the name capable of being transferred to a different building elsewhere. And in *Pepper v. Labrot* (c) it was held that the name "Oscar Pepper's Old Crow Distillery" had become attached to the distillery, and that Oscar Pepper's son and successor in business, on whose bankruptcy the distillery was sold, was not entitled to interfere with the use by the purchaser of the name "Oscar Pepper" as part of the name of the distillery. But in one Canadian case (d) the purchasers of "The Western or Mason's Hotel" were protected in their exclusive right to the name, as against the vendor, who had re-occupied his former premises after the purchaser had been driven out by a fire.

In the same way, the proprietor of the "Prescott House" Hotel was held entitled to restrain the use of the name by a coach proprietor upon his coaches, an agreement between the latter and a former owner of the hotel being treated as having been in the nature of a revocable licence, which had been revoked upon the sale of the hotel to the plaintiff (e). And not only the proprietors of such establishments have been protected in respect of the names by which they have been known, but other persons, who have contracted with such proprietors for the exclusive conveyance of visitors to and from their hotels, have been held entitled to restrain the use by others not so authorized upon their vehicles

(a) Dig. 467.

(b) 1 Ky. L. Rep. 112: 82 Ky. 303.

(c) 8 Fed. Rep. 29.

(d) *Mossop v. Mason*, 18 Grant. Up. Can. Ch. 453.(e) *Deiz v. Lamb*, 29 N. Y. Super. Ct. 537.Name of
hotel on
conveyances.

and servants' clothing of the name of the establishment with which they were connected (*a*).

Similar cases. So, again, the name of a line of steamships (*b*), of collieries (*c*), and of particular waggons (*d*), has been protected.

Name not used in ordinary business.

Closely connected with the cases which concern the rights of an individual or firm in the trade name under which his or their business is carried on, are the cases in which it has been sought by one person to restrain the unauthorized use of his name by another, though he does not himself use that name over a shop, or, in fact, as a trade name usually so called.

Where articles are produced under a certain name.

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

Author.

Thus, an author is entitled to protection for the name which sells his works for him. In *Lord Byron v. Johnston* (*e*), the defendant, who had advertised for sale poems which he represented to be by the plaintiff, but as to which he declined to swear to his belief in their genuineness, was restrained by injunction. And in *Besant v. Moffatt & Paige* (*f*), a well-known writer was protected against the use of his name in connection with a book for which he was not responsible.

Humourist.

In *Clemens v. Such* (*g*), a humorous writer, whose works were published under the *nom de plume* of "Mark Twain," was held to be entitled to restrain the unauthorized use of that designation by another person. And in *Clemens v. Belford* (*h*), it was held that the name might not be connected with matter not written by the plaintiff, though it might be attached to a reprint of matter written by him and not copyrighted. In *Picture Press, Ltd. v. Ross* (*i*) the plaintiffs were the proprietors of certain publi-

(*a*) *Stone v. Carlan*, 13 Mo. L. R. 360; R. Cox, 115; *Marsh v. Billings*, 7 Cush. 322; R. Cox, 118. And compare *Knott v. Morgan*, 2 Keen, 213.

(*b*) *Winsor v. Clyde*, 9 Phila. 513 ("Keystone Line").

(*c*) *Braham v. Beacham*, 7 Ch. D. 848 ("Radstock Collieries").

(*d*) *Shaver v. Shaver*, 54 Iowa, 208 ("Shaver Waggons").

(*e*) 2 Mer. 29.

(*f*) 84 L. T. (Journal) 152.

(*g*) Dig. 429.

(*h*) 11 Biss. 459.

(*i*) *Joyce, J.*, Feb. 21, 1909. In *New York Herald Co. v. Ottawa Citizen Co.*, Can. S. C. R. 229, the Supreme Court of Canada refused to restrain the proprietors of a newspaper from using the heading "Buster Brown and Tige"

cations which had since 1884 been issued under the name of "Ally Sloper's" publications; and they succeeded in obtaining an injunction to restrain the defendant, who was the son and executor and universal legatee of one C. H. Ross, from issuing another publication as "Ally Sloper's Comic Calendar," notwithstanding that C. H. Ross had published a paper under that name from 1876 to 1888, when it came to an end, and that it was stated that C. H. Ross had originated the name "Ally Sloper."

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

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

In all such cases the plaintiff must of course show that deception is probable, or he cannot succeed in obtaining the relief he seeks. Thus, where an artist painted a picture, and another person exhibited a diorama imitated from it, it was held that there could be no deception or injury, though if the plaintiff's picture had been a diorama the case would have been different (d). So where a person who wrote songs under the name of Claribel sought to

for an illustrated comic section, in an action by the proprietors of another paper which contained an illustrated comic section headed "Buster Brown."

(a) 1 M. & Rob. 162. Cf. *Lee v. Gibbings*, 67 L. T. N. S. 263.

(b) *Martin v. Wright*, 6 Sim. 297.

(c) *Clark v. Freeman*, 11 Beav. 112.

(d) *Martin v. Wright*, 6 Sim. 297.

restrain the publication of a song described as "written by Claribel," no mention being made of the composer's name, though the music given was not that of Claribel, it was decided that the words "written by" did not imply that the music was also composed by Claribel, and the injunction was refused (a).

*Clark v.
Freeman.*

The decision in *Clark v. Freeman* (b) has been much discussed with respect to the right a man has in his name. In that case the plaintiff, Sir James Clark, was an eminent physician, who filed a bill to restrain the advertisement and sale by the defendant of certain pills termed by him "Sir J. Clarke's Consumption Pills," the advertisements being so framed as to be calculated to induce the public to buy the pills as being of the plaintiff's invention. Lord Langdale, M. R., refused to grant the injunction, on the ground that there was no injury to property; but apparently not without some doubt, since he gave leave for the case to be mentioned again to him if cases in support of the bill could be produced. He did not, however, think the cases mentioned to him (c) sufficient to warrant him in granting the injunction, but at the same time he remarked that if "Sir James Clark had been in the habit of manufacturing and selling pills, it would have been very like the other cases in which the Court had interfered for the protection of property." The principle on which Lord Langdale's decision was based was that the Court would not interfere where the name pirated by the defendant had not become known to the public in connection with a manufactured article, but was merely a name under which an individual had acquired a certain reputation (d). It is evident, however, that the sale of quack medicines under the name of an eminent physician would tend to destroy his reputation and the confidence of his patients in him, and thereby to cause him a far more severe pecuniary loss than would be incurred by the sale of a few boxes of pills or copies of a book being lost to him. Later judges have, therefore, been of opinion that the case in question "might have been decided in favour of the plaintiff, on the ground that he had a property in his own name" (e). It would appear, however,

(a) *Barnard v. Pellow*, W. N. 1868, p. 94. And see *Seeley v. Fisher*, 11 Sim. 581; and *Archbold v. Sweet*, 1 M. & Rob. 162.

(b) 11 Beav. 112.

(c) *Lord Byron v. Johnston*, 2 Mer. 29;

and *Routh v. Webster*, 10 Beav. 561.

(d) See *Delondre v. Shaw*, 2 Sim. 237.

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

that an action will not lie to restrain an unauthorised use of a man's name unless such use is calculated to injure him in his property, business, or profession (*a*).

Whatever rights a man may, irrespective of contract, have in his own name, so as to be able to prevent the unauthorised use of it by another, it is always open to him to modify those rights by contract, whether by way of permitting others to use his name in a certain manner (*b*), or by way of restraining his own use of it to a certain extent (*c*). Thus, where a publisher had sold to the defendants the copyright of an annual, entitled "Beeton's Christmas Annual," he himself entering into their service, it was held that the defendants were entitled to continue the annual publication under that same name, even after the plaintiff had ceased to remain in their employ, and had become unwilling for his name to be used by them in connection with a work not of his production (*d*). But it seems that, although a contract by which a man binds himself to limit in some way his use of his own name can be enforced, a contract so binding him cannot be made by the representative of his estate in bankruptcy, and if such a contract has been entered into, the bankrupt will be entitled to disregard it (*e*).

Contracts in respect of names.

The name of the editor of a publication, appearing upon the title page, forms no part of the title. Romilly, M. R., refused, therefore, to restrain the proprietors of a paper, who had agreed

Name of editor.

in *In re Riviere*, 26 Ch. D. 48, 53, Lord Selborne, C., observed, "that case has seldom been cited but to be disapproved: could not a professional man be injured in his profession by having his name associated with a quack medicine?" In *Williams v Hodge & Co.*, 84 L. T. (Journal) 134, a very similar case, Kay, J., said that the decision in *Clark v. Freeman* "was rather a surprising one, and one which he had always thought was not sufficiently considered"; but he did not feel himself at liberty to disregard it on an interlocutory application, in the absence of authority to the contrary. The expressions of opinion of Lord Cairns, Lord Selborne and Malins, V.-C., had apparently not been brought to his notice. Lord Westbury, C., however, spoke of the decision at all events without disapprobation: *Leather Cloth Co.'s case*, 4 De G. J. & S. 137. *Clark v. Freeman* has been again observed upon

by Kekewich, J., in *Lee v. Gibbings*, 67 L. T. N. S. 263, in which he said, "I do not think that after the observations of Malins, V.-C., Lord Cairns, and Lord Selborne, I ought to hold or regard it as otherwise than erroneously decided." And see *per* Byrne, J., in *Walter v. Ashton*, (1902) 2 Ch. 282.

(*a*) *Walter v. Ashton*, (1902) 2 Ch. 282; *Dockrell v. Dougall*, 80 L. T. N. S. 556.

(*b*) *Ward v. Beeton*, L. R. 19 Eq. 207. See *Condy v. Mitchell*, 37 L. T. N. S. 268, 766.

(*c*) *Ainsworth v. Bentley*, 14 W. R. 630; *Ward v. Beeton*, L. R. 19 Eq. 207.

(*d*) *Ward v. Beeton*, L. R. 19 Eq. 207. See *Gage v. Canada Publishing Co.*, 11 Can. Sup. Ct. 305.

(*e*) *Helmhold v. Helmhold Manufacturing Co.*, 53 How. Pr. 453. And see *Walker v. Mottram*, 19 Ch. D. 354.

with their editor not to alter the title of their paper without mutual consent, from omitting the publication on the title page of the editor's name as such (a).

Where name
is used so as
to injure.

It is clear that a man has a right to prevent the unauthorised use of his name by another person, apart from any special manufacture, where such use of it might involve him in legal or other difficulties. Thus, in *Routh v. Webster* (b), a bill was filed to restrain the provisional directors of a joint-stock company, called "The Economic Conveyance Company," from using the plaintiff's name in their prospectuses as a trustee of their company without his authority. The defendants setting up by way of defence that what had been done had been done inadvertently, and stating their intention of discontinuing their misrepresentations, the Master of the Rolls granted the injunction, holding that the defendants were not entitled "to use the name of any person they pleased, representing him as responsible in their speculations, and to involve him in all sorts of liabilities, and then to be allowed to escape the consequences by saying they had done it by inadvertence," and also that the plaintiff was in nowise bound to surrender his right to the injunction, trusting to the assurances of the defendants as to their intentions for the future. This decision has been generally approved as an "authority for preventing the improper use of a man's name against his will; not for the restraint of a libel, for no libel was involved" (c). On this principle, the proprietors of "The Times" succeeded in obtaining an injunction against a person who was offering cycles for sale in such a manner as to create the impression that the plaintiffs were the vendors (d).

Trade libel.

Where, however, a man's name has been used against his will in such a manner as to be libellous, or where statements have been made disparaging the goods sold under his name or trade mark, or threatening persons dealing in his goods, a more difficult question is raised, and one which has not always been answered in the same

(a) *Crookes v. Petter*, 6 Jur. N. S. 1131.

(b) 10 Beav. 561.

(c) Per Lord Cairns, C., in *Prudential Assurance Co. v. Knott*, L. R. 10 Ch. 142. In *Webster v. Webster*, 3 Swanst. 490, n., the injunction was refused because there was no injury to be apprehended. In *Tudor v. Tudor*, W. N. 1873, p. 72, there was an express con-

tract. See *Bullock v. Chapman*, 2 De G. & Sm. 211; *Dixon v. Holden*, L. R. 7 Eq. 488; *Hodges v. London Trams Co.*, 12 Q. B. D. 105; *Dockrell v. Dougall*, 80 L. T. N. S. 556; *Townsend v. Jarman*, (1900) 2 Ch. 698; *Walter v. Ashton*, (1902) 2 Ch. 282; *Reid v. Sibbald*, 18 Journ. of Juris. 392, and cases *infra*.

(d) *Walter v. Ashton*, (1902) 2 Ch. 282.

way. With respect to libels, Lord Cottenham, C., said (a), that the Libel Act "appointed a jury as the proper tribunal for trial of injuries to the person by libel or defamation; and that the liberty of the press consisted in the unrestricted right of publishing, subject to the responsibilities attached to the publication of libels, public or private." The principle that the publication of a libel was a crime, and that the Court of Chancery had no jurisdiction to prevent the commission of crimes, except in such cases as those relating to the protection of infants, was laid down by Lord Eldon in 1818 (b), and after that time the Equity judges frequently stated that it was not within the proper scope of their authority to restrain the publication of libels (c). There were, indeed, cases in which it was thought that where an injury was occasioned or threatened to a right of property by a libellous statement, the Court had jurisdiction to interfere to protect that right of property (d), but, practically speaking, cases which involved the consideration of libellous statements were left to the Courts of Common Law (e).

The Judicature Act, 1873, however, introduced a new element into the discussion by enacting (§ 25, sub-s. 8) that "an injunction may be granted by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made"; and in *Thorley's Cattle Food Co. v. Massam* (f), Vice-Chancellor Malins suggested that this enactment had conferred upon the Court more extensive powers than those which it previously possessed, and that an injunction might

Effect of the
Judicature
Act, 1873.

(a) *Fleming v. Newton*, 1 H. L. C. 376. This case was a Scotch one, and the Lord Chancellor was speaking with reference to the Scotch Libel Act, but his remarks are equally applicable to cases arising in England, and under Order XXXVI. rule 2, of the Rules of 1883, a defendant in a libel case can still insist upon a jury.

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

(c) *Martin v. Wright*, 6 Sim. 297; *Seeley v. Fisher*, 11 Sim. 581; *Clark v. Freeman*, 11 Beav. 112; *Emperor of Austria v. Day*, 2 Giff. 628; 3 De G. F. & J. 217 (in particular *per* Turner, L. J.); *Mulkern v. Ward*, L. R. 13 Eq. 619; *Broune v. Freeman*, W. N. 1873, p. 178; *Prudential Assurance Co. v. Knott*, L. R. 10 Ch. 142; *Fisher v. Apollinaris Co.*, *ib.* 297. The same view has been taken in India: *Shepherd v.*

Trustees of the Port of Bombay, Ind. L. R. 1 Bomb. 132; and in America: *Munger v. Dick*, 55 How. Pr. 132.

(d) This was especially the view of Malins, V.-C. See *Dixon v. Holden*, L. R. 7 Eq. 488; *Springhead Spinning Co. v. Riley*, L. R. 6 Eq. 561; *Rollins v. Hinks*, L. R. 13 Eq. 355; *Armann v. Lund*, L. R. 18 Eq. 330. And see also *Emperor of Austria v. Day*, 3 De G. F. & J. 217; *Maxwell v. Hogg*, L. R. 2 Ch. 307; *James v. James*, L. R. 13 Eq. 421.

(e) For the principles by which the Courts of Common Law were guided, see *Wren v. Weild*, L. R. 4 Q. B. 730; *Western Counties Manure Co. v. Lares' Chemical Manure Co.*, L. R. 9 Ex. 218; *Mellin v. White*, (1895) A. C. 154.

(f) 6 Ch. D. 582.

have been granted by virtue of those powers to restrain an injurious and unjust statement. Numerous cases have since been decided with respect to the effect of the section, in some of which expressions were employed which were calculated to lead to the belief that the power to grant injunctions where it was thought to be "just or convenient" conferred a power to grant injunctions in cases in which no legal remedy previously existed (a). It is now, however, settled—and this is not opposed to the observations before referred to—that the right view is that the section has enlarged the powers of the Court, not by enabling the Court to grant relief in cases where none was obtainable before in any of the Superior Courts, but by way of giving each branch of the High Court power to grant relief in cases which could previously be brought only in the same or a different form before some other branch of the Court (b); so that, as Cotton, L. J., said in the case of *North London Railway Co. v. Great Northern Railway Co.* (c), "where there is a legal right which was, independently of the Act, capable of being enforced either at law or in equity, there, whatever may have been the previous practice, the High Court may interfere by injunction in protection of that right."

Conditions
necessary for
injunction.

The injunction may be granted to restrain the continued publication of a libel which has been found to be so by the verdict of a jury (d), or it may be granted to restrain the publication of statements which have not been submitted to a jury (e). But where the Court is asked to grant an injunction, especially on an interlocutory application, without the assistance of a jury, the jurisdiction which it possesses so to do is one which must be exercised very carefully (f), and it ought not to be exercised unless

(a) See *Beddow v. Beddow*, 9 Ch. D. 89; *Quartz Hill Consolidated Gold Mining Co. v. Beall*, 20 Ch. D. 501.

(b) *Day v. Brownrigg*, 10 Ch. D. 294; *Ward v. Drat*, L. J. N. of C. 1878, p. 67; *Gaskin v. Balls*, 13 Ch. D. 324; *Dicks v. Brooks*, 15 Ch. D. 22 (*per* Bacon, V.-C.); *Mellin v. White*, (1895) A. C. 154, 163.

(c) 11 Q. B. D. 30.

(d) *Saxby v. Easterbrook*, 3 C. P. D. 339; *Hinrichs v. Berndes*, W. N. 1878, p. 11.

(e) As in *Thomas v. Williams*, 11 Ch. D. 861; *Collard v. Marshall*, (1892) 1 Ch. 571; *Pink v. Federation of Trades & Labour Union*, 67 L. T. N. S. 258;

Dunlop Pneumatic Tyre Co., Ltd. v. Maison Tulbot, 52 W. R. 254. And see *Jarradale Timber Co. v. Temperley*, 11 Times L. R. 119; *ib.* 305. Cf. *Lee v. Gibbings*, 67 L. T. N. S. 263, and *Royal Baking Powder Co. v. Wright, Crossley & Co.*, 15 P. R. 677; 16 P. R. 217; 18 P. R. 95.

(f) *Quartz Hill Consolidated Gold Mining Co. v. Beall*, 20 Ch. D. 501; *Armstrong v. Armit*, 2 Times L. R. 887; *Coulson & Sons v. Coulson & Co.*, 3 *ib.* 846; *Liverpool Household Stores Association v. Smith*, 37 Ch. D. 170. See *Marks v. Conservative Newspaper Co., Ltd.*, 3 Times L. R. 244; *Collard v. Marshall*, (1892) 1 Ch. 571; *Lipton, Ltd. v. Duncans*, Times, Nov. 26th, 1898.

the statements of which complaint is made are proved to be untrue (*a*), unless they are injurious to the plaintiff (*b*), with reference to his trade or property (*c*), and are so clearly libellous that a contrary verdict of a jury would be set aside as unreasonable (*d*), unless it is proved that the defendant intends to continue to make them (*e*), and that the injury will be irreparable, *i.e.*, incapable of compensation by damages (*f*), and unless (in cases of privilege) express malice is also established (*g*). Thus, in *Halsey v. Brotherhood* (*h*) the defendant had threatened intending purchasers from the plaintiff, alleging that the plaintiff was manufacturing in infringement of his, the defendant's, patent rights; and Jessel, M. R., and the Court of Appeal held that an injunction could not be granted unless the defendant persisted in making the statements after they had been proved to be false. In *Colley v. Hart* (*i*), it was held by North, J., that there was

(*a*) *Halsey v. Brotherhood*, 15 Ch. D. 514; 19 *ib.* 386; *Burnett v. Tate*, 45 L. T. N. S. 743; *Anderson v. Liebig's Extract of Meat Co., Ltd.*, *ib.* 757; *Quartz Hill, &c. Co. v. Beall*, 20 Ch. D. 501; *Benbow v. Low* (1), 23 Sol. J. 819; *Roper's, &c. Co. v. Copeman's, &c. Association, Ltd.*, 28 *ib.* 218; *Armstrong v. Armit*, 2 Times L. R. 887; *Coulson & Sons v. Coulson & Co.*, 3 *ib.* 846; *Liverpool Household Stores Association v. Smith*, 37 Ch. D. 170; *Poulett v. Chatto & Windus*, 32 Sol. J. 24; *Nähmaschinen Fabrik vormals Frister & Rossmann Aktiengesellschaft v. Singer Manufacturing Co.*, 10 P. R. 310; *Incandescent Gas Light Co. v. New Incandescent Gas Lighting Co.*, 76 L. T. N. S. 47, which shows that it is a good defence that the statements are substantially true; *Royal Baking Powder Co. v. Wright, Crossley & Co.*, 15 P. R. 677; 16 P. R. 217; 18 P. R. 95. And see *Clover v. Royden*, L. R. 17 Eq. 190.

(*b*) *Dicks v. Brooks*, 15 Ch. D. 22. And see *Brook v. Evans*, 2 L. T. N. S. 740; *Bullock v. Chapman*, 2 De G. & Sm. 211.

(*c*) See *per Lindley, L. J.*, in *Coulson & Sons v. Coulson & Co.*, 3 Times L. R. 846, with which compare the statement by North, J., in *Pollard v. Photographic Co.*, 40 Ch. D. 345. And see *Royal Baking Powder Co. v. Wright, Crossley & Co.*, 18 P. R. 95.

(*d*) *Coulson & Sons v. Coulson & Co.*, 3 Times L. R. 846; *Liverpool Household Stores Association v. Smith*, 37 Ch. D.

170; *London & Northern Bank, Ltd. v. Newnes, Ltd.*, 16 Times L. R. 96; *Lloyds Bank, Ltd. v. Royal British Bank, Ltd.*, 19 Times L. R. 548, 604.

(*e*) *Quartz Hill, &c. Co. v. Beall*, 20 Ch. D. 501.

(*f*) *Armstrong v. Armit*, 2 Times L. R. 887.

(*g*) *Quartz Hill, &c. Co. v. Beall*, 20 Ch. D. 501; *Burnett v. Tate*, 45 L. T. N. S. 473; *Armstrong v. Armit*, 2 Times L. R. 887; *Coulson & Sons v. Coulson & Co.*, 3 *ib.* 846; *Liverpool Household Stores Association v. Smith*, 37 Ch. D. 170; *Incandescent Gas Light Co. v. New Incandescent Gas Lighting Co.*, 76 L. T. N. S. 47; *Royal Baking Powder Co. v. Wright, Crossley & Co.*, 18 P. R. 95; *Ripley v. Arthur & Co.*, 18 P. R. 82.

(*h*) 15 Ch. D. 514; 19 *ib.* 386. See the New York case of *Wolfe v. Burke*, 56 N. Y. 115. The precise question raised in *Halsey v. Brotherhood* was settled by § 32 of the Patents Act, 1883, under which numerous cases have been decided, but the general question of injunctions to restrain trade libels remains. See *Incandescent Gas Light Co. v. New Incandescent Gas Lighting Co.*, 76 L. T. N. S. 47; *Ripley v. Arthur & Co.*, 18 P. R. 82. The Patents Act, 1883, s. 32, is now repealed, but its provisions have been re-enacted and extended to designs by Patents and Designs Act, 1907, ss. 36, 61.

(*i*) 6 P. R. 17.

no jurisdiction to restrain the defendant from issuing a circular to the plaintiff's customers, alleging that the plaintiff was infringing his trade marks, and threatening proceedings, but at the trial of the action he appears to have been disposed to hold that such an action might properly lie if malice were proved (a). And in *Anderson v. Liebig's Extract of Meat Co., Ltd.* (b), Chitty, J., refused to restrain the company (who were taking proceedings to stop the plaintiff from selling his goods as "Baron Liebig's Extract of Meat" and using on the pots a photograph of the Baron) from circulating letters among the plaintiff's customers, stating that he was using the name and photograph without authority, on the ground that the company was not shown to be acting otherwise than *bonâ fide*, or to be stating that which was untrue (c). In a similar case of *Royal Baking Powder Co. v. Wright, Crossley & Co.* (d), an injunction was ultimately refused on the ground that no special damage was proved. On the other hand in *Dunlop Pneumatic Tyre Co. v. Maison Talbot* (e), an injunction was granted where, though no actual damage had accrued, it was proved that damage was imminent and was the natural and direct result of the trade libel.

Trade libel.

In *Lee v. Gibbings* (f), it was held by Kekewich, J., that an author of a book who had sold the copyright to a publisher, could not restrain him from publishing the book in a mutilated form except on the ground of injury to reputation, the remedy for which was an action for libel, and that the Court ought not, except in the case of a trade libel, to grant an interlocutory injunction to restrain a libel. In *Mellin v. White* (g), it was held by the House of Lords, that in order to maintain an action for a false statement disparaging the goods of a rival trader, proof of special damage (h) was necessary, and that for this purpose it was immaterial whether the remedy sought was injunction

(a) *Colley v. Hart* (2), 7 P. R. 101.

(b) 45 L. T. N. S. 757.

(c) And see *Nähmaschinen Fabrik vormals Frister & Rossmann Aktiengesellschaft v. Singer Manufacturing Co.*, 10 P. R. 310; *Sanders v. United Horse Shoe and Globe Nail Co.*, N. S. W. 12 L. R. Eq. 224. Cf. *Coats v. Chadwick*, (1894) 1 Ch. 347.

(d) 18 P. R. 95. And see *Concaris v. Duncan*, (1909) W. N. 51.

(e) 52 W. R. 254.

(f) 67 L. T. N. S. 263.

(g) (1895) A. C. 154. So in *Royal Baking Powder Co. v. Wright, Crossley & Co.*, 18 P. R. 95, another case in the H. L.

(h) As to the meaning of special damage, see *Rutcliffe v. Evans*, (1892) 2 Q. B. 524; *Alcott v. Millar's Karri and Jarrah Forests, Ltd.*, 21 Times L. R. 30. And see *Empire Typesetting Machine Co. of New York v. Linotype Co.*, 79 L. T. N. S. 8.

or damages; and it was doubted by Lord Herschell whether such an action could be maintained where the only disparagement consisted in vaunting the superiority of the defendant's goods either generally or in some particular respect. "In order to constitute disparagement," said Lord Watson, "which is, in the sense of law, injurious, it must be shown that the defendant's representations were made of and concerning the plaintiff's goods; that they were in disparagement of his goods and untrue; and that they have occasioned special damage to the plaintiff"; though, where the statement complained of is not merely a disparagement of the plaintiff's goods but is capable of being read as a disparagement of the plaintiff in the way of his trade, it may be a trade libel (a), in which case proof of special damage is unnecessary (b). In accordance with the view above expressed by Lord Herschell, the Court of Appeal in another case in which the sole cause of action disclosed by the statement of claim was that the defendants, who were rivals in trade of the plaintiffs, had falsely and maliciously published a statement that their goods were superior to the plaintiffs', ordered the statement of claim to be struck out as disclosing no reasonable cause of action and dismissed the action on the ground that the statement complained of, coming from rival traders, did not constitute a cause of action, whether special damage were alleged or not (c).

On the other hand, where the necessary facts are present, an injunction will be granted, as in *Thorley's Cattle Food Co. v. Massam* (2) (d), where it was established that the plaintiffs and defendants were both in possession of and entitled to use the same secret recipe in their respective businesses, and Malins, V.-C., and the Court of Appeal granted an injunction to restrain the defendants from publicly advertising that they alone were acquainted with the secret. When granted.

Where the plaintiff in an action for slander of title to a trade mark and his property therein dies, the cause of action survives to Survival of cause of action.

(a) *Linotype Co. v. British Empire Typesetting Machine Co.*, 81 L. T. N. S. 331.

(b) *South Hetton Colliery Co. v. North Eastern News Association*, (1894) 1 Q. B. 133.

(c) *Hubbuck & Sons v. Wilkinson, Heywood & Clark*, (1899) 1 Q. B. 86. This case is explained and distinguished in

Alcott v. Millar's Karri and Jarrah Forests, Ltd., 21 Times L. R. 30.

(d) 14 Ch. D. 763. And see *Hill v. Hart-Davies*, 21 Ch. D. 798; *Hermann Loog, Ltd. v. Bean*, 26 Ch. D. 306; *Hayward & Co. v. Hayward & Sons*, 34 Ch. D. 198; *Punch v. Boyd*, 16 L. R. Ir. 476; *Dunlop Pneumatic Tyre Co. v. Maison Talbot*, 52 W. R. 254.

his legal personal representative (*a*). Where a trader represented to the public that work executed by a rival trader was his work, Kekewich, J., thought that an action for an injunction might lie as between rival traders without proof of special damage, but held that such an action did not pass by an assignment of the goodwill (*b*).

Misrepresentations by subsequent manufacturer.

The same principle on which misrepresentations by an original manufacturer with respect to the goods and business of a subsequent manufacturer are restrained, applies with even greater force to similar misrepresentations by the latter, and while it is open to any one to manufacture an unpatented article with the process of manufacture of which he has become acquainted, and also to describe it by the name applied to it by the original inventor so soon as that name shall have become *publici juris*—that is to say, descriptive of a specific article, but not of a specific maker—yet at the same time such subsequent manufacturer is not entitled to carry on an unfair competition in trade with the original maker or his successors in business, by means of assertions or representations that his own article is the only genuine one, or that the article of the original maker or his successors is spurious (*c*).

“Original.”

And where such an assertion or representation is embodied in the title of the later manufacturer’s article by its being styled the “original” an appellation which would naturally suggest the idea of the article in question being the make of the original manufacturer—such fraudulent representation will usually be restrained (*d*). But in the entire absence of evidence as to deception, Wood, V.-C., refused to grant an injunction in a similar case (*e*), and from the result of later litigation between the same parties (*f*), it is clear that the presumption against a person who

(*a*) *Hatchard v. Mige*, 18 Q. B. D. 771.

(*b*) *Bullivant v. Wright*, 13 Times L. R. 201.

(*c*) *James v. James*, L. R. 13 Eq. 421; *Thomas v. Williams*, 14 Ch. D. 864; *Liebig’s Extract of Meat Co., Ltd. v. Anderson* (2), 55 L. T. N. S. 206; *Hirsch v. Hirsch & Co.*, 80 L. T. (Journal) 283; *British Life Association, Ltd. v. Roberts*, 2 Times L. R. 319; *George v. Blow*, N. S. W. 20 L. R. Eq. 395. And see *Gillette Safety Razor, Ltd. v. Pellett, Ltd.*, 26 P. R. 598, where the issue of an unfair circular was restrained.

(*d*) *Cocks v. Chandler*, L. R. 11 Eq. 446; *Lazenby v. White*, 41 L. J. Ch. 354. So in *M. Melachrino v. R. Melachrino & Co.*, Chitty, J., May 29th, 1888, where the defendants had placed on their labels the words “R. Melachrino & Co. Original Egyptian cigarettes.” And see *Hagg v. Darley*, 47 L. J. Ch. 567.

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

(*f*) *Browne v. Freeman*, W. N. 1873. p. 178. This was, however, before the cases under the Judicature Act, 1873, which see, *supra*.

styles an article of his own manufacture, but not of his invention, "the original," may be rebutted. In *Dence v. Mason* (1) (a), the defendant was restrained from styling himself the original maker of the "essence of beef," Malins, V.-C., holding that even if he had been the first to actually compound the article, which was not satisfactorily proved, he was not entitled to make such statements as those complained of, since he was in the employ of the plaintiff's predecessor in business at the time when he said he made it for the first time. In *Fullwood v. Fullwood* (2) (b), the defendants attempted to represent their business to be the original one, by assuming for it the date of establishment of the business which was really the first.

A dealer may not represent, contrary to the fact, that he is agent for a manufacturer (c); neither may a manufacturer represent, contrary to the fact, that a dealer is acting as agent for him (d). A trader who manufactures according to a particular process cannot obtain an injunction to restrain another trader from stating untruly that he manufactures according to that process, so long as the latter does not represent that his goods are the goods of the plaintiff. In civil proceedings traders can only sue in protection of their own interests and not to prevent the public from being cheated (e).

False representation of agency.

In other cases the attempt to deceive has been made in different forms: thus, in an early case (f), the defendant attempted to attract to himself the custom intended for the plaintiffs by an ingenious variation of their labels, his own labels being facsimiles of those of the plaintiffs, with only the difference that, whereas theirs contained the sentence "Manufactured by Day and Martin," his bore the words "Equal to Day and Martin's," the "Equal to" being in very small type. So, in an American case (g), a dentist formerly employed by the Colton Dental Asso-

Deceptive labels and notices.

(a) Dig. 534; 41 L. T. N. S. 573.

(b) 9 Ch. D. 176. And see *Green v. Rooke*, W. N. 1872, p. 49; *Wheeler v. Johnston*, 3 L. R. Ir. 284; *Whitney v. Hickling*, 5 Grant, Up. Can. Ch. 605; *Mossop v. Mason*, 18 *ib.* 453.

(c) *Howe v. McKernan*, 30 Beav. 517; *Wheeler & Wilson v. Shakespear*, 39 L. J. Ch. 36. And see *Cyclists Touring Club v. Hawley*, Times, July 9, 1900.

(d) *Coleman v. Flavel*, 12 Sawy. 220.

(e) *Native Guano Co., Ltd. v. Sewage*

Manure Co., 8 P. R. 125. And see *Freeman v. Sharp Brothers & Co., Ltd.*, 16 P. R. 205.

(f) *Day v. Binning*, C. P. Cooper, 489; 1 Leg. Obs. 205. See *Wolfe v. Alsop* (1) & (2), 10 V. L. R. (E.) 41; 12 *ib.* 421.

(g) *Colton v. Thomas*, 2 Brews. 308; R. Cox, 507. And see *Klotz v. Hecht*, 73 Fed. Rep. 822; *Garde v. Mitchell*, 17 V. L. R. 209. And see cases collected at pp. 150, 151.

ciation, on setting up in business for himself, described himself in his notice as "formerly operator at the Colton Dental Rooms," "formerly operator at the" being printed very small. And in another American case (a) a former partner in a firm of dentists trading as "Morgan and Schuyler," continued to carry on business at the old premises as "B. F. Schuyler, successor to Morgan and Schuyler," the words preceding the old firm name being in such small letters as to be almost invisible. In *Mallan v. Davis* (b), a dentist who had practised for several years in Praed St. with the words "Old-established dentist" over the door, left that address; and the defendant, who practised as a dentist at another house in Praed St., put up a notice stating that the old-established dentist could be consulted there; and it was held that he had acted in a way calculated to deceive, but no injunction was granted, there having been a delay of three months, and the defendant giving an undertaking to combine his own name in a conspicuous way with the description.

Franks v. Weaver.

Again, in *Franks v. Weaver* (c), the plaintiff sold a medicine which he had invented, and which he termed "Franks' Specific Solution of Copaiba," in bottles enclosed in wrappers, on which were printed directions for use, and testimonials. The defendant, an agent of the plaintiff, sold a preparation of his own, labelled "Chemical Solution of Copaiba." The label went on to state that the plaintiff had invented the "Specific Solution," and then gave the testimonials printed by the plaintiff as commendatory of the plaintiff's medicine, and also the same directions for use as those given by the plaintiff. In *Sedon v. Senate* (d), a person who had sold a medicine to another, set up a new medicine under a similar description, and in his advertisement adopted verses which had been attached to the original medicine. In all these cases, except *Mallan v. Davis* (e), injunctions were granted. It appears from the decision of Stirling, J., in *Tallerman v. Dowsing* (f), that the right to restrain a misappropriation of testimonials is merely ancillary to the right to prevent one person passing off his goods as the goods of another. In that case the plaintiff, who

(a) *Morgan v. Schuyler*, 79 N. Y. 490.

(b) 3 Times L. R. 221.

(c) 10 Beav. 297. And see *Siegert v. Findlater*, 7 Ch. D. 801; *Siegert v. Ehlers*, Dig. 432; *Dunbar v. Glenn*, 42 Wise. 118.

(d) 2 V. & B. 220. And see *Wotherspoon v. Gray*, Ct. Sess. Cas. 3rd Ser. II. 38, where the interdict was refused.

(e) 3 Times L. R. 221.

(f) (1900) 1 Ch. 1.

was the inventor of a system of treating diseases by hot air, moved to restrain the defendant, who was the inventor of a rival system of hot air treatment, from appropriating a press notice relating to the plaintiff's system and applying it to his, the defendant's, system. Stirling, J., declined to grant an interlocutory injunction in the absence of any attempt by the defendant to pass off his system as the plaintiff's, and distinguished *Franks v. Weaver* (a) on that ground; but the case was compromised on appeal.

With respect to directions for the use of the article, it seems that, as Malins, V.-C., said in *Massam v. Thorley's Cattle Food Co.* (1) (b), if the article produced by one person is the same as that produced by another, and the former is quite at liberty to produce the same article, then the directions used by the latter are the correct directions for the use of the former's article, and he can only repeat them. In fact, if he could not give the appropriate directions for using the article which he is entitled to make, his liberty to manufacture would be unduly interfered with. The decision in the above case was, however, reversed by the Court of Appeal (c) on the general question of representation, the imitation of the directions being referred to as an indication of fraudulent intention, and any trader who uses the same directions as another ought to take great care to prevent the possibility of deception.

To describe articles formerly patented by the name of the former patentee is not necessarily fraudulent, since the name may be used as indicative of a principle of construction (d); but in an American case (e) an injunction was granted to restrain the defendant from marking goods of his own make as being made under the plaintiff's subsisting patent, notwithstanding an allegation by the defendant that the patent was invalid.

The imitation of a peculiar manner of making up and packing goods may, in combination with other circumstances, be held to prove a fraudulent intention; and it seems that, even in the

(a) 10 Beav. 297.

(b) 6 Ch. D. 574, 581. And see *per* Cotton, L. J., in *In re Leonard & Ellis*, 53 L. J. Ch. 611.

(c) 14 Ch. D. 718. And see *Simmons Medicine Co. v. Simmons*, 81 Fed. Rep. 163.

(d) *Wheeler & Wilson Manufacturing Co. v. Shakespear*, 39 L. J. Ch. 36; *Singer Manufacturing Co. v. Loog* (3), 8 App. Cas. 15; and other cases in Ch. 4.

(e) *Washburn & Moen Manufacturing Co. v. Haish*, 9 Biss. 141.

absence of other circumstances of fraud, if the imitation is very significant, and the evidence very conclusive, an injunction will be awarded (*a*). But for this the imitation must be in respect of matters which are not common to the trade, but special to the plaintiffs (*b*), and the defendant must not have effectively distinguished his goods (*c*).

Imitation of
line of
omnibuses.

The manner in which the Court interferes by way of injunction to prevent unfair competition in trade is well illustrated by a case which has always attracted a good deal of attention—that of the omnibus companies (*d*). In that case the plaintiffs were the proprietors of a line of omnibuses painted in a particular manner, with the words “Conveyance Company” and “London Conveyance Company” upon them. The defendant ran omnibuses similarly painted, and dressed his servants in livery imitated from that of the plaintiffs’ employés. On his being required to alter this, he made some mere colourable alterations, but really left the matter as it stood at first. Lord Langdale, M. R., on the case coming before him on motion to dissolve an interlocutory injunction, said that he had not the least doubt that the defendant intended to represent his omnibuses to the public as those of the plaintiffs. He said “it was not to be said that the plaintiffs had any exclusive right to the words ‘Conveyance Company’ or ‘London Conveyance Company,’ or any other words; but they had

(*a*) See *Edelsten v. Vick*, 11 Hare, 78; *Wollam v. Ratcliff*, 1 H. & M. 259; *Anglo-Swiss Condensed Milk Co. v. Swiss Condensed Milk Co.*, W. N. 1871, p. 163; *Lerer v. Goodwin*, 35 Ch. D. 1; *Edge v. Johnson*, 9 P. R. 134; *Harau, Id. v. Tiffin*, 26 P. R. 473; *Adolph Frankau & Co., Id. v. Pfluocer*, 26 P. R. 741; *S. C. (2)*, Joyce, J., Dec. 13th, 1910; *Edge v. Nicolls*, 27 P. R. 671 (reversed, C. A., Nov. 22nd, 1910); *McLean v. Fleming*, 96 U. S. 215. See also *Orr v. Diaper*, L. R. 4 Ch. D. 92; and cases collected at p. 155.

(*b*) *Jamieson v. Jamieson*, 15 P. R. 169; *King v. Gillard*, 22 P. R. 327; *Williams v. Bromley*, 26 P. R. 481, 765; *Williams v. Newbery*, 26 P. R. 489.

(*c*) *Burford, Id. v. Mowling*, 8 C. L. R. 460.

(*d*) *Knott v. Morgan*, 2 Keen, 213. See also *London General Omnibus Co. v. Felton*, 12 Times L. R. 213; *London Road Car Co. v. Era Omnibus Association*, Times, June 23rd, 1898, where the de-

fendants were restrained on motion by the Court of Appeal from running omnibuses with a flag affixed thereto and otherwise got up like the plaintiffs’ omnibuses without more clearly distinguishing their omnibuses from the plaintiffs’, and at the trial the injunction was made perpetual by Cozens-Hardy, J., Times, April 28th, 1899. Injunctions were also granted by Farwell, J., in *London General Omnibus Co. v. Haydon*, Times, Feb. 17th, 1900, and *London General Omnibus Co. v. Lavell*, (1901) 1 Ch. 135, after a personal inspection of the rival omnibuses; but in the latter case the injunction was discharged by the Court of Appeal for want of any evidence of actual or probable deception. In *London General Omnibus Co. v. Gillings*, C. A., June 27th, 1900, the refusal of Cozens-Hardy, J., to grant an injunction was affirmed by the Court of Appeal. See also *London General Omnibus Co. v. Sullivan*, Times, June 1st, 1900.

a right to call upon that Court to restrain the defendant from fraudulently using precisely the same words and devices which they had taken for the purpose of distinguishing their property, and thereby depriving them of the fair profits of their business by attracting custom on the false representation that carriages, really the defendant's, belonged to and were under the management of the plaintiffs." This case was not at all a case of trade mark, though reference has been made to it as such; the Master of the Rolls expressly denied any exclusive right in the words painted on the vehicles, and personally altered the terms of the injunction so as to avoid creating such a right. In the language of Wood, V.-C. (a), "the defendant might have had those words painted on a yellow omnibus without objection, and so of the other resemblances; the wrong lay in their accumulation, not in any one of them alone." The value of the case really consists in the example it affords of the way in which the aggregation of a number of circumstances, individually comparatively harmless, may produce a result injurious to an individual and obnoxious to the law; and also of the manner in which the law will interfere to protect the interests of honest trade.

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

As to the cases which have been decided in respect of trade secrets, the general rule may be stated as being that any person who has, without the use of unfair means, become acquainted with the mode of compounding a secret unpatented preparation, may make and sell the compound, provided he does not lead the public to suppose that his preparation is the manufacture of the original discoverer or of his successors in business; and he may even call the compound made by himself by the same name as that given by the original discoverer to his, so long as he does not sell his own goods as and for those of another (c). On the other hand, where

(a) *Woolton v. Ratcliff*, 1 H. & M. 259.

(b) *Prince Albert v. Strange*, 1 Mac. & G. 25. See *Pollard v. Photographic Co.*, 40 Ch. D. 345. Also *Lamb v. Evans*,

(1893) 1 Ch. 218, 229, per Bowen, L. J.

(c) *James v. James*, L. R. 13 Eq. 421; *Liébig's Extract of Meat Co. v. Hanbury*, 17 L. T. N. S. 298; *Condy v. Mitchell*, 37 *ib.* 268, 766; *Carter v. Goetze*, 2 Keen,

the knowledge of the secret process has been acquired by means of a breach of trust, neither the person who has committed the breach of trust, nor any one to whom he has imparted his discovery, will be allowed to make use of the information so surreptitiously acquired (*a*).

Duty not to use or divulge another's secret.

Again, "there is no doubt whatever that where a party who has a secret in a trade employs persons under contract express or implied, or under duty express or implied, those persons cannot gain the knowledge of that secret and then set it up against their employer" (*b*); and, stating it generally, where one person has entered into a contract, express or implied (*c*), with another person, to keep that other person's secret, and not to divulge it, nor to use it for his own advantage, he will be restrained by an injunction from so divulging or using the secret in question (*d*); and so will a person who is acting in collusion with him (*e*); and a contract by which, on the sale of a trade secret, the vendor has bound himself not to use that secret, is not invalid as being in restraint of trade (*f*). Where the defendant, who had become acquainted with a trade secret, stood by and allowed the plaintiff to purchase it, without disclosing that he was acquainted with it,

581; *Singleton v. Bolton*, 3 Dougl. 293; *Williams v. Williams*, 3 Mer. 157; *Canham v. Jones*, 2 V. & B. 218; *Heyl-Dia v. Edmunds*, 81 L. T. N. S. 579. And see the comments on *Canham v. Jones* in *Morison v. Moat*, 9 Hare, 241. But, of course, when the name has become a trade mark, no one but the proprietor can use it. The question is whether the name is descriptive of the article or distinctive of the manufactory. See *Massam v. Thorley's Cattle Food Co.* (2), 14 Ch. D. 748.

(*a*) *Williams v. Williams*, 3 Mer. 157; *Youatt v. Winyard*, 1 Jac. & W. 394; *Tipping v. Clarke*, 2 Hare, 383; *Morison v. Moat*, 9 *ib.* 241; 21 L. J. Ch. 248; *Estcourt v. Estcourt Hop Essence Co.*, L. R. 10 Ch. 276; *Portal v. Hine*, 4 Times L. R. 330.

(*b*) *Per* Lord Cranworth, L. J., in *Morison v. Moat*, 21 L. J. Ch. 248. And see *Merrycather v. Moore*, (1892) 2 Ch. 518; *Lamb v. Evans*, (1892) 3 Ch. 462; (1893) 1 Ch. 218.

(*c*) See *Tipping v. Clarke*, 2 Hare, 383; *Robb v. Green*, (1895) 2 Q. B. 1, 315; *General Accident Corporation v. Noel*, (1902) 1 K. B. 377; *Weston v. Hemmons*, 2 V. L. R. Eq. 121.

(*d*) *Sedon v. Senate*, 2 V. & B. 220;

Bryson v. Whitehead, 1 S. & S. 74; *Green v. Fulgham*, *ib.* 398; *Tipping v. Clarke*, 2 Hare, 383; *Morison v. Moat*, 9 *ib.* 241; 21 L. J. Ch. 248; *Hagg v. Darley*, 47 *ib.* 567; *Portal v. Hine*, 4 Times L. R. 330; *Merrycather v. Moore*, (1892) 2 Ch. 518; *Whitney v. Hickling*, 5 Grant, Up. Can. Ch. 605; *Weston v. Hemmons*, 2 V. L. R. Eq. 121; *Peabody v. Norfolk*, 98 Mass. 452; *Salomon v. Hertz*, 40 N. J. Eq. 400, where, however, it was held that the defendant ought not to be restrained from divulging where or from whom the plaintiff bought his materials, or to whom he sold his goods, or the prices at which he bought and sold. In *Newbery v. James*, 2 Mer. 446, Lord Eldon declined to issue an injunction, on the ground that the Court could have no means of judging as to its infringement.

(*e*) *Portal v. Hine*, 4 Times L. R. 330; *Peabody v. Norfolk*, 98 Mass. 452; *Salomon v. Hertz*, 40 N. J. Eq. 400.

(*f*) *Bryson v. Whitehead*, 1 S. & S. 74; *Hagg v. Darley*, 47 L. J. Ch. 567; *Jarvis v. Peck*, 10 Paige, 118. And see *Leather Cloth Co. v. Lonsont*, L. R. 9 Eq. 352; *Allsopp v. Wheatecroft*, L. R. 15 Eq. 59.

it was held that he was estopped from setting up his previous knowledge against the plaintiff, and an injunction was granted to restrain him from using it (a). In a passing off action by the owner of a trade secret, where the identity of the processes of manufacture is put in issue, the plaintiff is not usually required to disclose his secret process (b).

Where the defendant is availing himself of a breach of faith or of contract by means of the use of a certain designation for his goods, in such a case the defendant will be restrained from the use of such designation, although the plaintiff may have no exclusive right in the same, apart from such special circumstances (c).

No one will be allowed to use the name of a well-known article with the secret recipe of which he is unacquainted, upon goods of his own make, so as to represent the spurious goods to be genuine (d); nor is it a good defence to say that the purchasers of the article did not know the name of the original manufacturer, for "one man may quite well pass off his goods as the goods of another if he passes them off to people who will accept them as the manufacture of another, although they do not know that other by name at all" (e); but it seems that if a person has an equal right to the use of the name with the person who is acquainted with the secret in accordance with which the goods are manufactured, the latter, at all events, cannot restrain him from the use of the mark, whatever remedy may be open to the public (f). If the person of whom complaint is made is acquainted with the secret process, the objection to his use of the name does

(a) *Champlin v. Stoddart*, 37 N. Y. Sup. Ct. 300.

(b) *Rey v. Lecouturier*, 25 P. R. 265; 27 *ib.* 268. In such a case it has been held in Victoria that the plaintiff may be cross-examined *in camera*, counsel and an expert on each side being allowed to be present and the Court forbidding any disclosure of the evidence: *Sandner v. Curnow* (1905), V. L. R. 648, following *Badische Anilin und Soda Fabrik v. Levinstein*, 24 Ch. D. 156, where Pearson, J., adopted a similar course in a patent action.

(c) *Morison v. Mout*, 9 Hare, 241. And see *Green v. Folgham*, 1 S. & S. 398; *James v. James*, L. R. 13 Eq. 421; *Estcourt v. Estcourt Hop Essence Co.*,

L. R. 10 Ch. 276; *Weston v. Hemmons*, 2 V. L. R. Eq. 121. In *Canham v. Jones*, 2 V. & B. 218, and *Green v. Rooke*, W. N. 1872, p. 49; L. J. N. of C. 1872, p. 54, no fraud was proved.

(d) *Cotton v. Gillard*, 44 L. J. Ch. 90; *Ansell v. Gaubert*, Dig. 163; *Birmingham Vinegar Brewery Co. v. Powell*, (1897) A. C. 710; *Daniel v. Whitehouse*, (1898) 1 Ch. 685; *Rey v. Lecouturier*, 25 P. R. 265; 27 *ib.* 268.

(e) *Birmingham Vinegar Brewery Co. v. Powell*, (1897) A. C. 710, 715, per Lord Herschell.

(f) *Weston v. Ketcham* (1), 39 N. Y. Super. Ct. 54; S. C. (2), 51 How. Pr. 455.

not arise (*a*), and such a person will not be restrained from using it at the suit of a person who has no right to use the recipe in the district in which the defendant trades (*b*).

Secret passes
with owner's
personal
estate.

After the death of an inventor of a secret process, his son, who had learnt the secret in his employ, continued to make the article, but did not take out administration to the father, and it was held that, without becoming his father's personal representative, he could acquire no right to prevent the use of the secret by another (*c*).

Green v.
Folgham.

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

(*a*) *In re Magnolia Metal Co.*, (1897) 2 Ch. 371; *Witthaus v. Braun*, 44 Md. 303. And see *Helmhold v. Helmhold Manufacturing Co.*, 53 How. Pr. 453; *Chadwick v. Covell*, 151 Mass. 190.

(*b*) *Manhattan Medicine Co. v. Wood*, 108 U. S. 218.

(*c*) *Hovenden v. Lloyd*, 18 W. R. 1132. And see *Singleton v. Bolton*, 3 Doug. 293.

(*d*) 1 S. & S. 398.

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

value might be estimated; and the Vice-Chancellor accordingly decreed the value to be ascertained at law, as at the date of the decree.

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

The rights which are possessed by the owner of a magazine, newspaper, or other literary publication, are of a very similar character to those which a person has in the goodwill of a business carried on by him. Just as a name affixed to a shop conveys to customers the idea of a certain degree of excellence, with which the articles sold by the person using that name are associated in their minds; so the title prefixed to a periodical, or its general appearance, conveys to those who take it up the impression that the contents of that publication will be found to be up to the standard to which former editions of the simulated publication have attained. Like goods bearing a trade mark, literary publications carry with them wherever they go the guarantee for their quality, and the representations conveyed by their titles are made to all into whose hands they may come, not merely to the original purchaser. With the doctrine of trade marks that of the titles of literary works has also progressed, so that in this also it has been said that "a publisher or author has either in the title of his work, or in the application of his name to the work, or in the particular marks which designate it, a species of property similar to that which a trader has in his trade mark, and may, like a trader, claim the protection of a Court of Equity against such a use or imitation of the name, mark, or designations as is likely, in the opinion of the Court, to be a cause of damage to him in respect of that property" (*b*). Literary
production.

The earliest of the cases with respect to the titles of publications was *Hogg v. Kirby* (*c*), before Lord Eldon, C., in 1803. *Hogg v.*
Kirby.

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

(*b*) Per Miller, J., in *Robertson v. Berry*, 50 Md. 591. See, however, *Walter v. Emmott*, 54 L. J. Ch. 1059.

(*c*) 8 Ves. 215. And see the early Scotch cases of *In re Edinburgh Correspondent Newspaper*, Ct. Sess. Cas. 1st Ser. I. 407, n.; and *Constable & Co. v. Brewster*, *ib.* III. 215.

plaintiff was the proprietor of a monthly magazine, called "The Wonderful Magazine," which was in fact edited by the plaintiff, though the defendant's name was used as that of the publisher. At the completion of the fifth number, the defendant refused to allow the longer use of his name, and the arrangement was accordingly discontinued, and the accounts between the parties finally settled. The plaintiff then put out a notice stating that he would publish the sixth number, which he did; but on the following day a new magazine was published by the defendant, under the same title as the old one, but with the addition of "New Series Improved, printed for Kirby & Scott," and it was announced that it was intended to issue this monthly. The plaintiff then instituted a suit to check the piracy, and was able to point to several circumstances, in addition to the title, which indicated an intention of inducing the belief that the work was in fact a continuation of the plaintiff's. Lord Eldon, in his judgment, after alluding to the circumstance that the plaintiff's counsel had argued the case on the several grounds of copyright, fraud, and contract, said that he should state the question to be, "not whether the defendant's work was the same as the plaintiff's, but, in a question between those parties, whether the defendant had not represented it to be the same,"—in fact, resting the case upon fraud on the part of the defendant. His Lordship held that the defendant's intention did appear to be to represent his work as a continuation of the plaintiff's, "taking the credit which had been acquired by that to his own" (a), and the injunction was accordingly granted, but in such terms as to extend only to the pretence of the defendant's work being a continuation of the plaintiff's (b).

*Spottiswoode
v. Clarke.*

In *Spottiswoode v. Clarke* (c), where the plaintiff published "The Pictorial Almanack," and the defendant "Old Moore's Pictorial Almanack," there being certain similarities between the wrappers of the two works, Lord Cottenham, denying that trade marks had anything to do with the case, said that it was difficult

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

(b) In *Strahan v. King*, Dig. 539, the proprietors of the "Contemporary Review" sought to restrain their publishers and a former assistant editor from issuing the "Nineteenth Century," alleging

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

(c) 2 Ph. 154.

to believe that no fraud was intended, but that if such were the case, the attempt was very clumsy. And he felt so much doubt as to the legal right that, on the balance of convenience, he dissolved the injunction which had been granted by the Vice-Chancellor of England, giving the plaintiff leave to bring an action, and ordering the defendant to keep an account.

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

Title of
periodical.

The modern doctrine was thus stated by the L. J. in the "Sporting Life" case (b): "It appears to us that there is nothing analogous to copyright in the name of a newspaper, but that the proprietor has a right to prevent any other person from adopting the same name for any other similar publication." And in *Clement v. Maddick* (c), in which case the plaintiffs were the publishers of "Bell's Life," and the defendants the originators of a "Penny Bell's Life," it was said by Stuart, V.-C., that "This is an application in support of the right to property. It has been argued on behalf of the defendants that, unless a fraudulent intention is made out, the plaintiffs are not entitled to an injunction. That is a view of the law to which I cannot accede. Lord Cottenham, in the case of *Millington v. Fox* (d), has declared

Fraudulent
intention
need not be
proved.

(a) 33 L. J. Ch. 561. And see *Williams v. Osborne*, 13 L. T. N. S. 498; and *Singer Manufacturing Co. v. Loog* (3), 8 App. Cas. 15 (*per* Lord Blackburn); *Rose v. McLean Publishing Co.*, 24 Out.

App. R. 240.

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

(c) 1 Giff. 98.

(d) 3 My. & Cr. 338.

that where a trade mark has been innocently and even unconsciously made use of to the injury of another, the owner of the trade mark is entitled to the protection of this Court."—"The defendants' whole case appears to rest on the fact that they intended to commit no fraud; that they had no fraudulent intention in adopting the words 'Bell's Life,' and thought that by prefixing the word 'Penny' to the title they had sufficiently warned the public that they were not purchasing the plaintiffs' paper. But the absence of fraudulent intention is no defence against an application to the Court for an injunction by the person whose property has been injured," and where deception is probable, an injunction will be granted (a). In *Waller v. Emmott* (b), however, the Court of Appeal did not take the same view as to the jurisdiction in such cases being founded on property, and Cotton, L. J., said that "the principle upon which the Court has to decide these cases is this: It is not a question of property; it is

Injunctions
granted

(a) Thus, injunctions were granted in the following cases:—*Edmonds v. Benbow*, Dig. 33 ("The Real John Bull" imitated by "The Old Real John Bull"); *In re The Edinburgh Correspondent Newspaper*, Ct. of Sess. Cas. 1st Ser. I. (new ed.) 407, n. ("The Edinburgh Correspondent," name copied); *Constable & Co. v. Brewster*, Ct. of Sess. Cas. 1st Ser. III. 215 (new ed. 152) ("The Edinburgh Philosophical Journal" by "The New Series of the Edinburgh Philosophical Journal"); *Prouett v. Mortimer*, 2 Jur. N. S. 114 ("The John Bull and Britannia" by "The True Britannia"); *Ingram v. Stiff*, 5 Jur. N. S. 947 ("The London Journal" by "The London Daily Journal"); *Chance v. Sheppard*, Dig. 317 ("The Bedfordshire Express and General Advertiser for the Counties of Cambridge, Hertfordshire, Huntingdonshire, and Middlesex" by "The Bedfordshire Express and General Advertiser for the County"); *Corns v. Griffiths*, W. N. 1873, p. 93 ("The Iron Trade Circular—Rylands" by "The Iron Trade Circular—edited by Samuel Griffiths"); *Metzler v. Wood*, 8 Ch. D. 606 ("Hemy's Royal Modern Tutor for the Pianoforte" by "Hemy's New and Revised Edition of Jousse's Royal Standard Pianoforte Tutor"); *Hutchings v. Sheard*, W. N. 1881, p. 20 ("The Violin School, by J. D. Loder" by "J. D. Loder's Celebrated Violin School, edited, revised, and enlarged by T. Westrop"); *Primrose Press Agency v. Knowles*, L. J.

N. of C. 1886, p. 43 ("Church and State" in each case); *Licensed Victuallers' Newspaper Co. v. Bingham*, 38 Ch. D. 139; *Reuter's Telegram Co. v. International Guide Syndicate*, 94 L. T. (Journal) 437, 460 (unauthorised use of "Official" as applied to a guide to an exhibition); *Reed v. O'Meara*, 21 L. R. Ir. 216 ("The Grocer and Oil Trade Review" imitated by "The Grocer and Wine Merchant and Irish Brewer and Distiller." An injunction was granted to restrain the word "Grocer," into which the plaintiffs' title was commonly abbreviated, from being used as the first and principal part of the defendants' title); *Picture Press, Ltd. v. Ross, Joyce, J.*, Feb. 24th, 1909 ("Ally Sloper"); *Gage v. Canada Publishing Co.*, 11 Can. Sup. Ct. 306 ("Beatty's Headline Copy Book" imitated by "Beatty's New and Improved Headline Copy Book"); *Carey v. Goss*, 11 Ont. Rep. 619 ("The Commercial Traveller and Mercantile Journal," commonly abbreviated to "The Commercial Traveller," and "The Traveller," by "The Traveller"); *Rose v. McLean Publishing Co.*, 24 Ont. App. R. 240 ("Canadian Bookseller and Library Journal," imitated by "Canada Bookseller and Stationer"). And see *Keene v. Harris*, 17 Ves. 338; *Waller v. Head*, 25 Sol. J. 742, 757 (imitations of "The Times").

(b) 54 L. J. Ch. 1059.

the question whether what has been done by the defendant is in reason calculated to induce people to take his goods as those of the plaintiff, or, in other words, to pass off his goods, whatever they may be, as the goods of the plaintiff." And Bowen, L. J., said, "The principle which is involved seems to me to be the right of the Court, and the duty of the Court, to prevent damage being done to the business of a person who is lawfully carrying on his business, by acts, conduct, or representations, consisting either of acts or language, which are calculated to deceive the public, and persons who otherwise would deal with the plaintiff." However, even in this case it was not suggested that a fraudulent intention was necessary to enable relief to be given; and if that is so, the question whether property is or is not involved seems of little practical importance. Even if the theory that there is property in the name of a newspaper is admitted, that right is not invaded without a probability of deception being produced.

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

But deception must be probable.

(a) *Ledger v. Ray*, Dig. 550. And no injunctions were granted in *Bradbury v. Beeton*, 39 L. J. Ch. 57 ("Punch" and "Punch and Judy"); *Dicks v. Yates*, 18 Ch. D. 76 ("Splendid Misery, or East End and West End, by C. H. Hazelwood," and "Splendid Misery, by the author of Lady Audley's Secret, Vixen, &c."); *Dale v. Smith*, W. N. 1882, p. 145 ("The Plumber and Decorator and Journal of Gas and Sanitary Engineering" and "The Decorator, Plumber, and Gasfitter's Journal"); *Dale v. General Newspaper Co.*, 1 Times L. R. 177 (same as above, and "The Plumbing and Decorating, Sanitary,

Water, and Gas Engineering Chronicle"); *Cowen v. Hutton*, 46 L. T. N. S. 897 ("The Newcastle Daily Chronicle" and "The Sporting Chronicle and Prophetic Bell"); *Walter v. Emmott*, 54 L. J. Ch. 1059 ("The Mail" and "The Morning Mail." Here the style and price of the two papers were very different); *Jaffray v. Emmott*, Bacon, V.-C., July 3rd, 1885 ("The Birmingham Daily Mail" and "The Morning Mail"); *Borthwick v. The Evening Post, Ltd.*, 37 Ch. D. 449 ("The Morning Post" and "The Evening Post"); *Brett v. Bowles*, L. J. N. of C. 1890, p. 43; affirmed by C. A. April 30th, 1890 ("The Princess' Novel-

Injunctions refused.

to restrain the defendant from using the name "Post Office Directory," and it was shown that the name had been used by others than the plaintiff, and that the defendant had had the assistance of post office servants, it was held that no injunction could be granted (*a*). So, where both plaintiff and defendant sold under the name of "Castle Album" albums illustrated with pictures of castles, it was held that the name was descriptive of the thing, and that, even if the name were capable of appropriation at all, no injunction would be granted to protect it, unless it were proved that it was recognised as denoting exclusively the plaintiff's albums (*b*). Even if the title is not descriptive, and has been taken without alteration by the defendant, no injunction will be granted unless the plaintiff's paper has been long enough on sale to have acquired some reputation under the name (*c*). And the plaintiff must come with clean hands (*d*).

Titles of literary works protected generally.

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

Incidents of title of publication.

The right which exists in the title of a publication is a right of property (*g*), a chattel interest (*h*), capable of assignment (*i*) or

ettes" and "The Princess"); *Houlston v. Morley*, 90 L. T. (Journal) 40 ("Enquire Within upon Everything" and "Enquire Within"); *Willox v. Pearson*, 18 Times L. R. 220 ("Evening Express" and "North Express").

(*a*) *Kelly v. Byles*, 13 Ch. D. 682.

(*b*) *Schorr v. Schmincke*, 53 Ch. D. 546.

(*c*) *Licensed Victuallers' Newspaper Co. v. Bingham*, 38 Ch. D. 139.

(*d*) *Talbot v. Judges*, 3 Times L. R. 398.

(*e*) *Mack v. Petter*, L. R. 14 Eq. 431. See *Weldon v. Dicks*, 10 Ch. D. 247.

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

(*g*) *Clement v. Maddick*, 1 Giff. 98; *Kelly v. Hutton*, L. R. 3 Ch. 708. But this was disputed in *Walter v. Emmott*, 54 L. J. Ch. 1059.

(*h*) *Per Wood*, L. J., in *Kelly v. Hutton*, L. R. 3 Ch. 708.

(*i*) *Longman v. Tripp*, 2 Bos. & P.

bequest (a), passing, in the event of its proprietor's bankruptcy, to his trustee, but incapable of seizure by a sheriff (b), and which, in the event of a dissolution of partnership between joint proprietors, must be sold for the purpose of the proceeds of the sale being included in the assets of the partnership (c).

Although the term copyright has been sometimes applied to the right in the title of a publication (d), there "cannot in general be any copyright in the title or name of a book" (e), but copyright and trade mark are things "totally distinct" (f), and registration under the Copyright Acts gives no further right to protection than exists independently of such registration (g).

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

No copyright
in title.

Must be
actual user.

N. R. 67; *Ex parte Foss*, 2 De G. & J. 230; *Kelly v. Hutton*, L. R. 3 Ch. 708; *Cloves v. Hogg*, W. N. 1870, p. 268; *ib.* 1871, p. 40; *Ward v. Beeton*, L. R. 19 Eq. 207.

(a) *Keene v. Harris*, 17 Ves. 338. In *McCormick v. McCubbin*, Ct. Sess. Cas. 1, Ser. I. 541 (new ed. 496) it was held by the Court of Session that the executors of the proprietor of a half-share in a newspaper were entitled to proceed to a sale of his share.

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

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

(d) *E.g.*, per Lord Romilly, M. R., in *Mack v. Petter*, L. R. 14 Eq. 431; per Malins, V.-C., in *Weldon v. Dicks*, 10 Ch. D. 247; per Bacon, V.-C., in *Dicks v. Yates*, 18 Ch. D. 76.

(e) Per James, L. J., in *Dicks v. Yates*, 18 Ch. D. 76. And see *Kelly v. Hutton*, L. R. 3 Ch. 708; *Correspondent Newspaper Co. v. Saunders*, 11 Jur. N. S. 540;

Primrose Press Agency v. Knowles, L. J. N. of C. 1886, p. 43; *Schore v. Schmincke*, 33 Ch. D. 516; *Licensed Victuallers' Newspaper Co. v. Bingham*, 38 Ch. D. 139.

(f) Per Jessel, M. R., in *Dicks v. Yates*, 18 Ch. D. 76. In *Gage v. Canada Publishing Co.*, 11 Can. Sup. Ct. 306, it was said that the name of a newspaper was not a trade mark. Some such names have, however, been registered in this country.

(g) *Maxwell v. Hogg*, L. R. 2 Ch. 307; *Barlow & Jones, Ltd. v. Johnson & Co.*, 7 P. R. 395, 399. See *Hirsch v. Jonas*, 3 Ch. D. 584.

(h) Or registered, since the Trade Marks Act of 1875.

(i) Per Turner, L. J., in *Maxwell v. Hogg*, L. R. 2 Ch. 307. And see *Correspondent Newspaper Co. v. Saunders*, 11 Jur. N. S. 540.

(k) *Primrose Press Agency v. Knowles*, L. J. N. of C. 1886, p. 43.

their newspaper at Stationers' Hall on December 24th, 1885, but did not publish the first number till January 16th, 1886; while in the meantime the plaintiffs had registered on January 1st, 1886, and begun to sell on January 2nd, 1886, a newspaper under the same name, and it was held that an injunction must be granted for the protection of the plaintiffs, who had been the first to actually use the title. The user must, however, be substantial (*a*). Where, on the other hand, a book has been once published under a particular title, it seems that the right in the title remains, notwithstanding that the book has been long out of print, and has, in fact, been treated as obsolete (*b*).

(*a*) *Licensed Victuallers' Newspaper Co. v. Bingham*, 38 Ch. D. 139.

(*b*) *Weldon v. Dicks*, 10 Ch. D. 247.

CHAPTER IX.

GOODWILL.

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

The connection between goodwill and trade marks is very intimate. Thus, where in a suit for specific performance of a contract for sale of a business (*c*), one of the subjects of the contract was "goodwill, &c." Romilly, M. R., said that those words united such things as were necessarily connected with and belonged to the goodwill, many of which were easily pointed out; for instance, the use of trade marks. Such things would be included in the words "et cætera," and would be included in the conveyance. The sale of a business carries with it the goodwill and trade marks (*d*), and the sale of a business and goodwill carries with it the right to the trade name (*e*), and the words "assets and effects of every kind and nature," in a bill of sale of a business, cover the trade Connection between goodwill and trade marks.

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

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

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

(*d*) *Shipwright v. Clements*, 19 W. R. 599; *Singer Manufacturing Co. v. Loog* (3), 8 App. Cas. 15, 33 (per Lord Blackburn); *Currie v. Currie*, 15 P. R. 339; *In re Zenophone Trade Mark*, 20 P. R. 450; *Inland Revenue Commrs. v. Muller & Co's Margarine, Ltd.*, (1901) A. C. 217; *Gage v. Canada Publishing Co.*, 11 Can. Sup. Ct. 306. And see *Hall v. Barrows*, 4 De G. J. & S. 150; *Brown Chemical Co. v. Meyer*, 139 U. S. 540. In *Churton v. Douglas, Johns*, 174, V.-C. Wood went so far as to say that the question of trade mark was in fact the same as

the question of firm name, which, it was obvious, was an important part of the goodwill. See, too, *England v. Curling*, 8 Beav. 129; *In re Roger* (2), 12 P. R. 149; *Dickson v. McMaster & Co.*, 18 Ir. Jur. 202; *Congress & Empire Spring Co. v. High Rock Congress Spring Co.*, 57 Barb. 526; R. Cox, 599; *Dison Crucible Co. v. Guggenheim*, 2 Brews. 321; R. Cox, 559; *Sohier v. Johnson*, 111 Mass. 238; *Witt-haus v. Braun*, 44 Md. 303; *Ex parte Young*, Dig. 537.

(*e*) Per James, L. J., in *Levy v. Walker*, 10 Ch. D. 436. See *Thompson v. Mackinnon*, 2 Steph. Dig. 726; *Attenborough v. Jay*, 14 Times L. R. 439.

marks used in the business (a). Again, a trade mark cannot exist in gross and apart from the goodwill of the business with which it has been connected (b).

Connection recognised by registration Act of 1875, and later Acts.

This close connection was fully recognised in the Trade Marks Registration Act, 1875 (c), by the second section of which it was provided that a registered trade mark should be assigned and transmitted only in connection with the goodwill of the business concerned in such particular goods or classes of goods, and should be determinable with such goodwill. By the third section the right of the registered proprietor to the exclusive use of the trade mark was made subject to the provisions in respect of its connection with the goodwill. These provisions have been repeated in §§ 70 and 76 of the Patents Act, 1883 (d), and § 22 of the Trade Marks Act, 1905 (e).

What constitutes goodwill.

"Goodwill, I apprehend," said Wood, V.-C., in the important case of *Churton v. Douglas* (f), "must mean every advantage, every positive advantage, if I may so express it, as contrasted with the negative advantage of the late partner not carrying on the business himself, that has been acquired by the old firm in carrying on its business, whether connected with the premises in which the business was previously carried on, or with the name of the late firm, or with any other matter carrying with it the benefit of the business."—"Very frequently the goodwill of a business or profession, without any interest in land connected with it, is made the subject of sale, though there is nothing tangible in it" (g). And it carries with it the benefit of such matters as a covenant by a servant (h) or partner (i) not to carry on a similar business within prescribed limits.

Formerly treated as always local.

Previously to the case of *Churton v. Douglas* (k), the language of various eminent judges as to what constituted "goodwill" had

(a) *Morgan v. Rogers*, 19 Fed. Rep. 596. And see *Ferne v. Wilson*, 26 V. L. R. 422; *Russia Cement Co. v. Le Page*, 147 Mass. 206; *Horie v. Chaney*, 143 Mass. 592; *Mackinnon v. Thompson*, 5 Can. Leg. News 396.

(b) *Cotton v. Gillard*, 44 L. J. Ch. 90; *In re Wellcome*, 32 Ch. D. 213; *Rey v. Lecouturier*, 25 P. R. 265; 27 *ib.* 268; *In re Johnson*, 26 P. R. 195; *Smith v. Fair*, 14 Ont. Rep. 729; *Dixon Crucible Co. v. Guggenheim*, 2 Brews. 321; *R. Cox*, 559; *Witthaus v. Braun*, 44 Md.

303; *Kidd v. Johnson*, 100 U. S. 617.

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

(d) 46 & 47 Vict. c. 57.

(e) 5 Edw. VII. c. 15.

(f) Johns. 174.

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

(h) *Jacoby v. Whitmore*, 49 L. T. N. S. 335; *Showell v. Winkup*, 60 *ib.* 389.

(i) *Townsend v. Jarman*, (1900) 2 Ch. 698.

(k) Johns. 174.

rather tended to connect the goodwill with the premises on which the business was carried on, than with the business carried on there, probably because that language, though in general terms, was directed to the circumstances of the case then in course of decision (a). Thus, Lord Eldon, C., in *Cruttwell v. Lye* (b), describes goodwill as "nothing more than the probability that the old customers will resort to the old place" (c). Leach, M. R., describes it (d) as "an advantage attaching to the possession of the house" in which the business had been carried on; and Lord Langdale, M. R. (e), as "the chance or probability that custom will be had at a certain place of business in consequence of the way in which that business has been previously carried on." In *King v. Midland Railway Co.* (f), Giffard, V.-C., gave effect to this view by holding that the assignees in liquidation of a mortgagor, whose business premises were taken by a railway company, were entitled to no part of the purchase-money, as having been paid in respect of the goodwill of the business, as against the mortgagee of the premises, whose debt exceeded the purchase-money; but that the goodwill was incident to the mortgaged premises and passed with them.

The judgment in *Churton v. Douglas*, which has been accepted Not so now. by the House of Lords in the important case of *Trego v. Hunt* (g), has now established that the dictum of Lord Eldon in *Cruttwell v. Lye* (h) must be read as meaning that goodwill is the probability that the old customers will buy the old goods from the old firm or their successors in business, whether the means of identification be the place of business or otherwise (i). "It is the whole advantage, whatever it may be, of the reputation and connection of the firm" (k). The customers of a large wholesale

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

(b) 17 Ves. 335.

(c) In this case Sir A. Piggott, in the course of his argument, said that "goodwill" was "the advantage belonging to a house long accustomed to carry on a particular trade." See, too, *per Plumer, V.-C.*, in *Harrison v. Gardner*, 2 Madd. 198.

(d) In *Chisum v. Dewes*, 5 Russ. 29.

(e) In *England v. Downs*, 6 Beav. 269, adopted in *Vonderbank v. Schmidt*, 44 La. Ann. 264; 32 Am. St. Rep. 316.

(f) 17 W. R. 113. See *Rutter v. Daniel*, 30 W. R. 724, 801; *Mitchell v. Read* (2), 26 N. Y. Sup. Ct. 418.

(g) (1896) A. C. 7, 17.

(h) 17 Ves. 335.

(i) And compare *Labourere v. Dawson*, L. R. 13 Eq. 322; *Cooper v. Metropolitan Board of Works*, 25 Ch. D. 472.

(k) *Per Lord Macnaghten in Trego v. Hunt*, (1896) A. C. 7, 24. And see *Inland Revenue Commissioners v. Muller & Co.'s Margarine, Ltd.*, (1901) A. C. 217, 223-4; *Hill v. Fearis*, (1905) 1 Ch. 466.

house cannot be supposed to pay much attention to the exact site of the establishment; and "there may even be a species of goodwill which may be the subject of bargain and sale, although not dependent on the business being carried on in any particular place: for instance, in the case of what are called quack medicines" (a).

Local
connection
important.

While, however, there may be a species of goodwill not intimately connected with a particular spot, in many trades there can hardly be any goodwill apart from the premises on which business has been carried on. Thus, "it is quite plain that the goodwill of a public-house passes with the public-house. In such a case the goodwill is the mere habit of the customers resorting to the house. It is not what is called a personal goodwill" (b). Such a goodwill carries with it the public-house licences, since without them the business cannot be carried on (c). And wherever there is a connection between the goodwill and a particular locality it will be of great consequence; and a house of little value in itself, at a rack-rent, may have a peculiar value attached to it from the fact of a long-established business having been carried on there (d).

Another view
of goodwill.

Looked at from another point of view, the goodwill may be said to be the money value of what has just been described as the goodwill (e). It has been held to be included in the phrases "assets" (f), "effects and securities" (g), "property and

(a) Brett, J., in *Llewellyn v. Rutherford*, L. R. 10 C. P. 456. The goodwill of a newspaper is another example. See the observations of Lord Lindley, in his work on Partnership. See, too, *Potter v. The Commissioners of Inland Revenue*, 10 Ex. 147; *Ginesi v. Cooper*, 14 Ch. D. 596; *Trego v. Hunt*, (1896) A. C. 7, 17, 21; *Donald v. Hodgart's Trustees*, Ct. Sess. Cas. 4th Ser. XXI. 246.

(b) *Per* Jessel, M. R., in *Ex parte Punnett*, 16 Ch. D. 226. As to the goodwill of a public-house, see also the following Scotch decisions: *Hughes v. Stirling*, Ct. Sess. Cas. 4th Ser. XIX. 840; *Philp's Executor v. Philp's Executor*, Ct. Sess. Cas. 4th Ser. XXI. 482; *Mason v. Queen*, 23 Scot. L. Rep. 641; *Leishman v. Henderson*, 6 Scot. L. T. 328; *Ross Trustees v. Ross*, 9 Scot. L. T. 286; *Town & County Bank v. McBain*, *ib.* 485; *Murray's Trustee v. McIntyre*, Ct. Sess. Cas. 5th Ser. VI. 588; *Graham v. Graham's Trustees*, *ib.* 1015; *Muirhead's*

Trustees v. Muirhead, 42 Scot. L. Rep. 367; *Livingston v. Assessor for Paisley*, 46 *ib.* 433.

(c) *Rutter v. Daniel*, 30 W. R. 724, 801; *Coupland's Trustee v. Coupland*, 23 Sc. L. R. 456. As to the valuation of the goodwill of a brewery with tied houses, see *Page v. Ratcliffe*, 75 L. T. N. S. 371.

(d) *Parsons v. Hayward*, 31 L. J. Ch. 666; *Llewellyn v. Rutherford*, L. R. 10 C. P. 456. See *Cooper v. Metropolitan Board of Works*, 25 Ch. D. 472, *per* Cotton, L. J. So with a pottery: *Bell's Trustee v. Bell*, Ct. Sess. Cas. 4th Ser. XII. 85.

(e) *Austen v. Boys*, 2 De G. & J. 626; *Llewellyn v. Rutherford* (Brett, J.), L. R. 10 C. P. 456.

(f) *Jennings v. Jennings*, (1898) 1 Ch. 378.

(g) *In re David & Matthews*, (1899) 1 Ch. 378.

effects" (a), and a bequest of the goodwill of a business may carry the business premises (b).

An important discussion with regard to the nature of goodwill, looked at from the point of view of the Stamp Acts, took place in the House of Lords in *Inland Revenue Commissioners v. Muller & Co.'s Margarine, Ltd.* (c), where Lord Macnaghten said: "It is very difficult, as it seems to me, to say that goodwill is not property. Goodwill is bought and sold every day. It may be acquired, I think, in any of the different ways in which property is usually acquired. When a man has got it he may keep it as his own. He may vindicate his exclusive right to it if necessary by process of law. He may dispose of it if he will—of course, under the conditions attaching to property of that nature. Then comes the question—can it be said that goodwill has a local situation within the meaning of the Act? I am disposed to agree with an observation thrown out in the course of the argument, that it is not easy to form a conception of property having no local situation. What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation, and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start. The goodwill of a business must emanate from a particular centre or source. However widely extended or diffused its influence may be, goodwill is worth nothing unless it has power of attraction sufficient to bring customers home to the source from which it emanates. Goodwill is composed of a variety of elements. It differs in its composition in different trades and in different businesses in the same trade. One element may preponderate here and another element there. To analyze goodwill and split it up into its component parts, to pare it down, as the Commissioners desire to do, until nothing is left but a dry residuum—ingrained in the actual place where the business is carried on while everything else is in the air, seems to me to be as useful for practical purposes as it would be to resolve the human body into the various substances of which it is said to be composed. The goodwill of a business is one

Goodwill
discussed
in House of
Lords.

(a) *In re Leas Hotel Co., Ltd.*, (1902)
1 Ch. 334.

(b) *Blake v. Shaw*, Johns. 732.
(c) (1901) A. C. 217.

whole, and in a case like this it must be dealt with as such. For my part, I think that if there is one attribute common to all cases of goodwill it is the attribute of locality. For goodwill has no independent existence. It cannot subsist by itself. It must be attached to a business. Destroy the business, and the goodwill perishes with it, though elements remain which may perhaps be gathered up and be revived again. No doubt, where the reputation of a business is very widely spread, or where it is the article produced rather than the producer of the article that has won popular favour, it may be difficult to localise goodwill."

And in the same case Lord Lindley said: "Goodwill regarded as property has no meaning except in connection with some trade, business, or calling. In that connection I understand the word to include whatever adds value to a business by reason of situation, name and reputation, connection, introduction to old customers, and agreed absence from competition, or any of these things, and there may be others which do not occur to me. In this wide sense, goodwill is inseparable from the business to which it adds value and, in my opinion, exists where the business is carried on. Such business may be carried on in one place or country or in several, and if in several there may be several businesses, each having a goodwill of its own. That in some cases and to some extent goodwill can and must be considered as having a distinct locality, is obvious, and was not, in fact, disputed. The goodwill of a public-house or of a retail shop is an instance. The goodwill of a business usually adds value to the land or house in which it is carried on if sold with the business; and so far as the goodwill adds value to land or buildings, the goodwill can only be regarded as situate where they are. In such a case the goodwill is said to be annexed to them."

Goodwill in
learned
professions.

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

Division into

Adverting to this distinction, Sir J. Cross, in *Ex parte*

Thomas (a), divided goodwill into personal and local, adding that there might be a goodwill partly personal and partly local (*b*). But the employment of the word "local" as descriptive of one of the two principal heads under which goodwill falls seems open to objection, on the ground that it tends to produce the misconception exposed and removed by Vice-Chancellor Wood in *Churton v. Douglas (c)*, and to unduly narrow the meaning to be assigned to "goodwill," which, as has been seen, comprehends, not merely the advantage of local situation, but every positive advantage connected with an established trade.

personal and local.

The two classes of goodwill may more satisfactorily be distinguished, from the classes of pursuit to which they respectively relate, as the goodwill of a profession on the one hand, and that of a trade on the other. It is, indeed, true that the goodwill of a trade, the more usual kind, possesses so many characteristics which that of a profession has not, that the latter has been thought to be hardly entitled to the name of goodwill at all (*d*), and in *Arundell v. Bell (e)*, Jessel, M. R., went so far as to say that "there is nothing analogous to the goodwill in an ordinary trade, which you can sell, in the case of a partnership of living solicitors"; but, on the other hand, there are points of resemblance in which both classes are governed by the same general rule, and there is a convenience in following an established phraseology.

Division into goodwill of profession and of trade.

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

Contract by attorney to transfer goodwill enforced.

(a) 2 Mont. D. & De G. 294. And see *Ex parte Pamott*, 16 Ch. D. 226.

(b) This division corresponds to that of trade marks into personal and local, made by Romilly, M. R., in *Hall v. Barrows*, 32 L. J. Ch. 548, which, however, was not indorsed by Westbury, C. See 4 De G. J. & S. 150.

(c) Johns. 174.

(d) See *Austen v. Boys*, 2 De G. & J.

626; *Burchell v. Wilde*, (1900) 1 Ch. 551; and *Rain v. Munro*, Ct. Sess. Cas. 4th Ser. V. 416, per Lord Curriehill.

(e) 52 L. J. Ch. 537. And see per Denman, J., in *James v. James (2)*, 60 L. T. N. S. 569.

(f) 1 East, 190, in 1803. See the medical case of *Rawlinson v. Clarke*, 14 M. & W. 187.

the vendor could recover in an action. The answer was that the contract was good in law.

Decision
doubted.

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

Sale of solicitor's practice.

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

Thornbury v. Berill.

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

Partnership
between
solicitors
dissolved.

But where, on a dissolution by two solicitors of a *bonâ fide* partnership between them, it was agreed that one should carry

(a) 1 Mer. 459.

(b) 3 Madd 74.

(c) *Whittaker v. Howe*, 3 Beav. 383.

(d) *Per Denman, J.*, in *James v. James*

(2), 60 L. T. N. S. 569.

(e) *Thornbury v. Berill*, 1 Y. & C. Ch. 554.

(f) 4 East, 190.

on the business under the old firm name, paying the other certain annuities, it was held by Wood, V.-C., that the agreement contained nothing illegal or contrary to the public policy (*a*).

Again, on a dissolution of a professional partnership, a retiring partner is not entitled to compensation in respect of his share in the goodwill (*b*), and a surviving partner may continue the business (*c*). Rights on dissolution.

In *Spicer v. James* (*d*), a country attorney having died intestate, his administrator carried on the business until the intestate's son came of age, when he handed over the business to the son. The son becoming insolvent, a bill for an account of profits, and insisting that a sum was due to the intestate's estate in respect of the goodwill, was filed against the administrator by a creditor of the son, but was dismissed by Leach, M. R., on the ground that the goodwill of an attorney's business was not a subject of administration. So, in *Arundell v. Bell* (*e*), the Court of Appeal decided that the estate of a solicitor, who had retired from a partnership and shortly afterwards died, was not entitled to any allowance in respect of his interest in the goodwill of the business; and Jessel, M. R., said that "as a general rule there is nothing in the nature of a partnership asset to be sold which can fairly be termed goodwill in an ordinary partnership between solicitors." Goodwill of deceased solicitor.

Where, however, the widow of a surgeon dentist, being one of his executors, sold the goodwill of his business with an introduction to patients, Knight-Bruce, V.-C., held that either the whole, or, at all events, some part of the price paid, belonged to the testator's estate (*f*). But in the similar Scotch case of *Bain v. Munro* (*g*), it was held by the Lord Ordinary and Court of Session that the price which was paid was in fact the price of the widow's recommendation, and that she was entitled to retain it for her own benefit, and in another Scotch case it was held that no goodwill could be considered to be attached to the practice of a deceased doctor (*h*). In the particular circumstances Estate of professional man interested in proceeds of goodwill.

(*a*) *Aubin v. Holt*, 2 K. & J. 66.

(*b*) *Austen v. Boys*, 2 De G. & J. 626; *Farr v. Pearce*, 3 Madd. 74. See *Burchell v. Wilde*, (1900) 1 Ch. 551.

(*c*) *Ib.* And see *Milner v. Reed*, Dig. 328; *Chappell v. Griffith*, 53 L. T. N. S. 459.

(*d*) Collyer on Partnership, 2nd ed. p. 104.

(*e*) 52 L. J. Ch. 527.

(*f*) *Smale v. Graves*, 3 De G. & S. 706.

(*g*) Ct. Sess. Cas. 4th Ser. V. 116.

(*h*) *Thatcher v. Thatcher*, 11 Scot. L. T. 605.

of the case the same was held with regard to a stockbroker's business (*a*), but as a rule the goodwill of a stockbroker's business is a saleable asset, and when a partner dies, in the absence of special agreement, his personal representatives are entitled to a share of the goodwill (*b*).

Goodwill of professional business.
Recapitulation.

The goodwill of a professional business may, in short, be sold, and a breach of a contract to sell may be a ground for damages, but the authorities are against the enforcement of the specific performance of such a contract, though when the sale is complete, the terms of the sale will be carried into execution. Such a goodwill, in the case of a partnership, survives to the surviving partner, and is not a subject of compensation to an outgoing partner. Special stipulations will, however, be enforced. Such a goodwill will not be considered in the administration of the proprietor's estate unless actually sold; but if that has been done, the price paid, or some part of it may be attributed to the estate. If professional partners dissolve partnership, without sale or assignment of the goodwill, and without any provision as to the use of the firm name, each may continue to use the name in any way which does not expose his former partners to any risk of liability (*c*).

Goodwill of a trade.

"The goodwill of a trade," said Tindal, C. J. (*d*), "is a subject of value and price. It may be sold (*e*), bequeathed (*f*), or become assets in the hands of the personal representatives of a trader" (*g*). A sale may be conditional (*h*), and may be effected by a mortgagee (*i*). Though incapable, by reason of its incorporeal nature, of seizure by a sheriff (*k*), goodwill is "goods and chattels within the Bankruptcy Acts (*l*), and may be dealt with by the trustee in bankruptcy just as the bankrupt's other pro-

(*a*) *Wilson v. Williams*, 29 L. R. Ir. 176.

(*b*) *Hill v. Fauris*, (1905) 1 Ch. 466, where *Wilson v. Williams*, 29 L. R. Ir. 176, is distinguished.

(*c*) *Burchell v. Wilde*, (1900) 1 Ch. 551.

(*d*) In *Hitchcock v. Coker*, 6 Ad. & E. 438, 451.

(*e*) See *Darby v. Whitaker*, 4 Dr. 139; *Churton v. Douglas*, Johns. 174; *Cooper v. Hood*, 26 Beav. 293; *Hudson v. Osborne*, 39 L. J. Ch. 79; *Shipwright v. Clements*, 19 W. R. 599; *Howe v. Searing*, 10 Abb. Pr. 264; R. Cox, 244.

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

Robertson v. Quiddington, 28 Beav. 529.

(*g*) See *Worral v. Haul*, Peake, 105; *Dakin v. Cope*, 2 Russ. 170; *Chissum v. Dewes*, 5 Russ. 29; *McCormick v. McCubbin*, Ct. Sess. Cas. 1st Ser. I. 511; *Donald v. Hodgart's Trustees*, Ct. Sess. Cas. 4th Ser. XXI. 246.

(*h*) *Boon v. Moss*, 70 N. Y. 465.

(*i*) *Ex parte Punnett*, *In re Kitchin*, 16 Ch. D. 226.

(*k*) *Ex parte Foss*, 2 De G. & J. 230; *Helmore v. Smith*, 35 Ch. D. 436. And see *Gigg v. Bassett*, 30 Ont. L. R. 263.

(*l*) *Longman v. Tripp*, 2 Bos. & P. N. R. 67; *Ex parte Foss*, 2 De G. & J. 230.

party" (a). It is also "property" within the Stamp Acts (b). But where a business consists in manufacturing in accordance with a secret process, the goodwill cannot pass without the knowledge of the secret (c).

The valuable character of goodwill is not confined to a few trades, but is recognised throughout the commercial world. Thus, among the cases on this subject which have come before the Courts, instances are to be found in which the traders were public-house keepers (d), brewers (e), bankers (f), tailors (g), mercers (h), dyers (i), milliners (k), upholsterers (l), pencil-makers (m), tobacco-brokers (n), snuff-makers (o), paper-makers (p), provision merchants (q), cheesemongers (r), glass-blowers (s), glass-stainers (t), manufacturing chemists (v), commission agents (x), iron-masters (y), carriers (z). The goodwill of a newspaper or magazine, consisting of the right to use the title under which reputation has been acquired by a publication, is another instance of valuable goodwill (a).

Universally
valuable.

"The name of a firm," says Wood, V.-C., in *Churton v. Douglas* (b), "is a very important part of the goodwill of the Firm name part of goodwill.

(a) See *Hudson v. Osborne*, 39 L. J. Ch. 79; *Hammond v. Malcolm, Brunner & Co.*, 9 P. R. 301; *In re Bolanachi's Empire Chocolate Co.*, 89 L. T. (Journal) 273.

(b) *Potter v. The Commissioners of Inland Revenue*, 10 Ex. 147; *Benjamin Brooke & Co., Ltd. v. Inland Revenue Commissioners*, (1896) 2 Q. B. 356; *West London Syndicate v. Inland Revenue Commissioners*, (1898) 2 Q. B. 507; *Inland Revenue Commissioners v. Muller & Co.'s Margarine, Ltd.*, (1901) A. C. 217. And see *Inland Revenue Commissioners v. Angus*, 23 Q. B. D. 579; *Inland Revenue Commissioners v. Glasgow & South Western Railway Co.*, 12 App. Cas. 315.

(c) *Key v. Lecouturier*, 25 P. R. 265; 27 ib. 268.

(d) *Coslake v. Till*, 1 Russ. 376; *Spratt v. Jeffery*, 10 B. & C. 249; *Ex parte Thomas*, 2 Mont. D. & De G. 294; *Tweed v. Mills*, L. R. 1 C. P. 39; *Llewellyn v. Rutherford*, L. R. 10 C. P. 456; *Ex parte Pannett, In re Kitchin*, 16 Ch. D. 226; *Philp's Executor v. Philp's Executor*, Ct. Sess. Cas. 4th Ser. XXI. 182.

(e) *Cooper v. Watson*, 3 Doug. 413; *Wade v. Jenkins*, 2 Giff. 509; *Hall v. Hall*, 20 Beav. 139.

(f) *Smith v. Everett*, 27 Beav. 446.

(g) *Scurling v. Dubell*, 38 L. J. Ch. 111; *Pearson v. Hayward*, 31 L. J. Ch. 666.

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

(i) *Bryson v. Whithead*, 1 S. & S. 74.

(k) *Shackel v. Baker*, 14 Ves. 468.

(l) *Chissum v. Daws*, 5 Russ. 29.

(m) *Banks v. Gibson*, 31 Beav. 566.

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

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

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

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

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

(s) *Featherstonhaugh v. Fourack*, 17 Ves. 298.

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

(v) *Turner v. Major*, 3 Giff. 142.

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

(y) *Cooper v. Hood*, 26 Beav. 293; *Hall v. Barrows*, 4 De G. J. & S. 150.

(z) *Cruttwell v. Lyc*, 17 Ves. 355.

(a) *Giblett v. Read*, 9 Mod. 459; *Keene v. Harris*, 17 Ves. 338; *Longman v. Tripp*, 2 Bos. & P. N. R. 67; *Ex parte Foss*, 2 De G. & J. 230; *Marshall v. Watson*, 25 Beav. 501; *Bradbury v. Dickens*, 27 ib. 53; *McCormick v. McCubbin*, Ct. Sess. Cas. 1st Ser. I. 511.

(b) *Johns*, 174.

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

Sale of
goodwill.

Goodwill is a subject of sale (b), and may fetch a considerable price. There was formerly a doubt whether a contract for the sale of a goodwill would be specifically enforced in Equity (c), but this question was set at rest by Kindersley, V.-C., in *Darbey v. Whitaker* (d). "It is said there can be no specific performance of a contract to purchase a goodwill. No doubt you cannot have a specific performance of a contract to purchase a goodwill alone, unconnected with business premises, by reason of the uncertainty of the subject-matter. But when a goodwill is entirely or mainly annexed to the premises, and the contract is for the sale of the premises and goodwill, there is not the

(a) And see *Lewis v. Langdon*, 7 Sim. 121; *Banks v. Gibson*, 34 Beav. 566; *Bond v. Milbourn*, 20 W. R. 197; *Scott v. Boulton*, 20 ib. 508; *Condy v. Mitchell*, 37 L. T. N. S. 268, 766; *Lery v. Walker*, 10 Ch. D. 436; *Beazley v. Soares*, 22 ib. 660; *Gray v. Smith*, 43 ib. 208; *Hill v. Farris*, (1907) 1 Ch. 466. See *Currie v. Currie*, 15 P. R. 339, where the goodwill was sold minus the right to use the firm name.

(b) See, among other cases, *Bunn v.*

Guy, 4 East, 190; *Smule v. Graves*, 3 De G. & S. 706; *Cooper v. Hood*, 26 Beav. 293; *Bradbury v. Dickens*, 27 ib. 53; *Churton v. Douglas*, Johns. 174; *Ex parte Punnett*, *In re Kitchin*, 16 Ch. D. 226; *Buckingham v. Walters*, 14 Cal. 246.

(c) *Baxter v. Connolly*, 1 Jac. & W. 580. And see *Costake v. Till*, 1 Russ. 376; *Bozon v. Farrow*, 1 Mer. 459; *Cassidy v. Metcalf*, 1 Mo. App. 593.

(d) 4 Dr. 139.

slightest ground for doubt that such a contract is a fit matter for a decree in a suit for specific performance." It seems, however, that there may be cases in which a contract for sale of a goodwill would be specifically enforced, the business and goodwill being included together, though there was no such dependence on the business premises (*a*). Such would be the case with the goodwill of a quack medicine or a newspaper, which is practically independent of locality (*b*). The connection between the business and the goodwill is such that the sale of the business (*c*), or of a share in the business (*d*), as a going concern, carries with it the goodwill, or the corresponding share in the goodwill, even without its being specifically mentioned, and so does the sale of a hotel or public-house (*e*). And if the goodwill is sold, the trade name goes with it (*f*). If the business consists in manufacturing under a trade secret, neither the goodwill nor the trade name can pass without the secret (*g*).

As to the rights of the vendor after the sale of his business and goodwill, "it has been settled that there is no implied covenant of any kind" (*h*), and in the absence of any express restrictive covenant, the vendor is at liberty to set up a business of precisely the same description as that of which he had sold the goodwill, and that next door to the place where his former business was carried on, and to state his connection with that former business (*i*): but he is not entitled to represent that he is carrying

Rights of
vendor of
goodwill.

After sale
may set up
new business.

(*a*) Thus, Romilly, M. R., says, in *Robertson v. Quiddington*, 28 Beav. 529: "Goodwill is never a tangible thing unless it is connected with the business itself, from which it cannot be separated. I never knew a case in which it has been so treated." In *England v. Downs*, 6 Beav. 269, and *Morris v. Moss*, 25 L. J. Ch. 194, the goodwill of a business was held, under the circumstances, to pass with the stock, and not with the premises. In *Llewellyn v. Rutherford*, L. R. 10 C. P. 456, the price of the goodwill was held to belong to the previous lessee, under the contract between him and the lessor.

(*b*) See *Bryson v. Whitehead*, 1 S. & S. 74; *Llewellyn v. Rutherford*, L. R. 10 C. P. 456 (*per* Brett, J.); *Snowden v. Noah*, Hopk. 317; R. Cox, 1.

(*c*) *Shipwright v. Clements*, 19 W. R. 599. And see *Rolt v. Bulmer*, W. N. 1878, p. 119; *Reynolds v. Bullock*, 47

L. J. Ch. 773; *Rickerby v. Reay*, 20 P. R. 380.

(*d*) *Churton v. Douglas*, Johns. 174; *Currie v. Currie*, 15 P. R. 339. See *Innes v. Smith*, 1 Scot. L. T. 45; *Ferne v. Wilson*, 26 V. L. R. 422.

(*e*) *Ex parte Pannett, In re Kitchin*, 16 Ch. D. 226.

(*f*) *Banks v. Gibson*, 31 Beav. 566; *Churton v. Douglas*, Johns. 174; *Levy v. Walker*, 10 Ch. D. 436; *Gray v. Smith*, 43 Ch. D. 208; *Rosher v. Young*, 17 Times L. R. 347; *Brown Chemical Co. v. Meyer*, 139 U. S. 540; *Ferne v. Wilson*, 26 V. L. R. 422.

(*g*) *Rey v. Lecouturier*, 25 P. R. 265; 27 *ib.* 268.

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

(*i*) *Clark v. Leuch*, 32 Beav. 14; *Hookham v. Pottage*, L. R. 8 Ch. 91; *Shipwright v. Clements*, 19 W. R. 599; *Cassidy v. Metcalfe*, 1 Mo. App. 593.

on the same identical business, either by direct representations, or by assuming the trade name under which the business he has sold acquired its reputation, or the trade mark by which its goods have become known in the market (*a*); nor can he after the sale give a right to others to use the trade marks (*b*). If the trade name consisted simply of the vendor's own name, the restraint upon his continuing to use that name will have to depend upon the evidence of that user being fraudulent (*c*), but in the absence of such evidence, the *bonâ fide* use by a man of his own name will not be prohibited (*d*). But where the trade name in question consisted of the name of the defendant, John Douglas, with the addition "& Co.," it was held that the use of that was an important ingredient in the case, as proving fraudulent intention (*e*). And so where the name of the firm had been "Benjamin Finch & Co.," and on dissolution B. Finch agreed to carry on business only under his own name, he was restrained from trading as "Benjamin Finch & Co." (*f*).

Solicitation of former customers.

The rights of a vendor of a business and goodwill with respect to soliciting his former customers and dealing with them has been the subject of much difference of judicial opinion. In *Labouchere v. Dawson* (*g*) Lord Romilly, M. R., laid down a stringent rule, saying that when the vendor of a goodwill has established a new firm for the purpose of carrying on a business similar to that which has been sold, "the new firm is entitled to publish any advertisement he pleases in the papers, stating that he is carrying on such business. He is entitled to publish any circulars to all the world to say that he is carrying on such

(*a*) *Shackle v. Baker*, 14 Ves. 468; *Cruttwell v. Lye*, 17 Ves. 335; *Kennedy v. Lee*, 3 Mer. 441, 452; *Sedon v. Senate*, 2 V. & B. 220; *Harrison v. Gardner*, 2 Madd. 198; *Churton v. Douglas, Johns.* 174; *Hudson v. Osborne*, 39 L. J. Ch. 79; *Labouchere v. Dawson*, L. R. 13 Eq. 322; *Ginesi v. Cooper*, 14 Ch. D. 596; *Leggott v. Barrett*, 15 *ib.* 306; *Walker v. Mottram*, 19 *ib.* 355; *Dawson v. Beeson*, 22 *ib.* 504; *Mrs. Pomeroy, Id. v. Sculé*, 24 P. R. 177; *Smith v. McBride*, Ct. Sess. Cas. 4th Ser. XVI. 36; *Melrose Draper v. Huddle*, *ib.* 5th Ser. IV. 1120; *Mossop v. Mason*, 18 Grant, Up. Can. Ch. 453. See *Ferne v. Wilson*, 26 V. L. R. 422.

(*b*) *Sohl v. Geisendorf*, 1 Wils. (Ind.) 60.

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

(*d*) *Burgess v. Burgess*, 3 De G. M. & G. 896; *Bond v. Milbourn*, 20 W. R. 197; *Turton v. Turton*, 42 Ch. D. 128.

(*e*) *Churton v. Douglas, Johns.* 174. And see *Fullwood v. Fullwood* (1), W. N. 1873, p. 185. In *Bond v. Milbourn*, 20 W. R. 197 (very shortly reported), it seems that the plaintiff would have been entitled to an injunction at all events against the use of the words "& Co." by the defendant, if that had been the relief prayed.

(*f*) *Day v. Finch*, 25 Sol. J. 354.

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

a business; but he is not entitled, either by private letter, or by a visit, or by his traveller or agent, to go to any person who was a customer of the old firm, and solicit him not to continue his business with the old firm, but to transfer it to him, the new firm (a). And Jessel, M. R., was of opinion that this doctrine should be extended so as to entitle the purchaser of the goodwill of a business to restrain the vendor from having any dealings with his former customers, irrespective of whether he had solicited their custom or not (b).

On the other hand, in *Leggott v. Barrell* (c), the Court of Appeal held that, assuming the vendor could be restrained from soliciting his old customers in accordance with the order of the Court below, which was not appealed from on this point, he could not be restrained from dealing with his old customers, even though he had solicited them prior to the date of the injunction.

The question next arose with reference to the case in which the goodwill had not been voluntarily alienated by the person entitled to it, and the distinction between this case and the case of a voluntary sale was clearly pointed out in *Walker v. Mottram* (d), in which Jessel, M. R., and the Court of Appeal held that a trader, the goodwill of whose business had been sold by his trustees in liquidation, could not be prevented from actually soliciting his former customers. "An assignment of a business and its goodwill, without more, appears to us," said Lush and Lindley, L. J.J., "to pass now just as much as and no more than in the days of Lord Eldon (e). As against the assignor it confers on the assignee the exclusive right to carry on the business assigned, and, as incidental to this, it also confers on him the exclusive right to represent himself as carrying on that business, and consequently the right, not only to sue the assignor for damages if he has infringed these rights, but also to restrain him from infringing them if he manifests an intention to infringe them. Moreover, to this extent a bankrupt who does not concur in his trustee's assignment is in no better position than a bankrupt who

(a) As to the surrender of a business by A. "for the benefit" of B., see *Clark v. Louch*, 32 Beav. 14; and also *Harrison v. Gardner*, 2 Madd. 198; and *Churton v. Douglas*, Johns. 174.

(b) *Ginesi v. Cooper & Co.*, 14 Ch. D. 596.

(c) 15 Ch. D. 306.

(d) 19 Ch. D. 355.

(e) Cf. *Trego v. Hunt*, (1896) A. C. 7, in which Lord Herschell criticises the language of Lord Eldon in *Cruttwell v. Lye*, 17 Ves. 335, 346. And see p. 335.

Leggott v. Barrell.

Walker v. Mottram.

does. Every bankrupt, whether he concurs or not, is bound by every lawful disposition of his property by the trustee, and whatever rights such a disposition confers on a purchaser must be respected by the bankrupt, whether he joins in the conveyance or not. But, in our opinion, the right of a purchaser of the goodwill of a business from the trustee in bankruptcy does not extend to restrain the bankrupt (even if he joins in the conveyance, from *bonâ fide* commencing a fresh business, and from seeking assistance in it from his old friends and customers. It would, in our opinion, be contrary to the policy of the bankruptcy laws to extend *Labouchere v. Dawson* (a) to such a case. It is not necessary to overrule that decision; we leave it where it is, that is to say, it will still be applicable to voluntary sales. But we do not think it ought to be extended to alienations which are compulsory' (b). On this principle it was held by the Court of Appeal in *Dawson v. Beeson* (c) that an expelled partner was entitled to solicit the customers of his old firm.

Pearson v. Pearson.

In *Pearson v. Pearson* (d), it was definitely laid down by Baggallay and Cotton, L. J.J., Lindley, L. J., dissenting, that *Labouchere v. Dawson* (a) was wrongly decided, and that a vendor of a business and goodwill cannot, in the absence of an express restrictive covenant, be restrained from soliciting the old customers of the business.

Trego v. Hunt.

This much-debated question was at length set at rest by the decision of the House of Lords in *Trego v. Hunt* (e), in which the view expressed by Lord Romilly in *Labouchere v. Dawson* (a) was unanimously approved, and the view of the majority of the Court in *Pearson v. Pearson* (d) was overruled. The decision of the House of Lords finally establishes that the vendor of the goodwill of a business is not entitled to canvass the customers of the old firm, although it was treated as settled law that the sale of the goodwill did not, in the absence of special covenants, prevent the vendor from setting up a rival business in the same neighbourhood. The distinction between the two cases is thus pointed out by Lord

(a) L. R. 13 Eq. 322.

(b) See *Ferne v. Wilson*, 26 V. L. R. 422; *Helmbold v. Helmbold Manufacturing Co.*, 53 How. Pr. 453; *Hegeman & Co. v. Hegeman*, 8 Daly, 1; *Iowa Seed Co. v. Dorr*, 70 Iowa, 481.

(c) 22 Ch. D. 504.

(d) 27 Ch. D. 145. See *Fernon v. Hallam*, 34 Ch. D. 748.

(e) (1896) A. C. 7. See *Dumbarton Steamboat Co. v. Macfarlane*, Ct. Sess Cas. 5th Ser. I. 993.

Herschell: "If a person who has previously been a partner in a firm sets up in business on his own account and appeals generally for custom, he only does that which any member of the public may do, and which those carrying on the same trade are already doing. It is true that those who were former customers of the firm to which he belonged may of their own accord transfer their custom to him: but this incidental advantage is unavoidable, and does not result from any act of his. He only conducts his business in precisely the same way as he would have done if he had never been a member of the firm to which he previously belonged. But when he specifically and directly appeals to those who were customers of the previous firm, he seeks to take advantage of the connection previously formed by his old firm, and of the knowledge of that connection which he had previously acquired, to take that which constitutes the goodwill away from the persons to whom it has been sold and to restore it to himself." The principle of *Trego v. Hunt* equally applies where, on the creation of a partnership, it has been agreed that the goodwill shall belong exclusively to one of the partners (*a*); and the same principle has since been extended to a case where a partnership was dissolved by consent upon the terms that the continuing partner should, on payment of a money consideration to the retiring partner, retain the assets, no express mention being made of the goodwill (*b*). It has also been held by Farwell, J., that the principle of *Trego v. Hunt* extends to the solicitation of persons who, while remaining customers of the old firm, have independently of solicitation become also customers of the new firm, and he expressed regret that the law did not more effectually prevent the vendor of a business from attracting away all the business he has sold (*c*). But it seems that the prohibition against soliciting former customers does not extend to a receiver and manager who has been carrying on, under the order of the Court, the business sold (*d*). An express stipulation in articles of partnership that on the sale of the goodwill to the continuing partner the outgoing partner may set up a rival business in the neighbourhood will not authorise the solicitation of customers (*e*). The decision of the House of

(*a*, *Per* Lord Herschell, (1896) A. C. 21. 1 Ch. 685.

(*b*) *Jennings v. Jennings*, (1898) 1 Ch. 378.

(*d*) *In re Irish*, 40 Ch. D. 49.

(*e*) *Gillingham v. Boddow*, (1900) 2 Ch. 242.

(*c*) *Carl Bros., Ltd. v. Webster*, (1904)

Lords is only directed to voluntary transactions, and cannot be said to impeach the authority of *Walker v. Moltram* (a).

Vendor restrained though no express covenant.

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

Express restrictive covenant usual.

In the sale of a business and goodwill, it is customary to insert an express restrictive covenant, which will be binding on the vendor, restraining him from setting up the same trade within a certain limit of time or space, or using his name or allowing it to be used for that purpose (c); and this has become so usual that where (d) in a contract for sale, one of the items was "goodwill, &c.," Romilly, M. R., held that in the "&c." would be included, amongst other things, a covenant by the vendor not to carry on a similar business in Great Britain, for a reasonable time, to be limited in the conveyance, having regard to the nature of such undertakings. Such a covenant may even have the effect of compelling the vendor to quit his trade altogether for the period specified, as was held by Lord Mansfield, C. J., and the Court of King's Bench, in *Cooper v. Watson* (e); and it has been held that a breach of a covenant "not to carry on or be concerned or interested in" a certain business, was committed by the inventor entering into the service of a nephew, who carried on the same trade, under the same name, within the prescribed limits (f). Again, a covenant not to carry on a certain business directly or indirectly

(a) 19 Ch. D. 355. And see *Ferne v. Wilson*, 26 V. L. R. 422.

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

(c) *Cooper v. Watson*, 3 Doug. 413; *Bryson v. Whitehead*, 1 S. & S. 74; *Williams v. Williams*, 2 Swanst. 253; *Whittaker v. Howe*, 3 Beav. 383; *Turner v. Evans*, 2 De G. M. & G. 710; *Newling v. Dobell*, 38 L. J. Ch. 111; *Wolmershausen v. O'Connor*, 36 L. T. N. S. 921; *Rawlinson v. Clarke*, 14 M. & W. 187; *Rolfe v. Rolfe*, 15 Sim. 88; *Shipwright v. Clements*, 19 W. R. 599; *Lee v. Ehrhart*, 19 L. T. N. S. 637; *Hagg v. Darley*, 17 L. J. Ch. 567; *Davis v. Smaggasgale*,

W. N. 1890, pp. 158, 169; *Woods v. Sands*, Dig. 467; and similarly upon the sale of a trade mark together with the right to manufacture according to a secret recipe; *Filkins v. Blackman*, 13 Bl. C. C. 440.

(d) *Cooper v. Hood*, 26 Beav. 293. See *Jacoby v. Whitmore*, 49 L. T. N. S. 335.

(e) 3 Doug. 413.

(f) *Newling v. Dobell*, 38 L. J. Ch. 111. See *Rolfe v. Rolfe*, 15 Sim. 88; and compare *Lee v. Ehrhart*, 19 L. T. N. S. 637, where there was held to be no breach.

within the counties of C., A., and M., was broken by soliciting orders on three occasions within C., though the offices of the new business were outside the limits (*a*). A vendor of a business who had covenanted not to carry on such a business, will not be allowed to do so under the pretext of acting as a commission merchant (*b*), and the fact that former customers have requested the vendor to supply them does not prevent his so doing from being a breach of his covenant (*c*). But where the defendant was shown to have so acted in a few instances only, and with the plaintiff's knowledge and consent, and in fact at his request, it was held that there was no breach (*d*).

In an American case (*e*) it was held that a person who had retired from a firm by sale of his interest, and had agreed not to trade in C. under the old firm name, but had nevertheless traded there under the same name, and had solicited former customers of the firm, must pay damages calculated, not upon the total amount of improper solicitation of such customers, but upon the amount of business which could be proved to have been lost through such solicitation.

Damages in respect of improper solicitation.

"Where a man sells the goodwill of a trade, and covenants to make it as profitable as he can, the actual profit made is not that which the vendee is bound to take; but he will have an action of covenant, if he can establish his title to more, through the default of the vendor" (*f*). But no such covenant will be implied where it is not expressed: thus the sale of the goodwill of a school involves no personal effort on the part of the vendor to influence the attendance of pupils (*g*). Where a servant (*h*) or partner (*i*) has covenanted not to carry on a business similar to his master's or partner's within certain limits, the benefit of the covenant passes to a purchaser of the goodwill of the business.

Covenant to make profitable.

The purchaser of a business and goodwill is entitled to all the

Rights of purchaser of goodwill.

(*a*) *Turner v. Evans*, 2 De G. M. & G. 710. And the question of solicitation of customers is frequently made the subject of express agreement. See *Baldwin v. Williams*, 83 L. T. N. S. 141; *Harris v. Mansbridge*, 17 Times L. R. 21.

(*b*) *Richardson v. Peacock*, 26 N. J. Eq. 40.

(*c*) *Studer v. Hoffman*, 61 N. Y. 248.

(*d*) *Rawlinson v. Clarke*, 11 M. & W. 157.

(*e*) *Burckhardt v. Burckhardt*, 36 Ohio St. 261.

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

(*g*) *McCord v. Williams*, 96 Penn. St. 18.

(*h*) *Jacoby v. Whitmore*, 49 L. T. N. S. 335; *Showell v. Winkup*, 60 L. T. N. S. 389; *Automobile Carriage Builders, Ltd. v. Sayers*, 101 L. T. N. S. 419.

(*i*) *Townsend v. Jarman*, (1900) 2 Ch. 698.

advantages of the reputation and connection of the business as previously conducted, except such benefit as the vendor, on setting up a *bonâ fide* new business (as he is at liberty to do if there is no covenant to the contrary), may derive from the fact of his being known to have belonged to the former business; and the purchaser is entitled to restrain the vendor by injunction from interfering with what he has sold. With respect to the right of the purchaser to continue to trade under the old trade name, it has been thought that, at all events if it consisted in whole or in part of the name of the vendor, injury (*a*), or at least inconvenience (*b*), might result to the latter from its continued use by the purchaser, and in *Scott v. Rowland* (*c*), Wickens, V.-C., granted an injunction to restrain the purchaser of the business of "John Scott & Co." from trading under that name. So in *Thynne v. Shore* (*d*), where the business had been carried on in the name of "A. Thynne." In *Banks v. Gibson* (*e*), however, Romilly, M. R., said that the firm name was an asset of the business, and would pass as a trade mark upon a sale of the business and goodwill; and it seems that the question of the purchaser's right to use the name, where it can be done without injury to the vendor, must now be taken to be settled in the affirmative by the decision of the Court of Appeal in *Levy v. Walker* (*f*), in which Jessel, M. R., and James and Bramwell, L. JJs., denied that any liability could be occasioned to the vendor by the use of his name, and held that the plaintiff (Mrs. Levy), who, while Miss Charbonnel, had traded in partnership with the defendant as "Charbonnel & Walker," was not entitled to restrain the defendant, who had bought the goodwill of the business as a going concern, from continuing to use the old name.

*Levy v.
Walker.*

(*a*) *Per* Wickens, V.-C., in *Scott v. Rowland*, 20 W. R. 508, and Hall, V.-C., in *Levy v. Walker*, 10 Ch. D. 436. See *Chatteris v. Isaacson*, 57 L. T. N. S. 177; *Thynne v. Shore*, 45 Ch. D. 577.

(*b*) *Per* Wood, V.-C., in *Churton v. Douglas*, Johns, 174.

(*c*) 20 W. R. 508. And see *Lewis v. Langdon*, 7 Sim. 421; *Turner v. Major*, 3 Gilf. 42; *Dence v. Mason*, 41 L. T. N. S. 573; *Dickson v. McMaster & Co.*, 18 Ir. Jur. 202, 212. In *Tuder v. Tudor*, W. N. 1873, p. 72, there was an express contract.

(*d*) 45 Ch. D. 577.

(*e*) 31 Beav. 566.

(*f*) 10 Ch. D. 436. And see *Webster v. Webster*, 3 Swanst. 490, n.; *Clark v. Leach*, 32 Beav. 14; *Bond v. Milbourn*, 20 W. R. 197; *Comly v. Mitchell*, 37 L. T. N. S. 268, 766; *Coulson & Sons v. Coulson & Co.*, 3 Times L. R. 816; *Tussaud v. Tussaud*, 41 Ch. D. 678; *Attenborough v. Jay*, 11 Times L. R. 439; *In re David & Matthews*, (1899) 1 Ch. 375; *Mrs. Pomroy, Ad. v. Scali*, 24 P. R. 177; *Smith v. McBride*, Ct. Sess. Cas. 4th Ser. XVI. 36; *Woods v. Sands*, Dig. 467; *Massop v. Mason*, 18 Grant, Up. Can. Ch. 453; *Ferne v. Wilson*, 26 V. L. R. 422.

James, L. J., said: "It should never be forgotten in these cases that the sole right to restrain anybody from using any name that he likes in the course of any business he chooses to carry on is a right in the nature of a trade mark: that is to say, a man has a right to say, 'You must not use a name, whether fictitious or real—you must not use a description, whether true or not—which is intended to represent, or calculated to represent, to the world that your business is my business, and so, by a fraudulent misstatement, deprive me of the profits of the business which would otherwise come to me.' That is the principle, and the sole principle, on which this Court interferes. The Court interferes solely for the purpose of protecting the owner of a trade or business from a fraudulent invasion of that business by somebody else. It does not interfere to prevent the world outside from being misled into anything. If there is any misleading, that may be for the Criminal Courts of the country to take notice of, or for the Attorney-General to interfere with; but an individual plaintiff can only proceed on the ground that, having established a business reputation under a particular name, he has a right to restrain any one else from injuring his business by using that name. . . . But there is another point upon which I myself cannot entertain any doubt: which is this—that the assignment of the goodwill and business of Charbonnel & Walker did convey the right to use the name of Charbonnel & Walker, and the exclusive right to use that name, as between the vendor and the purchaser of that business. Whether it would prevent another person from afterwards using the name of Charbonnel, I do not say; but the trade name, made up of parts of two real names, as the Master of the Rolls says, the trade name of Charbonnel & Walker (whether it was entirely a fictitious name can make no difference) was the name of the business, and that business was sold. That was a name with which every article sold might have been impressed, just as in the case of *Millington v. Fox* (a), where the name was continued as part of the designation of the article sold. I think it right to say that the sale of the goodwill and business conveyed the right to the use of the partnership name as a description of the articles sold in that trade, and that that right is an exclusive right as against the person who sold it, and an exclusive right

(a) 3 My. & Cr. 338.

as against all the world, so that no other person could represent himself as carrying on the same business" (a). The result of the authorities seems to be that the old firm name may be used in any way which does not expose the vendor to liability (b), but not in any way which would do this (c). But where a partner retires without assigning the goodwill to the continuing partner, the latter cannot continue to use the name of the retiring partner (d), and the sale of the goodwill and business of a company in the course of winding up has been held by Kay, J., not to include the right to use the name of the company (e).

Rights of
purchaser.

The purchaser of the goodwill is, *à fortiori*, entitled to represent himself as continuing the old business: thus, where the business of John Douglas & Co. was sold, it was held that the purchasers alone had the right to describe themselves as "late John Douglas & Co.," and the vendor was restrained from calling his new firm "John Douglas & Co.," that being an interference with that right (f). But a purchaser has no right to use the name of the business he has bought in such a way as to create confusion in the minds of the public (g); and it is a fraud for a person to purchase the goodwill of a small business in order to gain a right to use a name generally identified with a different and important business (h). In *Warner v. Warner* (i), it was held that the purchaser of the goodwill of a business in proprietary medicines had the right to continue to use the old name, but that the change of the name to the purchaser's own name, so as to assimilate it to the name of an old rival business, should be restrained by injunction. And where a business has been carried on under a name somewhat resembling that under which a similar old-established business is carried on, the purchaser of the

(a) And see *Thornloe v. Hill*, (1894) 1 Ch. 569.

(b) *Thunne v. Shore*, 45 Ch. D. 577; *Turnsoul v. Jarman*, (1900) 2 Ch. 698.

(c) *Burchell v. Wilde*, (1900) 1 Ch. 552; *Turnsoul v. Jarman*, (1900) 2 Ch. 698; *Walter v. Ashton*, (1902) 2 Ch. 282.

(d) *Gray v. Smith*, 43 Ch. D. 208.

(e) *In re Bolanachi's Empire Chocolate*, 89 L. T. Journal) 273. And see *Montreal Lithographing Co. v. Sabiston*, (1899) A. C. 610; *Cropper Minerva Machines Co., Ltd. v. Cropper, Charlton & Co., Ltd.*, 23 P. R. 388.

(f) *Churton v. Douglas*, Johns. 174. And see *Lewis v. Langdon*, 7 Sim. 421.

In a Cape Colony case a person who had carried on a business under the name of "Jones & Co.," sought to restrain the defendant, who had bought from the plaintiff's trustee the business and the right to use the trade name, from trading as "Jones & Co.," but the action failed: *Jones v. Brown*, Cape Good Hope, 25 S. C. R. 20.

(g) *Chinn v. Thomas*, 5 V. L. R. Eq. 188.

(h) *Perks v. Hall & Co.*, W. N. 1881, p. 111; *Abel Morrall, Ltd. v. Hessin*, 19 P. R. 557; 20 *ib.* 429.

(i) 5 Times L. R. 359.

newer business must not change the name of his business so as to assimilate it to that of the older business (*a*). The mortgagee of the goodwill of a business, including the right to use the name under which the business is carried on, has no such right in that name as to be able to restrain the use of it by another person, if he has himself never 'traded under it' (*b*).

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

Implied contract to keep up business.

In some cases questions have been raised with respect to the ownership of the goodwill of a business carried on on mortgaged premises. This has most frequently been when the mortgaged premises have been taken under compulsory powers, so that it has been necessary to decide to whom, or in what proportions, the purchase-money was payable. The principle which governs such cases was thus laid down by Cotton, L. J. (*f*). "Goodwill is a word of which few people understand the meaning. It is obvious that to certain kinds of goodwill a mortgagee will be entitled. The goodwill which attaches to a house increases the value of that house, and therefore the mortgagee is entitled to that. By that I mean, for instance, there is a well-known public-house, and from its position being well known, people go to it; or a well known shop, from its being situated in a good thoroughfare, people go to it. The goodwill is attaching to the house, and adds to the value of the house. But there may be other

Goodwill of mortgaged property.

(*a*) *Holt v. Smith*, 1 Times L. R. 329.

(*b*) *Bozley v. Soares*, 22 Ch. D. 660.

(*c*) *McIntyre v. Belcher*, 14 C. B. N. S. 651. Compare *Harrison v. Gardner*, 2 Madd. 198.

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

(*e*) *Frans v. Hughes*, 18 Jur. 691. And see *Turner v. Major*, 3 Giff. 412.

(*f*) *Cooper v. Metropolitan Board of Works*, 53 L. J. Ch. 109 (this passage is given rather less fully at 25 Ch. D. 179), and see *Chissum v. Doves*, 5 Russ. 29; *King v. Midland Railway Co.*, 17 W. R. 113; *Pole v. Tibb*, 3 Ch. D. 36. *Ex parte Pannett, In re Kitchin*, 16 *ib.* 226.

goodwills attaching to the personal reputation which a man has made for himself. That, of course, does not go to the mortgagee, but is a thing personal to the man whose skill and whose name have acquired that goodwill. It does not follow at all that because it is called 'goodwill' the mortgagee will be entitled to it. So far as it is incident to the house, and is connected with the house, and increases the value of the house, it goes as part of the value of the house to the mortgagee."

Goodwill in partnership assets.

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

Disposal on dissolution.

On a dissolution of partnership the business and goodwill may be disposed of in three different ways: by sale, for the benefit of the partners or their creditors; by the whole concern, including the trade name, being taken by one partner at a valuation; or by a simple division of the tangible assets of the partnership, in which case each is at liberty to use the trade name just as the partnership did previously (c) (subject to the qualification that the use of the old name must not expose the other partners to liability) (d), or at all events to state his connection with the old firm (e). But where a partnership was entered into for a certain term, an injunction was granted to restrain one of the partners from carrying on business with others under the old partnership name, the partnership term not having expired (f).

Compensation governed by articles.

On a dissolution of a partnership governed by articles, the retiring partner will not be entitled to compensation for his share in the goodwill except in accordance with the articles (g). Thus,

(a) *Bradbury v. Dickens*, 27 Beav. 53; *Banks v. Gibson*, 34 Beav. 566; *Hall v. Barrows*, 4 De G. J. & S. 150; *McCormick v. McCubbin*, 1 Ct. Sess. Cas. 1st Ser. I. 541.

(b) *Marten v. Van Schaick*, 4 Paige, 479; *Williams v. Wilson*, 4 Sandf. Ch. 379.

(c) *Banks v. Gibson*, 34 Beav. 566; *Condy v. Mitchell*, 37 L. T. N. S. 268, 766; *Levy v. Walker*, 10 Ch. D. 436; *Fenton v. Levy*, 29 Sol. J. 735; *Chappell v. Griffith*, 53 L. T. N. S. 459. And see per Lindley, M. R., in *Burchell v. Wilde*, (1900) 1 Ch. 551, at p. 563.

(d) *Burchell v. Wilde*, (1900) 1 Ch. 551; *Rosier v. Young*, 17 Times L. R. 347. And see *Townsend v. Jarman*, (1900) 2 Ch. 698.

(e) *Clark v. Leach*, 32 Beav. 14; *Hookham v. Pottage*, L. R. 8 Ch. 91; *Dickson v. McMaster & Co.*, 18 Ir. Jur. 202. See *Matthews v. Hodgson*, 2 Times L. R. 899.

(f) *England v. Curling*, 8 Beav. 129.

(g) *Hall v. Hall*, 20 Beav. 139; *Kennedy v. Lee*, 3 Mer. 441, 452; *Farr v. Pearce*, 3 Madd. 74; *Stewart v. Gladstone*, 10 Ch. D. 626; *Innes v. Smith*, 1 Sc. L. T. 45.

in a case where provision was not made for such compensation, it was held that the premises on which the business had been carried on for many years, and which the continuing partner was entitled on dissolution to take at a valuation, were to be valued without regard to the fact of previous occupation, as, if that were taken into account, it would have the effect of making the partner in question pay for the goodwill (a).

But for a retiring partner to be entitled to compensation for his share in the goodwill, it is not necessary for the word "goodwill" to be mentioned in the article governing the distribution of the partnership property. In *Hall v. Hall* (b), indeed, it was held that a provision in the articles for the valuation, on the determination of the partnership, of the "property, credits, and effects," and "the stock in trade and effects," did not include the goodwill; and so, in *Dickson v. McMaster & Co.* (c), with respect to the term "stock in trade, goods, chattels, and effects." But those cases must be taken to be overruled by the cases in which the terms "stock belonging to the partnership" (d), "property and effects" (e), and "effects and things" (f), have been held to include goodwill.

What terms include goodwill.

Where, however, the partnership articles of a firm of commission merchants provided that a retiring partner should receive the share in the partnership property to which he was entitled upon the basis of annual accounts taken, under another article, of the partnership "estate and effects," provision being made thereby for a fair valuation and appraisement of all the particulars included in such accounts, which might be in their nature susceptible of valuation, but no mention being made of the goodwill of the business, it was held by the Court of Appeal that, the share of partners in the goodwill of a commission business not being ordinarily estimated in calculating their annual shares of profits, and that not having been the practice in the case before them, the goodwill could not be taken into account and valued as being included in the partnership "estate and effects" (g).

Stewart v. Gladstone.

(a) *Burfield v. Rouch*, 31 Beav. 241.

(b) 20 Beav. 139.

(c) 18 Ir. Jur. 202.

(d) *Hall v. Barrows*, 4 De G. J. & S. 150.

(e) *Reynolds v. Bullock*, 47 L. J. Ch. 773. And see *Wilmer v. Thomas*, 74 Md. 485 ("all the estate and property

wherever situated").

(f) *Barrow v. Barrow*, 27 L. T. N. S. 431; *Rolt v. Bulmer*, W. N. 1878, p. 119. And see *Shipright v. Clements*, 19 W. R. 599; *In re David & Matthews*, (1899) 1 Ch. 378.

(g) *Stewart v. Gladstone*, 10 Ch. D. 626. Compare *Hill v. Fearis*, (1905) 1 Ch.

Goodwill included in valuation.

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

One partner cannot monopolise goodwill, when no articles.

In *Featherstonhaugh v. Fenwick* (b), it was decided that on a dissolution of a partnership, not provided for by articles, one partner could not secure to himself the whole benefit of the goodwill by claiming to take the share of the other at a valuation, or requiring him to remove his proportion from the premises, or clandestinely obtaining a renewal to himself of the lease of the premises occupied by the partnership; but where the goodwill goes with the premises, it has been held in America that the partners who quit the premises have no claim in respect of goodwill against a partner who remains on the premises (c); and where, under a power contained in the articles, a majority of the partners in a firm expelled another partner, it was decided that in the valuation of the amount to which he was entitled, the value of the goodwill could not be taken into account (d).

Estate of dead partner shares in partnership profits until settlement.

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

466, where that case was explained and distinguished; also *Hunter v. Dowling*, (1895) 2 Ch. 223.

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

(b) 17 Ves. 298. And see *Parsey v. Armstrong*, 18 Ch. D. 698; *Mitchell v. Read* (1), 61 N. Y. 128. As to a trade mark, see *Weston v. Ketcham* (1), 39 N. Y. Super. Ct. 54.

(c) *Musselman & Clarkson's Appeal*, 62 Penn. St. 81.

(d) *Stewart v. Gladstone*, 10 Ch. D. 626.

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

been risked, such a proportion of the total profits as are attributable to that capital will belong to that estate.

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

Subject to circumstances.

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

Similarly with goodwill.

There is, indeed, a distinct decision (c) by Lord Loughborough, C., that upon a dissolution of a partnership without articles the goodwill survives to the surviving partner. This position was, however, doubted by Lord Eldon, C., in *Crawshay v. Collins* (d); and it is now thoroughly established that the goodwill is partnership assets. "The goodwill of a trade, although inseparable from the business, is an appreciable part of the assets of a concern, both in fact and in the estimation of a Court of Equity. Accordingly, in reported cases, Lord Eldon held that a share of it properly and as of right belonged to the estate of the deceased partner. It does not survive to the remaining partners, unless by express agreement; but it may by agreement, as it may be agreed that any particular portion of the partnership assets shall so survive. Goodwill manifestly forms a portion of the subject-matter which produces profits, which constitutes partnership property, and which is to be divided between the surviving partners and the estate of the deceased partner, according to the terms of the contract, and when that is silent, according to their shares in the concern" (e). The share of the deceased partner in the con-

Goodwill does not survive.

(a) *Per* Wigram, V.-C., in *Willett v. Blandford*, 1 Hare, 253. And see *Simpson v. Chapman*, 4 De G. M. & G. 154, where these remarks were highly approved by Turner, L. J., and it was held that under the circumstances of the case, nothing was due to the estate of the deceased partner.

(b) *E.g.*, *Hill v. Fearis*, (1905) 1 Ch. 466.

(c) *Hammond v. Douglas*, 5 Ves. 539. And see *Lewis v. Langdon*, 7 Sim. 421; *Robertson v. Quiddington*, 28 Beav. 529.

(d) 15 Ves. 227.

(e) *Per* Romilly, M. R., in *Wedderburn v. Wedderburn*, 22 Beav. 84. And see

cern is not, however, the sole guide to the interest of his estate in the goodwill. The various circumstances alluded to by Wigram, V.-C., in *Willett v. Blandford* (a) must be considered. Thus, where at the time of the death of one of two partners the partnership was insolvent, and the deceased partner indebted to the partnership, and the surviving partner subsequently carried on the business with such energy and success that he was able at a later period to sell the goodwill for £1,700, it was held by Jessel, M. R., that the surviving partner was only liable to account to the estate of his deceased partner for the value of a moiety of the goodwill at the time of the latter's death (b).

Firm name.

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

Firm continued by certain partners.

When, on a dissolution of partnership, the goodwill of the business becomes the property of some of the former partners, with it they acquire the right of representing their remodelled business as being the continuation of the old one; and they are at liberty to express this by styling themselves "B. & C., late A. & B.,"

Mardonald v. Richardson, 1 Giff. 81; *Bradbury v. Dickens*, 27 Beav. 53; *Smith v. Everett*, 27 Beav. 446; *Hall v. Barrows*, 4 De G. J. & S. 150; *In re David & Matthews*, (1899) 1 Ch. 378; *Hill v. Fearis*, (1905) 1 Ch. 466; *McCormick v. McCubbin*, Ct. Sess. Cas. 1st Ser. I. 541.

(a) 1 Hare, 253.

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

(c) 7 Sim. 421. See *Milner v. Reed*, Dig. 328.

(d) In this respect *Hine v. Lart*, 10

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

(e) A decided opinion to this effect is expressed in *Lindley on Partnership*. And see *In re David & Matthews*, (1899) 1 Ch. 378; *Hill v. Fearis*, (1905) 1 Ch. 466.

(f) *Phelan v. Coilender*, 13 N. Y. Sup. Ct. 244.

or "B. & C., successors to A. & B.," or by using any similar words (*a*). If they continue to use the style of the old business, "A. & B.," as before, then, as regards the partner by whose retirement or death the dissolution has been brought about, it does not appear that he or his estate will be exposed to loss or inconvenience, or that he or his representatives are likely to have any ground for complaint (*b*), although they will be entitled to object if the result is to expose them to liability, and the right to the name has not been expressly assigned (*c*); and, as regards the public, it seems that the use of the old name does not, as a rule, constitute any false representation, the only statement being that the new firm is carrying on the business of the old one (*d*). Such continued user, however, will not be permitted when it can be only for an improper and fraudulent purpose, and in order to deceive the public (*e*); nor where the partnership has been only contrived with a view to giving the purchaser of a professional business the means of appropriating to himself the personal reputation of the vendor (*f*).

When a partner has retired from a business, his share and interest therein being taken over by the continuing partners, or when, on the death of a partner, the partnership business has been sold, the retiring or surviving partner, as the case may be, has full liberty to set up a precisely similar business to that which the partnership carried on, but he must not represent it to be the same business (*g*). To use the language of Fry, J., in *Mogford v. Courtenay* (*h*), "the rights of a late partner who has no interest in the goodwill of the old business, to carry on trade are somewhat refined. They amount shortly to this—that he may carry on a similar trade or similar business; he cannot carry on the identical

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

(*a*) *Churton v. Douglas*, Johns. 174; *Lewis v. Langdon*, 7 Sim. 421; *Hookham v. Pottage*, L. R. 8 Ch. 91.

(*b*) See *Levy v. Walker*, 10 Ch. D. 436, and cases at p. 352, *supra*.

(*c*) *Troughton v. Hunter*, 18 Beav. 470; *Hodges v. London Trams Co.*, 12 Q. B. D. 105; *Townsend v. Jarman*, (1900) 2 Ch. 898.

(*d*) *Banks v. Gibson*, 34 Beav. 566; *Aubin v. Holt*, 2 K. & J. 66. And see *Leather Cloth Co. v. American Leather Cloth Co.*, 1 H. & M. 271; 4 De G. J. & S. 137; 11 H. L. C. 523,

(*e*) *Dence v. Mason*, Dig. 534; 41 L. T.

N. S. 573.

(*f*) *Thornbury v. Bevil*, 1 Y. & C. Ch. 554.

(*g*) *Kennedy v. Lee*, 3 Mer. 441, 452; *Harrison v. Gardner*, 2 Madd. 198; *Churton v. Douglas*, Johns. 174; *Hall v. Barrows*, 4 De G. J. & S. 150; *Clark v. Leach*, 32 Beav. 14; *Bond v. Milbourn*, 20 W. R. 197; *Hookham v. Pottage*, L. R. 8 Ch. 91; *Selby v. Anchor Tube Co.*, W. N. 1877, p. 191; *Wolmerhausen v. O'Connor*, 36 L. T. N. S. 921; *Leggott v. Barrett*, 15 Ch. D. 306; *In re David & Matthews*, (1899) 1 Ch. 378.

(*h*) 45 L. T. N. S. 303.

business. He is at liberty to do everything which flows from the right to carry on a similar business; he is prohibited or liable to be restrained from doing anything which conduces to his carrying on the identical business; but what acts come within either of those classes is a question of very considerable nicety." To this extent the rights of an expelled partner are the same as if he had retired voluntarily (*a*). In the valuation, therefore, of the share of a retiring or dead partner, which is to be taken over by the surviving partner, this fact should be taken into consideration, as it may materially affect and even destroy the value of the share (*b*); and when the business is to be sold, that fact should be stated in the particulars of sale, in order that the purchaser may be able to buy with a full knowledge of the facts (*c*). In *Smith v. Everett* (*d*), the survivor of two partners in a banking business sold the business, and it was held that the estate of the deceased partner was entitled to a share of so much of the purchase-money as was attributable to the goodwill. Romilly, M. R., directed that this value should be ascertained, regard being had to the facts that: 1st, the partnership premises belonged to the survivor; 2ndly, the survivor had the right to carry on the business of a banker on the same premises after the sale of the goodwill; 3rdly, the sole right of issuing bank notes survived to him.

Retiring or surviving partner may state former connection.

Unless he has specially contracted not to do so (*e*), a retiring or surviving partner may advertise generally the facts that he was connected with the former business, and that he is establishing a new business (*f*), and he may style himself "formerly" or "late" of the firm, and, if he occupies the premises formerly occupied by the firm, may state that they were so occupied; but he may not describe himself as "successor to" the old firm.

And the termination of that connection.

A retiring partner may advertise the discontinuance of his par-

(*a*) *Dawson v. Beeson*, 22 Ch. D. 504.
 (*b*) *Mellersh v. Keen*, 28 Beav. 453;
Davies v. Hodgson, 25 Beav. 177; *In re David & Matthews*, (1899) 1 Ch. 378.

(*c*) *Cook v. Collingridge*, Jac. 607; *Hall v. Barrows*, 4 De G. J. & S. 150. And see the form settled by the L. J. in *Johnson v. Helleley*, 2 De G. J. & S. 446. See also *Jennings v. Jennings*, (1898) 1 Ch. 378; *In re David & Matthews*, (1899) 1 Ch. 378.

(*d*) 27 Beav. 446. Cf. *Smith v. Nelson*,

92 L. T. N. S. 313.

(*e*) *Wolmershausen v. O'Connor*, 36 L. T. N. S. 921.

(*f*) *Bradbury v. Dickens*, 27 Beav. 53; *Clark v. Leach*, 32 Beav. 14; *Labouchere v. Dawson*, L. R. 13 Eq. 322; *Graveley v. Winchester*, Seton, 6th ed. 395; *Burrows v. Foster*, 1 N. R. 156; *Selby v. Anchor Tube Co.*, W. N. 1877, p. 191; *Leggoll v. Barrett*, 15 Ch. D. 306; *Walker v. Mottram*, 19 *ib.* 355; *Dawson v. Beeson*, 22 *ib.* 504.

tiopation in a periodical issued by the partnership, but he is not at liberty to advertise its discontinuance generally, any more than he might represent the partnership to have ceased to carry on business, upon his own retirement (a). And where an ex-partner knowingly allowed his former firm to continue to use his name, it was held in America that he was estopped from denying his partnership as against a person who had acted in the belief that he was still a partner (b).

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

Necessary announcements may be made.

Where two partners, having been in the habit of carrying on the partnership business, each in a separate district, agreed to dissolve partnership, the premises, stock, and goodwill to be sold, or until sale to vest in a receiver, Stuart, V.-C., restrained one partner from carrying on the business on his own account in one district, and directed him to account for the profits (e).

Business carried on in separate districts.

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

Right of election protected.

(a) *Bradbury v. Dickens*, 27 Beav. 53. In *England v. Curling*, 8 Beav. 129, an injunction was granted to restrain a partner from publishing notices of the dissolution of the partnership during the term for which it was to subsist.

(b) *Richards v. Hunt*, 65 Ga. 342. So in *Backus v. Taylor*, 84 Ind. 503.

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

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

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

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

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

Valuation of goodwill.

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

(*a*) *Austen v. Boys*, 2 De G. & J. 626.
(*b*) 28 Beav. 453; and see *Donald v. Hodgart's Trustees*, Ct. Sess. Cas. 4th Ser. XXI. 246.

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

APPENDIX A.



THE TRADE MARKS ACT, 1905, AND THE RULES AND INSTRUCTIONS THEREUNDER.



THE TRADE MARKS ACT, 1905.

5 EDW. VII. c. 15.

An Act to consolidate and amend the Law relating to Trade Marks.

[11th August, 1905.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Trade Marks Act, 1905.
 2. This Act shall, save as otherwise expressly provided, come into operation on the first day of April one thousand nine hundred and six.
- Short title.
Commence-
ment of Act.

PART I.

Definitions.

3. In and for the purposes of this Act (unless the context otherwise requires):—

Definitions.

- See Pat.
Acts.
S. 64 and
notes.
- A "mark" shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof (*a*):
- A "trade mark" shall mean a mark used or proposed to be used upon or in connexion with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale (*b*):
- A "registrable trade mark" shall mean a trade mark which is capable of registration under the provisions of this Act:
- "The register" shall mean the register of trade marks kept under the provisions of this Act:
- A "registered trade mark" shall mean a trade mark which is actually upon the register:

“Prescribed” shall mean, in relation to proceedings before the Court, prescribed by rules of court, and, in other cases, prescribed by this Act or the Rules thereunder:

“The Court” shall mean (subject to the provisions for Scotland, Ireland, and the Isle of Man) His Majesty’s High Court of Justice in England.

(a) This definition is new. It corresponds to some extent with the definition contained in sect. 64 of the previous Acts, and has to be taken in conjunction with sect. 9, by which a name or signature or word which complies with the provisions of sub-sects. 1, 2, 3 or 4, constitutes an essential particular. By sub-sect. 5 of that section any other distinctive mark constitutes an essential particular, thus including such names, signatures and words as do not come within the earlier sub-sections, provided that an order of the Board of Trade or of the Court can be obtained. A letter, numeral (in former Acts called “figure”), or any combination thereof is now introduced for the first time into the class of marks which may be registrable though not used before August 13th, 1875. Some marks consisting of letters or figures are of considerable value—*e.g.*, *In re Birmingham Small Arms Co., Ltd.*, 24 P. R. 563 (“B.S.A.”); *Bouke, Roberts & Co., Ltd. v. Wayland & Co.*, 26 P. R. 251 (“K.M.S.”). See also the observations of Kekewich, J., in *In re Apollinaris Brunnen*, 24 P. R. 436. The name of a patented article cannot come within this definition, see *per* Neville, J., *In re Gestetner*, 24 P. R. 545, at p. 549; (1907) 2 Ch. 478; and on appeal (1908) 1 Ch. 513. Again in *In re Philippart*, 25 P. R. 565, Parker, J., held that the word “Diabolo,” which had been registered for tops used in the game of that name, was not used upon the goods for the purpose of indicating that they were the goods of the registered proprietor, and was therefore improperly registered. So also “Gramophone”: *In re Gramophone Co., Ltd.*, 27 P. R. 689.

(b) This definition is also new, but, except in one respect, it does not materially differ from previous practice. Ever since the first Trade Marks Act was passed, not only manufacturers’ marks, but also marks used by merchants and dealers for the purpose of indicating that the goods to which the marks are attached have passed through their hands and are guaranteed by them, have been recognized as constituting registrable trade marks, and this is substantially the meaning of the word “selection” as here used—*i.e.*, it means that the goods on which the mark is placed are goods which have been selected by a trader as approved by him for sale in the course of his business. An instance of this is afforded by the case of *Major Bros. v. Franklin & Son*, 25 P. R. 406, in which Jelf, J., held that fruit salesmen who had their baskets packed with fruit by a particular grower, and then sold the fruit as their own, although as between themselves and the grower the fruit was sold on commission, were properly registered for a trade-mark used by them on baskets of fruit. In all the instances above mentioned the goods pass through the hands of the person marking them for the purpose of sale, but “certification” introduces a new principle, which is explained in sect. 62. In this case the mark is not a trade mark in the strict sense—*i.e.*, it is not a mark used for the purpose of indicating that the goods are the manufacture or merchandise of a particular person, but it means that the marked goods have been examined, and are certified by the person whose mark they bear as being of a particular origin, &c., as specified in sect. 62.

Register of Trade Marks.

4. There shall be kept at the Patent Office for the purposes of this Act a book called the Register of Trade Marks, wherein shall be entered all registered trade marks with the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations, and such other matters relating to such trade marks as may from time to time be prescribed. The register shall be kept under the control and management of the Comptroller-General of Patents, Designs, and Trade Marks, who is in this Act referred to as the Registrar.

This section comes from sect. 78 of the Act of 1883.

Register of
trade marks.

See Pat.
Acts.

S. 78 and
note.

5. There shall not be entered in the register any notice of any trust expressed, implied, or constructive, nor shall any such notice be receivable by the Registrar. Trust not to be entered on register.

This section comes from sect. 85 of the Act of 1883. See Pat. Acts.

6. The register of trade marks existing at the date of the commencement of this Act, and all registers of trade marks kept under previous Acts, which are deemed part of the same book as such register, shall be incorporated with and form part of the register (a). Subject to the provisions of sections thirty-six and forty-one of this Act the validity of the original entry of any trade mark upon the registers so incorporated shall be determined in accordance with the statutes in force at the date of such entry, and such trade mark shall retain its original date, but for all other purposes it shall be deemed to be a trade mark registered under this Act (b). S. 85 and note.
Incorporation of existing register.
See Pat. Acts.
S. 114 and note.

(a) This comes from sect. 114 (2) of the Act of 1883.

(b) Except for its being made subject to the provisions of sects. 36 and 41 of this Act, this branch of the section is in accordance with the law which previously existed, by which the validity of a registered trade mark has always had to depend upon its compliance with the provisions of the Act in force at the date of its registration; e.g., a word registered as a trade mark prior to the Act of 1883 was bad unless it could be shown to have been used *per se* as a trade mark prior to the 13th August, 1875. Similarly, a word registered under the Act of 1883, which was not an old mark, had to be justified as a fancy word; and a word registered under the Act of 1888, which was not an old mark, had to be justified as an invented word, or a word having no reference to the character or quality of the goods. Inasmuch as by sect. 36 a trade mark registered prior to the commencement of this Act is not to be removed from the register on the ground that it was not registrable under the Act under which it was registered, there does not seem to be much value in this part of sect. 6. Where a registered mark is attacked on the ground that it does not fall within the definition of registrable marks, it has first to be ascertained whether it is within the definition of the Act under which it was registered, and if not, then whether it falls under the definition in the present Act. (See *In re Gestetner*, (1907) 2 Ch. 478; (1908) 1 Ch. 513; *In re Philippart*, 25 P. R. 565.)

7. The register kept under this Act shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee. Inspection of and extract from register.
See Pat. Acts.

This comes from sect. 88 of the Act of 1883. S. 88 and note.

Registrable Trade Marks.

8. A trade mark must be registered in respect of particular goods or classes of goods. Trade mark must be for particular goods.

This comes from sect. 65 of the Act of 1883. See classification of goods in Third Schedule to Rules. See P. Acts.

9. A registrable trade mark (a) must contain or consist of at least one of the following essential particulars:— S. 65 and note.

(1) The name of a company, individual, or firm represented in a special or particular manner; Registrable trade marks.

(2) The signature of the applicant for registration or some predecessor in his business (b); See P. Acts.
S. 64 and notes.

- (3) An invented word or invented words (*c*);
 (4) A word or words having no direct reference to the character or quality of the goods (*d*), and not being according to its ordinary signification a geographical name or a surname (*e*);
 (5) Any other distinctive mark (*f*), but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (1), (2), (3), and (4), shall not, except by order of the Board of Trade or the Court, be deemed a distinctive mark :

Provided always that any special or distinctive word or words, letter, numeral, or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before the thirteenth day of August one thousand eight hundred and seventy-five, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration shall be registrable as a trade mark under this Act (*g*).

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons (*h*).

In determining whether a trade mark is so adapted, the tribunal may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered (*i*).

(*a*) This section comes, with very important modifications, from sect. 64 of the Act of 1883 and the amended form of the same section contained in sect. 10 of the Act of 1888. It will be necessary to bear in mind that in the case of cotton marks the provisions of this section are varied by sect. 64 (10).

(*b*) This sub-section for the first time recognizes the signature of a former proprietor of the applicant's business as an essential particular. Hitherto only the signature of the person applying was so recognized. (See *In re Albert Baker & Co.* (1898) *Ltd.*, 25 P. R. 513, at p. 524.)

(*c*) These words come from sect. 64 of the Act of 1888, and are governed by the decision in the "Solio" case—*In re Eastman Photographic Materials Co., Ltd.*, (1898) A. C. 571. Prior to that decision many words capable of registration under that decision had been rejected on grounds derived from the rules previously laid down with regard to fancy words under the Act of 1883, and since that decision many words have been rejected on grounds based on some *dicta* of the Lords therein, but which it is thought might fairly have been sanctioned. Until those *dicta* have been further explained by the House of Lords, it is probable that the same effect will continue to be given to them, but applicants whose marks are rejected on such grounds will in future have the opportunity of endeavouring to satisfy the Board of Trade or the Court, under sub-sect. 5 of this section, that their words are really capable of constituting a distinctive mark, and, if so, registration will be conceded notwithstanding those *dicta*. A word which has been created and applied as the name of a patented article cannot be regarded as an invented word (*In re Gestetner*, (1907) 2 Ch. 478; (1908) 1 Ch. 513). In *In re Philippart*, 25 P. R. 565, "Diabolo," being an Italian variant for Diavolo, was held not to be an invented word.

(*d*) These words come from sect. 64 of the Act of 1888, except that the word "direct" is now introduced for the purpose of rendering registrable words which, though they may contain some indirect allusion to character or quality, are nevertheless capable of being regarded as distinctive. A word which has been created and applied as the name of a patented article is not a word having no direct reference, &c. (*In re Gestetner*, (1907) 2 Ch. 478; (1908) 1 Ch. 513). So the word "Diabolo," registered for tops intended for use in the game of that name, was held not to be a word having no direct reference, &c. (*In re Philippart*, 25 P. R. 565). On the other hand, in *In re*

Compagnie Industrielle des Petroles (24 P. R. 585), the word "Motorine" was held to be a word which had no direct reference, &c. to the goods to which it was intended to be applied, consisting of lubricating oil for use with motor cars and the like.

(e) This provision contains a very liberal modification of the corresponding prohibition in sect. 64 (1) (e) of the Act of 1888. By that sub-section a geographical name was rendered incapable of registration, and difficulties often arose in the case of words which did not suggest to ordinary observers a geographical origin, although in fact they had been used to define particular geographical spots in remote parts of the world. The decision of the Court of Appeal in the "Magnolia" case (*In re Magnolia Metal Co.*, (1897) 2 Ch. 385) in effect interpreted the old prohibition in the sense which now becomes statutory by means of the introduction of the words "according to its ordinary signification." Even if a word is geographical according to its ordinary signification, it may still be registered in a proper case by leave of the Board of Trade or the Court (*In re Apollinaris Brunnen*, 24 P. R. 436; *In re National Starch Co.*, 25 P. R. 802; *In re California Fig Syrup Co.*, 26 P. R. 816); but not if it is calculated to deceive (*In re Royal Worcester Corset Co.*, 26 P. R. 185). The provision as to a surname is new, and will apply to such instances as "Swan," "Pears," and the like, which have in point of fact constituted the surnames of occasional families, though not suggesting that as their primary meaning. See sect. 44.

(f) This is an important provision, enabling, as it does, any mark falling within the definition in sect. 3 to be registered so long as it is distinctive, subject to the provision requiring an order of the Board of Trade or the Court in the particular cases specified. In such cases the usual course is that the applicant sends in to the registrar an application on the special Form T. M. No. 5, on which the registrar reports whether there are any existing marks with which it appears to conflict or not. Then the applicant sends in to the registrar a statement of the facts on which he relies to support his application. If, as is usual, he desires his case to be dealt with by the Board of Trade, the documents are transmitted by the registrar to the Board, who then call upon the applicant to supply evidence in support of his application, and it is usually expected that such evidence shall consist of a statutory declaration by the applicant himself, or someone representing him, and further declarations (three or more), by persons engaged in the trade to bear out the contention that, whatever may originally have been the case, the word has by actual use come to be in fact distinctive of the goods of the applicant. When this has been done, the word is either passed for registration by the Board of Trade, or they appoint a hearing at which the applicant is heard personally, or by counsel or agent, in support of his application, and the matter is then dealt with by the Board. When the applicant desires his application to be dealt with by the Court, or where his application has been referred to the Court by the Board of Trade under sect. 59, the same course must in substance be followed (see *In re Apollinaris Brunnen*, 24 P. R. 436), in which case the name of a mineral water spring was allowed to be registered for mineral water upon an undertaking being given by the applicants not to use the mark except in respect of the water from the applicant's property at Neuenahr or in the neighbourhood thereof. The Board of Trade have dealt with a large number of applications under these special provisions, and have allowed many to pass upon production of sufficient evidence of *de facto* distinctiveness arising from long and exclusive user, although such words have been originally geographical or surnames, or descriptive in other ways. The fact that the word has been passed by the Board of Trade or by the Court does not preclude an opposition after advertisement in the *Trade Marks Journal*, as down to that point the application has been dealt with *ex parte*, and without an opportunity having been afforded to the trade or to any person having special grounds of objection to appear and be heard. In case of an opposition under such circumstances, the effect of the word having been passed for registration amounts to no more than a *prima facie* decision, open to being varied or set aside upon evidence produced by the opponents which, of course, would not have been before the Board of Trade or the Court. The application is, in other words, only allowed to proceed to advertisement, its further progress being dependent on reason to the contrary not being made out. (See *In re Crosfield*, 26 P. R. 561, 857; *In re Akt. Hjorth*, 27 P. R. 461.)

The principles on which the Court will act are laid down by the judgment of Cozens-Hardy, M. R., in the "Perfection" case (*In re Crosfield*, 26 P. R. 837, at

p. 854) in the following terms:—"The duty of the tribunal is not to declare that the mark ought to be registered, but only to give liberty to proceed with the application. Such liberty ought to be given where there is a sufficient *prima facie* case made out; and wherever there has been long continued and extensive user as a trade mark, that circumstance should, in ordinary cases, suffice to establish a right to proceed. But mere user is not necessarily decisive. The words in the proviso are 'may take into consideration,' and these words must not be treated as equivalent to a positive command to grant the application. A wide discretion is vested in the tribunal. It is apparent that no word can be registered under this paragraph unless it is 'distinctive,' that is to say, is 'adapted to distinguish' the goods of the proprietor from the goods of other persons. There are some words which are incapable of being so 'adapted,' such as 'good,' 'best' and 'superfine,' they cannot have a secondary meaning as indicating only the goods of the applicant. There are other words which are capable of being so 'adapted,' and as to such words the tribunal may be guided by evidence as to the extent to which use has rendered the word distinctive. It is easy to apply this paragraph to geographical words, and it is possible to suggest words having direct reference to character or quality which might be brought within it. But an ordinary laudatory epithet ought to be open to all the world, and is not, in my opinion, capable of being registered. It may be that within a particular area the applicant might succeed in a passing-off action against a trader who used the epithet without sufficiently distinguishing his goods from the goods of the applicant. But that would not justify the Court in giving the applicant a monopoly throughout the United Kingdom in the use of a laudatory epithet. Whether in any particular case the word is or is not something more than a laudatory epithet is for the tribunal to decide. If it is open to doubt, the tribunal may direct the application to proceed; if, however, the tribunal is satisfied that the word is purely laudatory, the application ought not to be allowed to proceed, and if the application has been allowed to proceed it ought to be refused at the second stage." In *In re Cassella* (27 P. R. 453), the same principle was held to apply to other directly descriptive words, and Buckley, L. J., said (p. 459) that "the principle is not confined, in my opinion, to laudatory epithets. It extends so far as to forbid the appropriation by one trader of any word forming part of the common stock of the English language, unless the word is one adapted to distinguish the goods in the sense which I have mentioned," i.e., "from those of other persons." It is suggested, however, that the sub-section must be interpreted in such a way as to enable some marks to be registered which could not be registered without it, and that this is the view taken by the Court is shown by the cases in which marks have in fact been allowed.

In any case a word which is the popular name for an article ought not to be allowed to be registered for that article, even though to the trade it may connote a particular maker: *In re Gramophone Co., Ltd.*, 27 P. R. 689.

Where the mark is one which is not within the first four sub-sections of sect. 9, nor a word requiring the sanction of the Board of Trade or the Court, but is claimed as a distinctive mark of some other description, e.g., a device, it will be dealt with by the registrar on the usual lines, but if it is of such a description as would not have been admitted to registration under the old Acts, e.g., if it consists only of letters or numerals, evidence is sometimes required to prove that it is in fact distinctive within the definition in this section. In *In re United States Playing Card Co.* (W. N. (1907) p. 251), it was held that if a device was distinctive it could be registered, whether it could or could not also be registered as a design.

Under this sub-section the Court has passed the words "Apollinaris" (*In re Apollinaris Brunnen*, 24 P. R. 436); "Oswego" (*In re National Starch Co.*, 25 P. R. 802); "Lawson Tait" (*In re Whitfield's Bedsteads, Ltd.*, 26 P. R. 657); "California Syrup of Figs" (*In re California Fig Syrup Co.*, 26 P. R. 846); "Primus" (*In re Akt. Hjorth*, 27 P. R. 461); "Itala" (*In re Itala Fabbrica*, 27 P. R. 493). But the Court has refused to pass "Perfection" (*In re Crossfield*, 26 P. R. 561, 837); "Diamine" (*In re Cassella*, 27 P. R. 453); "Gramophone" (*In re Gramophone Co., Ltd.*, 27 P. R. 689). See also *In re Orilwoola, Ltd.* ("Orilwoola"), 26 P. R. 850.

A mark which is calculated to deceive will not be passed as "distinctive" (*In re Royal Worcester Corset Co.*, 26 P. R. 185), nor the name of a patented article (*In re Bowden Patent Syndicate, Ltd.*, 26 P. R. 205).

As to the form in which the order should be made, see *In re National Starch Co.*, 25 P. R. 802; *In re Akt. Hjorth*, 27 P. R. 461; *In re Itala Fabbrica*, 27 P. R. 493.

(g) This proviso is derived from sect. 64 (3), (ii), of the Act of 1888, which has appeared with various modifications in all the Acts regulating the registration of

trade marks. The previous proviso is, however, now considerably varied in its language in several material respects. The expression "special and distinctive" now becomes "special or distinctive," so that either the one or the other condition has to be fulfilled instead of both, as hitherto. The word "numeral" is substituted for "figure," thus expressing in terms the interpretation which has always been placed upon the earlier word. It is now stated (as had previously been understood to be implied) that the user as a trade mark must have been by the applicant or his predecessors in business. Continued user is now made expressly necessary, though this also had previously been regarded as implied. The most important alteration is contained in the provision that the user may have been "either in its original form or with additions or alterations not substantially affecting the identity of the same." It has constantly happened that in the course of years various trifling alterations have been introduced into an old mark which yet remained for all purposes of distinction the same. The proprietor was naturally desirous of registering it in the form in which he was actually using it, but was unable to allege that the mark had been used in that form prior to 1875, and was, on the other hand, unable to allege that the identical mark used before 1875 had been continued to be used down to the date of the application. Now it will be possible for him to bring such a mark within the precise language of the present section. But if there have been alterations he must show that the mark remains in substance the same.

(h) This is a legislative recognition of the interpretation which had previously been placed upon the word "distinctive" (e.g., *Wood v. Lambert*, 32 Ch. Div. 24; *Perry, Davis & Son v. Harbord*, 15 App. Cas. 316). The great importance of the words "adapted to distinguish" may be seen from the judgments in *In re Crossfield* (26 P. R. 561, 837); *In re Cassella* (27 P. R. 453), and the other cases of special applications. It is suggested that the words may have been introduced to meet the point that a mark not actually in use can hardly be described as *de facto* distinctive, while it may well be "adapted to distinguish." If this suggestion were correct the words would be intended to widen the scope of the section by letting in unused marks. This is, however, not the effect which has been given to them by the Courts.

(i) This provision is new and useful. In the leading cases on the subject of fancy names under the Act of 1883, the Court of Appeal laid down that evidence as to the practical distinctiveness of words claimed as fancy words was to be excluded, and although since the disappearance of the term "fancy word" from the definition section this rule has not been so rigidly adhered to, it was very desirable that statutory authority should be given to the practice of having regard to the teaching of experience. The user of which evidence may be admitted must, however, be used for distinguishing, and not for merely descriptive purposes: *In re Gramophone Co., Ltd.*, 27 P. R. 689.

See Rules 11—16 for further regulations as to registrable trade marks.

10. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of such trade mark (a). If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

(a) The previous provisions as to registration in colour or colours are to be found in sect. 67 of the Act of 1883, as amended by sect. 11 of the Act of 1888. That section, however, did not contain any provision as to the limitation of a trade mark to any specified colour or colours, and this is now for the first time made possible. The object is to enable a trade mark in distinctive colouring to be registered by virtue of such colouring. An instance of an application for such purpose will be found in the case of *In re Hanson* (37 Ch. Div. 112), where the mark tendered consisted of a well-known red, white and blue label for coffee, which was refused registration because of the want of a provision enabling distinctiveness to consist in colour. Under the present section such an application might probably succeed, especially if the circumstances allowed advantage to be taken of the authority given by the concluding paragraph of sect. 9 for the admission of evidence as to practical distinctiveness. Where a trade mark contains matter which irrespective of colour is distinctive, it would appear inadvisable to limit the registration to a particular

Coloured
trade marks.
See Pat.
Acts.
S. 67 and
note.

colour or colours, as this would leave it open to other firms, so far, at all events, as trade marks are concerned, to imitate the distinctive matter, but colour it differently. Where such marks are concerned it is preferable to register without any limitation in respect of colour, and then, if thought advisable, to effect some further registration in which colour is made of the essence of the mark.

Restriction on registration.
See Pat. Acts.
Ss. 73, 86 and notes.

11. It shall not be lawful to register as a trade mark or part of a trade mark any matter, the use of which would by reason of its being calculated to deceive (α) or otherwise be disentitled to protection in a Court of justice, or would be contrary to law or morality, or any scandalous design.

(α) This comes from sects. 73 and 86 of the Act of 1883. From the decision of the House of Lords in *Eno v. Dunn* (15 App. Cas. 252), it seems that the words "calculated to deceive" must be taken as extending to cases in which the deception would result from similarity to marks previously in use by a different trader, and this was so held by Warrington, J., in *In re Compagnie Industrielle des Petroles* (24 P. R. 585), and adopted by Eve, J., in *In re Albert Baker & Co. (1898), Ltd.* (25 P. R. 513.) The onus is on the applicant to prove that the mark which he is seeking to register is not calculated to deceive by reason of its similarity to previous marks. In the earlier of the cases cited it was held that this onus was not discharged, the word "Motricino" for spirit for motive power purposes being held to be too similar to "Motorine" already registered for lubricating oil. On the other hand, in the later case, it was held that two marks, each containing the letters A. B. C., having both been used for several years without confusion the onus was discharged. In *In re Philippart* (25 P. R. 565), Parker, J., doubted very much whether the word "Diabolo" did not fall within the prohibition in this section as being a mark disentitled to protection. In *In re McGleannon* (25 P. R. 797), a "Shamrock" mark was refused registration on the ground that it was calculated to deceive, as suggesting an Irish origin for goods which did not come from Ireland. In *In re Gutta Percha Co., Ltd.* (26 P. R. 81, 428), a mark was not allowed to be registered in Class 38 for indiarubber boots and shoes on the ground of similarity to another mark already registered in Class 40 for indiarubber goods which did not include boots and shoes. In *In re Royal Worcester Corset Co.* (26 P. R. 185), it was held that the words "Royal Worcester," as applied to American-made corsets, were calculated to deceive, both because they might suggest an English origin and also because they might suggest Royal patronage, which was not in accordance with the fact. As to "Royal," see also *In re Carron Co.* (27 P. R. 412). In *Thorne & Sons, Ltd. v. Pimms, Ltd.*, (26 P. R. 221), it was held that a whiskey label containing the name "Glen Thorne," though not calculated to deceive so long as the whiskey sold under it was Thorne's whiskey, became so when the registered proprietors ceased to obtain their supplies from Thorne & Sons, Ltd., and the mark was expunged. In *In re Postum Cereal Co.* (Nov. 12, 1906), the Board of Trade refused an application for the registration of the words "Elijah's Manna," as being irreverent.

Registration of Trade Marks.

Application for registration.
See Pat. Acts.
S. 62 and notes.

12.—(1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the registrar in the prescribed manner.

(2) Subject to the provisions of this Act the registrar may refuse such application, or may accept it absolutely or subject to conditions, amendments, or modifications (a).

(3) In case of any such refusal or conditional acceptance the registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same (b), and such decision shall be subject to appeal to the Board of Trade or to the Court at the option of the applicant (c).

(4) An appeal under this section shall be made in the prescribed manner, and on such appeal the Board of Trade or the Court, as the

case may be, shall, if required, hear the applicant and the registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted (*d*).

(5) Appeals under this section shall be heard on the materials so stated by the registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the registrar, other than those stated by him, except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed (*e*).

(6) The registrar or the Board of Trade or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit (*f*).

This section comes from sect. 62 of the Act of 1883, as modified by sect. 8 of the Act of 1888.

See Rules 17 - 41 for regulations as to applications and subsequent procedure.

(*a*) The only point to which it seems necessary to refer here is that relating to the condition which has frequently been imposed by the authorities at the Patent Office of the obtaining the consent of the proprietor of a previously registered mark. In the case of *In re Dewhurst & Sons, Limtd.* (1896, 2 Ch. 137), the Court of Appeal refused to accept the consent of the proprietor of such a mark as conclusive; but in case of doubt there seems no reason why such consents should not continue to be accepted, as they have in fact been in the past, as a sufficient justification for allowing registration to proceed. It may be added that when the condition which the registrar desires to impose is with respect to association under sect. 24, he is not at liberty to require association going beyond the provisions of that section. (*In re Birmingham Small Arms Co., Ltd.*, 24 P. R. 563.)

(*b*) Before the present Act it was not the usual practice for anything in the nature of a written judgment to be given in such cases, nor for the materials used to be stated, although this has occasionally been done. The result was that an appellant against a refusal to register had to go to the Board of Trade without any accurate knowledge as to the grounds of the refusal. Now, if he desires to appeal, he will have an opportunity of knowing exactly what he has to meet.

(*c*) Hitherto an unsuccessful applicant has had to appeal to the Board of Trade by whom the appeal might or might not be referred to the Court. Usually, appeals against refusals to register not resulting from oppositions were heard by the Board of Trade, but occasionally they were referred to the Court against the wish of the appellant, who preferred to abandon his appeal rather than incur the expense of a proceeding in Court. On the other hand, it occasionally happened that the Board themselves decided a case which the appellant would have preferred to be disposed of before the Court. Where the Board heard the case their decision was final. Where it was heard by the Court the decision was open to the usual possibilities of appeal. Now the applicant will have his option. If he desires to go to the Court he can do so; if, on the other hand, he prefers to go to the Board of Trade, and the appeal is heard by the Board, their decision will be final, but they will still be at liberty to refer the appeal to the Court, under sect. 59, if they so think fit. Where the appeal is taken into Court the appellant may or may not be ordered to pay the costs of the registrar, according to the discretion of the Court, but he will not in any event be able to obtain an order for costs against the registrar. (See sect. 48.) If the refusal of the registrar is on the ground of similarity to a previous mark, it is convenient for the owner of such previous mark to be served with notice. (*Per Parker, J., In re Royal Worcester Corset Co.*, 26 P. R. 185.) See also *In re Shamrock & Co.*, 24 P. R. 569; *In re Carborundum Co.*, 26 P. R. 504; *In re Holbrooks, Ltd.*, 26 P. R. 791; *In re Itala Fabbrica*, 27 P. R. 493, where the persons cited were the applicants' agents in this country, and were left to oppose, if

they thought fit, after the mark had been advertised. The practice of giving notice existed under the old Acts. (See *In re Milne & Co.*, Chitty, J., July 6th, 1883, where the direction to serve the third party was given by the learned judge; *In re Bancroft & Co.*, 5 P. R. 209; *In re Baschiera & Co.*, 33 Sol. J. 469; *In re Sone and Fleming Mfg. Co.*, 30 Ch. D. 505; *In re Extract of Meat (Baron Liebig) Photograph Brand, Ltd.*, 17 P. R. 161, where the Court refused to proceed until the third party had been served; *In re Pomril, Ltd.*, 18 P. R. 181; *In re Booth's Distillery Co., Ltd.*, 21 P. R. 18; *In re Capsuloid Co., Ltd.*, 23 P. R. 782.) As to security for costs, see sect. 14 and notes thereto.

Appeals to the Court are to be by motion (Rule 121). As to appeals to the Board of Trade, see Rules 122—7.

(d) In *In re Shamrock & Co.* (24 P. R. 569), the registrar had refused to register a shamrock mark on the ground of its similarity to another shamrock mark, whose proprietors had not consented to the registration, but on appeal the proprietors of the earlier mark not thinking fit to attend the hearing, although they had had express notice, and the Court being of opinion that the two marks were not too similar to one another, registration was allowed. In *In re Apollinaris Brunnen* (24 P. R. 436), a special application under sect. 9 (5), registration was allowed subject to an undertaking given to the Court limiting the manner of user.

(e) The object of this provision is to enable a mark which is shown to be objectionable, though not on grounds originally taken, to be excluded from the register without exposing the applicant to the risk of having to pay costs incurred in reliance upon the insufficiency of the original objections.

See Rule 128.

(f) This provision disposes satisfactorily of the question which has sometimes been raised as to the date up to which amendments might be introduced into applications, *e.g.*, by the introduction of disclaimers. It is thought that the correct view is that applications have always remained applications, whether accepted or not, up to complete registration, and that throughout this inchoate state amendments were permissible. This has not, however, always been the view taken by the Court, *e.g.*, *In re Player*, (1901) 1 Ch. 382.

Advertisement of application.
See Pat. Acts.
S. 68 and notes.

13. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner. Such advertisement shall set forth all conditions subject to which the application has been accepted.

This section comes from sect. 68 of the Act of 1883, as amended by sect. 12 of the Act of 1888. The language is somewhat altered, but the substance remains the same. It has been the practice for a number of years past to set forth any disclaimers in the advertisement in the *Trade Marks Journal*. This practice is now to be extended to any conditions imposed under the new Act.

See Rules 47—50.

Opposition to registration.

See Pat. Acts.
S. 69 and notes.

14.—(1) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the registrar of opposition to such registration.

(2) Such notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition (a).

(3) The registrar shall send a copy of such notice to the applicant, and within the prescribed time after the receipt of such notice, the applicant shall send to the registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement, the registrar shall furnish a copy thereof to the persons giving notice of opposition, and

shall, after hearing the parties, if so required, and considering the evidence (*b*), decide whether, and subject to what conditions, registration is to be permitted.

(5) The decision of the registrar shall be subject to appeal to the Court or, with the consent of the parties, to the Board of Trade (*c*).

(6) An appeal under this section shall be made in the prescribed manner, and on such appeal the Board of Trade or the Court, as the case may be, shall, if required, hear the parties and the registrar, and shall make an order determining whether, and subject to what conditions, if any, registration is to be permitted (*d*).

(7) On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the tribunal bring forward further material for the consideration of the tribunal (*e*).

(8) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the registrar other than those stated by the opponent as herein-above provided except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed (*f*).

(9) In any appeal under this section, the tribunal may, after hearing the registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered (*g*).

(10) The registrar, or in the case of an appeal to the Board of Trade the Board of Trade, shall have power in proceedings under this section to award to any party such costs as they may consider reasonable, and to direct how and by what parties they are to be paid (*h*).

(11) If a party giving notice of opposition or of appeal neither resides nor carries on business in the United Kingdom, the tribunal may require such party to give security for costs of the proceedings before it relative to such opposition or appeal, and in default of such security being duly given may treat the opposition or appeal as abandoned (*i*).

This section is founded on sect. 69 of the Act of 1883, as altered by sect. 13 of the Act of 1888.

See Rules 51—61.

(*a*) There is no limitation of the grounds on which registration may be opposed, but any person is allowed to object for any reason which he supposes to disentitle the applicant to registration. It has, however, been held that offences alleged to have been committed by the applicant against the Companies Acts are not available as grounds for opposition (*In re Albert Baker & Co. (1898) Ltd.*, 24 P. R. 513).

(*b*) Hitherto the evidence on an opposed application has taken the form of statutory declarations. In future, the practice will be governed by sect. 49 of the Act, by which evidence will ordinarily be taken in the form of statutory declaration as before; but *vis à voce* evidence may, by consent of the parties, be taken in lieu of, or in addition to, evidence by declaration. Hitherto the statutory declarations used in the Registry Office have not been able to be used before the Court without verification by affidavit (see *In re Kingsford & Sons*, 15 P. R. 197); but now, by sect. 49, the declarations may be used before the Court in case of appeal in place of affidavits.

(*c*) Hitherto the appeal from the registrar has been to the Board of Trade, which in opposition cases has almost invariably referred the appeal to the Court. Now the parties may agree for the appeal to be heard by the Board of Trade, whose decision will be final; but the Board may, if it thinks fit, refer the appeal to the

Court under sect. 59. But unless the appeal is taken to the Board of Trade by consent it will have to be made to the Court, and whether the appeal is taken to the Court direct, or is referred to the Court by the Board of Trade, there will be the usual opportunities of further appeal.

Appeals to the Court are to be by motion. (Rule 121.) As to appeals to the Board of Trade, see Rules 122—7.

(d) In *In re Compagnie Industrielle des Petroles* (24 P. R. 585), the refusal of the registrar to register "Motricine," in view of the existing registration of "Motorine," was upheld, and registration, even subject to suggested conditions, was refused. In *In re Albert Baker & Co. (1898) Ltd.* (25 P. R. 513), one of the marks alleged to be in conflict was allowed to be registered without conditions, and the other was also allowed to be registered subject to a disclaimer which had been offered by the applicants. In *In re Grosfield* (26 P. R. 561, 837), a mark which had been passed by the Board of Trade on a special application was refused on opposition. In *In re Kenrick & Jefferson, Ltd.* (26 P. R. 641), an opposition to a mark which had been in use for many years was held to fail. In *In re Brock & Co.* (26 P. R. 681), the word "Osowoolo" was refused registration on account of its similarity to the word "Orlwoola." The latter word was removed from the register on appeal (*In re Orlwoola, Ltd.* (26 P. R. 850)), but no appeal was brought against the refusal to register "Osowoolo." In *In re Chemische Fabrik Griesheim Elektron* (27 P. R. 201), a representation of an Eastern dye works was refused registration on opposition by the owners of another dye works mark, though the pictures were different. (See also *In re Carborundum Co.*, 26 P. R. 504; *In re Holbrooks, Ltd.*, 26 P. R. 791; *In re Akt. Hjorth*, 27 P. R. 461.)

(e) In *In re Ogston & Tennant, Ltd.* (26 P. R. 816), further evidence was allowed to be adduced on appeal, and see *In re Extract of Meat (Baron Liebig) Photograph Brand, Ltd.* (17 P. R. 161).

(f) Under Rule 31 (8) of the Rules of 1890, an opponent has been strictly confined to grounds of objection taken by his notice of opposition. Now the ordinary rule will remain the same, but the tribunal hearing an appeal may permit further grounds to be introduced; but if this is done the applicant will be entitled to withdraw his application without paying the opponent's costs. He will probably be required to pay the costs of the registrar, if any, but the Court will have a discretion under sect. 48. In *In re Albert Baker & Co. (1898), Ltd.* (25 P. R. 513, see p. 516), further grounds of objection were allowed, but the application was pressed with success. Where an opponent refrains from pleading in his notice of opposition grounds of objection already known to him, and his opposition has been disallowed, he will not be allowed, on appeal to the Court, to introduce such grounds of objection on the appeal (*In re Kenrick & Jefferson, Ltd.*, 26 P. R. 641). But he may do so on a subsequent application to the Court for rectification: *ib.* Warrington, J., Dec. 9th, 1910. In *In re Royal Worcester Corset Co.* (reported on the hearing at 26 P. R. 185), the Worcester Royal Porcelain Co., Ltd., who had been served with notice of the application, before appearing to the notice, applied for an order that the applicants, being an American company of Boston, U.S.A., without assets in the United Kingdom, should give security for costs. The American company contended that if the case had been heard by the Board of Trade instead of being referred to the Court, no security could have been ordered, and that, the application having been referred to the Court contrary to the wish of the company, they were unwilling litigants and ought not to be ordered to give security, but it was held that security must be given (Warrington, J., Nov. 16, 1908).

See Rule 128.

(g) The requirement of re-advertisement in case of modification of the trade mark is new as a statutory provision, but the practice thus recognized has been followed in the Registry Office for some years past.

(h) The power of giving costs is new, except in cases taken to the Court, and except that the registrar had power to allow reasonable costs if an application were abandoned after notice of opposition. There appears to be no appeal against an award of costs by the registrar.

(i) This is in substance a re-enactment in the case of opponents or appellants residing and trading outside the United Kingdom of the provisions of sect. 69 of the Act of 1883 as it stood before the alteration introduced by the Act of 1888.

15. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the registrar or the Board of Trade or the Court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration (a): Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made (b).

Disclaimers.
See Pat.
Acts.
S. 64, 74
and notes.

This section comes from sects. 64 and 74 of the Act of 1883, as altered by sects. 10 and 16 of the Act of 1888, but important alterations are introduced.

(a) Under the former Acts it was made a condition of registration that an applicant should in his application state the essential particulars of his trade mark and disclaim any right to the exclusive use of the added matter. Now there is substituted for this a power given to the tribunal to require a disclaimer if it thinks fit. The disclaimer need not be made at the time of application, but may be subsequently introduced by direction of the tribunal. A disclaimer entered on the register may be injurious to the proprietor of the mark and will not be directed except for good cause shown, the object of the legislature in varying the provisions of the former Acts having been to relieve traders from the necessity of disclaiming except in special cases. The fact that the applicant has sought in good faith to claim a monopoly in matter contained in the mark is not of itself sufficient ground for requiring a disclaimer (*In re Albert Baker & Co. (1898). Ltd.*, 25 P. R. 513), in which it was further thought that if the mark is such that a disclaimer would not have been required under the repealed Acts it ought to be free from disclaimer under the present Act.

(b) This is a very important provision, as it clears away for the future any such difficulty as was raised in the case of *Rosenthal v. Reynolds* (1892, 2 Ch. 301), and recognizes the view taken by the Scotch Court in *Bayer v. Baird* (15 P. R. 615). An applicant who is willing to forego any registration rights in respect of matter included in his trade mark may now safely disclaim it without apprehending danger to any common law rights he may possess. The decision in *In re Loftus* (1894, 1 Ch. 193) may possibly still hold good in cases in which matter disclaimed on one registration appears in another mark tendered for registration.

16. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed the opposition has been decided in favour of the applicant, the registrar shall, unless the Board of Trade otherwise direct, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this Act to be the date of registration.

Date of registration.
See Pat.
Acts.
S. 75 and
note.

The latter part of this section comes from sect. 17 of the Act of 1888. The earlier part of the section reproduces the old practice.

See Rules 63—66.

17. On the registration of a trade mark the registrar shall issue to the applicant a certificate in the prescribed form of the registration of registration.

Certificate of registration.

such trade mark under the hand of the registrar, and sealed with the seal of the Patent Office.

This section is new. The former practice was to issue a notification of registration when the registration was completed. If the registered proprietor desired a certificate he had to make application for it and pay a special fee.

See Rule 67.

Non-comple-
tion of regis-
tration.

See Pat.
Acts.
S. 63 and
note.

18. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

This section comes from sect. 63 of the Act of 1883, as amended by the Act of 1888. See Rule 62.

Identical Trade Marks.

Identical
marks.

See Pat.
Acts.
S. 72 and
notes.

19. Except by order of the Court or in the case of trade marks in use before the thirteenth day of August one thousand eight hundred and seventy-five (*a*), no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor (*b*) which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive (*c*).

This comes from sect. 72 of the Act of 1883, as amended by sect. 14 of the Act of 1888.

(*a*) The exception made in the case of "old marks," *i.e.*, marks used before the date of the first Trade Marks Registration Act, seems to allow the registration of such marks although similar marks are standing on the register in other names, but it would appear that if such marks are common to the trade registration would be refused.

(*b*) The introduction of the words "belonging to a different proprietor" are intended to do away with the rule laid down in *Baker v. Rawson* (45 Ch. D. 519) and in *In re Player* (1901, 1 Ch. 382), to the effect that a mark ought not to be registered if the same proprietor had a mark substantially the same already on the register. The theory was that such a registration was a needless cumbering of the register, but this theory entirely disregarded the fact that the proprietor might have thoroughly good reasons for desiring a fresh registration in a slightly altered form; *e.g.*, if he were in fact using or desiring to use a mark which only differed slightly from his previous mark, and he wished to obtain registration of this in a country in which a British certificate of registration of the identical mark used was required as a condition of registration. In view of the enormous number of trade marks already registered, the presence on the register of a few more on payment of the prescribed fees could not really be objectionable, and now objections based on previous registrations by the same proprietor are excluded. In *In re Compagnie Industrielle des Petroles* (24 P. R. 585), "Motricine" was refused registration in view of the existing registration of "Motorine," but in *In re Shamrock & Co.* (24 P. R. 569), an application for the registration of a shamrock mark was allowed to proceed, notwithstanding the previous registration of another shamrock mark. This mark was, however, subsequently refused on the ground of its untruly suggesting an Irish origin for goods which did not come from Ireland (*In re McGlenon*, 25 P. R. 797). In *In re La Union Agrícola* (25 P. R. 295), it was sought to register certain diamond-shaped marks divided by a line across the centre into two triangles, and which in practice were half yellow and half green, in respect of elixirs and liqueurs, but registration was refused on the ground of similarity to certain diamond marks registered in respect of beers (which were treated as goods of the same description as

elixirs and liqueurs), such beer marks being in practice coloured in a single colour, either red, brown, blue or green. In *In re Gutta Percha Co., Ltd.* (26 P. R. 84, 428), it was held that india-rubber boots and shoes were goods of the same description as other india-rubber goods, and that in view of the registration of a mark for india-rubber goods in Class 48, a similar mark could not be registered for india-rubber boots and shoes in Class 38. Where two firms were concurrently entitled to the words "Guinea Gold" for tobacco goods, and owned registered marks in which those words appeared, one of such firms was allowed to register an additional "Guinea Gold" mark, the other firm, who had been served with notice of the application and had refused to consent, not appearing to oppose (*In re Phillips*, 26 P. R. 121; see *In re Royal Worcester Corset Co.*, 26 P. R. 185). On an appeal from a refusal to register, referred to the Court by the Board of Trade, the practice of the Board of Trade to direct notice to be served on the registered proprietor of the mark with which the mark tendered for registration is considered to conflict, is a convenient practice. If notice is not served the Court can proceed without it, or can itself direct it, as the circumstances may appear to require (*Ibid.*). If notice is served and the party served appears, and the application is refused, costs can be given to the party appearing (*Ibid.*). In *In re Carborundum Co.* (26 P. R. 504), an application which had been refused by the registrar on the ground of similarity to a previous mark, was allowed to proceed, the one claimed being antecedent to the registration of the registered mark, and the proprietors of that mark not appearing to oppose, though they had been served with notice and refused to consent. In *In re Holbrooks, Ltd.* (26 P. R. 791), a mark had been refused registration on the ground of a suggested similarity to a previously registered mark. The mark applied for had been in use for many years and, notwithstanding that the owners of the registered mark appeared on the appeal and resisted the application, the registration was allowed to proceed. (See also *In re Akt. Hjorth*, 27 P. R. 461, and the opposition cases under sect. 14.)

(c) Where similar, though not identical, trade marks are registered by the same proprietor, the provisions of sects. 24—27 as to associated trade marks appear to be applicable.

20. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor, the registrar may refuse to register any of them until their rights have been determined by the Court (a), or have been settled by agreement in a manner approved by him or (on appeal) by the Board of Trade (b).

Rival claims to identical marks.
See Pat. Acts. S. 71 and note.

This comes from sect. 71 of the Act of 1883.

(a) The manner in which the determination of the Court is to be obtained is not defined. In *In re Hudson* (24 P. R. 582) the registrar had declined to register either of two conflicting marks without a decision of the Court. One of the applicants thereupon applied for a direction to the registrar to proceed with his application notwithstanding the rival application, and the rival applicant not proceeding with his application, the matter was disposed of on the application of the applicant who did desire to proceed, and in the result neither mark was registered, the mark appearing to be common to the trade. Each applicant was left to pay his own costs, the costs of the registrar being borne by the applicant who had applied to the Court. In *In re Albert Baker & Co. (1898), Ltd.* (25 P. R. 513), the registrar similarly declined to proceed with either application, and each party applied to the Court for leave to proceed, which in the result was granted in both cases.

(b) The provision with respect to agreements between parties claiming similar marks is new, and the wording of the section is otherwise altered. The old section seems rather to be aimed at trade marks of which the ownership was disputed between different claimants, but the present section appears to contemplate rival applications for competing marks being made practically simultaneously. Very little use was made of the old section, and it seems unlikely that the present one will often be put into force. It will, however, apparently meet such cases as *In re Ehrmann* (1897, 2 Ch. 495), in which two persons who had dissolved partnership were both refused registration, although each consented to the other's application.

Cases have already occurred in which the same marks have been allowed to be registered by different firms upon agreements approved by the registrar, *e.g.*, with respect to the place of user, one applicant reserving certain countries as his district and the other applicant other countries. The Board of Trade may refer any appeal to the Court under sect. 59.

Concurrent
user.

21. In case of honest concurrent user or of other special circumstances which, in the opinion of the Court, make it proper so to do, the Court may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor, subject to such conditions and limitations, if any, as to mode or place of user or otherwise, as it may think it right to impose.

This is a new section. Sect. 74 of the old Act recognized the registration of similar old marks by three, but not more different proprietors. Now there is no limitation to old marks, and the limitation in respect of number has also disappeared, but it seems probable that a mark will be held to be common to the trade if it has been used by more than three proprietors. On the other hand, the section now contemplates the registration of similar marks, even though new, subject to conditions in respect of the mode or place of user, or otherwise. Such restrictions were not infrequently imposed in the early years of trade mark registration, chiefly for the purpose of avoiding conflicts between persons who had used similar marks in different ways or in different parts of the country or world, but more recently such limitations have not been favoured. Now their practicability is recognized and sanctioned, and has been acted on in the Trade Marks Registry. In *In re Compagnie Industrielle des Petroles* (24 P. R. 585) "Motricine" was not allowed to be registered having regard to the presence of "Motorine" on the register, even with suggested conditions as to the mode of user. And a similar refusal was given in *In re Gutta Percha Co., Ltd.* (26 P. R. 84, 428). Weight will be given to long user of the later mark tendered for registration. (*In re Sen and Fleming Mfg. Co.*, 30 Ch. D. 505; *In re Carborundum Co.*, 26 P. R. 504; *In re Kenrick and Jefferson, Ltd.*, 26 P. R. 641; *In re Holbrooks, Ltd.*, 26 P. R. 791; and see *In re Akt. Hjorth*, 27 P. R. 461.) In *McKenzie v. Leslie* (9 C. L. R. 247), where A. and B. had each used the same mark in New South Wales, but in different districts, and B. had obtained registration, it was held that there had been honest concurrent user, and A. was allowed to register, subject to conditions for preventing confusion.

Assignment.

Assignment
and trans-
mission of
trade marks.

See Pat.
Acts.
S. 70 and
notes.

22. A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill (*a*). But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any British possession or protectorate or foreign country in connection with any goods for which it is registered together with the goodwill of the business therein in such goods (*b*).

This comes from sect. 70 of the Act of 1883. See Rules 76-81.

(*a*) The indissoluble character of the connection between the trade mark and goodwill has always been recognized. The provision, however, that the trade mark shall be determinable with the goodwill has not, so far as is known, been put into force in connection with registration. The old rectification section, in fact, did not contain any words directly applicable to the case of a mark which was on the register, but which had ceased to be connected with an existing goodwill. The decision in *In re Butt* (1898, 2 Ch. 432; 1899, A. C. 428), however, met this difficulty to some extent, and sect. 35 (1) of the present Act expressly provides

for rectification at the instance of a person aggrieved by any entry wrongly remaining on the register. Where a person procured himself to be registered as the subsequent proprietor of a trade mark, but had not acquired the goodwill, the mark was expunged from the register (*In re Johnson*, 26 P. R. 195). In the "Chartreuse" case, *Rey v. Lecouturier* (25 P. R. 265; 27 P. R. 268), the entry of the name of a subsequent proprietor, who was held not to have acquired the goodwill, was ordered to be expunged, restoring the register to its previous condition.

(b) The latter part of this section is in harmony with the provisions of sect. 21, and recognizes the possibility of the same mark belonging to and being used by different persons in different countries, even though they may have been originally in the same ownership.

23. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the registrar may (subject to the provisions of this Act as to associated trade marks), on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the registrar under this section shall be subject to appeal to the Board of Trade.

Apportionment of marks on dissolution of partnership.

This is a new section. The intention seems to be to do away with any supposed indivisibility of goodwill, where the marks are sufficiently distinct from one another to allow them to be apportioned and placed in different names. The provision as to associated trade marks (see sects. 24—27) prevents any apportionment which might create confusion arising from the similarity *inter se* of marks apportioned to different proprietors. The Board of Trade may refer any appeal to the Court under sect. 59.

See Rules 87—89.

Associated Trade Marks.

24. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Associated trade marks.

This is a new section. The central idea of this group of sects. 24—27, of which 26 alone appeared in a somewhat more limited form in the earlier Acts, seems to be that trade marks are to be allowed to be placed on the register by the same proprietor which resemble one another in their distinctive characteristics, but which are to be treated as independent marks, except that they may not devolve on different proprietors so as to bring about the existence on the register, in different names, of marks which would conflict with one another in material respects if they were not the property of the same owner. Sect. 24 deals with the case of an application by a person already on the register for a particular trade mark to register a new trade mark bearing such a similarity to the first that it would be disallowed if applied for by a different applicant. Sect. 25 deals with the case in which the proprietor of a registrable trade mark, which contains within itself something which by itself would be a registrable trade mark, desires to obtain protection for the part in addition to the protection which he desires to acquire for the whole. Sect. 26 deals with the case in which a person desires to register several trade marks at the same time, which agree in essentials but differ in non-essentials.

Sect. 27 relates to the transmissibility of associated trade marks and the effects of their registration. Sect. 24 is in substance the same as sect. 26, except that the latter section has to do with cases in which several marks are applied for at the same time, and the earlier section with the case in which the applications are made successively. It will be noticed that under sect. 24 the mark previously registered has to be entered on the register as associated with the later mark besides a corresponding entry as to the later mark. The jurisdiction to require association is limited by this section to cases in which the mark sought to be registered is claimed in respect of the same goods or description of goods as the mark already on the register which it resembles, just as by sect. 19 the prohibition against registering a mark too similar to a mark already registered, belonging to a different proprietor, is limited to cases in which the goods are the same or of the same description. In *In re Birmingham Small Arms Co., Ltd.* (24 P. R. 563), the registrar objected to register a mark in Class 22 for cycles, motor cycles and automobiles, unless this were associated with an identical mark already registered in Class 19 for arms, ammunition and stores. It was held, however, that the goods were not the same nor of the same description, and that the condition of association could not be imposed, even under the general powers of sect. 12 (2). In this case it seems also to have been considered that a mark which is identical with and not merely similar to a mark already registered is outside the language of this section, but this point will probably require further consideration. The mischief aimed at would certainly be the same in this case as where the marks were similar but not identical:

See Rule 65.

Combined
trade marks.

25. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately he may apply to register the same as separate trade marks (a). Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks (b) and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Act be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains (c).

This section is new.

(a) The ordinary case would probably be that of the registration of a distinctive label containing within itself some distinctive device or word: in other cases the presumption is that the marks would be registered separately.

(b) The result of associating trade marks as provided by this section may apparently lead to a device becoming inseparable from any one of the labels in which it appears, however numerous they may be; but this seems only reasonable as the device will still be infringed by the use of a similar device notwithstanding that no two of the labels are similar in other respects, seeing that the user of the whole label is by this section to be deemed to be user of the device, and that by sect. 27 the device is, except for the purposes of transmission, to be deemed to have been registered separately.

(c) The provision contained in the last portion of this section is useful as removing any doubt, though it could hardly be asserted with success that a device or word was not being used when it was in fact used as part of a larger mark.

Series of trade
marks.

See Pat.
Acts.

S. 66 and
note.

26. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

- (a) Statements of the goods for which they are respectively used or proposed to be used; or
- (b) statements of number, price, quality, or names of places; or
- (c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark (a); or
- (d) colour (b);

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

This section is founded upon sect. 66 of the Act of 1883.

(a) This is a provision which did not appear in the earlier section. It would probably meet such cases as where there is some difference in non-distinctive decoration or the like.

(b) This is also new. It cannot apply in cases in which colour is made essential under sect. 10, and in other cases it seems scarcely of much importance in view of the fact that by sect 10 registration in one colour is to be deemed registration for all colours unless colour is specially claimed.

27. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks (a). Provided that where under the provisions of this Act user of a registered trade mark is required to be proved for any purpose, the tribunal may if and so far as it shall think right accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user (b).

Assignment and user of associated trade marks.

This section is new.

(a) The provision that a trade mark associated with other trade marks is, except for purposes of transmission, to be deemed to have been registered separately, seems to involve the possibility of obtaining a separate certificate of registration in respect of it.

(b) The material part of a registered trade mark is the essential particular of which it consists or which it contains, and so long as the essential particular is used it is only reasonable to provide that the additions are to be treated as immaterial, and to allow user of the essential particular in combination with certain non-essentials to be equivalent to its user in combination with different non-essentials. It will be observed, however, that this principle is not to be pressed farther than the tribunal dealing with the matter may consider to be reasonable. (See *In re Birmingham Small Arms Co., Ltd.*, 24 P. R. 563.)

Renewal of Registration.

28. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Act.

Duration of registration.

This comes from sect. 79 of the Act of 1883.

See Pat. Acts.

See Rules 68—75 with reference to this group of sections.

S. 79 and notes.

29. The registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

Renewal of registration.

See Pat. Acts.

S. 79 and notes.

This comes from sect. 79 of the Act of 1883.

Procedure on
expiry of
period of
registration.

See Pat.
Acts.

S. 79 and
notes.

30. At the prescribed time before the expiration of the last registration of a trade mark, the registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

This comes from sect. 79 of the Act of 1883. It does not at present appear what conditions may be imposed upon renewal other than the payment of a renewal fee. Possibly, however, some requirement may be made for furnishing evidence of user or the like.

Status of
unrenewed
trade mark.

See Pat.
Acts.

S. 79 and
notes.

31. Where a trade mark has been removed from the register for nonpayment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the registrar that there had been no *bonâ fide* trade user of such trade mark during the two years immediately preceding such removal (a).

This comes from sect. 79 of the Act of 1883, as altered by sect. 19 of the Act of 1888.

(a) This varies the provision of the older section, and substitutes proof of non-user for two years for proof that the non-payment of the renewal fee is due to the death or bankruptcy of the registered proprietor, or to his retirement from business, and that no person claiming under him is using the mark.

Correction and Rectification of the Register.

Correction of
register.

See Pat.
Acts.

S. 91 and
note.

32. The registrar may, on request made in the prescribed manner by the registered proprietor or by some person entitled by law to act in his name,—

- (1) Correct any error in the name or address of the registered proprietor of a trade mark (a); or
- (2) Enter any change in the name or address of the person who is registered as proprietor of a trade mark (b); or
- (3) Cancel the entry of a trade mark on the register (c); or
- (4) Strike out any goods or classes of goods from those for which a trade mark is registered (d); or
- (5) Enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark (e).

Any decision of the registrar under this section shall be subject to appeal to the Board of Trade (f).

This comes from sect. 91 of the Act of 1883; but the first sub-division of that section is provided for by sect. 12 (6) of the present Act, by which errors in or in connection with the application may be corrected.

See Rules 90—92.

(a) This is not confined to clerical errors, as was the case with the old sect. 91 (b).

(b) This is new, and meets such cases as that of *In re New Ormonde Cycle Co.* (1896, 2 Ch. 520), in which a difficulty was disclosed in meeting the case of a change of name on the part of the proprietor.

See Rule 82 as to alterations of address.

(c) This corresponds with the old sect. 91 (c), except that the power to cancel part of the entry is now omitted. This is, however, sufficiently provided for by the following sub-section.

(d) This provides for the only case in which it is to be anticipated that a cancellation of a part of the entry is likely to be desired. There have been many cases in which marks have been registered for too wide a description of goods, and in which the mark has consequently been exposed to compulsory rectification.

(e) This enables the proprietor of a registered trade mark to put his registration in order by introducing a limitation which ought to have been provided for in the first instance.

(f) The Board of Trade may refer any appeal to the Court under sect. 59, if it thinks fit.

See Rules 122-7.

33. Subject to the provisions of this Act where a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of law, the registrar shall, on request made in the prescribed manner, and on proof of title to his satisfaction, cause the name and address of such person to be entered on the register as proprietor of the trade mark. Any decision of the registrar under this section shall be subject to appeal to the Court or, with the consent of the parties, to the Board of Trade.

Registration of assignments, &c.
See Pat. Acts.
S. 87 and notes.

This comes from sect. 87 of the Act of 1883; but the provision as to licences is omitted, that being obviously inappropriate to the case of trade marks, the whole object of which is to indicate the goods of a particular firm and of no one else. The provision of the old section as to the enforcement of equities in respect of trade marks is omitted, apparently as being unnecessary. (See sect. 38.) Appeals under this section are placed on the same footing as appeals from decisions under sect. 14 in cases of oppositions to registration.

See Rules 121-7.

34. The registered proprietor of any trade mark may apply in the prescribed manner to the registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the registrar may refuse such leave or may grant the same on such terms as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Board of Trade (a). If leave be granted, the trade mark as altered shall be advertised in the prescribed manner (b).

Alteration of registered trade mark.
See Pat. Acts.
S. 92 and notes.

This section corresponds with sect. 92 of the Act of 1883, except that the application is now to be made to the registrar instead of to the Court as has previously been the rule.

See Rules 93, 94; and as to appeals, Rules 122-7.

(a) The Board of Trade may refer the appeal to the Court under sect. 59, if it thinks fit. This was done in *In re Carron Co.* (27 P. R. 412), in which the registrar had refused to allow certain alterations in registered marks and the applicants had appealed. The principal alteration desired was to enclose the marks, which were of an oval shape, in an outer ring bearing the words "Carron Company, Incorporated by Royal Charter 1773." This addition was refused, in view of Rule 12, as to the word "Royal," and the refusal was affirmed by the Court.

(b) This carries out the previous practice by which it has been usual to re-advertise an altered mark, though express provision was not made for this being done.

Rectification
of register.
See Pat.
Acts.
S. 90 and
notes.

35. Subject to the provisions of this Act (*a*)—

- (1) The Court may on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of any entry (*b*), or by any entry made in the register without sufficient cause (*c*), or by any entry wrongly remaining on the register (*d*), or by any error or defect in any entry in the register (*e*), make such order for making, expunging, or varying such entry, as it may think fit (*f*):
- (2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register (*g*):
- (3) In case of fraud in the registration or transmission of a registered trade mark, the registrar may himself apply to the Court under the provisions of this section (*h*):
- (4) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly (*i*).

This comes from sect. 90 of the Act of 1883.

(*a*) These words introduce two very important limitations on the power to rectify, which are imported for the first time into the present Act. These are to be found in sects. 36 and 41, by the first of which sections a mark which was wrongly registered at the time of its registration is not to be expunged if it complies with the conditions qualifying for registration under the present Act; while by the later section a mark is not to be expunged at all after the specified period unless the original registration was obtained by fraud, or unless the mark offends against sect. 11 of this Act.

(*b*) The word "non-insertion" now appears for the first time. It would seem that this provision does not entitle an applicant whose application has been refused to proceed under this section instead of appealing in the prescribed manner. (See *In re Normal Co., Ltd.*, 35 Ch. Div. 231.)

(*c*) These words cover any registration of a trade mark which does not comply with the conditions qualifying for registration.

(*d*) These words did not occur in the old sect. 90, and in *In re Gramophone Co., Ltd.* (27 P. R. 689), Parker, J., pointed out (p. 699) that "none of the earlier Acts provided machinery for taking a mark off the register, if once it had been properly put on." In *In re Batt* (1898, 2 Ch. 432; 1899, A. C. 428), it was contended that if a mark had been justifiably placed on the register there was no provision for removing it by reason of non-user, unless, at all events, it was possible to treat the fact of non-user as showing that the registration had been made without any *bonâ fide* intention of using. The Court of Appeal, however, in that case treated the words of the section then in existence as extending to any registration existing on the register without sufficient cause, irrespective of what might have been the state of things at the date of the actual registration. It will now be possible to deal with such cases without any straining of the words of the Act of Parliament, and in *Thorne & Sons, Ltd. v. Pimms, Ltd.* (26 P. R. 221), a whiskey label containing the name "Glen Thorne," which had been innocuous so long as only Thorne's whiskey was sold under it, was held to be calculated to deceive when other whiskey began to be supplied, and was expunged. The words incidentally cover the case of a registered trade mark having determined with the goodwill under sect. 22 (sect. 70 of the Act of 1883), for which formerly no express provision was made, and in such a case the mark was expunged (*In re Johnson*, 26 P. R. 195). In *Rey v. Lecouturier* (25 P. R. 265; 27 P. R. 268), only the later entry was expunged, leaving the previous registration standing.

(*e*) These words are new. They seem to be intended to lead up rather to the variation or correction of an entry than to its entire removal from the register.

(*f*) Under this section orders have been made for the removal of marks from the register on various grounds. Thus, in *In re Knapton* (24 P. R. 550), on the ground that the words "Sugar Soap" were common to the soap trade; in *In re Gestetner*

(1907, 2 Ch. 478; 1908, 1 Ch. 513), on the ground that the mark consisted of a word which was the name of a patented article (and compare *In re Bowden Patent Syndicate Ltd.*, 26 P. R. 205); in *In re Philippart* (25 P. R. 565), on the ground that the mark consisted of a word which was the name of a game, and of the implements used in it; in *In re Paine & Co., Ltd.* (25 P. R. 329), a registration was out down so as to exclude goods in which the registered proprietors did not deal. On the other hand, in *In re Compagnie Industrielle des Petroles* (24 P. R. 585), an application to rectify on the ground that the word "Motorine" was not a registrable word was refused. In *Boake, Roberts & Co., Ltd. v. Wayland & Co.* (26 P. R. 251), it was held that the letters "K. M. S." were distinctive, and a motion to rectify failed. In *In re Orkwoola, Ltd.* (26 P. R. 850), the word "Orkwoola," which had been allowed to remain on the register by the Court below on the ground that it could have been registered on a special application under the present Act, and was therefore saved by sect. 36 (26 P. R. 681), was ordered by the Court of Appeal to be expunged, the word being held incapable of registration under either Act. In *In re Casson* (27 P. R. 65), a mark which had been registered by an employee inconsistently, as the Court held, with his duty towards his employers, was removed from the register on application by the employers. In *Paterson v. Kit Coffee Co.* (27 P. R. 594), it was held in Scotland that user of a mark so as to cause confusion with the mark of another firm would not be a sufficient ground for its removal from the register after it had passed into the hands of other owners who had not used it improperly. Further, that mis-statements not contained in a mark, but made extraneously with regard to it, would not justify rectification. Particulars of the grounds of objection to the mark attacked are usually directed, and objections not taken on a previous opposition may be introduced: *In re Kenrick & Jefferson, Ltd.*, Warrington, J., Dec. 9th, 1910.

(g) It will be noticed that the power given to the Court by the old Act to direct an issue to be tried for the decision of any question of fact, and to award damages to the party aggrieved, is now omitted. It is believed that this power was never exercised.

(h) Power is now for the first time given to the registrar to apply to the Court for rectification. Such power is, however, limited to the case of fraud. What interpretation is in this connection to be placed on this expression remains to be decided.

(i) See Rules 129, 130.

36. No trade mark which is upon the register at the commencement of this Act, and which under this Act is a registrable trade mark, shall be removed from the register on the ground that it was not registrable under the Acts in force at the date of its registration (a). But nothing in this section contained shall subject any person to any liability in respect of any act or thing done before the commencement of this Act to which he would not have been subject under the Acts then in force (b).

Trade marks registered under previous Acts.

This is a new section.

(a) Up to the present time the validity of a registered trade mark, so far as its composition is concerned, has had to be determined by examining its compliance or non-compliance with the definition contained in the Act under which it was registered. Thus a new mark consisting of a word or words which was registered under the Act of 1883 has had to be proved to consist of a fancy word or words, whereas if registered under the Act of 1888 it has had to be proved to consist of an invented word or words, or of a word or words having no reference to the character or quality of the goods, and not being a geographical name. For the future the question as to the inherent registrability of a mark will have to be determined by an examination of the provisions of the present Act, and of its compliance or non-compliance with them. It has hitherto been thought that if it were sought to justify the registration of a trade mark under an Act different from that under which it was actually registered, the proper manner of dealing with the question was to submit the trade mark afresh to the ordeal of advertisement, and possible opposition, thus placing possible opponents in the position of being able to resist the placing of the mark on the register instead of in the less advantageous position of having to seek to remove it after registration. This being now altered, persons desiring to question the registrability of an actually registered mark will have to

show that it falls outside the wider definition provided by the present Act, and will be deprived of the opportunity of resisting a new application to register a mark for non-compliance with the old definition. A somewhat difficult question has been raised under this section as to the date at which a registered mark which was not properly registrable at the time of its registration under the Act then in force, must be qualified for registration under the present Act in order to escape removal. In *In re Gestetner* (1907, 2 Ch. 478; 1908, 1 Ch. 513), it was held by the Court of Appeal that such a case cannot be dealt with on the footing that the more liberal definition of a registrable trade mark contained in the present Act should be regarded as relating back to the date of the actual registration, and in this view Parker, J., concurred in *In re Philippart* (25 P. R. 565). But as to the date at which the mark, if it is to be saved, must be registrable under the present Act, Buckley, L. J., says in the former of these cases, "that sect. 36 of the Act of 1905 is a saving clause. I think one can read it thus:—Take the facts of to-day and the law of to-day and enquire whether if the mark were taken off it would, on the facts of to-day and the law of to-day, be entitled to go on again. If so, leave it alone." And in this view Kennedy, L. J., concurred, while Lord Alverstone, L. C. J., did not express any dissent. In *In re Philippart* (25 P. R. 565) (see p. 571), Parker, J., suggested that "the section might well be interpreted as meaning:—Take the facts as they existed at the commencement of the Act of 1905. If on those facts the mark could then have been registered, it becomes by virtue of the Act rightly on the register, and cannot therefore be removed on the ground that it was not registrable under the earlier Acts." The point thus suggested for consideration is whether for a mark to be saved by means of this section it must be registrable at the date of the application for rectification, or at the date of the commencement of the Act of 1905, *i.e.*, 1st April, 1906, and the materiality of the question is in effect that between 1st April, 1906, and the date of the application for rectification circumstances may have occurred which would prevent the mark from being registrable at the later date, but which had not occurred at the earlier date. As time goes on this question may become one of considerable importance, as the greater the period which has elapsed since the commencement of the Act of 1905, the greater will be the possibility of events having intervened to interfere with the registrability of the mark. If the right view is that the object of the section is to save the unnecessary circumlocution of taking off the register a mark which could immediately be replaced, the view taken by the Court of Appeal would seem the nearest to the intent of the legislature, but it must be admitted that considerable force attaches to the reference to the exemption from liability in respect of things done before the commencement of the present Act contained in the latter part of sect. 36, to which Parker, J., drew attention as supporting his suggestion. A consideration of the above cases will show that the proper way of dealing with a rectification motion, based on alleged non-registrability of the mark, is, first of all, to see if it was properly registered at the time. If it was, *cadit questio*; but, if it was not, it then has to be seen whether the provisions of the present section will save it.

(b) It will be observed that the exoneration from liability is confined to acts done before the commencement of this Act, so that a person attacked for infringement, who wishes to escape liability for such past acts by establishing the invalidity of the mark relied on, will apparently have to show that the mark was not registrable under the Act under which it was in fact registered, and will further, if he desires to continue the acts complained of, have to show that the mark does not come within the provisions of the present Act, unless, that is, he is able to make out that what he is doing is no infringement at all.

Non-user of
trade mark.

37. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bonâ fide* intention to use the same in connection with such goods, and there has in fact been no *bonâ fide* user of the same in connection therewith, or on the ground that there has been no *bonâ fide* user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to

be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

This is a new section. Under the old sect. 90 it was held in *In re Batt* (1898, 2 Ch. 432; 1899, A. C. 428) that a trade mark had been registered without sufficient cause if it had been registered without a *bonâ fide* intention of user. If such absence of intention to use the mark in connection with any goods was proved, the mark would be removed from the register entirely; whereas, if the registration were only in respect of too wide a description of goods, the registration would be cut down so far as the registration exceeded the intention of user. Absence of a *bonâ fide* intention of user would be considered to have been made out if the registration had continued for a substantial period without actual user, but no rule has hitherto been laid down as to the length of registration without user, which would justify an application to rectify. Under the present section non-user for five years immediately preceding the application (except under special circumstances) will now be sufficient to warrant rectification, whether the mark was originally intended to be used or not. On the other hand, if absence of a *bonâ fide* intention to use the mark is made out, and this has been followed by non-user, it is apparently not essential to show that such non-user has continued for as long as five years. It is not very easy to say what special circumstances would justify non-user, and it will be difficult to apply the saving clause to the first branch of the section, viz., to cases in which there was no *bonâ fide* intention of using, inasmuch as in such cases it cannot be made out that there was any intention to use, and abandonment of the mark can hardly be said to exist where the mark has never been used at all. In *In re Hare* (24 P. R. 263), and *In re Paine & Co., Ltd.* (25 P. R. 329), registrations were limited by excluding certain goods in which the registered proprietors did not deal. In *In re Philippart* (25 P. R. 565), Parker, J., suggested (see p. 573) that sect. 37 might be construed as enabling the Court to remove a mark which had ceased to be used, or had never been used for the legitimate purposes of a trade mark.

Effect of Registration.

38. Subject to the provisions of this Act—

- (1) The person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for such assignment (a):
- (2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property (b).

Powers of registered proprietor.
See Pat. Acts.
S. 87 and notes.

This comes from sect. 87 of the Act of 1883 (and see sect. 33, *ante*).

(a) This provision is subject to the conditions of sect. 22, by which a registered trade mark can only be assigned or transmitted in connection with the goodwill of the business, and to those of sect. 27, by which an associated trade mark can only be assigned or transmitted in conjunction with the other trade marks associated with it.

(b) By sect. 5 notice of any trust is not to be entered on the register or received by the registrar, but if a trust in fact exists, the beneficial owner is given an opportunity of enforcing his rights as against the trustee.

39. Subject to the provisions of section forty-one of this Act (a) and to any limitations and conditions entered upon the register (b), the registration of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connection with the goods (c) in respect of which it is registered: Provided always that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods no rights of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons as

Rights of proprietor of trade mark.
See Pat. Acts.
S. 76 and notes.

against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof (*d*).

This is a modification of sect. 76 of the Act of 1883.

(*a*) This appears to refer to the proviso in favour of a person who has used a mark prior to the user of the same or a similar mark which is registered by a different proprietor. See also sect. 44.

(*b*) See sect. 12 (2), (4), sect. 14 (4), (6), and sect. 21.

(*c*) See *C. A. Peters, Ltd. v. Domestic Inventions Co.*, 25 P. R. 387; *Société Benedictine v. Green*, 22 P. R. 618.

(*d*) This proviso is new. It gives effect to what has hitherto been understood to be the rule with regard to similar old marks registered by virtue of what was known as the Three Marks Rule, but now for the first time similar new marks are, by sect. 21, allowed to be registered under special circumstances, and subject to special conditions.

Registration to be *primâ facie* evidence of validity.

See Pat. Acts.

S. 76 and notes.

40. In all legal proceedings relating to a registered trade mark (including applications under section thirty-five of this Act) the fact that a person is registered as proprietor of such trade mark shall be *primâ facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

This is a new section, though founded in part upon sect. 76 of the Act of 1883. By that section registration was made *primâ facie* evidence of the right of the registered proprietor to the exclusive use of the mark. Now registration is to be *primâ facie* evidence of the validity of the registration, not only in actions brought to restrain infringements, but also in proceedings for rectification. As to rectification, however, very little practical difference seems to exist, inasmuch as the mark would always have been assumed to have been rightly registered until the contrary was made out, and if the contrary is made out under the present Act rectification will follow, subject, of course, to the provisions of sect. 41.

Registration to be conclusive after seven years.

41. In all legal proceedings relating to a registered trade mark (including applications under section thirty-five of this Act) the original registration of such trade mark shall after the expiration of seven years from the date of such original registration (or seven years from the passing of this Act, whichever shall last happen) be taken to be valid in all respects (*a*) unless such original registration was obtained by fraud (*b*), or unless the trade mark offends against the provisions of section eleven of this Act (*c*):

Provided that nothing in this Act shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of section twenty-one of this Act (*d*).

This is a new section.

(*a*) This is a very important alteration of the law. It has hitherto been considered that if a trade mark was registered, which was not entitled to registration, such registration was wrongful as against any person who might be affected by it, and the wrong so inflicted was open to correction at any time at the instance of the person improperly interfered with. In future, if a person has had for seven years

a registration which never ought to have been effected at all, he will be entitled to retain it for all time subject to the usual periodical renewals. It is apparently intended that persons affected by a wrongful registration shall for seven years have an opportunity of correcting the registration, but shall after the termination of that period be deprived of their right to do so. As a matter of fact, experience has shown that when a mark is once on the register persons affected by it, but who are not sued in respect of it, either never discover the registration at all or, if they do, do not consider it incumbent on them to provoke litigation for the purpose of rectifying until it is sought to make the registration operative as against them by taking proceedings for infringement. Now that rectification must be effected within seven years, if it is to be effected at all, it may be anticipated that persons who are alive to their own interests will seek to purge the register of improper registrations without waiting to be attacked. All registrations existing at the date of the Act will be open to attack for seven years, after which they will become conclusive. Future registrations will similarly be open to attack for seven years, but such seven years will date from the date of registration.

(b) What effect will be given to this provision remains to be seen. Registrations which are wrongful, only because the mark does not comply with the definition section, will be protected; but what will be regarded as amounting to fraud cannot be defined with any certainty.

(c) This proviso excludes from protection marks which are inherently immoral or offensive, and if the reasoning of the House of Lords, in *Eno v. Dunn* (15 App. Cas. 252), is applied, as it will be (see *In re Compagnie Industrielle des Petroles*, 24 P. R. 595; *In re Albert Baker & Co. (1898), Ltd.*, 25 P. R. 513), it will also exclude from protection marks which, though registered, are calculated to deceive by reason of their similarity to marks previously in use by other firms.

(d) It would appear that cases may well arise in which protection will be necessary, not only for anterior users, but also for persons who have subsequently used similar marks *boni fide* and without interference. In some of such instances laches might possibly be implied with success, but it must be anticipated that hard cases will sometimes arise under the altered state of the law which will be without remedy, and a greater burden will certainly be cast upon traders for the future of watching the register, and purging it without delay, than has hitherto been the case.

42. No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark unless such trade mark was in use before the thirteenth of August one thousand eight hundred and seventy-five, and has been refused registration under this Act (a). The registrar may, on request, grant a certificate that such registration has been refused.

Unregistered trade mark.
See Pat. Acts.
S. 77 and notes.

This section comes from sect. 77 of the Act of 1883, with material alterations.

(a) In order for an action to be brought for infringement of trade mark, the mark must either be registered, or, if unregistered, it must be shown that such mark is an old mark which was in use before the 13th August, 1875, and has been refused registration under *this* Act. Hitherto the refusal of an application under any Act to register an old mark has been sufficient to entitle the proprietor to sue for infringement. Now it will apparently be necessary for old marks, which have been already refused, to be tendered afresh for registration, and for a fresh certificate of refusal under the present Act to be obtained. In the case of a mark not used before the 13th August, 1875, registration is made a *sine qua non*. It will, however, still be open to the proprietor of an unregistered mark to bring an action for passing off. (See sect. 45.)

43. In an action for the infringement of a trade mark the Court trying the question of infringement shall admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade

Infringement.

mark is registered, and of any trade marks or get-up legitimately used in connection with such goods by other persons.

This is a new section. Trade evidence was formerly admitted much more freely than has recently been the case, and it may be hoped that a large interpretation will be placed upon the language of the section, as it is manifestly unsatisfactory that judges, who cannot themselves be familiar with all the details of trade, should be debarred from having recourse to the assistance of those who spend their lives in commerce. Reference may be made in this connection to the concluding paragraph of sect. 9, which introduces evidence as to the effects of user of a trade mark.

User of name, address, or description of goods.

44. No registration under this Act shall interfere with any *bonâ fide* use by a person of his own name or place of business or that of any of his predecessors in business, or the use by any person of any *bonâ fide* description of the character or quality of his goods.

This is a new section, and makes it easy to place a liberal construction upon the provisions of sect. 9 (1). Thus, if it is desired to register a word such as "Swan," although it is occasionally used as a surname, no injustice will be done to any person whose surname it is. Again, if such a word as "Absorbine" is tendered for registration, there will be no reason for refusing to register on the ground that such registration might interfere with the *bonâ fide* use of the word "Absorbing" to describe the nature of another firm's goods. It would appear, however, that if registration is sought for a word which, apart from this section, would not be allowed to be registered, it will not be allowed to go upon the register merely because this section provides some protection for persons who might otherwise be injuriously affected. (Cf. *In re Crosfield*, 26 P. R. 561, 837; *In re Gramophone Co., Ltd.*, 27 *ib.* 689.) Registration of a descriptive word would apparently throw upon a retailer reselling goods sold to him by another firm of makers with the word on them the onus of proving his *bona fides*, which would be a distinct hardship to him even if in the result he were able to prove that he had, in fact, acted *bonâ fide*, and the result must be, to a certain extent, to hamper trade.

"Passing-off" action.

45. Nothing in this Act contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

This is a new section, and sets at rest any doubt which might have arisen under the provisions of sect. 42, making registration a condition precedent to an infringement action.

Legal Proceedings.

Certificate of validity.
See Pat. Acts.
S. 77a. and note.

46. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and if it so certifies then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless in such subsequent proceeding the Court certifies that he ought not to have the same.

This comes from sect. 18 of the Act of 1888, introduced into the Act of 1883 as sect. 77 (a). It will be observed that it is not confined to an action for infringement, but is extended to any legal proceeding in which the validity of a registration comes into question, *e.g.*, a motion to rectify. Certificates have been granted in *In re Compagnie Industrielle des Petroles* (24 P. R. 585), and in *Major Bros. v. Franklin & Son* (25 P. R. 406).

47. In any legal proceeding in which the relief sought includes alteration or rectification of the register, the registrar shall have the right to appear and be heard, and shall appear if so directed by the Court (a). Unless otherwise directed by the Court, the registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding (b).

Registrar to have notice of proceeding for rectification.

This is a new section.

(a) Under the Trade Marks Rules of 1890 four days' notice of any application to the Court to rectify the register had to be given to the comptroller (Rule 49), and fourteen days' notice had to be given him of any application to the Court for leave to add to or alter a trade mark. (Rule 51.) Applications for the alteration of trade marks are now to be made to the registrar under sect. 34, but a refusal or conditional permission may come before the Court on appeal by way of reference by the Board of Trade. It is unusual for the registrar to appear on ordinary applications for the rectification of the register, unless some order other than the removal of the mark is asked for.

(b) This provision is a new one. Hitherto the registrar has, when necessary, given his evidence in the ordinary manner. Apparently it will be open to parties desirous of showing that the practice of the registry office, as stated by the registrar, is inaccurate or incomplete, to give evidence impugning his statement; but such cases are not likely to arise frequently.

Costs.

48. In all proceedings before the Court under this Act the costs of the registrar shall be in the discretion of the Court, but the registrar shall not be ordered to pay the costs of any other of the parties.

Costs of proceedings before the Court.

This is a new section. It has been the practice to assume, without any statutory provision to that effect, that the registrar was entitled to his costs, even on an appeal against a decision which was overruled. There were cases to the contrary in the early years of trade mark registration, but those cases have been regarded as no longer effective. Now the registrar will still be free from any liability to pay costs, but the Court will be at liberty to refrain from giving him costs without it being possible to allege that any rule of law or practice is being infringed by its so doing. It appears, however, that even if an objection is taken by the registrar and overruled by the Court, the successful applicant will still have to pay his costs unless he has done something to disentitle himself to them, which can very rarely be the case. (See *In re Apollinaris Brunnen*, 24 P. R. 436; *In re Birmingham Small Arms Co., Ltd.*, 24 P. R. 563; *In re Shamrock & Co.*, 24 P. R. 569; *In re United States Playing Card Co.*, W. N. (1907) p. 251; *In re National Starch Co.*, 25 P. R. 802.) In *In re California Fig Syrup Co.* (26 P. R. 846), in which a mark which had been refused registration in the Court below was allowed by the Court of Appeal to proceed, the applicants were left to bear the costs of the registrar in the Court below, but no costs were given of the appeal. (See p. 864.)

Evidence.

49. In any proceeding under this Act before the Board of Trade or the registrar, the evidence shall be given by statutory declaration in the following manner:

Mode of giving evidence.

the absence of directions to the contrary, but, in any case in which it shall think it right so to do, the tribunal may (with the consent of the parties) take evidence *vivâ voce* in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

In case any part of the evidence is taken *vivâ voce* the Board of Trade or the registrar shall in respect of requiring the attendance of witnesses and taking evidence on oath be in the same position in all respects as an official referee of the Supreme Court.

This is a new section. Under the former Acts the practice was as follows:—In cases in which an application has been objected to by the registrar, evidence in the strict sense has usually been required, either before the registrar or before the Board of Trade on appeal from him. When the Board of Trade has referred such appeals to the Court, *e.g.*, *In re Verschure*, 22 P. R. 569, the party appealing against the registrar's refusal has brought his evidence before the Court by way of affidavits sworn on his behalf, after delivering his notice of motion, and the matter has been dealt with on such evidence and on any evidence given by the registrar in the same manner in answer thereto. In cases in which the application has been advertised and opposed by some other person or firm, the evidence before the registrar has been given in the form of statutory declarations. The Board of Trade has invariably, or almost so, referred an appeal against the registrar's decision in an opposition case to the Court without itself dealing with it, and before the Court evidence on both sides has been given by way of affidavit. A party desirous of using the declarations filed on his behalf in the Patent Office has been required to verify such declarations by the affidavits of the declarants before such declarations could be used, *e.g.*, *In re Kingsford*, 15 P. R. 197. Now, evidence may, by consent of the parties, be taken *vivâ voce*, in lieu of or in addition to evidence by declaration. This section does not appear to provide for cross-examination on the declarations before the registrar, or the Board of Trade, in the absence of consent. Now the declarations are made available for use before the Court without verification by affidavit, but evidence so given will be dealt with in the same manner as evidence in the form of affidavits. The exact effect of these new provisions remains to be seen, but the introduction of *vivâ voce* evidence will much increase the cost of proceedings in the Patent Office, and it seems probable that it will only be in cases of some importance that such evidence will be consented to.

See Rules 105, 106 as to declarations.

Sealed copies to be evidence.

See Pat. Acts.

S. 89.

50. Printed or written copies or extracts of or from the register, purporting to be certified by the registrar and sealed with the seal of the Patent Office, shall be admitted in evidence in all Courts in His Majesty's dominions, and in all proceedings, without further proof or production of the originals.

This comes from sect. 89 of the Act of 1883.

Certificate of registrar to be evidence.

See Pat. Acts.

S. 96 and note.

51. A certificate purporting to be under the hand of the registrar as to any entry, matter, or thing which he is authorised by this Act, or rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

This comes from sect. 96 of the Act of 1883.
See Rules 102—104.

52.—(1) All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorised in that behalf by the President of the Board, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.

Certificate of Board of Trade to be evidence.

See Pat. Acts.

(2) A certificate, signed by the President of the Board of Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the fact so certified.

S. 102a. and note.

This comes from sect. 25 of the Act of 1888, also numbered as 102 (a) of the Act of 1883.

PART II.

Powers and Duties of Registrar of Trade Marks.

53. Where any discretionary or other power is given to the registrar by this Act or rules made thereunder he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

Exercise of discretionary power by registrar.

See Pat. Acts.

S. 94 and note.

This comes from sect. 94 of the Act of 1883.
See Rules 83—86. Also 95—104.

54. Except where expressly given by the provisions of this Act or rules made thereunder there shall be no appeal from a decision of the registrar otherwise than to the Board of Trade, but the Court in dealing with any question of the rectification of the register (including all applications under the provisions of section thirty-five of this Act), shall have power to review any decision of the registrar relating to the entry in question or the correction sought to be made.

Appeal from registrar.

This is a new section. Hitherto all appeals from the registrar have been to the Board of Trade, with power, however, to the Board of Trade in cases of refusal to register (sect. 62 of the Act of 1883), or in cases of opposition (sect. 69 of the Act of 1883, as modified by sect. 13 of the Act of 1888), to refer the appeal to the Court. By the present Act an appellant against a refusal (before advertisement) to register a trade mark may elect to appeal direct to the Court. (Sect. 12 (3).) And an appellant against a decision of the registrar in an opposition case must appeal direct to the Court, unless both parties consent to the appeal being brought to the Board of Trade. (Sect. 14 (5).) Again, by sect. 33 an appeal against a refusal of the registrar to register an assignment has to be taken to the Court, unless the parties consent to the appeal going to the Board of Trade. In certain special cases the registrar cannot act without an order of the Court, *e.g.*, sects. 19, 20, 21. Any appeal to the Board of Trade may be referred by the Board of Trade to the Court under sect. 59. By that section a decision of the Board is to be final, but when the appeal is brought or referred to the Court an unsuccessful party is left at liberty to appeal from the decision of the Court in the usual way.

55. Where by this Act any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, such act may under and in accordance with

Recognition of agents.

rules made under this Act or in particular cases by special leave of the Board of Trade be done by or to an agent of such party duly authorised in the prescribed manner.

This is a new section.

Registrar
may take
directions of
law officers.

See Pat.
Acts.
S. 95.

56. The registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to His Majesty's Attorney-General or Solicitor-General for England for directions in the matter.

This comes from sect. 95 of the Act of 1883. It is understood that before the present Act the registrar not unfrequently applied for and obtained the directions of the law officers under that section, though no public announcement has been made of such directions.

Annual
reports of
comptroller.
46 & 47 Vict.
c. 57.

See Pat.
Acts.
S. 102.

Also P. & D.
Act, 1907,
s. 76.

57. The Comptroller General of Patents, Designs, and Trade Marks shall in his yearly report on the execution by or under him of the Patents, Designs, and Trade Marks Act, 1883, and Acts amending the same, include a report respecting the execution by or under him of this Act as though it formed a part of or was included in such Acts.

This comes from sect. 102 of the Act of 1883. It serves to continue the inclusion in one report of all matters relating to patents, designs and trade marks, although the provisions as to trade marks are now contained in a separate Act of Parliament.

Powers and Duties of the Board of Trade.

Proceedings
before Board
of Trade.

See Pat.
Acts.
S. 102a.

58. All things required or authorised under this Act to be done by to or before the Board of Trade may be done by to or before the President or a secretary or an assistant secretary of the Board or any person authorised in that behalf by the President of the Board.

This comes from sect. 25 of the Act of 1888, also numbered sect. 102 (a) of the Act of 1883. Power is now given to the President of the Board of Trade to authorise any person to act on behalf of the Board, although such person is neither the President, nor a secretary, nor an assistant secretary of the Board.

Appeals to
Board of
Trade.

See Pat.
Acts.

Ss. 62, 69
and notes.

59. Where under this Act an appeal is made to the Board of Trade, the Board of Trade may, if they think fit, refer any such appeal to the Court in lieu of hearing and deciding it themselves, but, unless the Board so refer the appeal, it shall be heard and decided by the Board, and the decision of the Board shall be final.

This is new as a separate section. By sects. 62 and 69 of the Act of 1883 the Board of Trade had power to refer an appeal, under either of those sections, to the Court, but now they may refer any appeal. There has hitherto been no express provision that a decision of the Board of Trade on a matter dealt with by them was to be final; but this has been understood to be the rule, and in *In re Normal Co., Ltd.* (35 Ch. Div. 231), it was held that the Court had no jurisdiction to deal with an application refused by the comptroller, except upon a reference of an appeal to the Court by the Board of Trade. Although this section is in terms confined to appeals, the Board of Trade has in various instances referred to the Court under Rule 39 original applications for registration made to it under sect. 9 (5). The Board has, in such cases, occasionally intimated that if it dealt with the application, it would refuse it, but has given the applicant an opportunity of taking his application to the Court instead of pressing the Board to deal with it.

60.—(1) Subject to the provisions of this Act the Board of Trade may from time to time make such rules, prescribe such forms, and generally do such things as they think expedient (a)—

Power of Board of Trade to make rules.

- (a) For regulating the practice under this Act:
- (b) For classifying goods for the purposes of registration of trade marks:
- (c) For making or requiring duplicates of trade marks and other documents:
- (d) For securing and regulating the publishing and selling or distributing in such manner as the Board of Trade think fit, of copies of trade marks and other documents:
- (e) Generally, for regulating the business of the office in relation to trade marks and all things by this Act placed under the direction or control of the registrar, or of the Board of Trade.

See Pat. Acts. S. 101 and notes.

(2) Rules made under this section shall, whilst in force, be of the same effect as if they were contained in this Act.

(3) Before making any rules under this section the Board of Trade shall publish notice of their intention to make the rules and of the place where copies of the draft rules may be obtained in such manner as the Board consider most expedient, so as to enable persons affected to make representations to the Board before the rules are finally settled (b).

(4) Any rules made in pursuance of this section shall be forthwith advertised twice in the *Trade Marks Journal*, and shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or, if not, then as soon as practicable after the beginning of the then next session of Parliament.

(5) If either House of Parliament within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule or to the making of any new rules or rule.

This comes from sect. 101 of the Act of 1883. See Rules, *post*. For forms, see Second Schedule to Rules. For classification of goods, see Third Schedule to Rules. As to documents, see Rules 6—9. As to agents, see Rule 10.

(a) As to the power of the Board of Trade to direct notice of an application for registration to be served upon the registered proprietor of a trade mark with which the mark tendered for registration may conflict, see *In re Royal W. Corset Co.*, 26 P. R. 185.

(b) This provision is new, and will probably be found useful, as it will give an opportunity to persons likely to be affected by new rules to lay their views before the Board of Trade before such rules are made. It is understood that the views of bodies representing the mercantile community have sometimes been unofficially elicited before rules have been made, but in future an opportunity will be afforded to any person desiring to make representations on the subject.

Fees.

Fees.
See Pat.
Acts.
S. 80.

61. There shall be paid in respect of applications and registration and other matters under this Act, such fees as may be, with the sanction of the Treasury, prescribed by the Board of Trade.

This comes from sect. 80 of the Act of 1883.
See Rule 3, and First Schedule to Rules.

Special Trade Marks.

Standardiza-
tion, &c.,
trade marks.

62. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Board of Trade may, if they shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such examination and certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Board of Trade.

This is a new section, and one likely to prove useful. A mark not used, or intended to be used, by a person in trade for the purposes of such trade is unconnected with any goodwill, and cannot be regarded as a trade mark in the true legal sense, and it has hitherto been difficult to devise a suitable means for protecting marks used for the purpose of indicating that the goods to which they are applied are not the goods of the person applying the mark, but goods certified by him to possess certain characteristics. The registration and transmission of such marks are now rendered possible, but only with the permission of the Board of Trade, and the Board of Trade will have authority to permit or refuse registration according as they consider it to be, or not to be, to the public advantage. When registration has been permitted the registered proprietors will be able to suppress imitations just as if such marks were trade marks in the proper sense. The description of marks authorised by this section as standardization marks seems hardly as suitable as the expression "Certification marks" (see sect. 3). *e.g.*, a mark certifying goods to be of Irish origin can hardly be said to standardize the goods.

For regulations as to certification marks, see Rules 42—46.

Sheffield Marks.

Sheffield
marks.
See Pat.
Acts.
S. 81 and
notes.

63. With respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire, in the county of York (in this Act called the Cutlers' Company), and the marks or devices (in this Act called Sheffield marks) assigned or registered by the master, wardens, searchers, and assistants of that company, the following provisions shall have effect:—

- (1) The Cutlers' Company shall continue to keep at Sheffield the register of trade marks (in this Act called the Sheffield register) kept by them at the date of the commencement of this Act, and, save as otherwise provided by this Act, such register shall for all purposes form part of the register:
- (2) The Cutlers' Company shall, on request made in the prescribed manner, enter in the Sheffield register, in respect of metal

goods as defined in this section, all the trade marks which shall have been assigned by the Cutlers' Company and actually used before the first day of January one thousand eight hundred and eighty-four, but which have not been entered in such register before the passing of this Act :

- (3) An application for registration of a trade mark used on metal goods shall, if made after the commencement of this Act by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers' Company :
- (4) Every application so made to the Cutlers' Company shall be notified to the registrar in the prescribed manner, and, unless the registrar within the prescribed time gives notice to the Cutlers' Company of any objection to the acceptance of the application, it shall be proceeded with by the Cutlers' Company in the prescribed manner :
- (5) If the registrar gives notice of an objection as aforesaid, the application shall not be proceeded with by the Cutlers' Company, but any person aggrieved may in the prescribed manner appeal to the Court :
- (6) Upon the registration of a trade mark in the Sheffield register the Cutlers' Company shall give notice thereof to the registrar, who shall thereupon enter the mark in the register of trade marks : and such registration shall bear date as of the day of application to the Cutlers' Company, and have the same effect as if the application had been made to the registrar on that day :
- (7) The provisions of this Act, and of any rules made under this Act with respect to the registration of trade marks, and all matters relating thereto, shall, subject to the provisions of this section (and notwithstanding anything in any Act relating to the Cutlers' Company), apply to the registration of trade marks on metal goods by the Cutlers' Company, and to all matters relating thereto ; and this Act and any such rules shall, so far as applicable, be construed accordingly with the substitution of the Cutlers' Company, the office of the Cutlers' Company, and the Sheffield register, for the registrar, the Patent Office, and the Register of Trade Marks respectively ; and notice of every entry, cancellation, or correction made in the Sheffield register shall be given to the registrar by the Cutlers' Company :
- (8) When the registrar receives from any person not carrying on business in Hallamshire or within six miles thereof an application for registration of a trade mark used on metal goods, he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company :
- (9) Any person aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted under this Act may, in the prescribed manner, appeal to the Court (a) :
- (10) For the purposes of this section the expression " metal goods " means all metals, whether wrought, unwrought, or partly wrought, and all goods composed wholly or partly of any metal :

- (11) For the purpose of legal proceedings in relation to trade marks entered in the Sheffield register a certificate under the hand of the Master of the Cutlers' Company shall have the same effect as the certificate of the registrar.

This comes from sect. 81 of the Act of 1883, as amended by sect. 20 of the Act of 1888.

See Rules 107—112.

(*a*) It will be observed that an appeal against a decision of the Cutlers' Company is now to be brought direct to the Court. Hitherto such appeals have had to be brought to the comptroller in the first instance, his decision being subject to a further appeal to the Court. (Sect. 81 (12) of the Act of 1883, as amended by the Act of 1888.)

Cotton Marks.

Cotton marks. 64.—(1) The Manchester Branch of the Trade Marks Registry of the Patent Office (herein-after called "the Manchester Branch") shall be continued according to its present constitution. A chief officer of the Manchester Branch shall be appointed who shall be styled "the Keeper of cotton marks," and shall act under the direction of the registrar. The present keeper of the Manchester Branch shall be the first Keeper of cotton marks.

(2) As regards cotton goods which have hitherto constituted classes 23, 24, and 25, under the classification of goods under the Patents, Designs, and Trade Marks Acts, 1883 to 1902, the Register of Trade Marks for all such goods, except such as may be prescribed (*a*), shall be called "the Manchester Register," and a duplicate thereof shall be kept at the Manchester Branch.

(3) All applications for registration of trade marks for such cotton goods in the said classes (herein-after referred to as "cotton marks") shall be made to the Manchester Branch (*b*).

(4) Every application so made to the Manchester Branch shall be notified to the registrar in the prescribed manner together with the report of the Keeper of cotton marks thereon, and unless the registrar, after considering the report and hearing, if so required, the applicant, within the prescribed time gives notice to the Keeper of cotton marks of objection to the acceptance of the application, it shall be advertised by the Manchester Branch and shall be proceeded with in the prescribed manner.

(5) If the registrar gives notice of objection as aforesaid the application shall not be proceeded with, but any person aggrieved may in the prescribed manner appeal to the Court or the Board of Trade, at the option of the applicant (*c*).

(6) Upon the registration of a trade mark in the Manchester Register the Keeper of cotton marks shall upon notice thereof from the registrar thereupon enter the mark in the duplicate of the Manchester Register, and such registration shall bear date as of the day of application to the Manchester Branch, and shall have the same effect as if the application had been made to the registrar on that day.

(7) When any mark is removed from or any cancellation or correction made in the Manchester Register notice thereof shall be given by the registrar to the Keeper of cotton marks, who shall alter the duplicate register accordingly.

(8) For the purpose of all proceedings in relation to trade marks entered in the Manchester Register a certificate under the hand of the Keeper of cotton marks shall have the same effect as a certificate of the registrar (*d*).

(9) In every application for registration of a cotton mark, if such mark has been used by the applicant or his predecessors in business prior to the date of application, the length of time of such user shall be stated on the application (*e*).

(10) As from the passing of this Act (*f*)—

(a) In respect of cotton piece goods and cotton yarn no mark consisting of a word or words alone (whether invented or otherwise) shall be registered, and no word or words shall be deemed to be distinctive in respect of such goods (*g*):

(b) In respect of cotton piece goods no mark consisting of a line heading alone shall be registered, and no line heading shall be deemed to be distinctive in respect of such goods (*h*):

(c) No registration of a cotton mark shall give any exclusive right to the use of any word, letter, numeral, line heading, or any combination thereof (*i*).

(11) The right of inspection of the Manchester Register shall extend to and include the right to inspect all applications whatsoever that have been since the passing of the Trade Marks Registration Act, 1875, and hereafter shall have been made to the Manchester Branch in respect of cotton goods in classes 23, 24, and 25, whether registered, refused, lapsed, expired, withdrawn, abandoned, cancelled, or pending (*j*). 39 & 40 Vict.
c. 33.

(12) The Keeper of cotton marks shall, on request, and on production of a facsimile of the mark, and on payment of the prescribed fee, issue a certified copy of the application for registration of any cotton mark, setting forth in such certificate the length of time of user (if any) of such mark as stated on the application, and any other particulars he may deem necessary (*k*).

(13) As regards any rules or forms affecting cotton marks which are proposed by the Board of Trade to be made, the draft of the same shall be sent to the Keeper of cotton marks and also to the Manchester Chamber of Commerce. And the said Keeper, and also the said Chamber, shall, if they or either of them so request, be entitled to be heard by the Board of Trade upon such proposed rules before the same are carried into effect (*l*).

(14) The existing practice whereby the Keeper of the Manchester Branch consults the Trade and Merchandise Marks Committee appointed by the Manchester Chamber of Commerce upon questions of novelty or difficulty arising on applications to register cotton marks shall be continued by the Keeper of cotton marks (*m*).

This is a new section, inserted at the instance of the Manchester Chamber of Commerce for the purpose of giving legislative sanction to the practice already obtaining with regard to the Manchester Branch of the Trade Marks Registry, and modifying the general provisions of this Act in certain directions desired by the Manchester trade. It is largely based upon the provisions relating to Sheffield marks now contained in sect. 63. *ante*.

See Rules 113—120.

(a) No distinction appears to be drawn by the Rules between the goods comprised

in the three cotton classes, so that all would seem to be subject to the provisions of this section.

(b) By this sub-section all applications for registration of cotton marks are to be made at Manchester, whether the applicants carry on their business at Manchester or elsewhere. This is convenient, as enabling all cotton marks to be compared, whether Manchester marks or not. Under the previous sub-section existing registrations of cotton marks are to be recorded at Manchester.

(c) By this sub-section an applicant has his option of appealing either to the Court or to the Board of Trade in the same way as an applicant for the registration of any other trade mark has under sect. 12 (3).

(d) This is new, and corresponds with sect. 63 (11) relating to Sheffield marks.

(e) This is a new and useful provision, and it is difficult to understand why a similar provision was not introduced with regard to trade marks generally. So far as appears from the register, a trade mark used since the 14th August, 1875, is indistinguishable from a trade mark first used on the 14th August, 1910, both being technically new marks, but the one having in fact thirty-five years' user as against none. In any amendment of the Act it may be hoped that this provision of the Manchester section may be made generally applicable, so as to form some guide to those who have to deal with such matters of the strength of the case which can be set up.

(f) The provisions of this sub-section are entirely new, but in substance they are a statutory recognition of the rules which have hitherto been enforced with respect to cotton marks, and which have been considered to give effect to the special requirements of the cotton trade.

(g) According to the evidence given before the Parliamentary Committee, it has been the practice at Manchester for many years to reject all word marks which any plausible excuse could be found for rejecting, with the result that it has only been in the rarest cases that word marks have been registered for cotton goods. There was no authority to be found in the Act of Parliament for this distinction between cotton marks and other trade marks, but it was considered to be necessary in the interests of the cotton trade, and no objection seems to have been taken to it, so it may be assumed to have been recognized as reasonable. The sub-section does not appear to control the provisions contained in sect. 45 as to passing-off actions; but this is a point which will, no doubt, some day have to be considered by the Court. It must be observed that this prohibition of word marks does not extend to all cotton goods, but is confined to piece goods and yarn.

(h) The number of line headings used on Manchester goods has been so vast, and the differences between them have been so trifling, that it has been the rule at Manchester not to regard such headings as distinctive, although the word "heading" has appeared in the definition section of the Act. Having regard to this sub-section, little effect is likely to be given to the fact that the word "heading" is still included in the definition of a mark in sect. 3. The same remark with respect to passing-off actions applies as with respect to words.

(i) This clause introduces letters and numerals, and extends to combinations of words, letters, numerals and line headings. It does not, however, appear to prevent such matters from being considered when comparing combination marks used by different traders.

(j) This is a new provision, but it continues the practice at the Manchester Office. It would be useful if made applicable generally, but it is more especially needed for the purposes of the cotton trade on account of the large proportion of applications which have had to be rejected for various reasons, all of which are capable of being regarded, and are in fact regarded, as anticipations of later marks whether they have been followed by registration or not.

(k) This is a new provision, and enables unsuccessful applicants for registration to obtain official evidence of the fact that their applications have been made.

(l) This affords special opportunities for the Keeper of cotton marks and the Manchester Chamber of Commerce to represent their views to the Board of Trade with respect to proposed new rules before such rules are made. (Compare sect. 60 (3).)

(m) The practice here recognized was recommended by the Departmental Committee presided over by Lord Herschell in 1887, and has prevailed ever since.

International and Colonial Arrangements.

65. The provisions of sections one hundred and three and one hundred and four of the Patents, Designs, and Trade Marks Act, 1883 (as amended by the Patents, Designs, and Trade Marks (Amendment) Act, 1885) (a), relating to the registration of trade marks both as enacted in such Acts and as applied by any Order in Council made thereunder (b), shall be construed as applying to trade marks registrable under this Act.

International and Colonial arrangements. 48 & 49 Vict. c. 63.

See P. & D. A., 1907, s. 91.

(a) See *post*, p. 521. For these sections is now substituted sect. 91 of the Patents and Designs Act, 1907.

(b) See list of Orders in Council, *post*, p. 573.

Offences.

66. If any person makes or causes to be made a false entry in the register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanour.

Falsification of entries in register.

See Pat. Acts.

S. 93.

This comes from sect. 93 of the Act of 1883.

67.—(1) Any person who represents a trade mark as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding five pounds.

Penalty on falsely representing a trade mark as registered.

(2) A person shall be deemed, for the purposes of this enactment, to represent that a trade mark is registered, if he uses in connection with the trade mark the word "registered," or any words expressing or implying that registration has been obtained for the trade mark (a).

See Pat. Acts.

S. 105 and notes.

This comes from sect. 105 of the Act of 1883.

(a) An indication of origin may be a trade mark, though unregistered, and the mere use of the words "trade mark" in connection with an unregistered mark does not imply, and is not punishable as implying, that such trade mark is registered. (See *Sen-Sen Co. v. Britten*, (1899) 1 Ch. 692; *Royal Baking Powder Co. v. Wright, Crossley & Co.*, 18 P. R. 95.)

Royal Arms.

68. If any person, without the authority of His Majesty, uses in connection with any trade, business, calling, or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or if any person without the authority of His Majesty or of a member of the Royal Family, uses in connection with any trade, business, calling, or profession any device, emblem, or title (a) in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he may, at the suit of any person who is authorised to use such arms or such device, emblem, or title, or is authorised by the Lord Chamberlain to take proceedings in that behalf, be restrained by injunction or interdict from continuing so to use the same: Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark con-

Unauthorised assumption of Royal Arms.

See Pat. Acts.

S. 106 and note.

Also P. & D. A., 1907, s. 90.

taining any such arms, device, emblem or title to continue to use such trade mark (b).

This is a new section, extending the provisions of sect. 106 of the Act of 1883, now replaced by sect. 90 of the Patents and Designs Act, 1907. The language of sect. 106, if strictly construed, would seldom be applicable to such cases as actually arise. As a matter of fact, the metropolitan magistrates have usually disregarded the actual language of the section, and have given effect to what was understood to be its intention. The object of the present section is to get over this difficulty, and to provide a more suitable remedy by enabling persons likely to be aggrieved to proceed by way of injunction instead of in the police court. Under this section it is not necessary to show that the effect of the user of the Royal Arms is calculated to lead to the belief that the person using them is carrying on his business under the authority of the Sovereign or of a member of the Royal Family or of a Government department. No mention is made of any Government department, and it is sufficient to show that the user of the Arms is calculated to lead to the belief that they are being used by the authority of His Majesty, or that the person using them is employed by or supplies goods to His Majesty or a member of the Royal Family. In such a case a person entitled to take proceedings as provided by this section is enabled to obtain an injunction in England or Ireland or an interdict in Scotland to prevent the continuance of the wrongful practice. An injunction has been granted with costs in *Royal Warrant Holders Association v. Stale & Co., Ltd.* (25 P. R. 245); *Same v. E. J. Kitson, Ltd.* (26 P. R. 157); and other actions have been brought successfully by the same association.

(a) *E.g.*, "By Royal Appointment" (*Royal Warrant Holders Assn. v. E. J. Kitson, Ltd.*, 26 P. R. 157), and as to the word "Royal" see *In re Royal Worcester Corset Co.* (26 P. R. 185), and see *In re Carron Co.* (27 P. R. 412).

(b) It has always been the practice under the Acts regulating the registration of trade marks to refuse to allow the Royal Arms to appear in trade marks admitted to registration, unless such marks were already in use at the date of the passing of the first Trade Marks Registration Act—*i.e.*, before 13th August, 1875. Consequently, the proviso with which the present section concludes can hardly apply to any marks introduced since that date. The proviso, however, is not limited to cases of registered trade marks, and until the Act of 1883 was passed there seems to have been no legal authority for saying that the unauthorized use of the Royal Arms was contrary to any statutory enactment. It will be observed that neither the present section, nor sect. 106 of the Act of 1883, nor sect. 90 of the Act of 1907, extends to the use of any arms other than the Royal Arms of the United Kingdom or arms which might be supposed to be such arms. See, however, Rules 12—14, *post*.

Courts.

69. The provisions of this Act conferring a special jurisdiction on the Court as defined by this Act shall not, except so far as the jurisdiction extends, affect the jurisdiction of any Court in Scotland or Ireland in any proceedings relating to trade marks; and with reference to any such proceedings in Scotland the term "the Court" shall mean the Court of Session; and with reference to any such proceedings in Ireland the term "the Court" shall mean the High Court of Justice in Ireland.

This section comes from sect. 111 of the Act of 1883. Under that section it was held, in *In re King & Co.* (1892, 2 Ch. 462), that the High Court of Justice in England (see sect. 3, *ante*) had jurisdiction to expunge a mark registered in the name of a domiciled Scotchman or Irishman. The question whether the Scotch and Irish Courts had concurrent jurisdiction was there left open, and those Courts have since differed on the subject, the Court of Session having held, in *Cowie v. Herbert* (14 P. R. 436), that it had authority to rectify the register (but see *Dewar v. Dewar*, 17 P. R. 341; *Dawson v. Stewart*, 22 P. R. 250; *Reid v. Thomson, ib.* 376); while the Irish Master of the Rolls held, in *Bayer v. Connell* (1897, 1 Ir. R. 514), that he had no such jurisdiction. Even if such a jurisdiction exists,

General
saving for
jurisdiction
of Courts.

See Pat.
Acts.
S. 111.

it would seem well that it should not be exercised, having regard to the obvious inconvenience of the same register being controlled by different Courts, which might well take different views as to the principles to be applied.

70. This Act shall extend to the Isle of Man, and—

Isle of Man.

(1) Nothing in this Act shall affect the jurisdiction of the Courts in the Isle of Man in proceedings for infringement or in any action or proceeding respecting a trade mark competent to those Courts :

See Pat.
Acts.
S. 112.

(2) The punishment for a misdemeanour under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour and with or without a fine not exceeding one hundred pounds, at the discretion of the Court :

(3) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

This comes from sect. 112 of the Act of 1883.

71. The Court of Chancery of the County Palatine of Lancaster shall, with respect to any action or other proceeding in relation to trade marks, the registration whereof is applied for in the Manchester Branch, have the like jurisdiction under this Act as His Majesty's High Court of Justice in England, and the expression "the Court" in this Act shall be construed and have effect accordingly :

Jurisdiction
of Lancashire
Palatine
Court.

See Pat.
Acts.

Provided that every decision of the Court of Chancery of the County Palatine of Lancaster in pursuance of this section shall be subject to the like appeal as decisions of that Court in other cases.

S. 112a.

This section comes from sect. 26 of the Act of 1888, introduced into the Act of 1883 as sect. 112 (a).

72. In Scotland any offence under this Act declared to be punishable on summary conviction may be prosecuted in the Sheriff Court.

Offences in
Scotland.

This comes from sect. 108 of the Act of 1883.

See Pat.
Acts.

S. 108.

Repeal; Savings.

73. The enactments described in the schedule to this Act are repealed to the extent mentioned in the third column, but this repeal shall not affect any rule, table of fees, or classification of goods made under any enactment so repealed, but every such rule, table of fees, or classification of goods shall continue in force as if made under this Act until superseded by rules, tables of fees, or classification under this Act.

Repeal and
saving for
rules, &c.

See Pat.
Acts.

Ss. 113, 115.

This comes from sects. 113 and 115 of the Act of 1883. The effect of this repeal is that the whole of the Trade Marks Part of the Act of 1883, comprising sects. 62 to 81, is repealed, and that of the General Part of that Act, comprising sects. 82 to

117, the only sections which are left unrepealed with respect to trade marks are sects. 82 to 84, relating to the administration of the Patent Office (see sect. 74, *post*); sects. 103 and 104, relating to International and Colonial arrangements (see sect. 65, *ante*); and sect. 106, relating to the Royal Arms. Sects. 82 to 84 of the Act of 1883 are since replaced by sects. 62 to 64 of the Patents and Designs Act, 1907, sects. 103, 104 by sects. 91 and 88 of that Act, and sect. 106 by sect. 90 of that Act. With respect to the Act of 1888, the Trade Marks Part of this Act, comprising sects. 8 to 20, is repealed, and the remainder of the Act is also repealed, so far as it relates to trade marks.

Application
of 46 & 47
Vict. c. 57,
ss. 82—84.

See P. & D.
A., 1907,
ss. 62—64.

74. The provisions of sections eighty-two to eighty-four of the Patents, Designs, and Trade Marks Act, 1883, as amended by any subsequent enactment, shall continue to apply with respect to the administration at the Patent Office of the Law relating to the registration of trade marks, and shall accordingly be construed as if this Act formed part of that Act.

Sect. 73.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
46 & 47 Vict. c. 57.	The Patents, Designs, and Trade Marks Act, 1883.	Sections sixty-two to eighty-one, and, so far as they respectively relate to trade marks, sections eighty-five to ninety-nine, one hundred and one, one hundred and two, one hundred and five, one hundred and eight, and one hundred and eleven to one hundred and seventeen.
51 & 52 Vict. c. 50.	The Patents, Designs, and Trade Marks Act, 1888.	Sections eight to twenty, and, so far as they respectively relate to trade marks, sections twenty-one to twenty-six.

THE TRADE MARKS RULES, 1906.

Dated March 24th, 1906.

By virtue of the provisions of the Trade Marks Act, 1905, the Board of Trade do hereby make the following rules:—

PRELIMINARY.

1. These rules may be cited as the Trade Marks Rules, 1906, and shall come into operation from and immediately after the 31st day of March, 1906.

INTERPRETATION.

2. In the construction of these rules any words herein used the meaning of which is defined by the said Act or the Interpretation Act, 1889,* shall have the meanings thereby assigned to them respectively. Interpretation.

“Agent” means an agent duly authorized to the satisfaction of the registrar.

“Office” means Patent Office, Trade Marks Branch, 25, Southampton Buildings, London, W.C.

“Journal” means “*Trade Marks Journal*” (a).

(a) The *Trade Marks Journal* is published at short intervals. It contains illustrations of all the trade marks for which application is made, or a reference to the places where they may be seen, as well as the name, address and calling of each applicant, the description of the goods, and the length of user as an old mark, if any: thus affording all persons interested in the use of trade marks authentic information as to the nature of the marks applied for in their respective trades. The journal may be obtained from the Patent Office, Sale Branch. Copies of the journal are open to inspection at the Patent Office Library, Southampton Buildings, Chancery Lane.

FEEES.

3. The fees to be paid in pursuance of the said Act shall be the fees Fees. specified in the First Schedule to these rules.

* NOTE.—The more material definitions of the Interpretation Act are:—

“Statutory Declaration” means a declaration made by virtue of the Statutory Declarations Act, 1835.

“Month” means calendar month.

“Person,” unless the contrary intention appears, includes any body of persons corporate or unincorporate.

Words in the singular shall include the plural and words in the plural shall include the singular.

See this Act, App. L., *post*.

FORMS.

Forms.

4. The forms herein referred to are the forms contained in the Second Schedule to these rules, and such forms shall be used in all cases to which they are applicable, and shall be modified as directed by the registrar to meet other cases.

CLASSIFICATION OF GOODS.

Classification of goods.

5. For the purposes of trade marks registration and of these rules goods are classified in the manner appearing in the Third Schedule hereto (a).

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

(a) See Instructions, par. 14, and Guide to Classification, *post*, p. 463.

DOCUMENTS.

Size, &c. of documents.

6. Subject to any other directions that may be given by the registrar, all applications, notices, counter-statements, papers having representations affixed, or other documents required by the said Act or by these rules to be left with or sent to the registrar or to the Keeper of cotton marks or to the Cutlers' Company, shall be upon foolscap paper of a size of approximately 13 inches by 8 inches, and shall have on the left-hand part thereof a margin of not less than one inch and a half.

Service of documents.

7. Any application, statement, notice, or other document authorized or required to be left, made, or given at the Office, or to or with the registrar, or with or to any other person may be sent through the post by a prepaid or official-paid letter; any document so sent shall be deemed to have been delivered at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post. A letter addressed to a registered proprietor of a trade mark at his address as it appears on the register, or address for service, or to any applicant for or person opposing the registration of a trade mark at the address appearing in the application or notice of opposition or given for service as hereinafter provided shall be deemed to be sufficiently addressed.

Address.

8. Where any person is by the said Act or these rules bound to furnish the registrar with an address the following provisions shall apply:—

The address given shall in all cases be as full as possible, for the purpose of enabling any person easily to find the place of business of the person whose address is given.

When a person does not reside in a town with streets, the registrar may require the address to include all indications which he thinks necessary for such purpose so far as it can be attained.

When an applicant resides in a town where there are streets, the address given shall include the name of the street, and the number in the street or name of premises, if any.

Address for service.

9. Every applicant for the registration of any trade mark, and every opponent to such registration, and every agent, who does not reside or

carry on business in the United Kingdom, shall, if so required, give an address for service in the United Kingdom, and such address may be treated as the actual address of such applicant, opponent, or agent for all purposes connected with such application for registration or the opposition thereto.

The registrar may require the proprietor of a registered trade mark who does not reside or carry on business within the United Kingdom to give an address for service within the United Kingdom, and such address may be treated as the actual address of the proprietor for all purposes connected with such trade mark (a).

(a) See Instructions, par. 6.

AGENTS.

10. An application for registration and an opposition to registration and all other communications between an applicant, an opponent and the registrar, or the Board of Trade, and between the proprietor of a registered trade mark and the registrar, or the Board of Trade, or any other person, may be made by or through an agent (a). Agency.

Any such applicant, opponent, or proprietor may appoint an agent to represent him in the matter of the trade mark by signing and sending to the registrar an authority in writing to that effect in the Form TM No. 1, or in such other form as the registrar may deem sufficient. In case any proprietor of a registered trade mark shall appoint such an agent, service upon such agent of any document relating to such trade mark shall be deemed to be service upon the person so appointing him, and all communications directed to be made to such person in respect of such trade mark may be addressed to such agent.

The registrar shall not be bound to recognise as such agent any person who has been convicted criminally or struck off the Roll of Solicitors, or whose name, by reason of his having been adjudged guilty of disgraceful professional conduct, has been erased from the Register of Patent Agents, kept under the provisions of the Patents, Designs, and Trade Marks Act, 1888 (b), relating to the registration of Patent Agents, and not since restored.

(a) An agent signing should add after his signature the word "Agent." see Instructions, par. 6.

(b) See now sect. 84 of the Patents and Designs Act, 1907.

REGISTRABLE TRADE MARKS.

11. The registrar may refuse to accept any application upon which the following appear:— Registrable trade marks.

(a) The words "Patent," "Patented," or "By Royal Letters Patent," "Registered," "Registered Design," "Copyright," "Entered at Stationers' Hall," "To counterfeit this is forgery," or words to like effect (a).

(b) Representations of their Majesties or of any member of the Royal Family (a).

(a) See Instructions, par. 16.

Royal Arms. 12. Representations of the Royal Arms or Royal crests, or arms or crests so nearly resembling them as to lead to mistake, or of British Royal crowns, or of the British national flags, or the word Royal or any other words, letters, or devices calculated to lead persons to think that the applicant has Royal patronage or authorization, may not appear on trade marks the registration of which is applied for (*a*). Provided always that nothing contained in this rule shall preclude the registrar from allowing the registration as an "old mark," that is as a mark which was used by the applicant or his predecessors in business before the 13th August, 1875, of any mark which was capable of being so registered before the Trade Marks Act, 1905, came into operation.

(*a*) See notes to sect. 68, *ante*; also Instructions, par. 16.

Arms of foreign State. 13. Where representations of the arms of a foreign State or place appear on a mark the registrar may call for such justification as he may deem necessary for their use (*a*).

(*a*) See Instructions, par. 16.

Arms of city, &c. 14. Where a representation of the arms or emblems of any city, borough, town, place, society, body corporate, or institution appears on a mark, the applicant shall, if so required, furnish the registrar with a consent from such official as the registrar may consider entitled to give consent to the use of such arms or emblems (*a*).

(*a*) See Instructions, par. 16.

Representations of living person or persons recently dead. 15. Where the names or representations of living persons appear on a trade mark, the registrar shall, if he so require, be furnished with consents from such persons before proceeding to register the mark. In the case of persons recently dead the registrar may call for consents from their legal representatives before proceeding with registration of a trade mark on which their names or representations appear (*a*).

(*a*) See Instructions, par. 16.

Name or description of goods. 16. Where the name or a description of any goods appears on a trade mark the registrar may refuse to register such mark in respect of any goods other than the goods so named or described.

Where the name or description of any goods appears on a trade mark which name or description in use varies, the registrar may permit the registration of the mark with the name or description upon it for goods other than those named or described, the applicant stating in his application that the name or description varies (*a*).

(*a*) See Instructions, par. 16.

APPLICATION FOR REGISTRATION.

Application by firm. 17. If application for registration of a trade mark be made by a firm or partnership it may be signed in the name or for and on behalf of the firm or partnership by any one or more members thereof.

If the application be made by a body corporate it may be signed by a director or by the secretary or other principal officer of such body corporate.

Any application may be signed by an agent (a).

(a) See Instructions, pars. 4—7.

18. Where application is made for registration of a cotton mark the applicant shall address and send his application to the keeper of cotton marks at the Manchester Branch, 48, Royal Exchange, Manchester. Other applications (except applications which under sect. 63 of the said Act should be made to the Cutlers' Company) shall be addressed and sent to the registrar at the office (a).

Address of application.

(a) See Instructions, par. 4.

19. On or after receipt of the application the registrar shall furnish the applicant with an acknowledgment thereof.

Acknowledgment of application.

20. Where application is made to register a trade mark which was used (a) by the applicant or his predecessors in business (b) before the 13th of August, 1875 (c), the application shall contain a statement of the time during which and by whom it has been used in respect of the goods mentioned in the application. The registrar may require a statutory declaration verifying such user with exhibits showing the mark as used (d).

Application for old mark.

(a) *I.e.*, in respect of the same goods for which the application is being made. Registration must be applied for as for a new mark when the mark has been used on different goods. (See *In re Jelly, Son & Jones*, 51 L. J. Ch. 639; *Edwards v. Dennis*, 30 Ch. D. 454.)

(b) Upon an application by a firm for registration of a mark which has been used by that firm before August 13, 1875, though the members of the firm have changed since the date of the first user, it is not necessary to state the names of the members of the firm for the time being since the first user or to insert the words "or their predecessors, members of the firm for the time being" (*In re Wright, Crossley & Co.*, (1900), 2 Ch. 218). It seems that where the whole beneficial interest in the trade mark has passed from the original proprietor although there has been no actual assignment, an application may be made in the name of the person having such beneficial interest, but the point was not decided, since the application failed for want of user as a trade mark (*In re Heddle & Co.*, 20 P. R. 599).

(c) This is the date of the passing of the Act of 1875, and at this point the line is drawn between old and new marks, various indulgences being allowed to the former and not to the latter. (See the proviso to sect. 9, sub-sect. 5.)

(d) Unless the registrar requires a statutory declaration, a mere statement is sufficient.

21. Every application for registration of a trade mark shall contain a representation of the mark affixed to it in the square which the Form TM No. 2 contains for that purpose.

Contents of form of application.

Where the representation exceeds such square in size the representation shall be mounted upon linen, tracing cloth or other material that the registrar may consider suitable. Part of the mounting shall be affixed in the space aforesaid, and the rest may be folded over.

22. There shall be sent with every application for registration of Additional

representations. a trade mark four additional representations of such mark on the Form TM No. 3, exactly corresponding to that affixed to the application Form TM No. 2, and noted with all such particulars as may from time to time be required by the registrar or by the keeper of cotton marks. Such particulars shall, if required, be signed by the applicant or his agent.

Representations to be durable. 23. All representations of marks must be of a durable nature, but the applicant may in case of need supply in place of representations on the Form TM No. 3, half sheets of strong foolscap of the size aforesaid with the representations affixed thereon and noted as aforesaid.

Separate applications. 24. Applications for the registration of the same mark in different classes shall be treated as separate and distinct applications, and in all cases where a trade mark is registered under the same official number for goods in more than one class, the registration shall henceforth for the purpose of fees and otherwise be deemed to have been made on separate and distinct applications in respect of the goods included in each class.

Representations to be satisfactory. 25. The registrar, if dissatisfied with any representation of a mark, may at any time require another representation satisfactory to him to be substituted before proceeding with the application.

Specimens of trade marks in exceptional cases. 26. Where a drawing or other representation or specimen cannot be given in manner aforesaid, a specimen or copy of the trade mark may be sent either of full size or on a reduced scale, and in such form as the registrar may think most convenient.

The registrar may also, in exceptional cases, deposit in the office a specimen or copy of any trade mark which cannot conveniently be shown by a representation, and may refer thereto in the register in such manner as he may think fit.

Series of trade marks. 27. When application is made for the registration of a series of trade marks under sect. 26 of the said Act, a representation of each trade mark of the series shall be affixed, as aforesaid, to the application upon Form TM No. 2, and to each of the accompanying Forms TM No. 3.

Transliteration and translation. 28. When a trade mark contains a word or words in other than Roman characters, there shall be indorsed on the application in Form TM No. 2, and on each of the accompanying representations in Form TM No. 3, a sufficient transliteration and translation to the satisfaction of the registrar of each of such words, and every such indorsement shall be signed by the applicant or his agent.

Where a trade mark contains a word or words in a language other than English, the registrar may ask for an exact translation thereof, and if he so requires such translation shall be indorsed and signed as aforesaid.

PROCEDURE ON RECEIPT OF APPLICATION.

Search. 29. Subject to the provisions for special applications under para. 5 of sect. 9 of the said Act, upon receipt of an application for registration the registrar shall cause a search to be made amongst the registered marks and pending applications for the purpose of ascertaining whether there are on record any marks for the same goods or

description of goods identical with the mark applied for or so nearly resembling it as to be calculated to deceive.

30. If after such search and a consideration of the application the registrar thinks there is no objection to the mark being registered, he may accept it absolutely or subject to conditions, amendments, and modifications which he shall communicate to the applicant in writing. Acceptance.

31. If after such search and consideration of the application any objections appear, a statement of those objections shall be sent to the applicant in writing, and unless within one month the applicant applies for a hearing, he shall be deemed to have withdrawn his application. Objections.

32. If the registrar accepts an application subject to any conditions, amendments, or modifications, and the applicant objects to such conditions, amendments, or modifications, he shall within one month from the date of the communication notifying such acceptance apply for a hearing, and if he does not do so he shall be deemed to have withdrawn his application. If the applicant does not object to such conditions, amendments, or modifications, he shall forthwith notify the registrar in writing. Hearings.

33. The decision of the registrar at such hearing as aforesaid shall be communicated to the applicant in writing, and if he objects to such decision, he may within one month apply upon Form TM No. 4, requiring the registrar to state in writing the grounds of his decision and the materials used by him in arriving at the same. Decision of registrar.

Upon receipt of such form the registrar shall send to the applicant such statement as aforesaid in writing, and the date when such statement is sent shall be deemed to be the date of the registrar's decision for the purpose of appeal.

34. The registrar may call on an applicant to insert in his application such disclaimer as the registrar may think fit, in order that the public generally may understand what the applicant's rights, if his mark is registered, will be. Disclaimers.

SPECIAL APPLICATIONS UNDER PARAGRAPH 5 OF SECTION 9 (a).

35. An application to register a name, signature, or word or words under paragraph 5 of section 9 of the said Act shall be made on the Form TM No. 5, and not otherwise. Special applications under sect. 9, para. 5.

36. Upon receipt of such an application the registrar shall cause a search to be made amongst the registered marks and pending applications for the purpose of ascertaining whether there are on record any marks for the same goods or description of goods identical with the mark applied for or so nearly resembling it as to be calculated to deceive. Search.

37. If after such search the registrar thinks there are no such marks, he shall notify the applicant accordingly, but if after such search any such marks appear, he shall notify to the applicant the numbers of those marks and the journals (if any) in which they have been advertised. Result of search.

38. Within one month from the receipt of such notification the applicant shall send to the registrar in writing a case in duplicate Appeal by applicant.

stating at length the grounds upon which he relies in support of his application, and whether he desires to be heard by the Board of Trade or by the Court. If he fails to do so his application shall be deemed to be withdrawn. If he desires to be heard by the Board of Trade, he shall send with his case Form TM No. 10. If the Board think fit to refer the appeal to the Court, the registrar may certify the spoilt fee on such form for allowance.

Upon receipt of such case the registrar shall send the same to the Board of Trade for their information, together with a copy of all communications that have passed between the registrar and the applicant.

Hearing.

39. Upon receipt of such case the Board of Trade shall if the applicant desires to be heard by them fix a day for such hearing at which the applicant and the registrar may attend and be heard, and the Board shall make an order determining whether and subject to what conditions, amendments, or modifications, if any, the application is to be accepted, or may require the applicant to apply to the Court and limit a time for that purpose.

Order of the Court.

40. If the applicant desires to obtain an order of the Court he shall within one month from sending to the registrar his case as aforesaid bring the matter before the Court by motion, and if he does not do so he shall be deemed to have withdrawn his application.

Advertisement, &c. of application.

41. If the application is accepted either by the Board of Trade or the Court it shall be advertised and proceedings thereafter shall be had in respect of it as if it had been accepted by the registrar in the ordinary course.

(a) See notes to sect. 9 of the Act.

SPECIAL TRADE MARKS UNDER SECTION 62 (a).

Application under sect. 62.

42. Where an association or person desires to register a mark under sect. 62 of the said Act they shall apply to the registrar in writing upon the Form TM No. 6.

Mode of application.

43. Such application shall be in duplicate and shall be accompanied by six copies of the mark applied for.

Report by registrar.

44. Upon the receipt of such application the registrar shall as soon as may be notify the same to the Board of Trade together with his report upon the application, and shall at the same time send a copy of the application together with three copies of the mark applied for to the Board. The registrar shall also send the applicants a copy of his report, and within one month from the receipt of such report the applicants shall send the Board in duplicate a case setting out the grounds upon which they rely in support of their application, and if they fail so to do their application shall be deemed to be abandoned.

Hearing.

45. Upon receipt of such case the Board may call for such evidence, if any, as they think fit and shall, if necessary, hear the applicants and the registrar, and make an order determining whether and subject to what conditions, amendments, or modifications, if any, the application may be permitted to proceed.

Advertisement, &c.

46. If such application is permitted to proceed the mark shall be advertised and the application shall be treated in all respects as if it

were an ordinary application, and it shall be open to opposition in the same way and all such proceedings shall be had thereon as if it were an application under sect. 12 of the said Act.

(a) This group of rules refer to certification marks, *e.g.*, marks indicative of Irish origin.

ADVERTISEMENT OF APPLICATION.

47. Every application when accepted shall be advertised by the registrar in the Journal during such times and in such manner as the registrar may direct. Advertisement of application.

If no representation of the trade mark be inserted in connection with the advertisement of an application, the registrar shall refer in such advertisement to the place or places where a specimen or representation of the trade mark is deposited for exhibition (a).

(a) See Instructions, par. 15.

The object of the advertisement is to give to persons who might be claimants of the trade mark proposed to be registered the opportunity of coming forward and objecting (*per* Hall, V.-C., in *In re Meikle*, 24 W. R. 1067), and an advertisement is therefore indispensable (*Ibid.*). It is not, however, incumbent on persons to see the advertisement, and if a common mark has been registered after advertisement, and without opposition, it may be removed from the register on application by persons aggrieved (*In re Hyde & Co.*, 7 Ch. D. 724). As to the importance of the advertisement, see also *In re Apollinaris Co.* (1891, 2 Ch. 186, 231).

48. For the purposes of such advertisement the applicant may be required to furnish a wood block or electrotype (or more than one, if necessary) of the trade mark, of such dimensions as may from time to time be directed by the registrar, or such other information or means of advertising the trade mark as may be required by the registrar; and the registrar, if dissatisfied with the block or electrotype furnished by the applicant or his agent, may require a fresh block or electrotype before proceeding with the advertisement. Wood block or electrotype.

49. When an application relates to a series of trade marks differing from one another in respect of the particulars mentioned in sect. 26 of the said Act, the applicant may be required to furnish a wood block or electrotype (or more than one, if necessary) of any or of each of the trade marks constituting the series; or the registrar may, if he thinks fit, insert with the advertisement of the application a statement of the manner in respect of which the several trade marks differ from one another. Advertisement of series.

50. Advertisements under sect. 14 (9) of the said Act shall *mutatis mutandis* be made in the same manner as advertisements relating to an application for registration. Advertisement under sect. 14 (9).

OPPOSITION TO REGISTRATION.

51. Any person may within one month from the date of any advertisement in the Journal of an application for registration of a trade mark give notice in writing at the Office of opposition to the registration (a). Opposition.

(a) It must be noted that the times fixed by these rules may be enlarged by the registrar (see Rule 99). Also as to appeals (Rules 121, 127).

Notice of
opposition.

52. Such notice shall be in Form TM No. 7, and shall contain a statement of the grounds upon which the opponent objects to the registration. If registration is opposed on the ground that the mark resembles marks already on the register, the numbers of such marks and the numbers of the Journals in which they have been advertised shall be set out. Such notice shall be accompanied by a duplicate which the registrar will forthwith send to the applicant.

Counter-
statement.

53. Within one month from the receipt of such duplicate the applicant shall send to the registrar a counter-statement (Form TM No. 8) in writing setting out the grounds on which he relies as supporting his application. The applicant shall also set out what facts, if any, alleged in the Notice of Opposition he admits. Such counter-statement shall be accompanied by a duplicate in writing.

Evidence in
support of
opposition.

54. Upon receipt of such counter-statement and duplicate the registrar will forthwith send the duplicate to the opponent and within one month from the receipt of the duplicate the opponent shall leave at the Office such evidence by way of statutory declaration as he may desire to adduce in support of his opposition and shall deliver to the applicant copies thereof.

Evidence in
support of
application.

55. If an opponent leaves no evidence, he shall be deemed to have abandoned his opposition, but if he does then within one month from the receipt of the copies of declarations, the applicant shall leave at the Office such evidence by way of statutory declaration as he desires to adduce in support of his application and shall deliver to the opponent copies thereof.

Evidence in
reply by
opponent.

56. Within fourteen days from the receipt by the opponent of the copies of the applicant's declarations the opponent may leave at the Office evidence by statutory declaration in reply, and shall deliver to the applicant copies thereof. Such evidence shall be confined to matters strictly in reply.

Further
evidence.

57. In any proceedings before the registrar, he may at any time, if he thinks fit, give leave to either the applicant or the opponent to file any evidence upon such terms as to costs or otherwise as the registrar may think fit.

Exhibits.

58. Where there are exhibits to declarations filed in an opposition, copies or impressions of such exhibits shall be sent to the other party on his request, or, if such copies or impressions cannot conveniently be furnished, the originals shall be sent to the Office, so that they may be open to inspection. The original exhibits shall be produced at the hearing unless the registrar otherwise directs.

Hearing.

59. Upon completion of the evidence the registrar shall give notice to the parties of a date when he will hear the arguments in the case. Such appointment shall be for a date at least fourteen days after the date of the notice, unless the parties consent to a shorter notice. Within seven days from the receipt of such notice both parties shall file Form TM No. 9. A party who receives such notice and who does not, within seven days from the receipt thereof, give notice on Form TM No. 9 that he intends to appear, may be treated as not desiring to be heard and the registrar may act accordingly.

Extension of
time.

60. Where in opposition proceedings any extension of time is granted to any party, the registrar may thereafter, if he thinks fit, without giving the said party a hearing, grant any reasonable

extension of time to the other party in which to take any subsequent step.

61. Where a party giving notice of opposition neither resides nor carries on business in the United Kingdom, the registrar may call upon him to give a security in such form as the registrar may deem sufficient for the costs of the proceedings before the registrar, for such amount as to the registrar may seem fit, and at any stage in such opposition may require further security to be given at any time before giving his decision in the case. Security for costs.

NOTE.—Under the old Acts and Rules it was held that the notice of opposition might be amended, even after the counter-statement had been put in (*In re Moet*, 7 P. R. 226): but not after an appeal had been presented to the Board of Trade (*In re Robertson, Sanderson & Co.*, (1892) 2 Ch. 245. Under the Act of 1875 the practice was to require the opponent to take proceedings for the purpose of bringing the matter before the Court. The opponent thereupon took out a summons for directions as to the course to be followed, upon which it was usual for the applicant to be directed to apply for registration by way of motion or summons. In *In re Salamon* (Dig. 569), Jessel, M.R., said that the best mode of trying the case was by special case, when it was a simple question of law; by summons, when it was a question as to directions for carrying out the Act; by motion, when it was a question as to disputed facts. In *In re Simpson, Davies & Sons* (15 Ch. D. 525), he said he usually directed a summons, but had in one or two cases directed a motion. In *Ex parte King of Saxony* (Dig. 598), Hall, V.-C., directed a motion. Latterly a summons was almost invariably directed. See also *In re Johnston* (43 L. T. N. S. 672), as to the course of procedure where there was an action pending. Under the early Rules, and while the first step had to be taken by the opponent, who had to give notice thereof to the office, two cases occurred in which trade marks were registered, though the registration was opposed, in consequence of no notice having been given to the office by the opponents of their having brought the matter before the Court. In one of these cases, *In re The Patent Nut and Bolt Screw Co.*, Chitty, J., March 9th, 1883, with a view to remedying the slip, a consent order was taken to rescind the registration, without prejudice to the applicant's summons for leave to register, the object being to restore matters to their *status quo ante* the registration. The opposition was subsequently withdrawn, but the registrar now objected to register, on the ground that the application had been finally disposed of, and that a new application was necessary. It was, however, held that the proper course was to discharge the former order for the removal of the mark from the register, and to direct the registrar to restore the register to its condition previous to such removal. In the other case, *In re Esbensen*, Pearson, J., Jan. 25th, 1883, the opponent moved to cancel the registration, with a view to the prosecution of the opposition as if there had been no registration; but it was held that the proper course was for the opponent to move to rectify the register in the ordinary way. See also *In re Paton* (Dig. 601). Under the Act of 1883 a summons for leave to register was taken out by the applicant.

NON-COMPLETION.

62. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the registrar shall give notice to the applicant in writing in the Form O No. 1 of such non-completion, and if the applicant has an agent, shall send a duplicate of such notice to such agent. If after fourteen days from the date when such notice was sent the registration is not completed, the application shall be deemed to be abandoned, but the registrar may with such notice, where the applicant lives at a distance, give a further time after such fourteen days for the completion of such application. Non-completion within twelve months.

REFUSAL AFTER ACCEPTANCE.

Refusal after acceptance.

63. In pursuance of sect. 16 of the said Act the Board of Trade hereby direct that in cases where a mark has been accepted by error, the registrar need not register the mark but may withdraw his acceptance and refuse to register, but any such refusal shall be deemed to be a refusal under sub-sect. 2 of sect. 12 of the said Act, and an applicant shall have thereafter the same right of being heard, and of appealing, as he would have had if the mark had been refused immediately upon its receipt. In any other case the Board, having regard to any special facts, will give special directions under sect. 16 of the said Act.

ENTRY ON THE REGISTER.

Entry on register.

64. As soon as may be after the expiration of one month from the date of the advertisement in the Journal of any application, the registrar shall, subject to any opposition and the determination thereof, and subject to the provisions of Rule 63, and upon payment of the prescribed fee, on Form TM No. 11, enter the trade mark on the register. The entry of a trade mark on the register shall give the date of the registration, the goods in respect of which it is registered, and all particulars named in sect. 4 of the Act, together with particulars of the trade, business, profession, or occupation, if any, of the proprietor, and such other particulars as the registrar may deem necessary.

Associated marks.

65. Where a mark is registered as associated with any other mark or marks the registrar shall note upon the register in connection with such mark the numbers of the marks with which it is associated and shall also note upon the register in connection with each of the associated marks the number of the newly registered mark as being an associated mark with each of them.

Death of applicant before registration.

66. In case of the death of any applicant for a trade mark after the date of his application, and before the trade mark applied for has been entered on the register, the registrar, after the expiration of the prescribed period of advertisement, may, on being satisfied of the applicant's death, enter on the register, in place of the name of such deceased applicant, the name, address, and description of the person owning the goodwill of the business, on such ownership being proved to the satisfaction of the registrar.

Certificate of registration.

67. Upon the registration of a trade mark the registrar shall issue to the applicant a certificate in the Form O No. 2.

RENEWAL.

Renewal of registration.

68. At any time not less than two months and not more than three months before the expiration of the last registration of a trade mark any person may leave at the Office a fee for the renewal of the registration of the mark upon Form TM No. 12. Such person shall indorse upon such form his name and address, and before taking any further step the registrar may require such person to furnish within five days

an authority to pay such fee signed by the registered proprietor, and if such person does not furnish such authority, may return such fee and treat it as not received.

69. When he does not require such authority, the registrar shall upon receipt of such fee communicate with the registered proprietor at his registered address, stating that the fee has been received and that the registration will in due course be renewed. Notification of receipt of renewal fee.

70. At a date not less than one month and not more than two months before the expiration of the last registration of a mark, if no fee upon the Form TM No. 12 has been received, the registrar shall send to the registered proprietor at his registered address a notice in the Form O No. 3. Notice before removal of trade mark from register.

71. At a time not less than fourteen days and not more than twenty-eight days before the expiration of the last registration of a mark, the registrar shall, if no renewal fee has been received, send a notice to the registered proprietor at his registered address in the Form O No. 4. Second notice before removal of trade mark from register.

72. If at the date of the expiration of the last registration of a mark the renewal fee has not been paid, the registrar shall advertise the fact forthwith in the Journal, and if within one month of such advertisement the renewal fee upon Form TM No. 13, together with an additional fee upon Form TM No. 14, is received, he may renew the registration without removing the mark from the register. Advertisement of non-payment.

73. Where after one month from such advertisement such fees have not been paid, the registrar may remove the mark from the register as of the date of the expiration of the last registration, but may upon payment of the renewal fee upon Form TM No. 13, together with the additional fee upon the form TM No. 15, restore the mark to the register if satisfied that it is just so to do, and upon such conditions as he may think fit to impose. Removal of trade mark from register.

74. Where a trade mark has been removed from the register, the registrar shall cause to be entered in the register a record of such removal and of the cause thereof. Removal of mark from register.

75. Upon the renewal of a registration a notice to that effect shall be sent to the registered proprietor at his registered address and the renewal shall be advertised in the Journal. Notice and advertisement of renewal.

ASSIGNMENT.

76. The registrar may on request made jointly by a registered proprietor of a mark and the person to whom he has assigned such mark, together with the goodwill of the business concerned in the goods for which it has been registered, register the assignee as proprietor of the mark. Such application shall be in the Form TM No. 16. If the registrar so require, the assignee shall furnish a declaration in Form TM No. 17. Joint request for entry of assignment.

77. Where no such joint request is made, any person who has become entitled to a registered trade mark by assignment, transmission, or other operation of law, may leave a request at the Office for the entry of his name in the register as proprietor of such trade mark. The request shall be on the Form TM No. 18, and such request shall Request for entry of assignment by subsequent proprietor.

contain the name, address, and description of the person claiming to be entitled to the trade mark, hereinafter called the claimant.

Case accom-
panying
request.

78. Together with such request the claimant shall leave a case stating full particulars of the assignment, transmission, or other operation of law by virtue of which he claims to be entitled to be entered in the register as proprietor of the trade mark, so as to show the manner in which and the person or persons to whom the trade mark has been assigned or transmitted, and so as to show further that it has been so assigned or transmitted in connection with the goodwill of the business concerned in the goods for which the trade mark has been registered.

Signature of
request.

79. Such request shall in the case of an individual be made and signed by the claimant, and in the case of a firm or partnership by one or more members of such firm or partnership, and in the case of a body corporate shall be signed by a director or by the secretary or other principal officer of such body corporate.

Statutory
declaration
in support of
request.

80. Where the registrar shall determine that the case sets out particulars such as entitle the claimant to be registered as proprietor of such trade mark, he shall call upon the claimant to furnish a statutory declaration (Form TM No. 19) verifying the several statements in the case and declaring that the particulars given comprise every material fact and document affecting the proprietorship of the trade mark claimed by such request.

Proof of title.

81. In any case, the registrar may call on any person who desires to be registered as proprietor of a trade mark for such proof or additional proof of title and of the existence and ownership of such goodwill as aforesaid as the registrar may require for his satisfaction (*a*).

(*a*) If the proofs required are supplied, and the subsequent proprietor's name is entered on the register, it may be removed again on an application under sect. 35 by a person aggrieved (*Rey v. Lecouturier*, 25 P. R. 265 ; 27 P. R. 268).

ALTERATION OF ADDRESS.

Alteration of
address in
register.

82. Every registered proprietor of a trade mark who alters his address shall forthwith apply to the registrar on the Form TM No. 20 to insert the new address on the register, and the registrar shall alter the register accordingly.

DISCRETIONARY POWER.

Hearing.

83. Before exercising any discretionary power given to the registrar by the said Act adversely to any person, the registrar shall, if so required, hear the person who will be affected by the exercise of such power.

Application
for hearing.

84. An application for a hearing shall be made within one month from the date when the matter on which the registrar is called on to exercise discretionary power has arisen.

Notice of
hearing.

85. Upon receiving such application the registrar shall give the person applying ten days' notice of a time when he may be heard by himself or his agent.

Within five days from the date when such notice would be delivered in the ordinary course of post the person applying shall notify the registrar whether or not he intends to be heard on the matter.

86. The decision of the registrar in the exercise of any such discretionary power as aforesaid shall be notified to the person affected. Notification of decision.

APPLICATIONS UNDER SECTION 23.

87. All applications to the registrar under section 23 of the said Act shall be upon the form TM No. 21. Such application shall be accompanied by a case setting out fully the facts relating to the marks which the registrar is requested to permit an apportionment of. Application under sect. 23.

88. Upon receipt of such request and of such case the registrar shall enquire into the facts and call for such evidence as he may deem necessary upon the subject of such application. Before giving his decision the registrar shall, if necessary, give the parties an opportunity of attending before him at a hearing either by themselves or by their agents. Registrar to enquire and decide.

The decision of the registrar shall be in writing.

89. Upon any apportionment of marks under this section the registrar shall insert in the register a note in connection with each of the registered trade marks of the fact of such apportionment, and shall in such note refer to the date of the decision under which such apportionment has taken place. Note in register.

APPLICATIONS UNDER SECTION 32.

90. Applications under section 32 to the registrar may be made by the registered proprietor, or by the trustee in bankruptcy of the registered proprietor, or where the registered proprietor is a company in liquidation by the liquidator, and in other cases by such person as the registrar may decide to be entitled to act in the name of the registered proprietor. Application under sect. 32.

91. Where such application is made the registrar may require such evidence by statutory declaration or otherwise as he may think fit as to the circumstances in which the application is made. Evidence.

92. Where application is made, on Form TM No. 26, to enter a disclaimer or memorandum relating to a trade mark, the registrar, before deciding upon such application, shall advertise the application in the Journal for one month in order to enable any person desiring so to do to state any reasons in writing against the applicant being allowed to make such disclaimer or enter such memorandum. Advertisement of application.

APPLICATIONS UNDER SECTION 34.

93. Where a person desires to apply under section 34 to alter a trade mark he shall make his application in writing on Form TM No. 27, and shall furnish the registrar with six copies of the mark as it will appear when altered. Alteration of trade mark.

Advertisement of alteration.

94. Before proceeding with such application the registrar may call on the applicant to furnish a block suitable to advertise in the Journal the fact that such application has been made, or, if he think fit, the registrar, without calling for a block, may insert an advertisement describing the alteration proposed in words so that it can be understood by persons interested in the matter.

Where leave is granted the registrar may, if he is not already in possession of a block showing the trade mark as altered, cause the applicant to furnish a block showing the trade mark as altered for advertisement in the Journal, and upon receipt of such block shall forthwith advertise the mark as altered in the Journal.

SEARCH.

Searches.

95. The registrar, if requested so to do in writing upon a Form TM No. 28, may cause a search to be made in any class to ascertain whether any marks are on record at the date of such search which may resemble any mark sent in duplicate to him by the person requesting such search and may cause that person to be informed of the result of such search (*a*).

(*a*) See Instructions, par. 8.

HOURS OF INSPECTION.

Hours of inspection.

96. The office shall be open to the public every weekday, except Saturday, between the hours of ten and four, and on Saturday between the hours of ten and one, except on the days following:—

Christmas Day; Good Friday; the day observed as His Majesty's birthday; the days observed as days of public fast or thanksgiving, or as holidays at the Bank of England; and days which may from time to time be notified by a placard posted in a conspicuous place at the office.

POWER TO DISPENSE WITH EVIDENCE.

Dispensing with evidence.

97. Where under these rules any person is required to do any act or thing, or to sign any document, or to make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the registrar, or at the office, and it is shown to the satisfaction of the registrar that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the registrar, and upon the production of such other evidence, and subject to such terms as he may think fit, to dispense with any such act or thing, document, declaration, or evidence.

AMENDMENTS.

Amendment of documents.

98. Any document or drawing or other representation of a trade mark may be amended, and any irregularity in procedure which in the opinion of the registrar may be obviated without detriment to the

interests of any person may be corrected, if the registrar think fit, and on such terms as he may direct.

ENLARGEMENT OF TIME.

99. The time prescribed by these rules for doing any act, or taking any proceeding thereunder, may be enlarged by the registrar, if he think fit, and upon such notice to other parties, and proceedings thereon, and upon such terms, as he may direct, and such enlargement may be granted though the time has expired for doing such act or taking such proceeding. Enlargement of time.

100. Whenever the last day fixed by the said Act, or by these rules, for leaving any document or paying any fee at the office shall fall on Christmas Day, Good Friday, or on a Saturday or Sunday, or any day observed as a holiday at the Bank of England, or any day observed as a day of public fast or thanksgiving, herein referred to as excluded days, it shall be lawful to leave such document or to pay such fee on the day next following such excluded day or days if two or more of them occur consecutively. Excluded days.

101. Where a time for paying a fee is limited by these rules and the person who is bound to pay such fee resides at such distance from the office that he cannot reasonably be expected to pay the fee on the date limited by the rule, the registrar, if satisfied that the omission to pay the fee has not been from any want of diligence on the part of the person whose business it is to pay it, may accept the fee even though the date for paying the fee has passed, and treat it as if received on the correct date, provided always that the fee is actually paid with such promptitude as can be expected in the circumstances. Fees paid late by persons living at distances from office.

CERTIFICATES.

102. The registrar, when required otherwise than under section 17 of the said Act to give a certificate as to any entry, matter, or thing which he is authorised by the said Act or any of these rules to make or do, may, on receipt of a request in writing, and on payment of the prescribed fee, give such certificate, but every certificate of registration so given shall have specified on the face thereof, whether the same is to be used in legal proceedings, or for the purpose of obtaining registration abroad, or for purposes other than use in legal proceedings or obtaining registration abroad (a). Certificates by registrar.

a) See Instructions, par. 20.

103. Where a mark is registered without limitation of colour it shall be lawful for the registrar to grant a certificate of its registration for the purpose of obtaining registration abroad either in the colour in which it appears upon the register or in any other colour or colours. Marks registered without limitation of colour.

104. Where a certificate of registration is desired for use in obtaining registration abroad, the registrar shall affix to the said certificate a copy of the mark, and shall state in such certificate such particulars concerning the registration of the mark as to him may seem fit, and may omit therefrom reference to any disclaimers appearing on the register. Certificates for use in obtaining registration abroad.

DECLARATIONS.

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

105. The statutory declarations required by the said Act and these rules, or used in any proceedings thereunder, shall be made and subscribed as follows:—

- (a) In the United Kingdom, before any justice of the peace, or any commissioner or other officer authorised by law in any part of the United Kingdom to administer an oath for the purpose of any legal proceeding;
- (b) In any other part of His Majesty's dominions, before any Court, judge, justice of the peace, or any officer authorised by law to administer an oath there for the purpose of a legal proceeding; and
- (c) If made out of His Majesty's dominions, before a British Minister, or person exercising the functions of a British Minister, or a Consul, Vice-Consul, or other person exercising the functions of a British Consul, or a notary public, or before a judge or magistrate.

Notice of seal of officer taking declaration to prove itself.

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

CUTLERS' COMPANY.

Applications.

107. All applications to the Cutlers' Company for registration of a trade mark, under section 63 of the said Act, shall be in duplicate, accompanied by the prescribed fees and representations. Requests to enter old corporate marks on the Sheffield Register, under section 63 (2), should be made on Form Sheffield No. 1 (a).

(a) See Instructions, par. 18.

Notice to registrar.

108. The Cutlers' Company shall, within seven days of the receipt by them of an application to register a trade mark, send the registrar one copy of such application, by way of notice thereof, together with two representations of the mark for each class for which the applicant seeks registration.

Objections by registrar to acceptance.

109. The time within which the registrar shall give notice to the Cutlers' Company of any objection he may have to the acceptance of an application for registration made to the said Company shall be one month from the date of the receipt by the registrar of the notice from the said Company of the making of the application.

Advertisement of application.

110. If no such objection is made by the registrar, the Cutlers' Company shall require the applicant to send the registrar a wood block or electrotype as the registrar may direct, and the registrar shall, if satisfied with such wood block or electrotype, advertise the application in the same manner as an application made to him at the office.

111. The manner in which the registrar shall notify to the Cutlers' Company an application and proceedings thereon made as mentioned in sub-section 8 of section 63 of the said Act shall be by sending to the Cutlers' Company a copy of the Journal containing the application of which notice is required to be given, with a note distinguishing such application.

Notification to Cutlers' Company of application.

112. The provisions of these rules as to forms, representations, the proceedings on opposition to registration, registration, and all subsequent proceedings, shall, as far as the circumstances allow, apply to all applications to register made to the Cutlers' Company, and to all proceedings consequent thereon.

Similarity of proceedings in London and Sheffield.

COTTON MARKS.

113. An application to the Manchester Branch for registration of a trade mark under section 64 of the said Act shall be in duplicate. The special forms for cotton marks contained in the Second Schedule to these rules shall be used. One of the forms of application shall be stamped and the other unstamped (a).

Application.

(a) See Instructions, par. 19.

114. The Keeper of Cotton Marks shall forthwith, on receipt of such application, send the registrar one representation of the mark applied for.

One representation to be sent to registrar.
Search.

115. As soon as may be after receiving any application the Keeper of Cotton Marks shall make a search amongst the marks on the Manchester register, in the B list, and those which have been refused and those which are pending, and shall notify to the registrar the application and the marks, if any, which he has found so nearly resembling the mark applied for as to be calculated to deceive, and together with such notification shall send a report upon the application.

116. Upon considering such report, if the registrar thinks it will be necessary to object to the acceptance of the application, he shall give notice to the applicant of a time when he can be heard, and, within one month after hearing the applicant, may give notice to the Keeper of Cotton Marks of objection to the acceptance of the application, or that he has no objection, as the case may be. If no notice of objection, or if notice of no objection is received from the registrar, the application shall be advertised in the Journal by the Manchester Branch.

Hearings.

If the applicant, being notified as aforesaid of a time for hearing, does not attend, his application shall be deemed to be refused.

117. If the mark is advertised by the Manchester Branch and is not opposed, the Keeper of Cotton Marks may call upon the applicant for the prescribed fee for the registration of such trade mark, and upon receipt thereof shall report to the registrar, who shall forthwith, if he think fit, register the same.

Registration.

118. Where under the said Act or these rules an application has to be made to the Keeper of Cotton Marks, such application shall be made and such proceedings shall be had thereon as if in these rules the expression "Manchester Branch, 48, Royal Exchange, Manchester," were substituted for the word "office," and the expression "Keeper of Cotton Marks" were substituted for the word "registrar."

Procedure.

Service of documents.

119. Where any document is by these rules directed to be served upon the registrar it shall, in respect of cotton marks, be served in duplicate upon the Keeper of Cotton Marks, who shall forthwith transmit one copy to the registrar.

Search under Rule 95.

120. Where under rule 95 a search has to be made by the Keeper of Cotton Marks, such search shall cover all marks of which there is a right of inspection under section 64 (11) of the said Act.

APPEALS TO THE COURT.

Appeal to Court.

121. When any person intends to appeal to the Court, such appeal shall be made by motion in the usual way, and no such appeal shall be entertained unless notice of motion be given within one month from the date of the decision appealed against or within such further time as the registrar shall allow.

APPEALS TO BOARD OF TRADE.

Appeal to Board of Trade.

122. When any person intends to appeal to the Board of Trade he shall, before doing so, apply to the registrar for a hearing and obtain a decision from him upon the point raised. Within one month from the date of such decision (*a*) he shall, if he is advised to appeal to the Board of Trade in any case in which an appeal is given by the said Act, leave at the office a notice of such his intention, on Form TM No. 29.

Such notice shall be accompanied—

- (1) In case the appeal concerns an application not yet advertised, by a copy of the form of application and six representations of the mark applied for and a copy of the grounds of the registrar's decision.
- (2) In case of an opposition by a copy of the decision of the registrar, and if the appeal is by the applicant also by a copy of the form of application and six representations of the mark opposed.
- (3) In other cases by a copy of the decision of the registrar and a statement of the date of the hearing before him.

a) As to date of decision, see Rule 33.

Grounds of appeal to be stated.

Transmission of notice.

123. Such notice shall also be accompanied by a statement in writing of the grounds of appeal, and of the appellant's case in support thereof.

124. A copy of the notice and all the accompanying documents shall also be forthwith sent by the appellant to the Secretary of the Board of Trade, No. 7, Whitehall Gardens, London; and where there has been an opposition before the registrar to the opponent or applicant as the case may be.

Directions by Board.

125. The Board of Trade may thereupon give such directions (if any) as they may think fit with respect to parties and evidence, or otherwise, for the purpose of the hearing of the appeal by the Board

of Trade, or for the purpose of their referring the appeal to the Court to hear and determine the same (a).

(a) Where the Board of Trade on referring an appeal to the Court under the corresponding rule of the Trade Marks Rules, 1890, directed that additional parties should be served with notice of the application to the Court with liberty to adduce further evidence, the Court declined to hear the application until the additional parties were served (*In re Extract of Meat (Baron Liebig) Photograph Brand, Ltd.*, 17 P. R. 161).

126. Where the Board of Trade intend to hear the appeal, seven days' notice, or such shorter notice as the Board of Trade may in any particular case direct, of the time and place appointed for the hearing, shall be given to the registrar and to the appellant, and where there has been an opposition before the registrar to the opponent or applicant as the case may be. Hearing of appeal.

127. No appeal shall be entertained of which notice has not been given within one month from the date of the decision appealed against, or such further time as the registrar may allow, except by special leave of the Board of Trade. No appeal unless notice duly given.

WITHDRAWAL OF APPEALS.

128. Where under section 12 (5) or section 14 (8) of the said Act an appellant is entitled to withdraw his appeal, such withdrawal shall be effected by notice given to the registrar and to the other parties, if any, to such appeal within seven days after the leave referred to in such sections has been obtained. Withdrawal of appeal.

APPLICATIONS TO AND ORDERS OF THE COURT.

129. Where an order has been made by the Court in any case under the said Act, the person in whose favour such order has been made, or such one of them, if more than one, as the registrar may direct, shall forthwith leave at the office an office copy of such order, together with Form TM No. 30 if required. The register may, if necessary, thereupon be rectified or altered by the registrar. Order of Court.

Every application to the Court under the said Act shall be served on the registrar.

130. Whenever an order is made by the Court under the said Act, the registrar may, if he thinks that such order should be made public, publish it in the Journal. Publication of order of Court.

Dated this 24th day of March, 1906.

(Signed) D. LLOYD-GEORGE,
President of the Board of Trade.

SCHEDULES.

FIRST SCHEDULE.

FEES.

The following fees shall be paid in connection with applications, registrations, and other matters under the Act. Such fees must in all cases be paid before or at the time of the doing of the matter in respect of which they are to be paid:—

	—	Corresponding Form.
	£ s. d.	
1. On application not otherwise charged to register a trade mark for one or more articles included in one class.....	0 10 0	T.M. No. 2 or 5, Cotton No. 1.
1 <i>a</i> . On application not otherwise charged to register a series of trade marks for one or more articles included in one class	0 10 0	T.M. No. 2 or 5, Cotton No. 1.
1 <i>b</i> . On request to the Cutlers' Company to enter a mark on the Sheffield Register under sect. 63, sub-sect. (2)	5 0 0	Sheffield No. 1.
1 <i>c</i> . On application to the Board of Trade under sect. 62 for leave to register a mark for goods in one class.....	0 10 0	T.M. No. 6.
1 <i>d</i> . On application to the Board of Trade under sect. 62 for leave to register a mark for goods in more than one class— In respect of every class	0 10 0	T.M. No. 5.
Total fee in no case to exceed £10 for any number of classes.		
2. On an application to registrar to state grounds of decision and materials used under sect. 12, sub-sect. 3	0 10 0	T.M. No. 4.
3. On request to be heard by the Board of Trade on application to register a name, signature, word or words under sect. 9, para. (5)	1 0 0	T.M. No. 10.
4. On notice of opposition for each application opposed, by opponent	1 0 0	T.M. No. 7.
4 <i>a</i> . On filing a counter-statement in answer to a notice of opposition, by the applicant for each application opposed	0 10 0	T.M. No. 8.
4 <i>b</i> . On the hearing of each opposition, by applicant and by opponent respectively	1 0 0	T.M. No. 9.
5. For registration of a trade mark for one or more articles included in one class	1 0 0	T.M. No. 11.
5 <i>a</i> . For registration of a series of marks for one or more articles included in one class— For the first mark	1 0 0	T.M. No. 11.
And for every other mark of the series	0 5 0	
5 <i>b</i> . For registration under sect. 62 of a mark for goods in more than one class— In respect of every class	1 0 0	T.M. No. 11.
Total fee in no case to exceed £20 for any number of classes.		

	—	Corresponding Form.
	£ s. d.	
6. Upon each entry in the register of a mark of a note that the mark is associated with a newly registered mark.....	0 1 0	—
7. On application to register a subsequent proprietor in cases of assignment or transmission of a single mark	1 0 0	T.M. No. 16 or 18.
7 <i>a</i> . On application to register a subsequent proprietor of more than one mark standing in the same name, the devolution of title being identical in each case— For the first mark	1 0 0	T.M. No. 16 or 18.
And for every other mark	0 2 0	
8. On application to change the name of a proprietor of a single mark where there has been no alteration in the proprietorship	0 5 0	T.M. No. 23.
8 <i>a</i> . On application to change the name of a proprietor of more than one mark standing in the same name, the change being the same in each case— For the first mark	0 5 0	T.M. No. 23.
And for every other mark	0 1 0	
9. For renewal of registration of a mark at expiration of last registration	1 0 0	T.M. No. 12 or 13.
9 <i>a</i> . For renewal of registration of a series of marks at the expiration of last registration— For the first mark of the series	1 0 0	T.M. No. 12 or 13.
And for every other mark of the series	0 2 0	
9 <i>b</i> . For renewal of a mark registered under sect. 62 for goods in more than one class— In respect of every class	1 0 0	T.M. No. 12 or 13.
Total fee in no case to exceed £20 for any number of classes.		
10. Additional fee under Rule 72.....	0 10 0	T.M. No. 14.
11. Additional fee under Rule 73.....	1 0 0	T.M. No. 15.
12. For altering a single entry of the address of a registered proprietor	0 5 0	T.M. No. 20.
12 <i>a</i> . For altering more than one entry of the address of a registered proprietor where the address in each case is the same and is altered in the same way— For the first entry	0 5 0	T.M. No. 20.
And for every other entry	0 1 0	
13. For every entry in the register of a rectification thereof or an alteration therein, not otherwise charged	0 10 0	T.M. No. 30.
14. For cancelling the entry or part of the entry of a trade mark upon the register on the application of the owner of such trade mark	0 5 0	T.M. No. 24 or 25.
15. On request, not otherwise charged, under sect. 12 (6) or under sect. 32	0 5 0	T.M. No. 22 or 26.
16. For a search under Rule 95	0 10 0	T.M. No. 28.
17. For certificate of registrar of registration to be used in legal proceedings.....	1 0 0	T.M. No. 34.
18. For certificate of registrar of the registration of a trade mark to be used for the purpose of obtaining registration abroad	0 5 0	T.M. No. 33.
18 <i>a</i> . For certificate of registrar of the registration of a series of marks for the purpose of obtaining registration abroad	0 10 0	T.M. No. 33.

APPENDIX A.

	£	s.	d.	Corresponding Form.
19. For certificate of registrar other than certificate under sect. 17 or certificate of registration to be used in legal proceedings, or for the purpose of obtaining registration abroad ..	1	0	0	T.M. No. 31 or 32.
20. For certificate of Keeper of Cotton Marks	0	5	0	Cotton No. 3 or 4.
21. On appeal from registrar to Board of Trade in respect of each decision appealed against by appellant	1	0	0	T.M. No. 29.
22. On an application to the registrar under sect. 23 ..	5	0	0	T.M. No. 21.
23. On an application to the registrar for leave to add to or alter a single mark.....	1	0	0	T.M. No. 27.
23 <i>a</i> . On an application to the registrar for leave to add to or alter more than one mark of the same proprietor, the addition or alteration to be made, in each case being the same—				
For the first mark	1	0	0	T.M. No. 27.
And for every other mark	0	10	0	
24. For inspecting register in connection with any particular trade mark, for every quarter of an hour.....	0	1	0	—
25. For making a search amongst the classified representations of trade marks, for every quarter of an hour	0	1	0	--
26. For office copy of documents for every 100 words (but never less than 1s.)	0	0	4	--
27. For certifying office copies MS. or printed matter...	0	10	0	--
28. In cases where the wood block or electrotype of the trade mark exceeds two inches in breadth or depth, or in breadth and depth—				
For every inch or part of an inch over two inches in breadth	0	2	0	—
For every inch or part of an inch over two inches in depth	0	2	0	—

The fees to be paid on any proceeding at the Manchester Branch and at Sheffield (except as specially provided above) shall be the same as for the similar proceeding at the London office.

For the purpose of these fees (except as specially provided above) every mark of a series under sect. 66 of the Patents Designs and Trade Marks Act, 1883, or sect. 26 of this Act, shall be deemed to be a mark separately registered.

Dated this 24th day of March, 1906.

(Sd.) D. LLOYD-GEORGE,
President of the Board of Trade.

Approved

(Sd.) J. HERBERT LEWIS,
CECIL NORTON,
Lords Commissioners
of His Majesty's Treasury.

SECOND SCHEDULE.

FORMS.

	Page.	Corresponding Fee.
		No.
Authorisation	433	—
Application for registration of trade mark	433	1, 1a
Additional representation of trade mark	434	—
Request for statement of grounds of decision under sect. 12 (3)	434	2
Application for registration of trade mark under sect. 9 (5)	435	1
Application for registration of trade mark under sect. 62	436	1c or 1d
Opposition to application for registration	437	4
Counter-statement to opposition to application for registration	437	4a
Application for hearing in cases of opposition	438	4b
Application for hearing by the Board of Trade under sect. 9 (5)	438	3
Notice of non-completion of registration	438	—
Fee for registration of a trade mark	439	5, 5a, or 5b
Certificate of registration under sect. 17	439	—
Renewal of registration	439	9, 9a, or 9b
First notice before removal of mark from register, under sect. 30	440	—
Second notice before removal of mark from register, under sect. 30	440	—
Renewal of registration after notice has been given by registrar	441	9, 9a, or 9b
Additional fee to accompany renewal fee within one month after advertisement of non-payment of renewal fee	441	10
Restoration of trade mark where removed for non-payment of fee	441	11
Request by registered proprietor and assignee to register assignee as subsequent proprietor	442	7, 7a
Declaration by assignee in support of request by registered proprietor and assignee to register assignee as subsequent proprietor	442	—
Request to enter name of subsequent proprietor	443	7, 7a
Declaration in support of request to enter name of subsequent proprietor	443	—
Application for alteration of address on register	444	12, 12a
Application for apportionment of trade marks	444	22
Correction of clerical error or amendment of application.	444	15

	Page.	Corresponding Fee.
		No.
Request to enter change of name of registered proprietor.....	445	8, 8 ^a
Application to cancel entry on register	445	14
Request to strike out goods from those for which a mark is registered	446	14
Request to enter disclaimer, &c.	446	15
Application to add to or alter a trade mark	446	23 or 23 ^a
Request for search under Rule 95.....	447	16
Request to enter a mark on the Sheffield Register under sect. 63 (2)	447	16
Application for registration of cotton mark	448	1
Additional representation of cotton mark	449	—
Request for certificate under sect. 64 (12)	450	20
Request for certificate of Keeper of Cotton Marks	450	20
Certificate under sect. 64 (12)	451	—
General certificate (cotton marks) other than under sect. 64 (12)	451	—
Appeal from registrar to Board of Trade	452	21
Notice of order of Court for alteration of register.....	452	13
Request for general certificate	453	19
Request for certificate of refusal to register	453	19
Request for certificate of registration for use in obtaining registration abroad	454	18 or 18 ^a
Request for certificate of registration for use in legal proceedings	454	17

FORM TM No. 1.

TRADE MARKS ACT, 1905.

FORM OF AUTHORISATION.

SIR, I beg to inform you that I have appointed (a)
of
to act as my agent for (b)

I am, Sir,
Your obedient Servant,
(c)
Address . . .

(a) Here insert name and address of agent.
(b) Here state the particular purpose for which the agent is appointed.
(c) To be signed by the person appointing the agent.

Dated the . . . day of . . . , 19 . . .

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.

FORM TM No. 2.

TRADE MARKS ACT, 1905.

APPLICATION FOR REGISTRATION OF TRADE MARK
(other than Cotton Mark).

[TRADE MARKS.
10s.]

One representation to be fixed within this square, and four others to be sent on separate Forms TM No. 3.

Representations of a larger size may be folded, but must then be mounted upon linen and affixed hereto.

Application is hereby made for registration of the accompanying Trade Mark in Class . . . in respect of (a)

in the name of (b)

[Address and description]
trading as

who claims to be the proprietor thereof (c).

do not claim the registration of this Trade Mark under the special provisions of paragraph 5 of section 9 of the Trade Marks Act, 1905, in regard to names, signatures, or words.

(Signed)

Dated the . . . day of . . . , 19 . . .

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.

(a) Only goods contained in one and the same class should be set out here. A separate application form is required for each separate class.

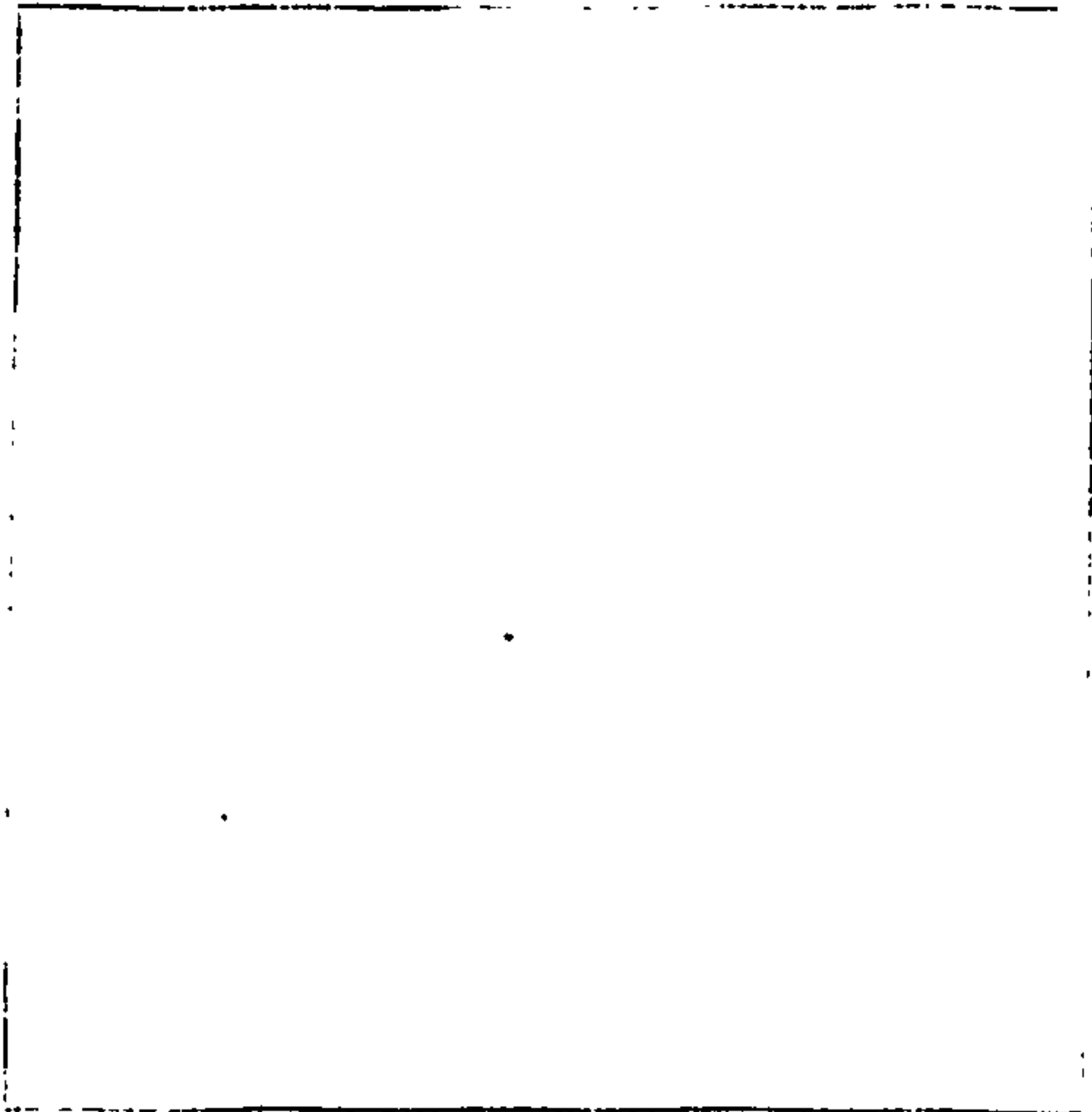
(b) Here insert legibly the full name, address and description of the individual, firm, or company. Add trading style (if any).

(c) Alter to "claim to be the proprietors thereof" in the case of a firm or company.

FORM TM No. 3.

TRADE MARKS ACT, 1905.

ADDITIONAL REPRESENTATION OF TRADE MARK, TO ACCOMPANY APPLICATION FOR REGISTRATION (other than Cotton Mark).



One representation of the trade mark to be affixed within this square.
It must correspond *exactly*, in all respects with the representation affixed to the Application Form.

Any representation of a larger size than foolscap may be folded, but must then be mounted upon linen and affixed hereto.

Four of these Additional Representations of the Trade Mark must accompany *each* Form of Application.

FORM TM No. 4.

TRADE MARKS ACT, 1905.

[TRADE MARKS.
10s.]

REQUEST FOR STATEMENT OF GROUNDS OF DECISION UNDER SECTION 12 (3).

You are hereby requested under sub-section 3 of section 12 of the Trade Marks Act, 1905, and Rule 33 made thereunder to state in writing the grounds of your decision, dated the day of 19 , after the hearing on the day of 19 , and the materials used by you in arriving at such decision.

(Signed)

Dated the day of , 19 .

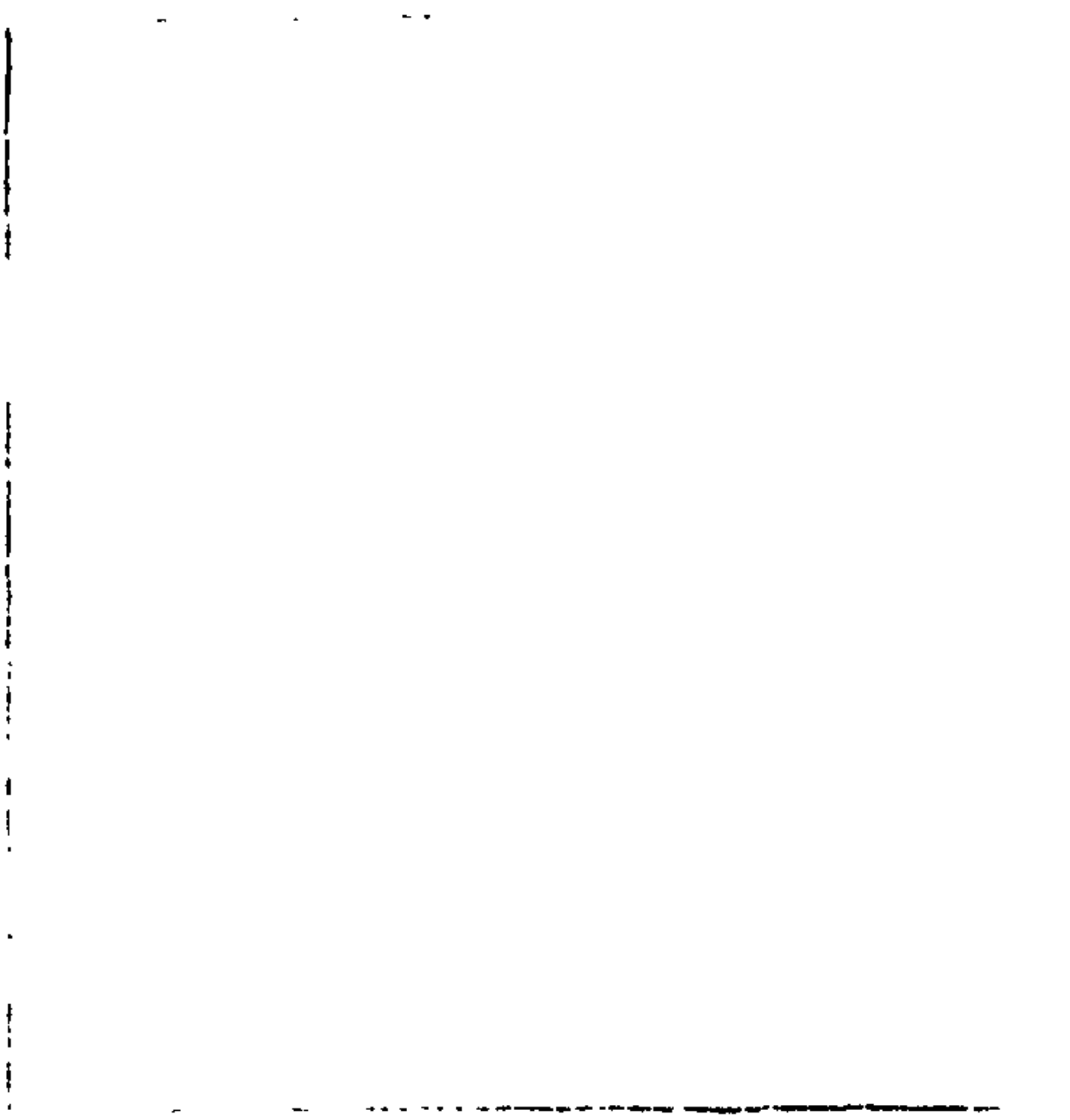
*To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

FORM TM No. 5.

TRADE MARKS ACT, 1905.

[TRADE MARKS.
10s.]

SPECIAL APPLICATION FOR REGISTRATION OF TRADE MARK
UNDER PARAGRAPH 5 OF SECTION 9.



One representation to be fixed within this square, and four others to be sent on separate Forms TM No. 3.

Application is hereby made for registration of the accompanying Trade Mark in Class _____, in respect of (a)

in the name of (b)
[address and description]

trading as _____ who claims to be the proprietor thereof (c) and desires an order of the Board of Trade or the Court directing registration of the same.

(Signed)

Dated the _____ day of _____, 19__.

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.

(a) Only goods contained in one and the same class should be set out here. A separate application form is required for each separate class.

(b) Here insert legibly the full name, address and description of the individual, firm, or company. Add trading style (if any).

(c) Alter to "claim to be the proprietor thereof" in the case of a firm or company.

[TRADE MARKS.
Fee 1c or 1d.] FORM TM No. 6.

TRADE MARKS ACT, 1905.

SPECIAL APPLICATION FOR REGISTRATION OF TRADE MARK UNDER
SECTION 62.

(To be accompanied by an unstamped duplicate.)

One representation to be fixed within this square, and six others to be sent on separate half-sheets of fool-cap.

Representations of a larger size may be folded, but must then be mounted upon linen and affixed hereto.

(a) Only goods contained in one and the same class should be set out here. A separate application form is required for each separate class.

Application is hereby made for registration of the accompanying trade mark in Class _____, in respect of (a) _____ in the name of _____ of [address and description] who desire the Board of Trade under section 62 of the said Act to permit the registration thereof.

Dated the _____ day of _____, 19____. (Signed)

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.

FORM TM No. 9.

[TRADE MARKS.
£1.]

TRADE MARKS ACT, 1905.

FORM OF APPLICATION FOR HEARING BY THE REGISTRAR
IN CASES OF OPPOSITION.

SIR,

In reply to your Notice dated the _____ giving
of (a) _____(a) Here insert
address.a date on which you will hear the arguments in the case of Opposition
No. _____ to Application No. _____, I beg to say that I intend to
appear before you on the date you have fixed, namely the _____ day
of _____, 19 ____.I am,
Sir,
Your obedient Servant,*To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

FORM TM No. 10.

[TRADE MARKS.
£1.]

TRADE MARKS ACT, 1905.

Application is hereby made to the Board of Trade to hear the matter
of the Application No. _____ under Rule 38.

* Signature.

Dated this _____ day of _____, 19 ____.

*To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

FORM O No. 1.

NOTICE OF NON-COMPLETION OF REGISTRATION.

No. _____

The Registrar has to call your attention to Section 18 of the Trade
Marks Act, 1905, and to Rule 62 of the Trade Marks Rules made
thereunder. The section and the rule are printed on the back hereof.Your application numbered as above was made on the
day of _____ 19 ____ . Registration has not been completed by
reason of your default. Unless it is completed within _____ days from
this date the application will be treated as abandoned.

Dated this _____ day of _____, 19 ____.

*To**The Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

FORM TM No. 11.

TRADE MARKS ACT, 1905.

FEE FOR REGISTRATION OF A TRADE MARK.

[TRADE MARKS.
Fee 5 or 5a.]

SIR.

In reply to your request I hereby transmit the prescribed fee for
the registration of the Trade Mark No. in Class .

I am,
Sir,
Your obedient Servant,

*

• signature.

Dated the day of , 19 .

*To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

FORM O No. 2.

TRADE MARKS ACT, 1905.

CERTIFICATE OF REGISTRATION UNDER SECTION 17.

To

I hereby certify, pursuant to Rule 67 of the Rules under the above
Act, that the Trade Mark in your application No. was duly
advertised in the *Trade Marks Journal* and has been registered in your
name in Class , in respect of the goods specified by you.

Witness my hand this day
of , 19 .

(Seal of Patent Office.)

Registrar.

*The Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

FORM TM No. 12.

TRADE MARKS ACT, 1905.

RENEWAL OF REGISTRATION BEFORE NOTICE GIVEN.

[TRADE MARKS.
Fee 9 or 9a.]

I hereby leave the prescribed fee of for the renewal
of the registration of the Trade Mark No. , in
Class .

Dated the day of , 19 .

*To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

N.B.—This Form must be indorsed with the name and address of
the person leaving the same.

FORM O No. 3.

TRADE MARKS ACT, 1905.

NOTICE BEFORE REMOVAL OF TRADE MARK FROM THE REGISTER,
UNDER SECTION 30.

The Registrar hereby gives you notice that in conformity with the provisions of section 30 of the above Act (printed at back hereof), your Trade Mark No. _____, registered in Class _____, will be removed from the Trade Marks Register, unless the prescribed fee of _____ (payable by Form TM No. 13) be received at this Office *before* the _____ day of _____, 19____, on which date the existing registration will expire.

A stamped Form TM No. 13, for payment of the fee, may be obtained as directed at the back of this Notice, *but cannot be obtained from this Office.*

Dated this _____ day of _____, 19____.

To

*The Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

FORM O No. 4.

TRADE MARKS ACT, 1905.

SECOND NOTICE.

NOTICE BEFORE REMOVAL OF TRADE MARK FROM THE REGISTER,
UNDER SECTION 30.

The Registrar hereby gives you notice that, in conformity with the provisions of section 30 of the above Act (printed at back hereof), your Trade Mark No. _____, registered in Class _____, will be removed from the Trade Marks Register, unless the prescribed fee of _____ (payable by Form TM No. 13) be received at this Office *before* the _____ day of _____, 19____, on which date the existing registration will expire.

If the above fee be not paid *before* the date above named, the Trade Mark will, after the end of one month from the date on which the omission to pay the fee has been advertised in the *Trade Marks Journal*, be removed from the Trade Marks Register, unless an *additional* fee of 10s. (payable by Form TM No. 14) be remitted.

Stamped Forms for payment of renewal fees may be obtained as directed at the back of this Notice, *but cannot be obtained from this Office.*

Dated this _____ day of _____, 19____.

To

*The Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

Cheques, money orders, or cash cannot be accepted in payment of fees.

Cheques, money orders, or cash cannot be accepted in payment of fees.

FORM TM No. 13.

TRADE MARKS ACT, 1905.

[TRADE MARKS.
Fee 9 or 9a.]

RENEWAL OF REGISTRATION OF MARK AFTER NOTICE.

SIR,

In pursuance of the notice received from you, I hereby transmit the prescribed fee of _____ for Renewal of Registration of the Trade Mark No. _____, in Class _____.

Dated the _____ day of _____, 19 ____.

To the Registrar,

Patent Office, Trade Marks Branch,

25, Southampton Buildings, Chancery Lane, London, W.C.

N.B.—This Form must be indorsed with the name and address of the person transmitting the same.

FORM TM No. 14.

TRADE MARKS ACT, 1905.

[TRADE MARKS.
10s.]

ADDITIONAL FEE OF 10s. TO ACCOMPANY RENEWAL FEE (FORM TM No. 13), WITHIN ONE MONTH AFTER ADVERTISEMENT OF NON-PAYMENT OF RENEWAL FEE.

SIR,

In pursuance of the notices issued by you, I hereby transmit the additional fee of 10s. (along with Form TM No. 13) for the Renewal of the Registration of the Trade Mark No. _____ in Class _____.

Dated the _____ day of _____, 19 ____.

To the Registrar,

Patent Office, Trade Marks Branch,

25, Southampton Buildings, Chancery Lane, London, W.C.

N.B.—This Form must be indorsed with the name and address of the person transmitting the same.

FORM TM No. 15.

TRADE MARKS ACT, 1905.

[TRADE MARKS.
£1.]

RESTORATION OF TRADE MARK WHERE REMOVED FOR NON-PAYMENT OF FEE.

[To accompany Form TM No. 13.]

SIR,

In pursuance of the notices issued by you, I hereby transmit the additional fee of £1 (along with Form TM No. 13) for restoration to the Trade Marks Register of the Trade Mark No. _____ in Class _____.

Dated the _____ day of _____, 19 ____.

To the Registrar,

Patent Office, Trade Marks Branch,

25, Southampton Buildings, Chancery Lane, London, W.C.

N.B.—This Form must be indorsed with the name and address of the person transmitting the same.

FORM TM No. 16.

TRADE MARKS ACT, 1905.

[TRADE MARKS.
Fee 7 or 7*a*.]JOINT REQUEST BY REGISTERED PROPRIETOR AND ASSIGNEE TO REGISTER
THE ASSIGNEE AS SUBSEQUENT PROPRIETOR OF A TRADE MARK.

(*a*) Name of Registered Proprietor. We, (*a*)
 of (*b*)
 (*b*) Address of Registered Proprietor. and (*c*)
 of (*d*)
 (*c*) Name of Assignee. hereby request, under Rule 76, that the name of (*e*)
 (*d*) Address of Assignee. , carrying on business as (*f*)
 (*e*) Name of Assignee. at (*g*) , may be entered in the
 (*f*) Trade or business of Assignee. Register of Trade Marks as proprietor of the Trade Mark No.
 in Class .
 (*g*) Address of Assignee. (*h*)
 (*h*) Signature of Registered Proprietor. (*i*)
 (*i*) Signature of Assignee.

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.

FORM TM No. 17.

TRADE MARKS ACT, 1905.

FORM OF DECLARATION ONLY TO BE FURNISHED WHEN REQUESTED BY
REGISTRAR BY ASSIGNEE IN SUPPORT OF FORM TM No. 16.

(*a*) Name of Assignee. I (*a*)
 (*b*) Address of Assignee. of (*b*)
 do hereby solemnly and sincerely declare that the Trade Mark No.
 (*c*) Name of Assignor. in Class has been assigned to me by (*c*)
 (*d*) Address of Assignor. of (*d*) together with the goodwill of the business
 concerned in the goods for which it has been registered, and that I
 have accepted such Assignment.

(*e*) And I make this solemn declaration conscientiously believing the
 same to be true and by virtue of the provisions of the Statutory
 Declarations Act, 1835.

This paragraph is not required when the declaration is made out of the United Kingdom.
 Declared at (*f*)
 this day of , 19 . }
 Before me (*g*)
 (*h*)

(*g*) Signature of Authority.
 (*h*) Title of Authority.

[If the declaration be made before any authority other than a Justice of the Peace, it will require to be stamped with a 2*s.* 6*d.* impressed Inland Revenue Stamp.]

FORM TM No. 18.

TRADE MARKS ACT, 1905.

[TRADE MARKS.
Fee 7 or 7*0*.]

REQUEST TO ENTER NAME OF SUBSEQUENT PROPRIETOR OF TRADE MARK
UPON THE REGISTER.

I, (a)

(a) Or We.
Here insert
name, address,
and description.

hereby request that you will enter (b) name (c) in the
Register of Trade Marks as proprietor of the Trade Mark No.
in Class

(b) My or our.
(c) Or names.

(d) entitled to the said Trade Mark and to the goodwill
of the business concerned in the goods with respect to which the said
Trade Mark is registered.

(d) I am or
We are.

Accompanying this Request is a statement of (e) case.

(e) My or Our.

* Signature.

Dated this day of , 19 .

To the Registrar,

Patent Office, Trade Marks Branch,

25, Southampton Buildings, Chancery Lane, London, W.C.

FORM TM No. 19.

TRADE MARKS ACT, 1905.

FORM OF DECLARATION (ONLY TO BE FURNISHED WHEN REQUESTED BY
REGISTRAR) IN SUPPORT OF STATEMENT OF CASE ACCOMPANYING
FORM TM No. 18.

I, of ,
do hereby solemnly and sincerely declare that the particulars set out
in the statement of case, exhibit marked and left by me in con-
nection with my request to be registered as subsequent proprietor of
the Trade Mark, No. , in Class , are true and comprise every
material fact and document affecting the proprietorship of the said
Trade Mark as above claimed.

(a) And I make this solemn declaration conscientiously believing the
same to be true, and by virtue of the provisions of the Statutory
Declarations Act, 1835.

(a) This para-
graph is not re-
quired when the
declaration is
made out of the
United King-
dom.

Declared at (b)
this day of , 19 .)
Before me,
(c)

(b) To be signed
here by the per-
son making the
declaration.

(c) Signature
and title of the
authority before
whom the decla-
ration is made.

To the Registrar,

Patent Office, Trade Marks Branch,

25, Southampton Buildings, Chancery Lane, London, W.C.

[If the declaration be made before any authority other than a Justice
of the Peace it will require to be stamped with a 2*s.* 6*d.* impressed
Inland Revenue Stamp.]

FORM TM No. 20.

[TRADE MARKS.
Fee 12 or 12*a*.]

TRADE MARKS ACT, 1905.

NOTICE OF APPLICATION FOR ALTERATION OF ADDRESS ON REGISTER
OF TRADE MARKS.In the matter of the Trade Mark,
No. registered in Class .I , of , the registered proprietor of the Trade Mark
numbered as above desire that my address on the Register of Trade
Marks be altered to

Dated this day of , 19 .

* Signature of
Proprietor.

*

*To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

FORM TM No. 21.

[TRADE MARKS.
£5.]

TRADE MARKS ACT, 1905.

APPLICATION TO PERMIT AN APPORTIONMENT OF TRADE MARKS.

In the matter of the Registered Trade
Marks Nos. .We, being the parties interested within the meaning of section 23
of the Trade Marks Act, 1905, in certain marks of , who has
ceased to carry on business, request you to permit an apportionment
of those marks amongst the persons in fact continuing the business.
With this application we send a case in pursuance of Rule 87.

(Signed) .

(Signed) .

Dated this day of , 19 .

*To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

FORM TM No. 22.

[TRADE MARKS.
5*s*.]

TRADE MARKS ACT, 1905.

FORM OF REQUEST FOR CORRECTION OF CLERICAL ERROR OR FOR
PERMISSION TO AMEND APPLICATION UNDER SECTION 12 (6) OR
SECTION 32 (1).

SIR,

I hereby request that

*

Dated this day of , 19 .

* Signature.

*To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

FORM TM No. 23.

TRADE MARKS ACT, 1905.

[TRADE MARKS.
Fee 8 of 8*u.*]REQUEST TO ENTER CHANGE OF NAME OF REGISTERED PROPRIETOR
OF TRADE MARK UPON THE REGISTER.

I, (a)

hereby request that you will enter (b) _____ name (c) in the
Register of Trade Marks as proprietor of the Trade Mark No.
in Class _____

(d) _____ entitled to the said Trade Mark and to the goodwill of the
business concerned in the goods with respect to which the said Trade
Mark is registered.

There has been no change in the actual proprietorship of the said
Trade Mark, but (e)

Dated this _____ day of _____, 19 _____

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.

(a) Or We.
Here insert
name, address,
and description.
(b) My or Our.
(c) Or Names.

(d) I am or We
are.

(e) Here state
the circum-
stances under
which the change
of name took
place.

* Signature.

FORM TM No. 24.

TRADE MARKS ACT, 1905.

[TRADE MARKS.
5*s.*]FORM OF APPLICATION BY PROPRIETOR OF REGISTERED TRADE MARK TO
CANCEL ENTRY ON REGISTER.

Trade Mark No. _____, Class _____, advertised in *Trade Marks*
Journal, No. _____, page _____.

Name of registered proprietor _____

Place of business _____

Description _____

I, the undersigned _____ of _____ [or I, the undersigned
_____ a member of the firm of _____ of _____ on behalf of my
said firm] _____ apply that the entry upon the Register of Trade
Marks of the Trade Mark No. _____ in Class _____ may be cancelled.

Dated this _____ day of _____, 19 _____

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.

* Signature.

FORM TM No. 25.

[TRADE MARKS
58.]

TRADE MARKS ACT, 1905.

REQUEST TO STRIKE OUT GOODS FROM THOSE FOR WHICH A TRADE MARK
IS REGISTERED.

I, _____ of _____, hereby request that you will strike out
from the goods for which the Trade Mark No. _____ is registered in
Class _____.

• Signature.

Dated this _____ day of _____, 19 ____.

*To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

FORM TM No. 26.

[TRADE MARKS.
58.]

TRADE MARKS ACT, 1905.

REQUEST TO ENTER DISCLAIMER OR MEMORANDUM RELATING TO A
TRADE MARK.

I, _____, of _____, hereby request that you will enter in the
Register in connection with Trade Mark No. _____, in Class _____,
the following _____, namely—

• Signature.

Dated this _____ day of _____, 19 ____.

*To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

FORM TM No. 27.

[TRADE MARKS.
Fee 23 or 23a.]

TRADE MARKS ACT, 1905.

APPLICATION UNDER SECTION 34 TO ADD TO OR ALTER A TRADE MARK.

In the matter of the Trade Mark
No. _____, in Class _____.

Application is hereby made on behalf of the registered proprietor of
the Trade Mark numbered as above to alter it in the following parti-
culars, that is to say—

(Here fill in full
particulars.)

Six copies of the mark as it will appear when so altered are filed
herewith.

Dated this _____ day of _____, 19 ____.

Signed _____

*To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

FORM TM No. 28.

TRADE MARKS ACT, 1905.

[TRADE MARKS.
10s.]

REQUEST FOR SEARCH UNDER RULE 95.

You are hereby requested to search under Rule 95 in Class to ascertain whether any Trade Marks are on record which resemble the Trade Mark sent herewith in duplicate each mounted on a half-sheet of foolscap.

* Signature.
† Address.

Dated this *
 †
 day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.

FORM SHEFFIELD No. 1.

TRADE MARKS ACT, 1905.

[CORPORATE
MARK. £5.]

REQUEST TO ENTER A MARK UNDER SECTION 63, SUB-SECTION (2).

You are hereby requested to register the accompanying Old Corporate Mark in Class in respect of in the name of , who claims to be the proprietor thereof.

(Signed)

Dated this day of , 19 .

To the Cutlers' Company,
Cutlers' Hall,
Sheffield.

COTTON No. 1.

[STAMP. 10s.]

TRADE MARKS ACT, 1905.

COTTON MARKS.

APPLICATION FOR REGISTRATION OF TRADE MARK.

*(See the annexed Extracts from the Trade Marks Act.)**(To be accompanied by an unstamped duplicate of this Form, and also by four Additional Representations on Form Cotton No. 2.)*

One representation to be fixed within the square.

Representations of a larger size may be folded, but must then be mounted upon cloth and affixed hereto.

(a) Insert the class.

(b) Insert "all goods included in this class" or, if it is not desired that the registration should cover the whole class, the description of the goods.

Only goods contained in one and the same class may be set out here. A separate application form is required for each separate class.

(c) If the applicant is outside the U.K. an address for service in the U.K. must be given before the application can be proceeded with.

(d) Strike out the alternative paragraph which does not apply to the case.

Application is hereby made for registration of the accompanying Trade Mark in Class (a) in respect of (b) , in the Name of , Address and description (c) , Trading as , who claim to be the proprietor thereof.

No claim of exclusive right is made to any of the letterpress appearing on the said Trade Mark, except in so far as it consists of the applicant's own name and address, or the foreign equivalent thereof.

The said Trade Mark has not hitherto been used by the applicant upon or in connection with the above-mentioned goods, but is proposed to be so used [or (d) The said Trade Mark has been used by the applicant (and/or by the predecessors in business of the applicant) upon or in connection with the above-mentioned goods since the , 19].

(Signed)

Dated the day of , 19 .

To the Keeper of Cotton Marks,
Manchester Branch of the Trade Marks Registry,
48, Royal Exchange, Manchester.

COTTON No. 2.

TRADE MARKS ACT, 1905.

COTTON MARKS.

ADDITIONAL REPRESENTATION OF TRADE MARK TO ACCOMPANY
APPLICATION FOR REGISTRATION.

One representation of the Trade Mark to be affixed within this square.

It must correspond *exactly*, in all respects, with the representation affixed to the application on "Form Cotton No. 1."

Any representation of a larger size than foolscap may be folded, but must then be mounted upon cloth and affixed hereto.

Class .

Description of Goods .

Length of User (if any) .

Name of Applicant .

Address .

Description .

No claim of exclusive right is made to any of the letterpress appearing on the mark except in so far as it consists of the applicant's own name and address, or the foreign equivalent thereof.

Four of these additional representations of the Trade Mark must accompany *each* form of application.

COTTON No. 3.

[STAMP. 5s.]

TRADE MARKS ACT, 1905.

COTTON MARKS.

REQUEST FOR CERTIFICATE UNDER SUB-SECTION (12) OF SECTION 64.

SIR,

You are hereby requested to issue a certified copy of the application numbered and dated the day of , 19 , for registration in Class of the Cotton Mark of which a fac-simile is sent herewith, setting forth in such certificate the length of time of user (if any) of such mark as stated on the application, and any other particulars you may deem necessary.

Dated this day of , 19 .

(Signed)

Address

*To the Keeper of Cotton Marks,
Manchester Branch of the Trade Marks Registry,
48, Royal Exchange, Manchester.*

COTTON No. 4.

[STAMP. 5s.]

TRADE MARKS ACT, 1905.

COTTON MARKS.

REQUEST FOR CERTIFICATE OF KEEPER OF COTTON MARKS AS TO A
TRADE MARK ENTERED IN THE MANCHESTER REGISTER.

In the matter of the Trade Mark
No. in Class .

SIR,

I hereby request you to furnish me with your Certificate of Registration of the mark numbered as above for use*

Dated this day of , 19 .

(Signed)

Address

*To the Keeper of Cotton Marks,
Manchester Branch of the Trade Marks Registry,
48, Royal Exchange, Manchester.*

* Here state the purpose for which the certificate is required, i.e., whether for use in legal proceedings, or for obtaining registration abroad, or for what other purpose.

MB No. 1.

TRADE MARKS ACT, 1905.

COTTON MARKS.

CERTIFICATE UNDER SUB-SECTION (12) OF SECTION 64.

Manchester Branch of the Trade Marks Registry,
48, Royal Exchange,
Manchester.

It is hereby certified by the Keeper of Cotton Marks, that a true copy of the application numbered _____ and dated the _____ day of _____, 19____, for registration in Class _____ of the Cotton Mark therein referred to is contained in the paper hereto annexed and that a fac-simile of the said mark is attached thereto, and that the length of time of user of such mark as stated on the application is

that the said mark is on deposit at this office. and Space for any other particulars the Keeper may deem necessary.

Witness my hand this _____ day
of _____, 19____.

(Seal of Patent Office.)

Keeper of Cotton Marks.

MB No. 2.

TRADE MARKS ACT, 1905.

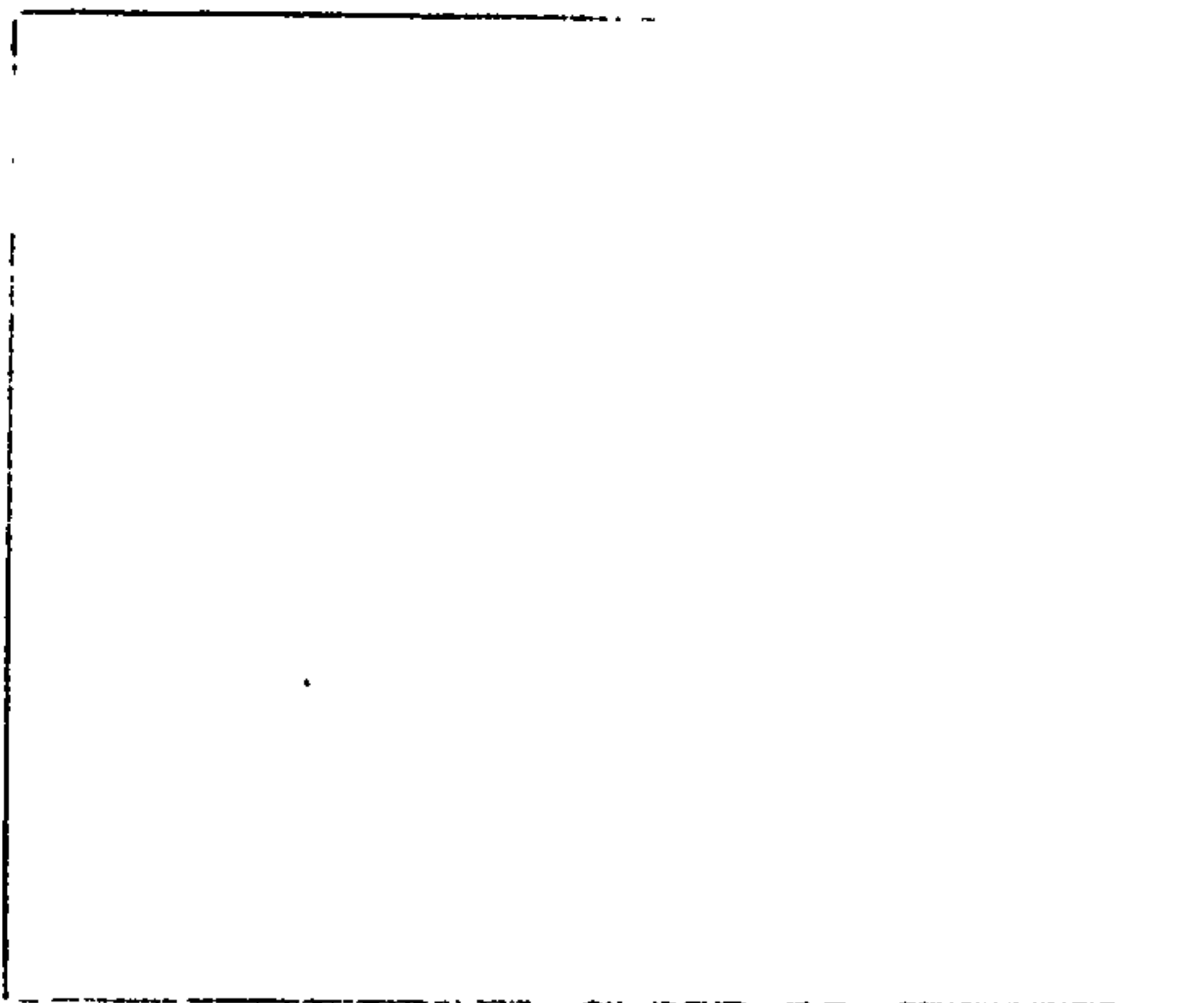
COTTON MARKS.

GENERAL CERTIFICATE.

Manchester Branch of the Trade Marks Registry,
48, Royal Exchange,
Manchester.

It is hereby certified by the Keeper of Cotton Marks that

REPRESENTATION OF TRADE MARK.



Witness my hand this _____ day of _____, 19____.

(Seal of Patent Office.)

Keeper of Cotton Marks.

FORM TM No. 31.

TRADE MARKS ACT, 1905.

[TRADE MARKS.
£1.]

REQUEST FOR GENERAL CERTIFICATE OF REGISTRAR (OTHER THAN
CERTIFICATE FOR USE IN LEGAL PROCEEDINGS OR FOR USE IN
OBTAINING REGISTRATION ABROAD).

In the Matter of the Trade Mark No.
in Class .

SIR,
I,

of
hereby request you to furnish me with your Certificate that (a)

(a) Here set
out the particu-
lars which the
registrar is re-
quested to cer-
tify.

(b)

Dated this day of , 19 .

(b) Signature.

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.

FORM TM No. 32.

TRADE MARKS ACT, 1905.

[TRADE MARKS.
£1.]

REQUEST FOR CERTIFICATE OF REFUSAL TO REGISTER A TRADE MARK.

In the matter of an Application
for registration of a Trade Mark,
No. in Class .

SIR,
I,

of
the Applicant in the above matter, hereby request you to furnish me
with your Certificate of Refusal to register the said Trade Mark.

*

Dated this day of , 19 .

* Signature of
applicant.

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.

THIRD SCHEDULE.

CLASSIFICATION OF GOODS.

Illustrations.

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

Class 1.

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

Such as—

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

Class 2.

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

Such as—

Artificial manure.
Cattle medicines.
Deodorisers.
Vermin destroyers.

Class 3.

Chemical substances prepared for use in medicine and pharmacy.

Such as—

Cod liver oil.
Medicated articles.
Patent medicines.
Plasters.
Rhubarb.

Class 4.

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

Such as—

Resins.
Oils used in manufactures and not included in other classes.
Dyes, other than mineral.
Tanning substances.
Fibrous substances (*e.g.*, cotton, hemp, flax, jute).
Wool.
Silk.
Bristles.
Hair.
Feathers.
Cork.
Seeds.
Coal.
Coke.
Bone.
Sponge.

Class 5.

Unwrought and partly wrought metals used in manufacture.

Such as—

Iron and steel, pig or cast.

Iron, rough.

„ bar and rail, including rails for railways.

„ bolt and rod.

„ sheet, and boiler and armour plates.

„ hoop.

Lead, pig.

„ rolled.

„ sheet.

Wire.

Copper.

Zinc.

Gold, in ingots.

Class 6.

Machinery of all kinds, and parts of machinery, except agricultural and horticultural machines included in Class 7.

Such as—

Steam engines.

Boilers.

Pneumatic machines.

Hydraulic machines.

Locomotives.

Sewing machines.

Weighing machines.

Machine tools.

Mining machinery.

Fire engines.

Class 7.

Agricultural and horticultural machinery, and parts of such machinery.

Such as—

Ploughs.

Drilling machines.

Reaping machines.

Thrashing machines.

Churns.

Cyder presses.

Chaff cutters.

Class 8.

Philosophical instruments, scientific instruments, and apparatus for useful purposes. Instruments and apparatus for teaching.

Such as—

Mathematical instruments.

Gauges.

Logs.

Spectacles.

Educational appliances.

Class 9.

Musical instruments.

Class 10.

Horological instruments.

Class 11.

Instruments, apparatus, and contrivances, not medicated, for surgical or curative purposes, or in relation to the health of men or animals.

Such as—
 Bandages.
 Friction gloves.
 Lancets.
 Fleams.
 Enemas.

Class 12.

Cutlery and edge tools.

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

Class 13.

Metal goods not included in other classes.

Such as—
 Anvils.
 Keys.
 Basins (metal).
 Needles.
 Hoes.
 Shovels.
 Corkscrews.

Class 14.

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

Such as—
 Plate.
 Clock cases and pencil cases of such metals.
 Sheffield and other plated goods.
 Gilt and ormolu work.

Class 15.

Glass.

Such as—
 Window and plate glass.
 Painted glass.
 Glass mosaic.
 Glass beads.

Class 16.

Porcelain and earthenware.

Such as—
 China.
 Stoneware.
 Terra Cotta.
 Statuary porcelain.
 Tiles.
 Bricks.

Class 17.

Manufactures from mineral and other substances for building or decoration.

Such as—
 Cement.
 Plaster.
 Imitation marble.
 Asphalt.

Class 18.

Engineering, architectural, and building contrivances.

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

Class 19.

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

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

Class 20.

Explosive substances.

Such as—
 Gunpowder.
 Gun-cotton.
 Dynamite.
 Fog-signals.
 Percussion caps.
 Fireworks.
 Cartridges.

Class 21.

Naval architectural contrivances and naval equipments not included in Classes 19 and 20.

Such as—
 Boats.
 Anchors.
 Chain cables.
 Rigging.

Class 22.

Carriages.

Such as—
 Railway carriages.
 Waggon.
 Railway trucks.
 Bicycles.
 Bath chairs.

Class 23.

(a) Cotton yarn.
 (b) Sewing cotton.

Class 24.

Cotton piece goods of all kinds.

Such as—
 Cotton shirtings.
 Long cloth.

Class 25.

Cotton goods not included in
 Classes 23, 24, or 38.

Such as—
 Cotton lace.
 Cotton braids.
 Cotton tapes.

Class 26.

Linen and hemp yarn and thread.

Class 27.

Linen and hemp piece goods.

Class 28.

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

Class 29.

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

Class 30.

Silk, spun, thrown, or sewing.

Class 31.

Silk piece goods.

Class 32.

Other silk goods not included in
Classes 30 and 31.

Class 33.

Yarns of wool, worsted, or hair.

Class 34.

Cloths and stuffs of wool, worsted,
or hair.

Class 35.

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

Class 36.

Carpets, floor-cloth, and oil-cloth.

Such as—
Drugget.
Mats and matting.
Rugs.

Class 37.

Leather, skins unwrought and
wrought, and articles made of
leather not included in other
classes.

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

Class 38.

Articles of clothing.

Such as—
Hats of all kinds.
Caps and bonnets.
Hosiery.
Gloves.
Boots and shoes.
Other ready-made clothing.

Class 39.

Paper (except paperhangings),
stationery, and bookbinding.

Such as—
Envelopes.
Sealing wax.
Pens (except gold pens).
Ink.
Playing cards.
Blotting cases.
Copying presses.

Class 40.

Goods manufactured from india-rubber and gutta-percha not included in other classes.

Class 41.

Furniture and upholstery.

Such as—

Paper hangings.
Papier mâché.
Mirrors.
Mattresses.

Class 42.

Substances used as food, or as ingredients in food.

Such as—

Cereals.
Pulses.
Olive oil.
Hops.
Malt.
Dried fruits.
Tea.
Sago.
Salt.
Sugar.
Preserved meats.
Confectionery.
Oil cakes.
Pickles.
Vinegar.
Beer clarifiers.

Class 43.

Fermented liquors and spirits.

Such as—

Beer.
Cyder.
Wine.
Whisky.
Liqueurs.

Class 44.

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

Class 45.

Tobacco, whether manufactured or unmanufactured.

Class 46.

Seeds for agricultural and horticultural purposes.

Class 47.

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

Such as—
Washing powders.
Benzine collas.

Class 48.

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

Class 49.

Games of all kinds and sporting articles not included in other classes.

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

Class 50.

Miscellaneous—

- (1.) Goods manufactured from ivory, bone or wood, not included in other classes.
- (2.) Goods manufactured from straw or grass, not included in other classes.
- (3.) Goods manufactured from animal and vegetable substances, not included in other classes.
- (4.) Tobacco pipes.
- (5.) Umbrellas, walking sticks, brushes and combs.
- (6.) Furniture cream, plate powder.
- (7.) Tarpaulins, tents, rick-cloths, rope, twine.
- (8.) Buttons of all kinds other than of precious metal or imitations thereof.
- (9.) Packing and hose of all kinds.
- (10.) Goods not included in the foregoing classes.

Such as—
Coopers' wares.

Dated this 24th day of March, 1906.

(Sd.) D. LLOYD-GEORGE,
President of the Board of Trade.

GUIDE TO THE CLASSIFICATION OF GOODS
UNDER THE TRADE MARKS ACT, 1905.

Printed by Order of the Registrar.
1909.

CLASSES OF GOODS.

(See Third Schedule to Rules, ante.)

The numbers in the following list refer to the Class in which the particular goods named have been placed for the purpose of Trade Marks Registration.

If any person intending to apply for registration of a trade mark is, on examining the following enumeration of goods, uncertain as to the Class to which his goods belong, he should send to the Registrar a letter addressed—

The Registrar,
The Patent Office, Trade Marks Branch,
25, Southampton Buildings,
Chancery Lane,
London, W.C.

giving a full description of the goods and of the purposes for which they are used. He will then be informed by the Registrar what Class he should name in his application.

N.B.—For *metal* read *metal other than precious metal or imitation of precious metal*.

For *precious metal* read *precious metal or imitation of precious metal*.

For *machinery* read *machinery except agricultural and horticultural machinery*.

Abdominal supporters. 11.	Acetylene gas. 1.
Abrasive preparations for polishing and grinding. 50.	—————, Carbide of calcium for producing. 1.
Absinthe. 43.	—————, Chemical mixture for purifying. 1.
Accordions. 9.	Acid, Carbolic (prepared for sanitary purposes). 2.
Account books. 39.	—————, Tartaric (for use as an ingredient in food). 42.
Accumulators, Electric (for medical purposes). 11.	
————— (not for medical purposes). 8.	

- Acids for use in manufactures, photography or philosophical research. 1.
 — prepared for use in medicine and pharmacy. 3.
 Acoustical tubes for the deaf. 11.
 Actinometers. 8.
 Actions, Gun and rifle. 19.
 —, Pianoforte. 9.
 Adding machines. 8.
 Adhesives (mucilage, paste, gum, labeling solution) prepared as articles of stationery. 39.
 — (made of gutta-percha for tailors' use). 40.
 — (for celluloid, for leather, for mending broken articles, for tipping billiard cues). 50.
 Adzes. 12.
 Aerated beverages (not alcoholic, not medicinal). 44.
 — waters (natural and artificial, including ginger beer). 44.
 Aerometers. 8.
 Aeroplanes. 6.
 Agricultural and horticultural implements of the larger kind. 7.
 ————— implements of the smaller kind (metal), without a cutting edge. 13.
 ————— implements of the smaller kind (metal), with a cutting edge. 12.
 ————— machinery and parts thereof. 7.
 Agriculture, Chemical substances used in. 2.
 Ague pads (not medicated). 11.
 Air beds, cushions and pillows (india-rubber or gutta-percha). 40.
 — bricks (metal). 13.
 — compressing engines. 6.
 — guns. 19.
 Air-pumps (for steam-engines, and for supplying air). 6.
 ————— (philosophical). 8.
 Air saddles for bicycles (india-rubber). 40.
 — tubes of india-rubber for tyres. 40.
 Alarms, Electric and pneumatic (as systems in buildings). 18.
 Albumen prepared for use in medicine and pharmacy. 3.
 Albumenized paper. 39.
 Albums. 39.
 Alcoholic beverages. 43.
 Alcoholometers. 8.
 Ale, Ginger (an aerated water). 44.
 Ales. 43.
 Alizarine (artificial). 1.
 Alkalies used in manufactures, photography or philosophical research. 1.
 — used for agricultural, horticultural and veterinary purposes. 2.
 Alkalies prepared for use in pharmacy. 3.
 Alloys, Metallic (unwrought or partly wrought). 5.
 Almanacs. 39.
 Alpaca (in the piece). 34.
 Aluminium wares. 14.
 Amalgams, Dental (containing no precious metal). 11.
 ————— (of precious metal). 14.
 Amber. 4.
 — beads and mouthpieces. 50.
 Ambulance cases containing surgical appliances. 11.
 Ambulances. 22.
 Ammeters. 8.
 Ammonia for use as a detergent. 47.
 Ammunition (explosive). 20.
 — (not explosive). 19.
 Ampere meters. 8.
 Anaesthetics for human use. 3.
 Anchors. 21.
 Anemometers. 8.
 Angle iron. 5.
 Aniline dyes (mineral). 1.
 — (not mineral). 4.
 Animal oils used in manufactures and not included in other classes. 4.
 — substances (raw or partly prepared) used in manufactures and not included in other classes. 4.
 Animals, Chemical preparations for destroying noxious. 2.
 — (stuffed). 50.
 Animated pictures, Apparatus for showing. 8.
 Anklets for curative purposes (not of precious metal). 11.
 Annatto for use as an ingredient in food. 42.
 Annealing metals, Preparations for. 1.
 Anthracene dyes. 1.
 Anti-asthmatic cigarettes (not containing tobacco). 3.
 — paper. 3.
 Anti-corrosives. 1.
 Anti-ferment for liquors. 42.
 Anti-friction grease. 47.
 Anti-incrustation composition. 1.
 Antimacassars (cotton). 25.
 — (linen). 28.
 — (silk). 32.
 — (woollen). 35.
 Anti-rheumatic rings, anklets and bracelets (not of precious metal). 11.
 — (of precious metal). 14.
 Anvils. 13.
 Apparel, Wearing. 38.
 Aprons (wearing apparel). 38.
 —, Carriage (wholly or principally of india-rubber). 40.
 — for machinery (cotton). 25.

Aprons for machinery (india-rubber or gutta-percha). 40.
 Archery, Implements for. 49.
 Architectural contrivances. 18.
 Arithmometers. 8.
 Armour plates. 5.
 Arms (in the nature of weapons). 19.
 Arrowroot (for food). 42.
 Arsenic salts used in manufactures. 1.
 Artists' brushes and canvas. 39.
 ——— colours. 1.
 ——— materials (except colours and the like). 39.
 Asbestos. 4.
 ——— cement sheets and plates for building. 17.
 ——— high-pressure packing, rope, yarn. 50.
 ——— paint. 1.
 ——— prepared for preventing the radiation of heat. 1.
 ——— prepared for use in stoves. 50.
 Ash, Soda. 1.
 —, Volcanic, raw or partly prepared for use in manufactures. 4.
 Ash-pans, Metal. 13.
 Asphalt. Paving made from. 17.
 Asphaltum. 4.
 Atomizers (architectural and building contrivances). 18.
 ——— for agricultural and horticultural purposes. 7.
 ——— for surgical and curative purposes. 11.
 Attachments or fastenings of metal for neckties, scarves, and similar articles. 13.
 Augers. 12.
 Automatic apparatus for detecting bad coins; for lighting and regulating gas. 8.
 ——— coin-freed delivery machines. 6.
 ——— fire extinguishers (as systems in buildings). 18.
 ——— musical instruments. 9.
 Awls. 13.
 Awnings. 50.
 Axes. 12.
 Axle caps for carts. 13.
 Axles and axle plates, Grinders'. 13.
 — for machines. 6.
 ——— (metal) for railway wagons and common roads. 13.
 ——— (wood). 50.
 Azimuth instruments. 8.

Babbitt metal. 5.
 Baby carriages. 22.
 — clothing. 38.
 — jumpers. 41.
 — soothers. 11.
 Back protectors. 11.

Bacon. 42.
 Bactericides. 2.
 Badges (metal). 13.
 ——— (precious metal). 14.
 ——— (textile), as small wares according to the class of material.
 Bags, Cricket; Golf. 49.
 —, Hand or Travelling (leather). 37.
 — (india-rubber) not for surgical or curative purposes. 40.
 —, Paper. 39.
 — (of textile materials). 50.
 Bait, Anglers' wheaten. 42.
 ——— (artificial). 49.
 Baize (woollen). 34.
 —, Table, being an oil-cloth. 36.
 Baking apparatus. 18.
 ——— dishes (metal). 13.
 ——— powder. 42.
 Balances (except Letter balances). 6.
 ———, Letter. 39.
 Balata goods, not included in other classes. 40.
 Bale studs (metal). 13.
 Balls for ball bearings. 13.
 ——— games. 49.
 Balsam for toilet purposes. 48.
 ——— use in pharmacy. 3.
 ——— veterinary use. 2.
 Balusters (metal). 13.
 Bandages (medical and surgical). 11.
 Bandboxes. 50.
 Bands and belts for wear. 38.
 —, Elastic (stationery). 39.
 — for tyres (leather). 37.
 ——— (india-rubber). 40.
 —, Galvanic. 11.
 —, Hat, as small wares according to the class of the material.
 —, Machine driving (cotton). 25.
 ——— (flax or hemp). 28.
 ——— (hair). 35.
 ——— (india-rubber, gutta-percha or balata). 40.
 ——— (leather). 37.
 —, Picking (leather). 37.
 Bangles (precious metal). 14.
 Banjos. 9.
 Barbed wire fencing. 13.
 Bar bells. 49.
 Barges. 21.
 Bark, Extract of (for tanning purposes). 4.
 Barks for use in medicine and pharmacy. 3.
 Barometers. 8.
 Barrels (rifle and pistol). 19.
 ——— (wood). 50.
 Bars, Furnace. 13.
 Basic slag for use as a manure. 2.
 Basil leather. 37.
 Basins (metal). 13.
 ——— (pottery ware). 16.

- Basket furniture, Articles of. 41.
 Baskets (metal). 13.
 ——— (not of metal). 50.
 ——— fitted for luncheons. 50.
 Bassinette perambulators. 22.
 Bassinettes. 41.
 Bate for tanning purposes. 4.
 Bath brick for polishing. 50.
 ——— cabinets, Portable Turkish. 11.
 ——— chairs. 22.
 ——— gloves. 11.
 ——— mineral waters. 44.
 ——— salts (for toilet purposes). 48.
 ——— (medicated). 3.
 ——— stone in blocks. 4.
 Bathing sabots or slippers. 38.
 Baths and trays for copying, being articles of stationery. 39.
 ——— (fireclay, earthenware or porcelain). 16.
 ——— (india-rubber or gutta-percha). 40.
 ——— (metal). 13.
 Battens (wood). 50.
 Batteries, Electric (medical). 11.
 ——— (not for medical purposes). 8.
 Batting gloves. 49.
 Bats for games. 49.
 Bay-leaf water and bay rum. 48.
 Bayonets. 19.
 Beads (glass). 15.
 ——— (ivory, wood, bone, horn, vegetable ivory, jet, mother of pearl or amber). 50.
 ——— (metal). 13.
 ——— (precious metal). 14.
 Beams, being parts of machinery. 6.
 ——— (metal), not being parts of machinery. 13.
 ———, Plough. 7.
 ——— (wood). 50.
 Bearings, being parts of machinery. 6.
 ——— (metal), not being parts of machinery. 13.
 Bed-coverlets (textile), as small wares according to the class of the material.
 Bed quilts, Down, as small wares according to the class of the covering material.
 Bed rests and tables. 41.
 Bedding, not being bed clothing. 41.
 Beds, Air and Water (india-rubber or gutta-percha). 40.
 ———, Feather. 41.
 Bedsteads. 41.
 Beef, Essence of. 42.
 Beehives. 7.
 ———, Comb foundations for; Wooden sections for. 50.
 Beer. 43.
 ——— engines. 6.
 ———, Ginger. 44.
 ——— preservatives and finings. 42.
 Beeswax for use in manufactures. 4.
 Bellows. 50.
 Bell systems, Electric and Pneumatic. 18.
 Bells. 13.
 ———, Dumb and Bar. 49.
 Belt clasps (jet or imitation jet, horn, or celluloid). 50.
 ——— (metal). 13.
 ——— (precious metal). 14.
 ——— composition. 50.
 ——— fasteners (metal). 13.
 Belts, Cartridge and Shot. 19.
 ——— Electric (being for medical purposes). 11.
 ——— for wear. 38.
 ———, Medical and Surgical. 11.
 ———, Swimming and Life. 21.
 Belting, Machine (cotton). 25.
 ——— (flax or hemp). 28.
 ——— (hair). 35.
 ——— (leather). 37.
 ——— (india-rubber, gutta-percha, or balata). 40.
 Bench screws (metal). 13.
 ——— (wood). 50.
 Benzine for motors. 47.
 Benzoline. 47.
 Berlin black for stoves and grates. 50.
 ——— wool. 33.
 Bessemer steel plates. 5.
 ——— tuyeres (earthenware or porcelain). 16.
 Bevels, Workmen's (metal). 13.
 ——— (wood). 50.
 Beverages, Aerated (not alcoholic and not medicated). 44.
 ———, Alcoholic. 43.
 ———, Medicated. 3.
 ——— (not alcoholic, not medicated, and not aerated). 42.
 ———, Preparations for. 42.
 Bezique markers. 49.
 Bicycles. 22.
 Billets (steel). 5.
 Bill files. 39.
 ——— hooks. 12.
 Billiard balls, cues, markers, and tables. 49.
 ——— chalk (prepared). 50.
 ——— table cushions (india-rubber). 40.
 Billing machines (in the nature of typewriting machines). 39.
 Bills with a cutting edge. 12.
 ——— without a cutting edge. 13.
 Binder belts. 11.
 Binders, Sheaf. 7.
 Binding (cotton). 25.
 ——— (linen). 28.
 ——— (silk). 32.
 ——— (woollen, worsted, and hair). 35.
 ———, Cases for book-. 39.
 Binocular glasses. 8.

Bins, Cabinet wine. 41.
 —, Corn and Wine (metal). 13.
 Bird cages (wood). 50.
 — (metal or wood and metal combined). 13.
 — food. 42.
 — lime, bird medicine. 2.
 Birds, Stuffed. 50.
 Biscuits. 42.
 —, Dog. 42.
 Bits, Horses'. 13.
 — (cutting). 12.
 Bitters (alcoholic). 43.
 —, Aerated (not alcoholic and not medicinal). 44.
 Bitumastic roofing material, 50.
 Bitumen, raw or partly prepared for use in manufactures. 4.
 — sheeting for roofing and similar purposes. 50.
 Blacking, Foundry. 4.
 — for leather and harness. 50.
 Black-lead (for polishing). 50.
 — points for pencils. 39.
 Black oil for harness. 50.
 — plates and taggers. 5.
 — varnish. 1.
 Bladders, Football (india-rubber). 40.
 Blades, Sword; Saw. 12.
 Blancmange powder. 42.
 Blankets in the piece (cotton). 24.
 — (woollen). 34.
 — not in the piece (cotton). 25.
 — (woollen). 35.
 — Printers' cotton. 25.
 Blanks, Key. 13.
 Blasting compounds. 20.
 Bleaching powder. 47.
 Blending glasses (graduated). 8.
 Blinds (metal). 13.
 — (paper). 39.
 — (textile) as small wares in the class of the material.
 —, Venetian (wood). 50.
 Blisters for human use. 3.
 — horses and cattle. 2.
 Blocks, Printers' (metal). 13.
 — (wood). 50.
 Blotting cases. 39.
 Blouses. 38.
 Blow lamps for burning off and brazing. 18.
 Blowing engines and machine blowers. 6.
 Blue, Laundry. 47.
 Boards (composition or wood). 50.
 Boas. 38.
 Boat chocks (wood). 50.
 — covers. 50.
 — hooks and boat lowering gear. 21.
 Boats. 21.
 Bobbins (parts of machines). 6.
 — (wood). 50.

Bodice steels. 13.
 — stiffeners (featherbone, whalebone). 50.
 Bodkins. 13.
 Boiled oil. 4.
 Boiler composition to prevent radiation of heat. 1.
 — plates. 5.
 — rivets. 13.
 — scale, Preparations for the prevention or removal of. 1.
 — tubes. 6.
 Boilers, Steam, for agricultural purposes. 7.
 —, not for agricultural purposes. 6.
 — (stove). 18.
 Bolt iron. 5.
 Bolts and nuts. 13.
 — for doors. 13.
 Boubons. 42.
 Bone. 4.
 — manure. 2.
 — mills (portable). 7.
 Bonnet boxes (wood or cardboard). 50.
 Bonnets. 38.
 Bookbinders' blocking varnish. 1.
 Bookbinding. 39.
 Bookbinding cloth (specially prepared). 39.
 Book cases. 41.
 — markers (silk). 32.
 — slides and rests. 39.
 Books. 39.
 Boot and shoe linings (linen), in the piece. 27.
 — protectors (metal). 13.
 — socks. 38.
 — varnish and polish; stretchers (wood); trees (wood); heels (wood). 50.
 — top powder. 50.
 — uppers (leather). 37.
 Boots. 38.
 Borderings, as small wares, according to the class of the material.
 Boring machines. 6.
 Bottle envelopes (corrugated paper). 39.
 — (grass, straw, or wood). 50.
 — filling, stoppering, and washing machines. 6.
 — stoppers (earthenware). 16.
 — (glass). 15.
 — (india-rubber). 40.
 — (vulcanized fibre). 50.
 Bottles (except feeding bottles or bottles mounted in precious metal) in the class of the substance of which they are made.
 —, Feeding. 50.
 — mounted in precious metal. 14.
 Bottling gloves. 38.
 — trays (wood). 50.

- Bottling wax. 39.
 Bougies. 11.
 Bouquets of out flowers. 46.
 Bowls, Hand (earthenware). 16.
 — (metal). 13.
 —, Playing. 49.
 Bows for archery. 49.
 — musical instruments. 9.
 — wear. 38.
 Box irons for laundry use. 13.
 Boxes, Despatch. 39.
 — (earthenware junction) for electric
 cables. 16.
 — (india-rubber). 40.
 — (leather). 47.
 — (metal). 13.
 —, Musical. 9.
 — (wood, ivory, wicker-work, bone,
 straw, pasteboard or cardboard). 50.
 Boxing gloves. 49.
 Brace bits. 12.
 Brace girths (leather). 37.
 Bracelets (precious metal). 14.
 — for curative purposes (not
 being of precious metal). 11.
 Braces, Drill. 13.
 — for wear. 38.
 —, Ratchet and crank. 13.
 Brackets (metal). 13.
 — (wood). 50.
 Bradawls. 13.
 Brads. 13.
 Braid (cotton). 25.
 — (gold and silver). 14.
 — (linen and hemp). 28.
 — (silk). 32.
 — (straw and chip). 50.
 — (woollen, worsted, mohair, al-
 paca). 35.
 Brake blocks (india-rubber). 40.
 — (vulcanized fibre). 50.
 Brakes, being agricultural or horticul-
 tural machinery, or parts of such
 machinery. 7.
 — machinery or parts of
 machinery, other than agricultural or
 horticultural machinery. 6.
 — metal goods not included
 in Classes 6 and 7. 13.
 Branding irons. 13.
 — stoves. 18.
 Brandy. 43.
 Brass polish. 50.
 — sheets and wire. 5.
 Brasses, Memorial. 13.
 Brattice cloth. 50.
 Brawn. 42.
 Brazing fluxes. 1.
 — furnaces. 18.
 Bread. 42.
 — platters (wood). 50.
 Breaking machines (agricultural and
 horticultural). 7.
 Breaking machines (other than agri-
 cultural and horticultural). 6.
 Breast-exhausters. 11.
 Breasts, Plough. 7.
 Breeches paste. 50.
 Breeze. 4.
 Brewing sugar. 42.
 Brick presses. 6.
 Bricks. 16.
 — (metal). 13.
 —, Toy. 49.
 Bridges (iron). 18.
 — (wood) for stringed instruments.
 50.
 Bridles. 37.
 Brimstone roll. 1.
 Briquettes, Artificial fuel. 50.
 Bristles. 4.
 Britannia metal wares. 14.
 Broad cloths. 34.
 Brocade powder. 1.
 Bronze, Articles of. 14.
 — powder. 1.
 — (ingot and wire). 5.
 Brooches (ivory, jet, wood, bone, horn,
 or mother of pearl). 50.
 — (precious metal). 14.
 Brooders for rearing poultry, 50.
 Brooms. 50.
 Bruising machines (agricultural). 7.
 Brunswick black. 1.
 Brushes, Artists'. 39.
 —, Dynamo. 6.
 —, except artists' brushes and
 brushes of metal. 50.
 —, Gilders'. 50.
 —, Wire. 13.
 Buckets (leather). 37.
 — (metal). 13.
 — (wood). 50.
 Buckles (metal). 13.
 — (precious metal). 14.
 Buffalo hides. 37.
 Buffers (india-rubber). 40.
 — (metal) not being parts of
 machinery. 13.
 Building blocks, Toy. 49.
 Buildings, Portable. 18.
 Bulbs, Glass. 15.
 —, Horticultural. 46.
 Bullet moulds and bullets. 19.
 Bullion fringe (gold and silver). 14.
 Bung bushes (metal). 13.
 Bunting, Flags of. 35.
 Buoys, Life. 21.
 Burners, Gas, Lamp and Stove (metal).
 13.
 Burnishing ink for boots. 50.
 Burrs, Fire (of clay). 16.
 Bushes, being metal goods not included
 in other classes. 13.
 — (parts of machinery). 6.
 Busks (metal). 13.

- Busts (papier mâché) for tailors and dressmakers. 50.
 Butter. 42.
 ——— colouring. 42.
 ——— coolers (wood). 50.
 ——— working machines. 7.
 Button hooks and fastening devices (metal). 13.
 Buttons of all kinds (other than of precious metal or imitations thereof). 50.
 ——— (precious metal). 14.
 ———, Press (being metal dress fasteners and not being ordinary buttons). 13.
 Butts (leather). 37.
 — (metal). 13.
- Cabinet furniture. 41.
 Cabinets, Filing (in the nature of furniture). 41.
 ———, Portable Turkish bath. 11.
 Cables, Electric. 8.
 ———, Ships' chain. 21.
 Cachous (confectionery). 42.
 Cabs. 22.
 Caddies (wood). 50.
 Cages, Bird (wood). 50.
 ——— (metal or metal and wood combined). 13.
 Cake crushers. 7.
 ——— for feeding cattle. 42.
 Cakes. 42.
 Calcareous cements for building. 17.
 Calculating machines. 8.
 Calendars. 39.
 Calf skins. 37.
 Calico (in the piece). 24.
 Callipers. 8.
 Calomel, prepared for use in medicine and pharmacy. 3.
 Cambooses. 18.
 Cambrie in the piece (cotton). 24.
 ——— (linen). 27.
 ——— smallwares (cotton). 25.
 ——— (linen). 28.
 Camera stands (wood). 50.
 Cameras, Photographic. 8.
 Camp ovens. 18.
 Camphor prepared for use in pharmacy. 3.
 Camphorated chalk for toilet purposes. 48.
 Canada plates. 5.
 Candles. 47.
 Candlesticks (metal). 13.
 ——— (precious metal). 14.
 ——— (wood). 50.
 Candy for food. 42.
 ——— (medicinal). 3.
 Cane bills. 12.
 — fibre (Bagasse) for use in manufactures). 4.
- Cane travelling trunks. 50.
 Canned fish, fruits, meats, and vegetables. 42.
 Cannon. 19.
 Canoes. 21.
 Can openers. 12.
 Cans (metal). 13.
 Canvas, Artists'. 39.
 ——— covers for ricks and vehicles. 50.
 Canvas in the piece (cotton). 24.
 ——— (linen or hemp). 27.
 ——— (jute). 29.
 Capers. 42.
 Capes. 38.
 Capoc, raw or partly prepared, for use in manufacture. 4.
 Caps, Chimney (metal). 13.
 ———, Detonating. 20.
 ——— for wear. 38.
 ———, Knee. 11.
 Capstans (steam). 3.
 Capsules (medicated) for human use. 3.
 ——— veterinary use. 2.
 ——— (metal). 13.
 ——— of gelatine or wafer for containing medicine. 50.
 ——— (paper). 39.
 Caramel, being an ingredient in food. 42.
 Carbide of calcium. 1.
 ——— silicon, being an abrasive. 50.
 Carboic acid prepared for sanitary purposes. 2.
 ——— use in medicine and pharmacy. 3.
 ——— soap being a disinfectant. 2.
 Carbon paper. 39.
 Carbons for electrical purposes. 4.
 Carburettors being parts of machinery. 6.
 Card-board. 39.
 ——— boxes. 50.
 ——— roofing material. 50.
 Card cases (leather). 37.
 ——— games. 49.
 Cards, Christmas, Sentiment, Menu, Programme, Pattern, Photographic and Playing. 39.
 ———, Machine. 6.
 Cargo gins. 6.
 Carpet bags. 50.
 ——— bindings (woollen). 35.
 ——— soap. 47.
 ——— sweepers (mechanical). 6.
 Carpets. 36.
 Carriage aprons (wholly or principally of india-rubber). 40.
 ——— bodies, principally of wood. 50.
 ——— metal work. 13.
 ——— rugs. 50.

- Carriages. 22.
 ———, Gun. 19.
 Carriers, Luggage and Parcel (being metal goods not included in other classes). 13.
 Carrying apparatus, Pneumatic, for cash and goods. 18.
 Cars. 22.
 ———, Side. 22.
 Cart covers. 50.
 Cartons (cardboard). 50.
 Cartridge belts, cases, dies, fillers, and pouches. 19.
 Cartridges. 20.
 Carts. 22.
 ———, Hoods for. 50.
 Carving tools. 12.
 Casement fasteners (metal). 13.
 Casements (metal). 13.
 Cases, Bookbinding. 39.
 ———, Pucking and Store (wood). 50.
 ———, Blotting. 39.
 ———, Pencil (not of precious metal). 39.
 ——— (precious metal). 14.
 ———, Stationery. 39.
 Cash boxes (metal). 13.
 ——— carrying apparatus, Pneumatic. 18.
 ——— checking apparatus for detecting false coins. 8.
 ——— register tills. 6.
 Casks (glass). 15.
 ——— (metal). 13.
 ——— (pottery ware). 16.
 ——— (wood). 50.
 ———, Wax composition for lining. 50.
 Cask-stands (metal). 13.
 ——— (wood). 50.
 Cassada plates (cooking, heating, and baking apparatus). 18.
 Cassia being an ingredient in food. 42.
 Castings (metal) in the rough. 5.
 Castor oil prepared for use in medicine and pharmacy. 3.
 Castors (metal). 13.
 Catamenial pads and bandages (not medicated). 11.
 Caterpillars, Preparations for destroying. 2.
 Catheters. 11.
 Cattle Ear markers for. 13.
 ——— food. 42.
 ——— medicines. 2.
 ——— troughs and pans (metal). 13.
 Caulking irons. 13.
 Caustic soda. 1.
 Ceiling coverings, being tiles or sheets of metal. 13.
 ——— in the nature of paper hangings. 41.
 Celery salt. 42.
 Cells, Dry (electrical). 8.
 Celluloid collars, cuffs, and cuff protectors. 38.
 Celluloid films (sensitized). 1.
 ——— records for talking machines. 8.
 ——— transparencies for cinematograph apparatus. 8.
 ——— yarn, gearcases, mudguards. 50.
 Cement for preventing the radiation of heat; for filling holes in castings. 1.
 ——— for tipping billiard cues; for mending china and other articles; for celluloid; for fixing india-rubber tyres; for floor-cloth. 50.
 ———, Portland, and other calcareous. 17.
 Cerates prepared for use in pharmacy. 3.
 Cereals for use as food. 42.
 ——— seed. 46.
 Ceresine. 4.
 Chaff cutters. 7.
 ——— knives (parts of machines). 7.
 Chain cables. 21.
 ——— rollers. 13.
 Chains, Dog, Cycle, and Motor. 13.
 ———, Measuring. 8.
 ——— of precious metal. 14.
 Chairs, Bath. 22.
 ———, Dentists' and Invalids'; along with furniture in Class 41.
 ——— (furniture). 41.
 ———, Garden (metal). 13.
 ——— or Deck (wood). 50.
 Chalk, Camphorated, for toilet purposes. 48.
 ——— (for drawing). 39.
 ———, Tailors'; Billiard. 50.
 Chamois leather. 37.
 Champagne. 43.
 Chapels (iron). 18.
 Charcoal. 4.
 Chasing machines. 6.
 ——— tools (being edge tools). 12.
 Chassis of motor cars. 22.
 Cheese. 42.
 ——— colouring. 42.
 ——— making apparatus. 7.
 ——— tasters. 12.
 ——— tubs. 50.
 Chemical apparatus (experimental). 8.
 ——— substances prepared for agricultural, horticultural, veterinary, and sanitary purposes. 2.
 ——— use in manufactures, photography, or philosophical research. 1.
 ——— use in medicine and pharmacy. 3.
 ——— test paper. 39.
 Chemises. 38.
 Cheroots. 45.
 Cherry brandy. 43.
 Chess boards. 49.
 Chest-expanding apparatus. 49.
 ——— braces. 38.

- Chest protectors. 11.
 Chests (metal). 13.
 — (wood). 50.
 Chewing gum. 42.
 Chicory. 42.
 Chignons. 50.
 Chillies. 42.
 Chimney caps, cowls, and tops (earthen-
 ware). 16.
 — (metal). 13.
 — cleaners (chemical). 2.
 Chimneys, Lamp (glass). 15.
 — (mica). 50.
 China articles. 16.
 — clay. 4.
 — crape (wool or worsted piece
 goods). 34.
 — grass (ramie) braids and belting.
 28.
 — used in manufac-
 tures. 4.
 — yarn. 26.
 Chip braid. 50.
 Chisels. 12.
 Chloride of calcium. 1.
 — gold. 1.
 — lime for disinfecting pur-
 poses. 2.
 — zinc. 1.
 Chlorodyne. 3.
 Chloroform for surgical and medical
 purposes. 3.
 Chocolate. 42.
 Cholera belts. 11.
 Choppers. 12.
 Chopping machines, Meat. 6.
 Chrome leather. 37.
 — ores. 4.
 — salts. 1.
 Chronometers. 10.
 Chucks (parts of machines). 6.
 Churches (iron). 18.
 Churns for butter making. 7.
 Chutney. 42.
 Cider. 43.
 — machines and presses. 7.
 Cigar and cigarette cases (leather). 37.
 — holders (not of pre-
 cious metal). 50.
 — cutting machines. 6.
 — wrappers (paper) sold separately.
 39.
 Cigarette making machines. 6.
 — paper tubes (sold empty). 39.
 — papers. 39.
 Cigarettes. 45.
 —, Anti-asthmatic (not contain-
 ing tobacco). 3.
 Cigars. 45.
 Cinder sifters (metal) for household use.
 13.
 — (machines). 6.
 Cinematographs. 8.
 Cinematograph transparencies for ex-
 hibition. 8.
 Cinnamon. 42.
 Circular saws. 6.
 Cisterns (metal). 13.
 —, Syphon flushing. 18.
 Citrate of magnesia. 3.
 Clamps (metal). 13.
 Claret. 43.
 Clarifiers for articles of food and drink.
 42.
 Clarionets. 9.
 Clasps (jet, horn or celluloid). 50.
 — (metal). 13.
 — (precious metal). 14.
 Clay, China. 4.
 —, Fire (articles of). 16.
 —, Modelling. 17.
 —, Pipe. 50.
 — pipes (tobacco). 50.
 Cleaning and polishing preparations,
 cleaning preparations for leather
 articles. 50.
 — cloths (cotton). 25.
 — preparations for fabrics and
 for other articles (being detergents).
 47.
 Cleansing preparations (medicated) for
 children's heads. 3.
 Cleavers. 12.
 Cleeks, Golf. 49.
 Clinical thermometers. 11.
 Clips, Letter. 39.
 Clippers, Horse. 12.
 Cloaks. 38.
 Clock and watch springs and dials. 10.
 — gongs and weights. 13.
 Clocks. 10.
 Clod crushers (agricultural). 7.
 Clogs. 38.
 Closets, Water; Hot; Steam. 18.
 Cloth, Brattice; Corundum; Crocus;
 Emery; Glass; Ruby; Sand. 50.
 — (carbolyzed), for destroying in-
 sects. 2.
 —, Cotton (in the piece). 24.
 — for bookbinding. 39.
 —, India-rubber. 40.
 —, Silk (in the piece). 31.
 —, Wool, Worsted, or Hair (in the
 piece). 34.
 Clothes horses (wood). 50.
 — lines (jute or hemp). 50.
 — (metal). 13.
 — props (wood). 50.
 — wringers. 6.
 Clothing, Articles of. 38.
 —, Horse. 37.
 Cloths, Rick. 50.
 —, Saddle. 37.
 Clouts, Waggon and Cart (metal). 13.
 Cloves. 42.
 Clubs (sporting articles). 49.
 Coach ironmongery. 13.

- Coaches. 22.
 Coal. 4.
 — cutting machines. 6.
 — saving compounds (chemical) for mixing with coal to economise consumption. 1.
 — scuttles (metal). 13.
 — tar. 4.
 Coatings (woollen and worsted). 34.
 Coats. 38.
 Cobblers' wax. 50.
 Cochineal used in manufactures. 4.
 Cocks (earthenware). 16.
 — (metal, not being parts of machinery). 13.
 — (wood). 50.
 Cocktails. 43.
 Cocoa. 42.
 — mills. 6.
 — nut (desiccated). 42.
 — fat and oil (edible). 42.
 — fibre. 4.
 — oil for illuminating purposes. 47.
 Cod-liver oil and cod-liver oil compounds for use in medicine and pharmacy. 3.
 Coffee. 42.
 — (aerated). 44.
 — mills. 6.
 — roasting machines. 6.
 — percolaters (glass). 15.
 — pots (earthenware and porcelain). 16.
 — (metal). 13.
 — (precious metal). 14.
 Coffins. 50.
 Cogs for horseshoes. 13.
 Coil clutches (parts of machinery). 6.
 Coils, Electrical induction (for medical purposes). 11.
 — (not for medical purposes). 8.
 —, Steam (apparatus for heating). 18.
 Coin-freed machines for delivering goods. 6.
 Coke. 4.
 Cold cream. 3.
 — sates. 13.
 Collar studs (ivory, wood, bone, jet, or mother of pearl). 50.
 — (metal). 13.
 — (precious metal). 14.
 — supports, Dress (metal). 13.
 — (celluloid). 50.
 Collars for wear. 38.
 —, Horse and Dog (leather). 37.
 Collodion. 1.
 — fancy wares not included in other classes. 50.
 — prepared for use in medicine and pharmacy. 3.
 Collodionized fibre, Threads manufactured from. 50.
 Colouring matters for laundry use. 47.
 — the hair and toilet use. 48.
 — use as ingredients in food. 42.
 — in making liqueurs (containing alcohol). 43.
 — manufactures (mineral). 1.
 — (other than mineral). 4.
 Colours, Artists'. 1.
 Comb foundations for beehives. 50.
 Combs for the hair. 50.
 —, Currying (metal); Graining (metal). 13.
 — (parts of machines). 6.
 Comforters (articles of clothing). 38.
 Commutators (parts of machinery). 6.
 Compasses (cutting). 12.
 — (drawing). 8.
 — (needle). 8.
 — (workmen's metal). 13.
 Compo-board. 50.
 Composing frames and sticks (wood). 50.
 Concertinas. 9.
 Concrete articles for building or decoration. 17.
 Condensed milk. 42.
 Condensers (parts of machinery). 6.
 Condensing machines. 6.
 Condiments. 42.
 Condition powder. 2.
 Conduits (earthenware). 16.
 — (metal). 13.
 Cones for use in bread-making. 42.
 Confectionery. 42.
 Confetti. 49.
 Conjuring apparatus. 49.
 Conservatories. 18.
 Contacts, Electrical (metal). 13.
 — (precious metal). 14.
 Contrivances, Building and Engineering. 18.
 — (not medicated) for surgical or curative purposes. 11.
 Cooking stoves and ranges. 18.
 — utensils (metal). 13.
 — (aluminium). 14.
 Coolers for wine, water, &c. (glass). 15.
 — (metal). 13.
 — (pottery-ware). 16.
 — (precious metal). 14.
 Cooper. 43.
 Coops, Poultry (metal). 13.
 — (wood). 50.
 Copal. 4.
 Copper. 5.
 — gauze. 13.
 — sulphate for agricultural and horticultural use. 2.
 — wire. 5.

Copperas. 1.
 Coppers, Portable washing. 18.
 Copying baths, trays, books, composition, ink, machines (rotary), paper and presses. 39.
 Cord, Blind and Sash (not of metal). 50.
 —, Elastic (india-rubber). 40.
 — for trimming (cotton). 25.
 ————— (linen). 28.
 ————— (silk). 32.
 ————— (woollen, worsted, and mohair). 35.
 Cordage (metal). 13.
 — (not of metal). 50.
 Cordials (alcoholic). 43.
 — (non-alcoholic). 42.
 Corduroys in the piece (cotton). 24.
 Cork. 4.
 — drawing machines. 6.
 — gripes (wood). 50.
 — socks for boots. 38.
 Corking machines. 6.
 Corks. 50.
 Corkscrews. 13.
 Corn-bins (metal). 13.
 — drills. 7.
 — flour. 42.
 — meters. 8.
 — plasters. 3.
 — rubbers. 11.
 Corned beef. 42.
 Cornets. 9.
 Cornices (concrete). 17.
 — (metal). 13.
 — (wood). 50.
 Corrosion, Compositions, Oils and Paints for preventing. 1.
 Corrugated iron or steel sheets. 5.
 — paper. 39.
 Corset busks (metal). 13.
 — covers (articles of clothing). 38.
 — shields and stiffeners (metal). 13.
 Corsets. 38.
 — for curative purposes. 11.
 Corundum cloth and paper. 50.
 —, Raw. 4.
 — wheels. 50.
 Cosaques. 42.
 Cosmetics. 48.
 Cosmetique. 48.
 Costume stands (wood or papier mâché). 50.
 Costumes. 38.
 Cots. 41.
 Cotter-pins. 13.
 Cotton, Gun. 20.
 — piece goods of all kinds. 24.
 — (raw or partly prepared). 4.
 —, Sewing. 23.
 — smallwares (not included in other classes), trimmings, cords, bindings, galloons, lace. 25.

Cotton, Silicate, prepared for use as a covering to prevent the radiation of heat. 1.
 ————— (raw). 4.
 ————— thread. 23.
 ————— wool (medicated). 3.
 ————— not medicated and not prepared for surgical or curative purposes. 25.
 ————— prepared for surgical or curative use. 11.
 ————— yarn. 23.
 Cotton-seed cake. 42.
 — oil, raw or partly prepared for use in manufactures. 4.
 —————, refined for edible purposes. 42.
 Couches. 41.
 Cough mixtures (for human use). 3.
 Counterfeit coins, Automatic instruments for detecting. 8.
 Counters for games. 49.
 — shops. 41.
 —————, Mechanical. 8.
 Counterweight fittings (metal). 13.
 Couplings (railway). 13.
 Covering walls and ceilings, Metal sheets for. 13.
 Coverings, Anti-corrosive. 1.
 —, Boiler (to prevent radiation of heat). 1.
 —, Wall (in the nature of paper hangings). 41.
 Coverlets, Bed (textile), as smallwares according to the class of the material.
 Covers (asbestos, mica), for lamps. 50.
 —, Bassinette; Cushion; Table; Tea-cosy; Toilet (all of cotton). 25.
 — (cardboard, paper). 39.
 —, Dish (precious metal). 14.
 — (india-rubber or gutta-percha). 40.
 — (metal). 13.
 —, Tyre (linen). 28.
 —, Van, Rick and Boat. 50.
 Cowls, Chimney (metal). 13.
 Crabs (machinery). 6.
 Crackers (being cosaques or bon-bons). 42.
 —, Nut (metal). 13.
 Cramps (metal). 13.
 Craues. 6.
 Crank braces. 13.
 Cranks, cycle. 13.
 Crape, China (wool or worsted). 34.
 — (cotton). 24.
 — (silk). 31.
 Crates (metal). 13.
 — (wood). 50.
 Cravats. 38.
 Crayon holders (not of precious metal). 39.
 ————— (precious metal). 14.
 Crayons. 39.

- Cream. 42.
 ———, Cold. 3.
 ——— for toilet use. 48.
 ———, Furniture. 50.
 ———, Salad. 42.
 ——— separators. 7.
 Creamometers. 8.
 Creosote for use in manufactures. 4.
 ——— preparations for disinfecting purposes. 2.
 ——— prepared for use in medicine and pharmacy. 3.
 Cresylic acid, prepared for use in medicine and pharmacy. 3.
 Cribs (furniture). 41.
 Cricketing articles not included in other classes. 49.
 ——— shoes. 38.
 Crimped paper. 39.
 Crinkled paper. 39.
 Crocus cloth and paper. 56.
 Croquet sets. 49.
 Crosses (celluloid). 50.
 ——— (precious metal). 14.
 Crossings, Railway. 5.
 Crowbars. 13.
 Crucibles (clay). 16.
 ——— (graphite or plumbago). 50.
 ——— (precious metal). 14.
 Cruets (electro-plated). 14.
 Crumb cloths (cotton), not in the piece. 25.
 ——— (linen), not in the piece. 28.
 Crushing machines (agricultural). 7.
 Crutches. 11.
 Cues, Billiard. 49.
 Cuff protectors (celluloid). 38.
 Cuffs. 38.
 ———, Preparation for taking the roughness from the edges of. 50.
 Culinary utensils (metal). 13.
 Cultivators. 7.
 Cupels (fire-clay). 16.
 Curaçoa. 43.
 Curative corsets. 11.
 ——— purposes, contrivances for. 11.
 Curl papers. 39.
 Curlers, Hair (metal). 13.
 Currie powder and paste. 42.
 Curry combs. 13.
 Currying and tanning oils. 4.
 Curtain hooks, rings and rods (metal). 13.
 ——— rings and rods (wood). 50.
 Curtains, as smallwares, according to the class of the material or predominating material.
 Cushions (india-rubber and gutta-percha). 40.
 ——— (leather). 37.
 Custard powder. 42.
 Cut flowers. 46.
 ———, Preservative for. 2.
 Cutch. 4.
 Cutlasses. 19.
 Cutlery. 12.
 ——— (electro-plated). 14.
 ——— (surgical). 11.
 Cut-outs (metal). 13.
 Cutting-out presses. 6.
 Cyanide of Potash. 1.
 Cycle component parts (metal) not included in other classes. 13.
 Cycles. 22.
 ———, geared hubs for. 6.
 Cyclometers. 8.
 Cylinders for compressed gas (not being parts of machines). 13.
 ———, Lime, for lighting purposes. 4.
 ———, Record, for talking machines. 8.
 Cymbals. 9.
 Dairy implements of the larger kind. 7.
 Damask in the piece (cotton). 24.
 ——— (linen). 27.
 ——— (silk). 31.
 ——— (woollen or worsted). 34.
 Dampers for stamps and envelopes. 39.
 Damping trays for press copying. 39.
 Damp-proof felt for lining walls. 50.
 Damp resisting preparations for walls. 1.
 Dandruff eradicator. 48.
 Darning lasts (wood). 50.
 ——— machines. 6.
 Dashpot plungers (parts of machinery). 6.
 Dates. 42.
 Daylight reflectors of silvered glass. 15.
 Deals. 50.
 Decanters (glass). 15.
 Deck chairs (principally of wood). 50.
 Decorations (celluloid), Floral and other. 50.
 ——— (gelatine transparencies) for windows. 50.
 ——— (metal) for walls and ceilings. 13.
 Deed boxes (metal). 13.
 Dental cement (medicated). 3.
 ——— composition, india-rubber, instruments, mirrors, plates, stopping (containing no precious metal), wax. 11.
 Dentifrices. 48.
 Deodorisers. 2.
 Depilatories (being chemical substances for use in manufactures). 1.
 Depilatory paste for toilet purposes. 48.
 Derricks. 6.
 Desiccated cocoanut. 42.
 Desks, Office; Reading. 41.
 ———, School. 8.

- Despatch boxes. 39.
 Destroying insects, vermin and weeds,
 Preparations for. 2.
 — nits, Medicated preparations
 for. 3.
 Detecting counterfeit coins, Automatic
 instrument for. 8.
 Detergents. 47.
 Detonating caps. 20.
 Developers, Photographic (chemical). 1.
 Dials, Sun. 8.
 — Watch and Clock. 10.
 Diamonds. 14.
 — for glass cutting. 50.
 Diapers (linen) in the piece. 27.
 — not in the piece. 28.
 Diaphragms for talking machines. 8.
 Diaries. 39.
 Diatomite (raw). 4.
 Dies (metal), without a cutting edge.
 12.
 —, Screw-cutting. 12.
 Differential pulleys. 6.
 Digesters (metal hollow-ware). 13.
 Dill water. 3.
 Dips, Sheep. 2.
 Discs, Record, for talking machines. 8.
 Dishcloths not in the piece (cotton). 25.
 — (esparto). 50.
 Dish covers (metal). 13.
 — (precious metal). 14.
 Disincrustant boiler composition. 1.
 Disinfectant limewash and disinfectant
 soap. 2.
 Disinfectants. 2.
 Distance measuring and recording
 apparatus. 8.
 Distemper paint. 1.
 Distilled water for table use. 42.
 — prepared for use in
 medicine and pharmacy. 3.
 Dividers (drawing). 8.
 Diving apparatus. 18.
 — dresses. 18.
 Dog biscuits. 42.
 — calls (metal), whistles (metal),
 chains, collars (metal). 13.
 — grates (fireplaces). 18.
 — leads (leather), collars (leather). 37.
 — soap and washes. 2.
 Dolls and dolls' dresses. 49.
 Domestic labour-saving machinery. 6.
 Door checks and springs (metal). 13.
 — fittings of metal. 13.
 — mats (india-rubber). 40.
 — (metal). 13.
 — (textile). 36.
 — scrapers (metal). 13.
 — springs made wholly or principally
 of india-rubber. 40.
 — straps (leather). 37.
 Doors (iron). 13.
 — (asbestos-lined). 13.
 — (wood). 50.
- Douches (medicated) for human use. 3.
 — (not medicated). 11.
 Down. 4.
 — quilts, as smallwares according
 to the class of the material of the
 cover.
 Doyleys (cotton). 25.
 Drain pipes (concrete). 17.
 — (earthenware). 16.
 — (metal). 13.
 — testing rocket apparatus. 8.
 Draught excluders (india-rubber). 40.
 Draw bars for railway couplings. 13.
 Draw-pulls (metal). 13.
 Drawers for wear. 38.
 Drawing boards, pencils and crayons.
 39.
 — instruments. 8.
 Drawings. 39.
 Drenches for cattle. 2.
 Drenching horns for animals. 11.
 Dress fasteners (metal), not being
 buttons. 13.
 — preservers (articles for wear). 38.
 — shields (cotton). 25.
 — (india-rubber). 40.
 — stiffeners (metal). 13.
 — (whalebone, featherbone,
 or celluloid). 50.
 Dresses. 38.
 Dressing-cases (principally or wholly of
 leather). 37.
 — (wood). 50.
 Dressing for leather goods, for belting,
 for floorcloth, for india-rubber tyres.
 50.
 — machines, Grain. 7.
 Dressings (medicated) for human use. 3.
 —, Seed. 2.
 —, Veterinary. 2.
 Driers (preparation for mixing with
 paint and varnish). 1.
 Drill braces. 13.
 Drilling machines (agricultural). 7.
 — (other than agricul-
 tural). 6.
 Drills not being machine drills. 12.
 — (linen) in the piece. 27.
 Drinking flasks and horns (not of precious
 metal nor mounted in precious metal).
 50.
 — (precious metal or
 mounted in precious metal). 14.
 Drinks (alcoholic). 43.
 Drops (medicated). 3.
 Drugget. 36.
 Drugs prepared for human use. 3.
 Drums (metal) for holding oil and pig-
 ments. 13.
 — (musical). 9.
 — (parts of machines). 6.
 — (porcelain or earthenware). 16.

- Dry cells (electrical). 8.
 — plates (chemically prepared, for use in photography). 1.
 — soap, being a form of common soap. 47.
 Drying kilns. 18.
 — machines. 6.
 Dubbin. 50.
 Dumb-bells. 49.
 Duplicating apparatus (for office use) for writings and drawings. 39.
 — inks. 39.
 Dust extracting machines. 6.
 — laying and absorbing compounds for floors. 50.
 ————— disinfectants. 2.
 Dusters (cotton), not in the piece. 25.
 — (silk), not in the piece. 32.
 Dusting powders (for toilet use). 48.
 Dyes for the hair. 48.
 —, Mineral. 1.
 —, not mineral, and not for toilet purposes. 4.
 Dyewood extracts. 4.
 Dynamite. 20.
 Dynamos. 6.

 Ear cleaners (surgical). 11.
 — markers (metal). 13.
 — rings (precious metal). 14.
 — trumpets. 11.
 Earthenware. 16.
 Easels. 39.
 Eau de Cologne. 48.
 Ebonite goods not included in other classes. 40.
 Edge tools. 12.
 Educational appliances. 8.
 Egg beating machines. 6.
 — boxes (wood). 50.
 — carriers (metal). 13.
 — powder and egg flour. 42.
 — preservatives (not being ingredients in food). 2.
 Eggs. 42.
 Elastic bands (stationery). 39.
 — hosiery for surgical or curative purposes. 11.
 — sandallings, wobs and cords (india-rubber). 40.
 —————
 (not of india-rubber) in the class of the material.
 Electric accumulators and batteries (medical). 11.
 —————
 (not medical). 8.
 — alarms (as systems in buildings). 18.
 — appliances for surgical or curative use. 11.

 Electric cables. 8.
 — carbons. 4.
 — clocks. 10.
 — detonators and fuses. 20.
 — dynamos, fans and blowers. 6.
 — fittings (metal goods not included in other classes). 13.
 — fusible cut-outs (principally of ordinary metal). 13.
 — ignition sparking plugs. 13.
 — induction coils (not for medical purposes). 8.
 — insulating materials (not included in other classes). 50.
 — insulators (india-rubber). 40.
 ————— (porcelain). 16.
 — lamps (ordinary). 13.
 ————— (philosophical). 8.
 — pianofortes. 9.
 — switchboards (complete). 8.
 — switches (ordinary) of metal. 13.
 — wire (covered) in the class of the covering material.
 Electricity meters. 8.
 Electromotors. 6.
 Electroplate. 14.
 Electrotypes for printing (metal). 13.
 Elevators, Grain or Straw. 7.
 Embossing machines. 6.
 — stamps (hand) for stationery. 39.
 Embrocation for horses and cattle. 2.
 ————— human use. 3.
 Embroidery (cotton). 25.
 ————— (linen). 28.
 ————— (silk). 32.
 ————— (woollen or worsted). 35.
 Emery cloth, paper, powder and wheels. 50.
 Emulsions (medicinal) for human use. 3.
 Enamel (being in the nature of paint). 1.
 — for coating metal. 1.
 — stopping teeth. 11.
 Enamelled articles of metal hollowware. 13.
 ————— leather. 37.
 ————— leather cloth. 36.
 Enemas. 11.
 Engineering contrivances. 18.
 Engines for agricultural purposes, as Watering, Hop-washing, &c. 7.
 — of all kinds other than agricultural. 6.
 Engravers' plates (metal). 13.
 Engravings. 39.
 Ensilage presses. 7.
 Envelopes. 39.
 Epsom salts for use in medicine and pharmacy. 3.
 Eraser, Ink and Pencil. 39.
 — (liquid) for removing stains from paper and fabrics. 47.
 Escapes, Fire. 50.
 Esparto grass, Cloths of. 50.

- Essences (alcoholic). 43.
 ——— and essential oils (medical).
 3.
 ——— (non-alcoholic) for use as food.
 42.
 Essential oils for use in manufactures,
 not included in other classes. 4.
 Etching mordants. 1.
 Etchings. 39.
 Ethers, prepared for use in pharmacy.
 3.
 Eucalyptus extracts prepared for use in
 medicine and pharmacy. 3.
 Excluders, Draught (india-rubber). 40.
 Exercisers for use in physical culture.
 49.
 Exhausters, Breast. 11.
 Expanded metal in sheets. 5.
 Expanders, Tube (metal). 13.
 Expanding apparatus, Chest. 49.
 Explosion engines. 6.
 Explosive substances. 20.
 Extinguishing compounds, Fire. 50.
 ——— machines, Fire (extinc-
 teurs). 6.
 ——— systems, Fire (for erection
 in buildings). 18.
 Extractor, Ink (for fabrics and paper).
 47.
 Eye-glass cases (papier mâché). 50.
 Eye glasses. 8.
 — salve. 3.
 Eyelets (metal). 13.
 Eyeletting machines. 6.
 Eyes, Artificial. 11.
 —, Hooks and. 13.
- Face powder and cream (not medicated).
 48.
 Facing, Founders'. 4.
 Facings, as smallwares, according to the
 class of the material or predominating
 material.
 Faience. 16.
 Fake ball. 50.
 Fancy smallwares (not included in other
 classes) of wood, bone, ivory, celluloid,
 jet or mother of pearl. 50.
 Fans for personal use. 50.
 — (parts of machinery). 6.
 Fare indicators. 8.
 Farina (preparation for stiffening calico
 or thread). 4.
 Farls. 42.
 Fasteners, Belt (metal). 13.
 ———, Dress (metal, not being
 buttons). 13.
 ——— (precious metal). 14.
 ——— (celluloid). 50.
 ———, Paper. 39.
 ———, Window (metal). 13.
- Fat for culinary purposes. 42.
 ——— illuminating, heating and lubri-
 cating. 47.
 ——— manufacturing purposes. 4.
 Feather beds and pillows. 41.
 ——— trimmings (made up), feather
 brushes. 50.
 Feathers (raw). 4.
 Feed pumps. 6.
 — water heaters (parts of machines).
 6.
 Feeding bottles. 50.
 Fellies or rims (wood). 50.
 Felt in the piece (woollen). 34.
 — for laying under carpets. 36.
 —, Roofing; Sarking; Waterproof-
 ing. 50.
 Felts for paper makers, not in the piece
 (cotton). 25.
 Fencing foils and gauntlets. 49.
 ——— (metal). 13.
 Fenders (metal). 13.
 Fermented liquors and spirits. 43.
 ——— milk for use as food. 42.
 Ferments (not medicinal). 42.
 Ferns and grasses (preserved). 50.
 Fertilisers. 2.
 Fibre, Potting. 2.
 Fibrous substances, raw or partly pre-
 pared, for use in manufactures, as
 cotton, hemp, flax, jute. 4.
 Fichus. 38.
 Field glasses. 8.
 Figures and busts of wood or papier
 mâché. 50.
 Filaments for lamps (not metallic). 50.
 Files. 12.
 —, Stationery. 39.
 Filing cabinets being office furniture. 41.
 Fillers, Cartridge. 19.
 Filletings (cotton). 25.
 Filling cement for metal castings. 1.
 — for bedding and cushions (textile)
 as small wares according to the class
 of the material.
 ——— teeth (precious metal). 14.
 ——— (not precious metal).
 11.
 ——— machines. 6.
 Films, Cinematograph (being trans-
 parencies for exhibition). 8.
 ———, Sensitized, for photography. 1.
 Filter cloths (cotton). 25.
 Filtering materials, being chemical sub-
 stances for sanitary purposes. 2.
 ——— raw or partly
 prepared vegetable and mineral sub-
 stances. 4.
 Filter paper. 39.
 Filters and filtering apparatus. 18.
 Finger stalls for curative purposes. 11.
 Finings (for coffee, beer, or wine). 42.
 Fire alarms (as systems in buildings). 18.
 — arms. 19.

- Fire bricks and clay, fireclay articles. 16.
 — engines. 6.
 — escapes. 50.
 — extinguishing compounds. 50.
 ————— machines (extinc-
 ————— teurs). 6.
 ————— systems for erection
 in buildings. 18.
 — indicating instruments. 8.
 — irons and screens (metal). 13.
 — lighters and wood. 50.
 — places. 18.
 — proofing solution. 50.
 Fireworks. 20.
 Fish. 42.
 Fishing bait (wheaten). 42.
 — boots. 38.
 — hooks. 13.
 — tackle, except fishing hooks. 49.
 Fittings, Bath; Door; Lavatory; Gas;
 Stable; &c. (of metal). 13.
 —, Electric (metal). 13.
 —, Furnace (silica and clay). 16.
 —, Shop (wood). 50.
 Fives balls. 49.
 — shoes. 38.
 Flags (cotton). 25.
 — (linen or hemp). 28.
 — (silk). 32.
 — (wool). 35.
 Flannel (in the piece). 34.
 —, medicated. 3.
 Flannelette (cotton). 24.
 Flashlight signalling apparatus. 8.
 Flasks, Drinking (not precious metal nor
 mounted in precious metal). 50.
 ————— (precious metal, or
 mounted in precious metal). 14.
 —, Powder. 19.
 Flat irons. 13.
 Flavourings for foods and beverages
 (not alcoholic). 42.
 Flax (raw or partly prepared). 4.
 — yarn and thread. 26.
 Fleams. 11.
 Flesh gloves and rubbers. 11.
 Flint paper and cloth. 50.
 Floggers (wood). 50.
 Flongs. 39.
 Floor cloth. 36.
 — polish. 50.
 Flooring composition (sawdust). 50.
 — (wood). 50.
 Flounces, Skirt (sold separately) as
 smallwares according to the class of
 the material.
 Flour. 42.
 — milling machines. 6.
 Flowers, Artificial. 50.
 —, Cut. 46.
 —, Preservatives for. 2.
 Flushing cisterns, Syphon (being build-
 ing contrivances). 18.
 Flutes. 9.
 Fluxes for soldering and brazing. 1.
 Fly gum and paper. 2.
 — powder for sheep. 2.
 — traps (metal). 13.
 Flying machines. 6.
 Fog signals (explosive). 20.
 Foil (metallic). 5.
 Foils (fencing). 49.
 Food for man and animals. 42.
 — preservatives (being ingredients in
 food). 42.
 ————— (not being ingredients
 in food). 2.
 Football bladders (india-rubber). 40.
 — cases (leather). 37.
 Footballs. 49.
 Footsacks for carriage use. 50.
 Foot warmers (metal). 13.
 ————— (wholly or principally of
 india-rubber). 40.
 Forges (portable). 6.
 Forgings, Rough. 5.
 Forks (agricultural and horticultural).
 13.
 — (brass). 13.
 — (cycle). 13.
 — for table use (steel). 12.
 ————— (wholly or partly of
 precious metal). 14.
 —, Tuning. 8.
 Foundations, Comb, for beehives. 50.
 Founders' powder and blacking. 4.
 Fountain pens (not of precious metal).
 39.
 ————— (precious metal). 14.
 Fowling pieces. 19.
 Frames (metal). 13.
 — (precious metal). 14.
 — (wood or composition). 50.
 Free wheel clutches for cycles. 13.
 Freezing machines. 6.
 — mixtures (chemical). 1.
 — pots (metal). 13.
 French chalk (prepared). 50.
 — polish and varnish. 50.
 Fret shelves (metal). 13.
 Friction composition for violin pegs and
 for handles of golf clubs. 50.
 — gloves. 11.
 — paste for driving belts. 50.
 Friezes, Irish, being woollen piece goods.
 34.
 Frillings (cambric). 28.
 — (cotton). 25.
 — (silk). 32.
 Frills for wear. 38.
 Fringe (gold and silver bullion). 14.
 Fringes (cotton). 25.
 — (linen or hemp). 28.
 — (silk). 32.
 — (worsted or woollen). 35.
 Fronts, Blocked shoe leather. 37.
 —, Shirt. 38.
 Frost cogs for horseshoes. 13.

Frothing preparations. 42.
 Fruit essences (alcoholic). 43.
 ——— (not alcoholic). 42.
 ——— prepared for human use
 as medicine. 3.
 ——— juices, syrups, and drinks (not
 alcoholic). 42.
 Fruits. 42.
 Fuel, Artificial. 50.
 ——— economising composition (chemi-
 cal). 1.
 ——— plant. 18.
 ——— (liquid) for internal combustion
 engines. 47.
 Fullers. 13.
 Fullers' earth for toilet purposes. 48.
 ——— use in manufactures.
 4.
 Fumigating apparatus (not medicated),
 for hygienic purposes. 11.
 ——— paper. 2.
 Fungus destroying or preventing pre-
 parations. 2.
 Funnels (glass). 15.
 ——— (gutta-percha). 40.
 ——— (metal). 13.
 ——— (porcelain or earthenware). 16.
 ——— (wood). 50.
 Furnace bars. 13.
 ——— blocks and fittings of silica or
 clay. 16.
 ——— grates. 18.
 Furnaces (experimental). 8.
 Furniture. 41.
 ——— cream and polish. 50.
 Fur waste and cut fur for use in manu-
 factures. 4.
 Furs not made up. 37.
 ——— made up for wear. 38.
 Fused silica. 15.
 Fuses. 47.
 Fuses (explosive). 20.
 Fusible metal cut-outs (electrical). 13.

Gaiters. 38.
 Galley racks (wood) for printers. 50.
 ——— ranges. 18.
 Galvanized iron and steel. 5.
 Gambier. 4.
 Game food. 42.
 Games of all kinds. 49.
 Garden chairs, seats and tables (metal).
 13.
 ——— (wood).
 50.
 ——— implements of the larger kind. 7.
 ——— smaller kind,
 with a cutting edge. 12.
 ———
 without a cutting edge (metal). 13.
 ——— tents. 50.

Garlands (celluloid). 50.
 Garment suspenders, not being articles
 of clothing (metal). 13.
 ——— (wood). 50.
 Garments. 38.
 ———, Life-saving (for use on
 water). 21.
 Garters. 38.
 Gas, Acetylene. 1.
 ——— brackets, burners, cylinders, stan-
 dards, and fittings (metal). 13.
 ——— engines. 6.
 ——— enriching and purifying material.
 1.
 ——— generating plant. 18.
 ——— holders (scientific). 8.
 ———, Instruments for testing. 8.
 ——— lighting and regulating apparatus
 (automatic), regulators and gauges. 8.
 ——— stoves. 18.
 ——— tubing (india-rubber). 40.
 ——— (metal). 13.
 Gasogenes. 8.
 Gates (metal). 13.
 ——— (wood). 50.
 Gauge glass tubes. 15.
 Gauges. 8.
 Gauntlets, Fencing. 49.
 Gauze (metal). 13.
 ——— (silk). 31.
 Gear cases (celluloid). 50.
 ——— (leather). 37.
 ———, Winding. 6.
 Gears, Variable, for cycles and cars. 6.
 Gelatine capsules for containing medi-
 cine. 50.
 ——— for use as food. 42.
 ——— glues. 1.
 ——— window decorations. 50.
 Gems, Natural and Artificial. 14.
 Generating plant for gas production. 18.
 Geneva. 43.
 German silver in sheets, bars, ingots,
 and wire. 5.
 Geysers. 18.
 Gilders' brushes. 50.
 Gills (machine). 6.
 Gilt thread. 14.
 Gimlets. 13.
 Gimps, as small wares, according to the
 class of the material or the predomi-
 nating material.
 Gin. 43.
 Ginger. 42.
 ——— ale (an aerated water). 14.
 ——— beer. 44.
 ———, Preparations for making.
 42.
 ——— brandy. 43.
 ——— bread. 42.
 ——— gin. 43.
 Gins, Cargo. 6.
 Girths (leather). 37.

- Glass. 15.
 — cloths not in the piece (cotton). 25.
 ————— (linen). 28.
 — lustres, no part of metal. 15.
 — paper and cloth. 50.
 —, Preparations for cleaning and polishing; for preventing condensation on. 50.
 Glasses, Blending (graduated); Eye; Opera; Field; Magnifying. 8.
 Glaze for food. 42.
 —, Laundry. 47.
 Glaziers' diamonds. 50.
 Globes (glass). 15.
 —, Terrestrial and celestial. 8.
 Glove stretchers (wood). 50.
 Gloves. 38.
 —, Bath, Flesh, and Friction. 11.
 —, Batting; Boxing. 49.
 —, Bottling. 38.
 — for use by X-ray operators. 11.
 —, Insulation (india-rubber). 40.
 Glucose. 42.
 Glue. 1.
 Glycerine for use in manufactures. 4.
 — prepared for toilet purposes. 48.
 ————— use in medicine and pharmacy. 3.
 Goffering irons. 13.
 Goggles. 8.
 Gold, gold alloys, and gold leaf. 5.
 — beaters' moulds and skin. 50.
 — thread and lace. 14.
 Golf balls, bags, clubs, irons, and tees. 49.
 Goloshes. 38.
 Gongs. 13.
 Gouges. 12.
 Governors (parts of machinery). 6.
 Grafting tools with a cutting edge. 12.
 ————— (metal) without a cutting edge. 13.
 Grain crushers. 7.
 — dressing machines. 7.
 — elevators. 7.
 Graining combs (metal). 13.
 Grains (for food). 42.
 Granite (rough or partly prepared). 4.
 — setts for paving. 4.
 — tar macadam. 17.
 Grape ferment for human use (medicinal). 3.
 — sugar. 42.
 Graphite crucibles. 50.
 — lubricants. 47.
 — polishes. 50.
 — raw or partly prepared for use in manufactures. 4.
 Grapnels (for use on board ship only). 21.
 Grass cutting machines. 7.
 — hooks. 12.
 — pulp, Yarns and textile piece goods made from. 50.
 Grass seeds. 46.
 Grasses, Preserved. 50.
 Grates (being fireplaces). 18.
 —, Furnace. 18.
 Gratings (metal). 13.
 Grease for lubricating, heating and illuminating purposes. 47.
 — use in manufactures. 4.
 ————— pharmacy. 3.
 Greenhouses. 18.
 Gridirons. 13.
 Grindstones. 50.
 Gripes, Cork (wood). 50.
 Grit for poultry. 42.
 Groats. 42.
 Ground sheets (india-rubber). 40.
 Grubbers. 7.
 Guano. 2.
 Guards, Fire (metal). 13.
 —, Leg (cricketing). 49.
 Guidebooks. 39.
 Guitars. 9.
 Gulleys (earthenware). 16.
 — (metal). 13.
 Gum, Chewing. 42.
 —, Fly. 2.
 — prepared as an article of stationery. 39.
 Gums for use in manufactures. 4.
 — prepared for use in pharmacy. 3.
 Gun barrels and locks, gun carriages. 19.
 — cotton and gunpowder. 20.
 Guns. 19.
 —, Harpoon. 19.
 Gut casts or traces. 49.
 Gutta-percha goods not included in other classes. 40.
 — tissue for tailors' use. 40.
 — tooth stopping. 11.
 Gutters (metal). 13.
 Gymnastic apparatus. 49.
 Hack saw blades. 12.
 Hacking knives. 12.
 Hackles (machine). 6.
 Hair brushes, combs, plaits, pads, and transformations. 50.
 — cloths and fabrics (in the piece). 34.
 — for use in manufactures. 4.
 — nets (of real hair). 35.
 — (silk). 32.
 — pins, curlers and wavers (metal). 13.
 — stuffing for furniture. 35.
 — washes and preparations for the hair. 48.
 —, Yarns of. 33.
 Halter balls (metal). 13.
 Halters. 37.

- Hames, Harness (metal). 13.
 ————— (wood). 50.
 Hammers. 13.
 —————, Steam. 6.
 Hammocks. 50.
 Hampers. 50.
 Hams. 42.
 Hand-barrows (metal). 13.
 ————— (wood). 50.
 ————— carts and trucks. 22.
 Handkerchiefs (cotton), in the piece. 24.
 ————— not in the piece. 25.
 ————— (linen) in the piece. 27.
 ————— not in the piece. 28.
 ————— (silk) in the piece. 31.
 ————— not in the piece. 32.
 Handles (metal). 13.
 ————— (precious metal). 11.
 ————— (vulcanite). 40.
 ————— (wood, ivory, bone, mother of pearl). 50.
 Hangers (parts of machinery). 6.
 ————— (textile) for garments, as small-wares according to the class of the material.
 Hangings, Paper. 41.
 Hardening fluid for metal. 1.
 Harmoniums. 9.
 Harness. 37.
 ————— liquid. 50.
 Harpoon guns. 19.
 Harps. 9.
 Harrows. 7.
 Harvesting machines. 7.
 Hatchets. 12.
 Hatching apparatus. 50.
 Hat and coat hooks (metal). 13.
 ————— bands, as smallwares, according to the class of the material.
 ————— gloss and reviver (for silk hats). 17.
 ————— pins (metal). 13.
 ————— stands and rails (furniture). 41.
 ————— varnish (for straw hats). 1.
 Hats. 38.
 Hay forks and racks (metal). 13.
 ————— knives. 12.
 ————— making machines, hay presses. 7.
 Headsquares (for children). 38.
 Head-stalls. 37.
 Healds. 6.
 Hearth brick and hearth stone. 50.
 Hearths of porcelain or earthenware. 16.
 Heat, Composition for preventing the radiation of. 1.
 ————— indicators and gauges. 8.
 Heater irons. 13.
 Heaters, Feed-water (parts of machines). 6.
 Heating apparatus for buildings. 18.
 Heel-ball. 50.
 ————— tips (metal). 13.
 ————— or pads (india-rubber). 40.
 Heels for boots (leather). 37.
 ————— (wood). 50.
 Helmets. 38.
 Hemp lace. 28.
 ————— machine belting. 28.
 ————— piece goods. 27.
 ————— (raw and partly prepared). 4.
 ————— yarn and thread. 26.
 Hempseed cake. 42.
 Herbs for food. 42.
 ————— used in medicine and pharmacy. 3.
 Hessians (jute). 29.
 ————— (tow). 27.
 Hides. 37.
 High-pressure packing. 50.
 Hinges (metal). 13.
 Hockey sticks. 49.
 Hoes. 13.
 —————, Horse. 7.
 Hog products used as food. 42.
 Hoists (machinery). 6.
 Holdfasts (metal). 13.
 Hollands, in the piece (linen). 27.
 ————— (spirits). 43.
 Hollowware (metal). 13.
 Home trainers. 49.
 Hominy. 42.
 Hones. 50.
 Honey. 42.
 Hoods for carts and motor cars (textile). 50.
 Hooks and eyes. 13.
 —————, Boat. 21.
 —————, Crochet (metal). 13.
 —————, Fish. 13.
 ————— for cutting, as billhooks. 12.
 ————— hanging or holding, as ship-hooks, curtain-hooks. 13.
 Hoop iron. 5.
 Hop presses. 7.
 Hops. 42.
 Horizons, Artificial. 8.
 Horizontal bars. 49.
 Horns, Cycle. 13.
 —————, Drenching. 11.
 —————, Drinking (not mounted in precious metal). 50.
 ————— (musical). 9.
 —————, Shoe (bone, ivory, wood). 50.
 ————— (metal). 13.
 Horological instruments. 10.
 Horse and cattle food. 42.
 ————— blisters and medicines. 2.
 ————— clippers. 12.
 ————— clothing. 37.
 ————— collars. 37.
 ————— hair. 4.
 ————— singers. 13.
 Horses, Slaters'. 12.
 Horseshoe cogs. 13.
 Horseshoes (metal). 13.
 ————— (vulcanised indiarubber). 40.