

c#

THE LAW OF
TRADE MARKS
AND
TRADE NAME.

*WITH CHAPTERS ON TRADE SECRET AND TRADE
LIBEL, AND A FULL COLLECTION OF
STATUTES, RULES, FORMS AND
PRECEDENTS.*

BY

D. M. KERLY, M.A., LL.B.,

SOMETIME FELLOW AND MACMAHON LAW STUDENT OF ST. JOHN'S COLLEGE, CAMBRIDGE;
AUTHOR OF "AN HISTORICAL SKETCH OF THE EQUIFABLE JURISDICTION OF THE
COURT OF CHANCERY"; OF THE INNER TEMPLE, BARRISTER-AT-LAW.

THIRD EDITION.

BY

THE AUTHOR AND F. G. UNDERHAY, M.A.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW (ASSISTANT-EDITOR OF THE REPORTS
OF PATENT DESIGNS AND TRADE MARK CASES).

LONDON:

SWEET & MAXWELL, LIMITED,
3, CHANCERY LANE, W.C.

1908.

S
UR
202
1908

Tx
K3964
ed 2

BRADBURY, AGNEW, & CO. LD., PRINTERS,
LONDON AND TONBRIDGE.

OCT 9 1909

PREFACE.

THE last edition of this book was published in 1901. In the interval the Trade Marks Act, 1905, has become law, and its passage has effected a material improvement in the administration of a branch of jurisprudence which is of great and increasing importance to the commercial community. The present editors published in 1906 an edition of the Act with an introduction and a short commentary, and, as the main features of the Act are now well known, it will be sufficient to refer to that introduction without repeating it here, and to the introductory chapter of this work.

The principal objects of the Act were to enlarge the scope of the Register by admitting to registration a number of marks, and particularly of word marks which, though good Common Law trade marks, were excluded by the older Acts, to simplify the law of registration and improve its expression by separating it altogether from the statutes dealing with Patents and Designs with which it had most unfortunately been associated in 1883, and to effect a considerable number of minor amendments.

In order to incorporate the provisions of the new Act in the book it has been found necessary practically to re-write a great part of the earlier chapters. This has been done, and both throughout the text and in the tables of corresponding sections printed in the Appendix, a detailed comparison of the old Acts with that now in force has been made.

The following extract from the preface to the 2nd edition remains almost as true now as when it was written :

“ The feature of the litigation of the past seven years has been the growing prominence of cases turning upon unregistered trade marks. The *Camel Hair Belting* and the *Yorkshire Relish Cases* made it plain that it is possible for words which are of the most obviously descriptive character in themselves to be practically

monopolised in a particular trade by a single trader. More recently the *Cellular Clothing Case* has indicated some of the limits within which this can be done. The general tendency of the modern decisions is to sweep away all the subordinate rules as to what can and what cannot be acquired as a Common Law trade mark, and to return in every instance to the simple inquiry whether what the defendant is doing is calculated to pass off his goods as those of the plaintiff. However attractive this apparent simplicity may appear at first sight, it is doubtful whether it will be satisfactory in the long run. As things stand, the task of advising at what point the wide advertisement and extensive use of a descriptive word by a trader on a large scale enables him to debar his smaller rivals from making use of it has become one of extreme difficulty."

As many of the unregistered trade marks referred to in the passage cited have now been registered under section 9 (5) of the Act, it is possible that the operation of section 41 making registration conclusive after seven years, will in the course of time set some of the questions referred to at rest to the great advantage of the owners of the trade marks, and with little or no loss to other persons concerned in their respective trades.

The circumstances under which, if at all, a trader may be restricted in the honest use of his own name have not yet been debated in any judgment of the House of Lords, and as appears by the discussion in the chapter on "Passing-off" actions, the question remains an open one.

Very important Trade Mark Acts have also been passed by the United States and by the Commonwealth of Australia. These have been set out in the Appendix. And, generally, an attempt has been made to bring together in the Appendix so far as space permitted everything which appeared likely to be useful in connection with the subject in countries where the Common Law of England prevails.

In the present volume the commentary on the Merchandise Marks Act of 1887 has been omitted, although the Act itself is printed in the Appendix. The growing bulk of the book suggested this change, and it was thought, moreover, that the

separate edition of the Act which is in preparation might be found more convenient than one in less portable form.

The editors desire to record their grateful acknowledgment for assistance kindly given in connection with the present edition by Mr. Ralph Griffin, the Registrar of Trade Marks, Mr. Cunliffe, the Solicitor of the Board of Trade, and Mr. R. E. V. Bax, of the Chancery Bar.

The cases have been brought down to August, 1908.

D. M. KERLY.
F. G. UNDERHAY.

Long Vacation, 1908.

NOTE.—Almost the whole of the work of preparing the present edition and carrying it through the Press has been undertaken by Mr. Underhay, to whose assistance the writer was much indebted in previous editions.

D. M. KERLY.

CONTENTS.

CHAPTER I.

	PAGES
INTRODUCTION	1—21

1. Trade Marks before the Registration Acts, 1. 2. Registration of Trade Marks, 4. 3. Passing-off and trade name actions, 12. 4. The Criminal Law of false marking, 16. 5. International and Colonial arrangements, 20.

CHAPTER II.

THE DEFINITION OF A TRADE MARK	22—56
--	-------

Definition of a common law trade mark, 23. No statutory definition before 1905...23. The statutory definition of a trade mark, 24. "Mark," 24. Combination trade marks, 25. Actual user not necessary, 25. Use in connection with the goods, 25. A trade mark is indicative of origin, 26. "Registrable trade mark," 26. "Registered trade mark," 26. Definitions in the M. M. A. 1862...26. Definitions in the M. M. A. 1887.. 27. Judicial definitions, 27.

1. **What symbols may be trade marks, 28.**
2. **Applied or attached to goods, 29 ; the mark must go to market with the goods, 29 ; and must sell the goods, 30 ; trade mark rights are restricted to the class of goods for which the mark is used. 31 ; the use of the trade mark on other goods is not protected, 32 ; anyone may use the mark on the right goods, 33.**
3. **Offered for sale in the market, 33 ; long user of mark or proof of actual reputation is unnecessary, 35.**
4. **The mark must be distinctive, 35 ; not necessary that public should know the name of the owner of the mark, 36 ; what are distinctive marks, 37 ; descriptive marks and marks apparently descriptive, but having a secondary distinctive meaning, 37 ; name of a new pattern, *Ford v. Foster*, 38 ; test whether trade mark has become *publici juris*, 38 ; the *Singer* cases, 39 ; no monopoly can be maintained in the reputation of goods which anyone may make and sell, 41 ; change of meaning of word, 42 ; secondary meaning of words originally common, 42 ; name of goods made under an expired patent, 43 ; the *Linoleum* case, 44 ; article formerly made under secret process, 47 ; whether the name given to a new article can be monopolised, 47 ; article formerly made under registered design, 48 ; "original," 49 ; name of place of origin, 49 ; "Anatolia liquorice," 49 ; *Seico v. Provezende*, 50 ; "Glenfield Starch," 51 ; advertisement of goods not a trade mark, 52 ; *Leather Cloth* case, 52 ; *Chevin v. Walker*, 53.**
5. **Made, worked upon, imported, selected, certified, or sold, 53 ; connection of the owner of the trade mark with the goods, 53 ; trade mark of selector, *Hirsch v. Jonas*, 54 ; designer for another person, 55.**
6. **Registered under the Acts as a trade mark, 56.**

CHAPTER III.

	PAGES
THE REGISTER OF TRADE MARKS, AND THE TRADE MARKS BRANCH OF THE PATENT OFFICE	57—64

The Register, 57. The Manchester Branch office and the Sheffield Register, 58. The Comptroller or Registrar, 58. Entries on the Register, 59. No trusts to be entered, 59. Title conferred by registration, 60. Alterations of the Register, 60. Falsification of the Register, 60. Devolution of title, 61. Period of registration, 61. Removal of entries, 61. Inspection of the Register, 61. Searches, 61. Indexes, 61. Certified copies of the Register to be evidence, 62. Registrar's certificate to be evidence, 62. Purpose of certificate of registration to be stated, 63. Patent office seal, 63. Notices and documents may be sent by post, 63. Addresses, 63. Excluded days in computing time, 63. Agency, 63. Exercise of discretionary power by Registrar, 64.

CHAPTER IV.

REGISTRATION OF TRADE MARKS	65—102
------------------------------------	---------------

Section 12...66.

- 1. Who may apply to register, 67 ; the proprietor, 67 ; an importer, 68 ; registration by licensee under patent, 69 ; application through an agent, 70 ; registration in the agent's name, 70.**
- 2. The Registrar's discretion, 70 ; reasons for refusal to register, 71 ; nature of the discretion, 72 ; to be judicially exercised, 75 ; consents, 76 ; acceptance subject to conditions, 76 ; Registrar to hear applicant before refusing registration, 76 ; Registrar may consult Law Officers, 77.**
- 3. Procedure on application to register, 77 ; ordinary applications to register, 78 ; form of application, 78 ; word in foreign language or characters, 78 ; essential particulars and disclaimers, 78 ; procedure on receipt of application, 79 ; abandonment of application, 80 ; advertisement, 80 ; registration, 81 ; death of applicant, 81 ; certificate, 81 ; special applications under sec. 9 (5)... 82 ; standardisation marks under sec. 62...83 ; amendments, 84 ; enlargements of prescribed times, 84.**
- 4. Opposition to registration, 85 ; sec. 14...85 ; Rules, 86 ; who may oppose, 88 ; statement of grounds of opposition, 88 ; summary of procedure on an opposed application, 89 ; amendments and enlargement of time, 90 ; grounds of opposition, 91.**
- 5. Appeal from the Registrar, 92 ; the tribunal of appeal, 92 ; appeal to the Board of Trade, 92 ; appeal to the Court, 94 ; reference of rival claims to the Court, 95 ; address for service, 96 ; evidence, 96 ; modification of application at the hearing, 97 ; disclaimers, 98 ; what objections the Court can consider, 98.**
- 6. Costs, 99 ; costs before the Registrar, 99 ; costs on appeal to the Court, 99 ; costs on appeal to Court is an opposition, 100 ; jurisdiction on appeal as to costs before Registrar, 101 ; costs on appeal to the Board of Trade, 101 ; costs on withdrawal of application, 101 ; security for costs, 102.**
- 7. Renewal of registration, 102.**

CHAPTER V.

CLASSIFICATION OF GOODS	103—111
--------------------------------	----------------

The classes, 104. Registration and protection for part of a class, 104. Trade mark should not be registered for goods in which there is no intention to deal, 105. Non-user of trade mark, 106. Associated trade marks, 107. Resembling marks belonging to the same proprietor, 108. Combined trade marks, 109. Series of trade marks, 110. Assignment of associated trade marks, 110.

CHAPTER VI.

	PAGES
SHEFFIELD MARKS	112—120

The Cutlers' Company, 112. Old corporate marks, 114. Recent legislation and the company, 114. The Act of 1875...114. The Acts of 1883 and 1888 ...116. The Act of 1905...117.

CHAPTER VII.

COTTON MARKS AND THE MANCHESTER BRANCH OFFICE	121—126
--	---------

The first Cotton Marks Rules, 121. The Cotton Marks Committee, 122. The Manchester Branch Office, 122. Special points of practice, 122. Effect of Act of 1905...122. Sec. 64...123. Jurisdiction of the Palatine Court of Chancery, 126.

CHAPTER VIII.

WHAT MARKS MAY BE REGISTERED AS TRADE MARKS	128—211
--	---------

Sec. 9...129. Sec. 10 of the Act of 1875...130. Sec. 64 of the Act of 1883 as amended by the Act of 1888...130. New marks may be registered, 131. Applicant must intend to use the mark, 132. Sec. 36...132. What Act applied to pending registrations, 133. Sec. 9 is purely restrictive, 134.

Essential particulars, 134; the five divisions are separate and independent, 136; additions now abolished, 136; (1) **NAME MARKS**, 136; name of imaginary person, 137; mere name in nominative case, 139; special or particular manner, 140. (2) **SIGNATURES**, 140; signature of applicant, 141; requirements for a good trade mark, 141. **WORD MARKS**, 142; words as trade marks, 142; Report of Lord Herschell's Committee, 143; geographical names, translated words, phonetic equivalents, 143. **FANCY WORD OR WORDS NOT IN COMMON USE**, 144; 1. Fancy word, 145; *Van Duzer's* case, 145; the word must be obviously meaningless, 146; *Borril* case, 148; *Tubloid* case, 149; *Cyclostyle* case, 149; descriptive words, 150; words in a foreign language, 150; name of goods in a foreign language, 151; names of common marks, 152; secondary distinctive meaning does not constitute a word a fancy word, 152; geographical words, 152; name of a person, 154; 2. Not in common use, 155; in the trade or popularly, 155; "the" prefixed to word, 156; examples from decided cases, 156. (3) **INVENTED WORDS**, 158; *Solio* case, 158; not qualified by (4)...158: quantum of invention, 160; variations of ordinary words, 162; whether applicant must be the inventor or first user, 163; date of invention, 163; examples from decided cases, 164. (4) **WORDS HAVING NO REFERENCE TO GOODS**, 165; Act of 1888...166; alteration made by Act of 1905...166; test to be applied under Act of 1888 ..166; examples from cases decided under Act of 1888...168; and not being geographical name, 170; *Magnolia* case, 170: geographical name not equivalent to name of any place, 170; examples from cases decided under Act of 1888...172; not being a surname, 172. (5) **DISTINCTIVE MARKS**, 173; the word "distinctive," 174; meaning of distinctive, 177; 1. What marks are to be distinguished, 177; common marks, 180; other trade marks, registered or not, 181; abandoned trade marks, 181; marks used as advertisements, 181; 2. What degree of distinctiveness is required, 183; secondary distinctive meaning, 183; descriptive marks, 183. **DEVICE**, 184; devices as trade marks, 184; word or letter not a device, 184; portrait of inventor, 185; part of mark common to trade, 186; combination devices, 186; descriptive devices, 187; device comprising picture of goods, 188; device representing the name of the goods, 188. **BRAND**, 189. **HEADING**, 191; line headings for cotton goods, 191. **LABEL**, 192; phrases and proverbs, 193; ordinary

arrangement of common parts, 193 ; additions under the Acts of 1883 and 1888...194 ; additions abolished by Act of 1905...195 ; disclaimer in regard to labels under previous Acts, 195 ; similar common words in contrasted labels, 196 ; blanks in labels, 197 ; colour, 197. **TICKET**, 197. **LETTER**, 198. **NUMERAL**, 198.

Old marks, 198 ; 1. special and distinctive, 198 ; deceptive mark not distinctive, 200 ; descriptive words, 200 ; words with a secondary distinctive meaning, 201 ; examples of old word marks, 203 ; 2. used as a trade mark, 203 ; use on bottles or boxes only, 204 ; where the applicant has another trade mark, 205 ; the old mark must have been used as registered, and alone, 205 ; use must continue until application to register, 205 ; slight variations permitted, 206 ; use for the same goods, 206 ; use in the United Kingdom, 206 ; fraudulent use, 207 ; effect of infringements, 207 ; slight evidence of user sufficient, 207 ; standardisation trade marks, 208.

Colour, 208 ; sec. 10, registration in colours, 209 ; colour as an element of similarity, 210.

CHAPTER IX.

	PAGES
DISCLAIMERS	212—220

Sec. 15. 212. Mark may contain non-distinctive matter, 212. Added matter in the Acts of 1883 and 1888...213. Scheme of the Act of 1905 as to disclaimers, 214. In what cases disclaimers may be required, 214. Parts not separately registered, 214. Matter common to the trade, 215. The three mark rule, 215. Label distinctive as a whole, 217. Time at which disclaimer may be required, 218. Disclaimer at the instance of proprietor, 219. Effect of registration with disclaimer, 219. Registration with blanks, 220.

CHAPTER X.

RESTRICTIONS ON REGISTRATION	221—275
---	---------

The Registrar's discretion not limited by the express restrictions, 222.

I. Identical or resembling marks, 222 ; old marks, 223 ; the three mark rule, 224 ; application of the rule, 224 ; rule does not apply to new marks, 225 ; duplicate claims, 225 ; public interests to be considered, 226 ; sec. 19 is not limited by the register classes, 227 ; the same goods or description of goods, 228 ; use or registration for part of a class, 229 ; registration of a second mark by agreement, 229 ; notes on the Register, 230 ; sec. 19 extends beyond infringing marks, 230 ; consents of proprietors, 231 ; expired trade marks, 232 ; where the marks are used in different markets, 232 ; deceptive resemblance calculated to deceive, 234 ; **A. WHAT PERSONS ARE TO BE CONSIDERED**, 235 ; ultimate purchasers, 235 ; foreigners, 235 ; ordinary persons, 236 ; **B. RULES OF COMPARISON**, 237 ; what amount of resemblance is calculated to deceive, 237 ; 1. the "idea of the mark" to be regarded, 237 ; the *Two Elephant* case, 239 ; the *Tuendstikker* case, 240 ; marks to be compared as wholes, 240 ; general resemblance with differences in details, 240 ; included common marks not to be disregarded, 241 ; ear as well as eye to be considered, 243 ; 2. the marks are to be compared as fairly used in practice, 244 ; alterations of the marks from their registered forms, 245 ; 3. the essential particulars are to be specially attended to, 246 ; 4. all the circumstances of the trade to be considered, 247 ; numerous marks of the same description, 248 ; similar marks belonging to applicant, 249 ; distinction may be of a well-known kind, 249 ; line headings, 249 ; bearing of common marks on the comparison, 250 ; 5. where the opponent's goods are known by a name suggested by the mark, 250 ; the *Dairy Maid Milk*

case, 251 ; answers to this objection, 252 ; (n) the name is descriptive of the goods, 252 ; (b) it is suggested by included matter common to the trade, 254 ; or by disclaimed matter, 254 ; or it is a common name, 255 ; (c) it gives a practical monopoly, 255 ; EVIDENCE, 256 ; expert evidence as to probability of deception, 256 ; evidence of actual deception, 259 ; examples and illustrations, 260 ; contrasted devices, 260 ; contrasted words, 262 ; CONCURRENT USER, 264 ; concurrent rights in registered mark, 265.

II. Deceptive or scandalous marks, sec. 19...266; doubtful new marks to be rejected, *Euo v. Dunn*, 268 ; mark containing name of the opponents' goods, 270 ; device suggesting the name, 271 ; "trade mark" attached to part of the mark, 271 ; threats of prosecution in trade mark, 273 ; "registered," &c., 273 ; mark referring to particular goods, 273 ; false representation as to origin of goods, 273 ; mark originally used fraudulently, 274 ; "or otherwise," 274.

CHAPTER XI.

RECTIFICATION OF THE REGISTER PAGES 276—320

1. Rectification under sec. 35...278 ; sec. 35...278 ; "PERSONS AGGRIEVED," 279 ; all persons substantially inconvenienced if the registration is wrong, 279 ; the question is one of *locus standi* only, 280 ; the *Apollinaris* case, 280 ; any person harassed or intimidated by the registration, 281 ; *Powell's* case, 281 ; defendant in a passing-off action, 282 ; where the respondent offers to disclaim, 283 ; exporter aggrieved by the registration of a mark for the home trade, 283 ; foreigner, 283 ; wider view now taken than in the earlier cases, 284 ; applications as to matters otherwise dealt with in the Act, 285 ; THE EXERCISE OF THE JURISDICTION, 285 ; where the mark was incapable of registration it must be removed, 285 ; and the conduct of the applicant is immaterial, 286 ; where it was capable of registration, but might have been opposed, the Court has a discretion, 286 ; *Paine v. Daniells*, 286 ; independent title by registration and user, 288 ; mark allowed to remain in pursuance of a compromise, 288 ; onus is on the applicant, 289 ; the Registrar's decision is no bar to rectification, 289 ; effect of sec. 41... 289 ; delay on the part of the applicant is generally no bar, 290 ; but delay may have a bearing on the evidence, 290 ; entry formerly to be vacated or rectified if originally wrongly made, 290 ; sec. 36...291 ; sec. 37, removal for non-user, &c., 292 ; associated trade marks, 294 ; THE ORDERS MADE, 294 ; (1) new entries, 295 ; new marks cannot be registered under sec. 35...295 ; (2) total removal, 295 ; reasons for removal, 295 ; alteration of circumstances, abandonment, misuser, 296 ; (3) partial removal, 297 ; deceptive marks wholly removed, 297 ; (4) registration of a disclaimer, 297 ; (5) limitation of the registration, 298 ; to particular goods, 298 ; to particular markets, 299 ; (6) limitation to specified colours, 300 ; (7) entry of conditions, 300 ; (8) variation of the mark, 300 ; (9) variation of the date of entry, 300 ; (10) variation of the name of the proprietor, 301 ; registration in the wrong name, 301 ; change of name, 301 ; (11) remedying of defects or errors, 303 ; PROCEDURE, 303 ; the Court, 303 ; motion, not action or counterclaim, 304 ; service on the Registrar, 305 ; service on the registered proprietor, 306 ; where the proprietor is resident abroad, 306 ; notice of motion not served out of the jurisdiction, 306 ; notice by letter, 306 ; foreigner appearing, liable for costs, 307 ; but not ordered to give security unless on his appeal, 307 ; EVIDENCE, 308 ; declarations of proprietor, 308 ; discovery, 308 ; written statement by Registrar, 309 ; particulars, 309 ; order to be served on the Registrar, 309 ; certificate under sec. 46...309 ; costs, 311 ; appeal, 313.

2. Correction and cancellation at the proprietor's request, 314 ; sec. 32...314 ; alteration of name or address, 314 ; procedure, 315 ; appeal, 316.

3. Alteration of a registered trade mark, 316 ; sec. 34...316 ; Act of 1883...316 ; old marks, 317 ; alterations of new marks, 318 ; procedure, 320 ; appeal, 320.

CHAPTER XII.

EFFECT OF REGISTRATION PAGES
321—344

Object of the Acts, 322.

1. **Title to new trade marks conferred by registration**, 322 ; new and unused marks may be registered, 323 ; applicant for registration must intend to use the mark, 323 ; Act of 1905...324 ; date of registration, 324.
2. **Registration as evidence of title**, 325 ; Act of 1883, sec. 39 of Act of 1905... 325 ; rights of proprietor, 325 ; limitations on rights, 326 ; right limited to goods for which the mark is registered, 327 ; and actually used, 327 ; upon or in connection with the goods, 328 ; sec. 40. Registration to be *prima facie* evidence of validity, 329 ; in application for rectification, 330 ; sec. 41. Registration to be conclusive after seven years, 330 ; changes made by the Act of 1905...331 ; name of patented goods, 332 ; fraud, 332 ; marks forbidden by sec. 11...333 ; concurrent registrations, 333 ; trade marks of anterior date, 333 ; matters subsequent to registration, 334.
3. **Registration as a condition precedent to an action for infringement**, sec. 42... 334 ; Act of 1883...335 ; (a) all new marks are within the prohibition, 335 ; (b) old marks refused registration are not, 336 ; certificate of refusal, 337 ; the section applies to foreigners, 337 ; registration is a condition precedent to an action, but not to the acquisition of a trade mark, 337 ; only the registered proprietor or his assignee can use, 338 ; the assignee can sue before registration, 338. **THE PROHIBITION DOES NOT AFFECT PASSING-OFF ACTIONS**, 338 ; sec. 45...338 ; distinction between infringement and passing-off actions, 339 ; unregistered trade marks are practically protected, 339 ; the operation of sec. 77 of Act of 1883...341 ; proof of fraud is not necessary to escape the prohibition, 342 ; failure to register only deprives the proprietor of the assistance of the Acts, 343 ; and of the protection of the Merchandise Marks Act, 344.

CHAPTER XIII.

ASSIGNMENT AND DEVOLUTION OF TRADE MARKS 345—361

A trade mark is assignable only with the goodwill, 345. Sec. 22...346. And passes with the goodwill by implication, 346. *Hall v. Barrows*, 347. Trade mark comprising the name of the original proprietor, 347. The *Leather Cloth* case, 348. No assignment if the use of the assigned mark by the assignee would be deceptive, 348. Lord Kingsdown's judgment, 348. The mark used by the assignee must indicate what it indicated when used by the assignor, 349. A mark comprising a trader's name is assignable, 349. There must be a business to assign within the United Kingdom, 350. Assignment with the goodwill of part of the business, 351. Transfer of goodwill and trade mark not necessarily contemporaneous, 351. Foreign trade marks and goodwill, 352. Dissolution of partnership, and bankruptcy, 352. Apportionment of trade marks on dissolution of partnership, 352. Power of proprietor to assign, sec. 38...353. Licences, 354. Lease of goodwill and trade marks, 354. Action by licensee, 355. Purchase or lease of goodwill, 355. Registered proprietor can make a title, 356. "Subject to the provisions of this Act," 356. Registration of assignments, sec. 33...357. Action by assignee before registration, 357. Alteration of registered mark in consequence of an assignment, 357. Procedure and rules, 358. Stamp on assignment of goodwill and trade mark, 359. What constitutes goodwill, 360.

CHAPTER XIV.

DETERMINATION OF TRADE MARK RIGHTS 362—376

1. **Loss of distinctiveness**, 363 ; by the action of the proprietor, 364 ; by extensive piracy, 365 ; test whether the mark is *publici juris*, 365 ; mark *publici juris* for a particular class, 366 ; amount of common user necessary, 366.

- 2. **Separation of the mark from the goodwill**, 367 ; sec. 22...367 ; no exclusive right in a registered mark apart from the goodwill, 367 ; removal of the mark, 368 ; temporary separation from goodwill, or disuse of mark, is immaterial, 369.
- 3. **Abandonment**, 370 ; agreement to abandon, 370 ; not mere disuse of mark, 370 ; adoption of a new mark, 371 ; use with the proprietor's name, 371 ; neglect to prosecute infringements, 371.
- 4. **Forfeiture of right to protection**, 372.
- 5. **Removal of mark from the Register**, 372 ; duration of registration, 372 ; renewal, 372 ; removal for non-payment of fees, sec. 30...373 ; rules, 373 ; cause of the removal to be registered, 374 ; right to renewal, 375 ; re-registration, 375 ; status of removed mark, 375 ; new mark may be deceptive by resembling the removed mark, 376.

CHAPTER XV.

	PAGES
THE ACTION FOR INFRINGEMENT	377—476

- Comparison with passing-off action, 379.
- 1. **Commencement of the action**, 380 ; in what Court, 380 ; no jurisdiction in the County Court, 380 ; service out of the jurisdiction, 381 ; notice of action unnecessary, 382 ; agents and partners of infringer, 382.
 - 2. **The plaintiff's title**, 383 ; joint trade marks, 383 ; contract for exclusive sale, 384 ; one of several proprietors may sue, 385 ; intention to use necessary, 385 ; action by executors, 386 ; right to sue in respect of unauthorised assumption of Royal arms, 386.
 - 3. **Registration**, 386 ; registration of assignment, 387 ; registration as evidence of title, 387.
 - 4. **What constitutes infringement**, 389 ; definition, 389 ; isolated act of infringement, 389 ; infringement must be within the realm, 391 ; whether it must be in plaintiff's market, 391 ; on goods for which the mark is registered, 392 ; use on goods which are not the plaintiff's, 394 ; what connection with spurious goods sufficient, 395 ; (A) WHERE THE DEFENDANT COPIES THE PLAINTIFF'S MARK OR PRETENDS THAT IT IS HIS OWN, 397 ; (B) WHERE HE COPIES AN ESSENTIAL FEATURE OF IT, 399 ; (C) WHERE HIS MARK IS A COLOURABLE IMITATION OF IT, 400 ; test of infringement, 400 ; actual deception need not be proved, 401 ; nor intention to deceive, 402 ; what resemblance is calculated to deceive, 403 ; principles of comparison summarised, 404 ; usages of the trade, 405 ; colour, 406 ; what importance is to be attached to differences between the marks, 406 ; inconspicuous additions or explanations : "late of," "from," "equal to," 408.
 - 5. **Defences**, 409 ; **ATTACK ON THE PLAINTIFF'S TITLE OR THE REGISTRATION OF HIS MARK**, 410 ; **CONCURRENT OR INDEPENDENT RIGHT**, 411 ; sec. 41... 413 ; registration of the defendant's mark, 414 ; introduction into a new market, 416 ; trade marks on dissolution of partnership, 418 ; or bankruptcy, 419 ; honest use of defendant's own name, 419 ; **ESTOPPEL**, 419 ; (a) personal estoppel, 420 ; agreement to condone infringement, 420 ; uncandid conduct, 420 ; use of mark in unregistered form, 420 ; (b) acquiescence, 421 ; licence, 422 ; (c) delay, 423 ; delay may modify the relief, or amount to abandonment, 424 ; it has a bearing on the evidence, 425 ; (d) deceptive trade mark or fraudulent trade, 426 ; collateral misrepresentation, 427 ; it is immaterial that the misrepresentation is too gross to deceive, 429 ; false claim of patent rights, 429 ; "trade mark" affixed to part of mark only, 433 ; false assertion of registration, 437 ; other misleading statements, 438 ; fraudulent trade, 439 ; Havana cigars, 439 ; *Bile Bean* case, 440 ; misrepresentation after action commenced, 440.
 - 6. **The relief granted**, 441 ; I. **INJUNCTION**, 441 ; form, 443 ; restricted to future consignments or a particular market, 444 ; refused because of

- acquiescence, 444 ; interim injunction, 445 ; refused because of delay, 446 ; undertaking as to damages, 447 ; undertaking to keep an account, 448 ; enforcement of the injunction, 448 ; choice of a new mark by the defendant, 449 ; delay in application to commit, 450 ; II. DELIVERY UP OF THE MARKED ARTICLES, 450 ; erasure of the spurious marks, 450 ; bailee is not bound to deliver spuriously marked goods, 451 ; III. DAMAGES OR PROFITS, 452 ; alternative, 454 ; as against innocent persons, 455 ; refused or limited because of delay, &c., 455 ; form of order, 456 ; costs of inquiry or account, 457 ; where the plaintiff is not solely entitled, 457.
- 7. Costs,** 458 ; infringer must offer complete redress, 458 ; stay of action, 460 ; not given in trivial cases, 461 ; where the plaintiff claims too much, 461 ; successful defendant may be refused costs, 463 ; unfounded charges of fraud, 464 ; costs on appeal, 465 ; interest on costs repaid, 465 ; higher scale, 465 ; certificate under sec. 46, solicitor and client costs, 466 ; costs of motion to rectify, 467.
- 8. Appeal,** 468.
- 9. Practice,** 469 ; pleadings, 469 ; particulars, 470 ; discovery, 471 ; inspection, 473 ; evidence, 474.

CHAPTER XVI.

	PAGES
THE ACTION FOR "PASSING-OFF"	477—551

- Foundation of the action—definition, 478. Comparison with the action for infringement, 479. It often succeeds where that action fails, 480. Sec. 42 is no bar, 481. Common law trade marks, 481. New case of passing-off or of fraud raised at the trial, 481. Proof of fraud not essential, 482. Property in trade name, &c., 483. Inferiority of the spurious goods not essential, 483. Rules and practice of infringement action generally apply, 484.
- 1. Direct misrepresentation as to business or goods,** 484 ; false pretence of business connection or of succession, 485 ; "late," 486 ; circulars, names over shops, executing orders intended for the plaintiff, 486 ; claims to medals, patents, &c., 487 ; unauthorised use of name of a non-trader, 487 ; system of advertising, 488 ; passing off one quality of goods for another, 488.
- 2. Imitations of trade name, get-up, &c.,** 488 ; plaintiff may be unknown, 489 ; evidence of repute, 489 ; assignment and devolution of trade name, &c., 491.
- A. THE PLAINTIFF'S TRADE NAME OR FIRM NAME,** 492 ; principle on which it is protected, 492 ; it may belong to others besides the plaintiff, 493 ; need not be the plaintiff's family name, 493 ; trade name of a company, 494 ; sec. 20 of the Companies Act is supplementary to the common law, 495 ; *Hendriks v. Montagu*, 496 ; no monopoly in names merely descriptive, 497 ; cases of company trade names collected, 497 ; assignments to or by limited company, 499 ; *Tussaud v. Tussaud*, 501 ; right to use a name cannot be sold in gross, 502 ; *Brinsmead v. Brinsmead*, 502 ; *Pinet v. Pinet*, 503 ; purchase of a name, 503 ; names of houses of business, 504.
- B. THE TRADE NAME OF THE PLAINTIFF'S GOODS,** 505 ; summary of principles, 506 ; names which are not distinctive, and descriptive names, 507 ; secondary meaning of descriptive name, 508 ; name of introducer or patentee, 514 ; common names, 515 ; concurrent right, 515 ; disclaimed word, 516 ; expunged trade mark, 516 ; use of common word by defendant may be an element in a "get-up" case, 517 ; geographical names, 517 ; name of author, &c., name of book, 518.
- C. IMITATION OF "GET-UP,"** 519 ; get-up common to the trade, 520 ; no monopoly in the constituent elements, 521 ; imitation of part of get-up, 522.
- 3. Use in connection with the defendant's goods,** 523.
- 4. Probability of deception,** 523 ; where deception is intended, 523 ; fraud of third party, 524 ; badges of fraud : unexplained similarities, colourable differences, gradual approximations, 524 ; proof of actual deception, 525 ; proof of probability of deception, 525.
- 5. Proof of damage,** 526 ; probability of damage is essential, 526.

- 6. Defences**, 527; the usual defences summarised, 527; concurrent right, 528; partners after dissolution, 528; rights of vendor and purchaser of goodwill, 528. **RIGHT TO TRADE UNDER ONE'S OWN NAME**, 532; the general rule, 532; present state of authorities, 533; *Jamieson v. Jamieson*, 535; mere similarity of name, 536; the *Valentine* case, *Chivers v. Chivers*, *Cash v. Cash*, the *Dunlop* case, 537; earlier cases, 540; *Turton v. Turton*, 540; anyone may describe his firm in the ordinary mercantile way, 542; not necessarily by any fancy name, 542; *Massam v. Thorley*, 542; the name must be the defendant's own, 543; not a bought name, or one altered to resemble the plaintiff's, 543; may be the defendant's name of repute, 544; "limited" may be added, 544; must be used *simpliiter*, not garnished, 544; proximity as a badge of fraud, 545.
- 7. The relief granted**, 546; injunction, 546; form of injunction in *Massam v. Thorley*, 546; only deceptive use of common word, &c., restrained, 547; limited prohibition, 549; damages or profits, 550.
- 8. Costs, appeals, practice, &c.** (reference to Chap. XV.), 550.
- Note.**—Extract from judgment of Kay, L.J., in *Yorkshire Helish* case, 550.

CHAPTER XVII.

	PAGES
WARRANTY OF TRADE MARKS AND TRADE DESCRIPTIONS	552—558
Under the Merchandise Marks Act, 1887...552. Implied at common law, 554. Where goods are described by reference to a trade mark, 554. Pictures ascribed to particular artists, 555. Remedies for breach of warranty, 555. Indemnity to manufacturer employed to apply an infringing mark, 557.	

CHAPTER XVIII.

TRADE LIBEL	559—568
No action for threats lies in respect of a trade mark, 559; but a threat may be libel, or slander of title, 560. A warning against infringements may be issued in good faith, 560; suggestion that goods are spurious, 561; special damage must be proved, 562; a threat or warning may be made, if <i>bonâ fide</i> , 563. Misleading report of a trade mark action, 564. True statements are not libellous, 564. Publication of an apology, 565. Statements, pending proceedings, may be contempt of Court, 565; although published in reply, 566; undertaking as to damages, 567; contempts by editors of newspapers, 567. Injunctions to restrain trade libels, 567; interlocutory injunctions, 567. The right of action survives to executors, 568.	

CHAPTER XIX.

TRADE SECRET AND TRADE NAME	569—575
Use of the trade name of a secret preparation, 569. The use of the name or secret may be a breach of contract or of confidence, 570. Summary of the leading cases of trade secret, 571; <i>Prince Albert v. Strange</i> ; <i>Morison v. Moat</i> , 571; other examples, 572. The jurisdiction rests on implied contract, 572. Patents taken out by agent in breach of confidential relation towards principal, 573. Use of agent's information where no breach of contract or confidence, 574; <i>Reuter's Telegram Co. v. Byron</i> , 574. No injunction where no threat to use the information, 575.	

CHAPTER XX.		PAGES
REGISTRATION OF FOREIGN AND COLONIAL TRADE MARKS		576—583

CHAPTER XXI.

MISCELLANEOUS MATTERS	584—590
---------------------------------	---------

APPENDICES	592—820
----------------------	---------

- I. Table showing arrangement of sections of the Act of 1905 with corresponding sections of the Act of 1883, as amended by the Act of 1888...592.
- II. Table showing the corresponding sections of the Patents, &c. Act, 1883, as amended by the Act of 1888, with the Trade Marks Act, 1905...594 ; III. The Trade Marks Act, 1905, with annotations, 597. IV. The Patents, Designs, and Trade Marks Act, 1883, as amended by the Act of 1888, so far as it relates to Trade Marks (now repealed), 626. V. The Trade Marks Registration Acts, 1875—1877 (now repealed), 646. VI. Selection of extracts from the Interpretation Act, 1889...652. VII. The Trade Mark Rules, 1906...655 ; table of fees, 673 ; schedule of forms, 676 ; classes of goods, 697. VIII. Instructions to persons who wish to register Trade Marks, 702. IX. Precedents of forms on an application to register a trade mark and on appeal, 716. X. Notice of motion to rectify the Register, 723. XI. Precedents of pleadings in actions for infringement and passing-off, 724. XII. Forms of orders in Trade Mark cases and cases analogous thereto, 730. XIII. Foreign States and British Possessions to which the provisions as to International and Colonial arrangements are applied, 741. XIV. The International Convention, 743 ; arrangement as to false indications of origin, 749 ; arrangement as to international registration, 751. XV. Treaty with the United States, 753. XVI. The United States Trade Marks Act, 1905...754. XVII. The Australian Trade Marks Act, 1905...761. XVIII. Summary of other Foreign and Colonial Trade Mark Laws, 782. XIX. The Merchandise Marks Act, 1887...805. XX. The Merchandise Marks Act, 1891...814. XXI. The Merchandise Marks (Prosecutions) Act, 1894...815. XXII. Statutes requiring particular classes of goods to be marked in a specified manner, 816. XXIII. Instances of words registration of which has been allowed by the Board of Trade under sec. 9 (5)...820.

INDEX	821
-----------------	-----

TABLE OF CASES

AND REFERENCES TO CONTEMPORARY REPORTS.

. Words and names of marks occurring in many of the decided cases will be found inserted in the Index, with cross-references to the Table of Cases.

A.	PAGE
A. & Co. ; D. v.	
Abbott v. The Bakers', &c. Association, Ltd., W. N. (1872) 31	241
— ; Siegert v.	
Abel Morrall. (<i>See</i> Morrall.)	
Abernethy v. Hutchinson, 3 L. J. Ch. (O. S.) 214... ..	572
Accident, Disease, and General Insurance Co., Ltd. ; Accident Insurance Co., Ltd. v.	
Accident Insurance Co., Ltd. v. The Accident, Disease, and General Insurance Co., Ltd., W. N. (1884) 191 ; 54 L. J. Ch. 104 ; 51 L. T. 597	499
Adams' Tm., 9 R. P. C. 174 ; 66 L. T. 610... ..	317, 318
Addley Bourne. <i>See</i> Bourne.	
Aerated Bread Co., Ltd., Application of. (<i>See</i> Albert Baker & Co. (1898) Ltd., Application of.)	
Aerators, Ltd. v. Tollit, [1902] 2 Ch. 319 ; 19 R. P. C. 418	495, 497, 498
Agius v. Great Western Railway Co., [1899] 1 Q. B. 413 ; 68 L. J. Q. B. 312 ; 80 L. T. 140 ; 47 W. R. 403	557
Ahlers ; Reddaway v.	
Ainslie & Co.'s Tm., 4 R. P. C. 212	156, 286
Ainsworth v. Walmsley, L. R. 1 Eq. 518 ; 35 L. J. Ch. 352 ; 14 L. T. (N. S.) 220 ; 14 W. R. 363 ; 12 Jur. (N. S.) 205	464, 484, 492, 507
Ajello v. Worsley, [1898] 1 Ch. 274 ; 67 L. J. Ch. 172 ; 77 L. T. 783 ; 46 W. R. 245	487
Alaska Packers Assoc. v. Crooks & Co., 16 R. P. C. 503 ; 18 R. P. C. 129	242, 257, 261, 446, 447, 521
Albert Baker & Co. (1898) Ltd., Application of, [1908] 2 Ch. 86 ; 25 R. P. C. 513	196, 214, 216, 217, 226, 270, 441
Albert (Prince) v. Strange, 1 Mac. & G. 25 ; 2 De G. & Sm. 652 ; 18 L. J. Ch. 120 ; 12 L. T. 367, 441 ; 13 L. T. 341 ; 13 Jur. 45, 109, 507	571
Aleploglu ; Gout v.	
Alexander v. Henry, 12 R. P. C. 360	389, 453
Alpine Tm., 29 C. D. 877 ; 54 L. J. Ch. 727 ; 53 L. T. 79 ; 33 W. R. 725	145, 146, 155, 156, 157
Alt ; De Busche v.	
Altman's Application, 21 R. P. C. 753	72, 274, 438, 584
American Leather Cloth Co. ; Leather Cloth Co. v.	
American Tobacco Co. v. Guest, [1892] 1 Ch. 630 ; 9 R. P. C. 218 ; 61 L. J. Ch. 242 ; 66 L. T. 257 ; 40 W. R. 364	390, 403, 452, 461
American Wire Co. v. Thomson, 44 Ch. D. 274	453
Amosteag Co. v. Spear, 2 Sandf. S. C. 599 (1849)	479
Anchor Tube Co. ; Selby v.	
Anderson v. Liebig's Extract of Meat Co., 45 L. T. 757	561, 564
Anderson's Tm., 54 L. J. Ch. 1084 ; affirming 26 C. D. 409 ; 53 L. J. Ch. 664 ; 32 W. R. 677	178, 185, 274
Andrew's Patent, 24 R. P. C. 349	467
Anglo-Swiss, &c. Co. v. Metcalf, 31 C. D. 454 ; 3 R. P. C. 28 ; 55 L. J. Ch. 463 ; 34 W. R. 345	235, 251, 252, 260, 298, 414
Anglo-Swiss Condensed Milk Co. v. The Swiss Condensed Milk Co., W. N. (1871) 163	424, 444, 456

T.M.

b

	PAGE
Anglo-Swiss Condensed Milk Co. <i>v.</i> Pearks, Gunston and Tee, Ltd., 20 R. P. C. 509; 21 R. P. C. 261	178, 182, 191, 251
Anglo-Swiss Condensed Milk Co.'s Tms. (<i>See also Same v.</i> Pearks, Gunston and Tee, Ltd., 21 R. P. C. 261)	178, 182, 191, 292, 299
Aplin & Barrett <i>v.</i> Richards, 20 R. P. C. 799	264
Apollinaris Application, <i>In re</i> , [1907] 2 Ch. 178; 24 R. P. C. 436	36, 59, 76, 83, 92, 98, 100, 134, 153, 166, 168, 172, 174
Apollinaris Co.'s Tm., [1891] 1 Ch. 1; [1891] 2 Ch. 186; 8 R. P. C. 137; 61 L. J. Ch. 625; 65 L. T. 6	7, 68, 134, 156, 157, 165, 168, 179, 194, 195, 217, 271, 273, 280, 290, 291, 307, 324, 336, 385, 386, 433, 435, 438, 454
Apollinaris Co., Ltd. <i>v.</i> Duckworth, 23 R. P. C. 540	518, 524
Apollinaris Co.; Fisher <i>v.</i> _____ <i>v.</i> Herrfeldt, 4 R. P. C. 478; 4 Times L. R. 9	258, 262, 387, 405, 446, 447, 525, 734
_____ ; Saxlehner <i>v.</i>	
Apollinaris <i>v.</i> Snook, 7 R. P. C. 474... ..	387, 448
Aquascutum, Ltd. <i>v.</i> Moore & Scantlebury, 20 R. P. C. 640	309, 471
Arbenz' Application, 35 C. D. 248; 4 R. P. C. 143; 56 L. J. Ch. 524; 56 L. T. 252; 35 W. R. 527; 3 Times L. R. 460	95, 98, 145, 150, 253, 289, 313
Archbold <i>v.</i> Sweet, 1 M. & R. 162; 5 C. & P. 219... ..	519
Argentino, The, L. R. 13 P. D. 191; 57 L. J. P. D. & A. 25	557
Armson; Pharmaceutical Society <i>v.</i>	
Armstrong & Co.; Winsor & Co. <i>v.</i>	
Army and Navy Co-operative Society, Ltd. <i>v.</i> Army, Navy and Civil Service Co-operative Society of South Africa, Ltd., 19 R. P. C. 575	446
_____ <i>v.</i> The Junior Army and Navy Stores, Ltd., Seb. Dig. p. 393	500
Arthur; Ripley <i>v.</i>	
Ashton's Tm., 48 W. R. 389	306
Ashworth <i>v.</i> English Card Clothing Co., 21 R. P. C. 355... ..	465
Atkin's Tm. 3 R. P. C. 164; 1 Times L. R. 657; 2 Times L. R. 543	196
Atkins; Schweitzer <i>v.</i>	
Atlas Metal Co.; Magnolia Metal Co. <i>v.</i>	
Attorney-General <i>v.</i> The North Metropolitan Tramways Co., [1892] 3 Ch. 70; 61 L. J. Ch. 693; 67 L. T. 283	472
Australian Mortgage Land and Finance Co. <i>v.</i> The Australian and New Zealand Mortgage Co., W. N. (1880) 6	497, 500
Australian and New Zealand Mortgage Co.; Australian Mortgage Land and Finance Co. <i>v.</i>	
Australian Wine Co., <i>Re</i> , 61 L. T. 427, n.	70, 302
Australian Wine Importers' Tm., 41 Ch. D. 278; 6 R. P. C. 311; 58 L. J. Ch. 380; 60 L. T. 436; 37 W. R. 578	32, 33, 77, 101, 227, 229, 231, 261, 393, 506
Automatic Weighing Machine Co. <i>v.</i> International Hygienic Society, 6 R. P. C. 475	311
Autran; Grezier <i>v.</i>	
Avril, <i>Re</i> , Sebastian, 4th ed. 374	354
B	
BADISCHE, Anilin, &c. Fabrik <i>v.</i> Basle Chemical Works, [1897] 2 Ch. 322; [1898] A. C. 200; 14 R. P. C. 211, 405, 919; 66 L. J. Ch. 171, 497; 67 L. J. Ch. 233; 76 L. T. 21, 434; 77 L. T. 573; 45 W. R. 481; 46 W. R. 255	391
_____ <i>v.</i> Hickson, [1906] A. C. 419; 25 R. P. C. 433... ..	391
_____ <i>v.</i> Johnson. (<i>See Same v.</i> Basle Chemical Works and next case.)	
Badische Anilin Fabrik <i>v.</i> Johnson, [1896] 1 Ch. 25; 12 R. P. C. 535	381
_____ <i>v.</i> Leviinstein, 4 R. P. C. at p. 470	94
Badman; Pinto <i>v.</i>	
Baird; Bayer <i>v.</i>	
_____ ; Walker <i>v.</i>	
Baird, W. & G., Ltd.; J. De Kuyper <i>v.</i>	
Baker. <i>See</i> Albert Baker.	

TABLE OF CASES.

xix

	PAGE
Baker ; Lawrie <i>v.</i>	
——— <i>v.</i> Rawson, 45 C. D. 519 ; 8 R. P. C. 89 ; 60 L. J. Ch. 49 ; 63 L. T. 306 186, 215, 219, 241, 249, 259, 261, 281, 291, 331, 462	
Bakers', &c. Association, Ltd. ; Abbott <i>v.</i>	
Balfour ; Green <i>v.</i>	
——— ; Hooper <i>v.</i>	
Balmer ; Lamplough <i>v.</i>	
Bancroft & Co.'s Tm., 5 R. P. C. 209 96, 225, 307, 357	
Bandy ; Ripley <i>v.</i>	
Banham ; Reddaway <i>v.</i>	
Bank of London ; Lawson <i>v.</i>	
Banks <i>v.</i> Gibson, 34 Beav. 566 ; 34 L. J. Ch. 591 ; 11 Jur. (N. S.) 680 ; 13 W. R. 1012 ; 6 N. R. 373 418, 528	
Banks and James' Tm., 12 R. P. C. 333 ; 44 W. R. 32 137, 154, 155, 157	
Barber <i>v.</i> Manico, 10 R. P. C. 93 142, 233, 399, 417, 444, 481, 482, 543, 549	
——— ; Willmott <i>v.</i>	
Barham ; Power <i>v.</i>	
Barker's Tm., 53 L. T. 23 238	
Barlow ; Broadhurst <i>v.</i>	
——— <i>v.</i> Johnson, 7 R. P. C. 395 ; W. N. (1890) 110 151, 252, 253, 323, 337, 408, 467, 577	
Barnard <i>v.</i> Pillow, W. N. (1868) 94... .. 518	
Barnett <i>v.</i> Leuchars, 13 L. T. (N. S.) 495 ; 14 W. R. 166... .. 395	
Barr & Co. <i>v.</i> Mair & Dougall, 21 R. P. C. 665 395	
Barrow's Tm., 5 Ch. D. 353 ; 46 L. J. Ch. 450, 725 ; 36 L. T. (N. S.) 291, 780 ; 25 W. R. 407, 564 199, 202	
Barrows ; Hall <i>v.</i>	
Baschet <i>v.</i> London Standard Co., [1900] 1 Ch. 73 ; 69 L. J. Ch. 35 ; 81 L. T. 509 ; 48 W. R. 56 464	
Baschiera's Tm., 33 S. J. 469 ; 5 T. L. R. 480 239, 251	
Basle Chemical Works ; Badische Anilin, &c. Fabrik <i>v.</i>	
Bass <i>v.</i> Dawber, 19 L. T. (N. S.) 626 449	
Bass, Ratcliff & Gretton, Ltd.'s Tms., [1902] 2 Ch. 579 ; 19 R. P. C. 129, 529 180, 181, 184, 210, 248, 289, 405	
——— <i>v.</i> John Davenport & Sons, Ltd., 19 R. P. C. 129 262, 396, 433, 435, 545	
Batt's Tm. (No. 1), 6 R. P. C. 493 153, 283	
——— (No. 2), [1898] 2 Ch. 432 ; [1899] A. C. 428 ; 15 R. P. C. 262, 534 ; 16 R. P. C. 411 ; 68 L. J. Ch. 557 ; 81 L. T. 94 28, 35, 61, 105, 206, 278, 292, 296, 298, 299, 324, 328, 331, 368, 371, 386	
Batt & Co. <i>v.</i> Dunnett. (<i>See</i> Batt's Tm. (No. 2).)	
Batty <i>v.</i> Hill, 1 H. & M. 264 ; 8 L. T. (N. S.) 791... .. 487, 526	
Bauer & Co. ; Hommel <i>v.</i>	
Bayer <i>v.</i> Baird, 15 R. P. C. 615 213, 219, 261, 409, 516	
——— <i>v.</i> Connell Bros., 14 R. P. C. 275 ; 16 R. P. C. 157 261, 303, 409	
Bayer & Co. ; Weingarten <i>v.</i>	
Bayer's Design, 24 R. P. C. 65 313	
Beachim ; Braham <i>v.</i>	
Beard <i>v.</i> Turner, 13 L. T. (N. S.) 746 407, 411, 456	
Beazley <i>v.</i> Soares, 22 C. D. 660 ; 52 L. J. Ch. 201 ; 31 W. R. 887 386, 393, 489	
Beddow & Sons <i>v.</i> Boyd, 4 R. P. C. 310 262, 401	
Beddow ; Gillingham <i>v.</i>	
Bedford ; Bury <i>v.</i>	
Bedlingfield ; Lever <i>v.</i>	
Beeton ; Ward <i>v.</i>	
Behn <i>v.</i> Burness, 3 B. & S. 756 ; 32 L. J. Q. B. 204 556	
Benbow <i>v.</i> Low, 16 C. D. 93 ; 50 L. J. Ch. 35 ; 44 L. T. 119 ; 29 W. R. 265... .. 472	
——— <i>v.</i> ———, 44 L. T. (N. S.) 875 ; 29 W. R. 837 215, 418, 531, 569	
Benedictus <i>v.</i> Sullivan, Powell & Co., 12 R. P. C. 25 263, 434, 437, 439, 440, 472	
Bennett ; Hudson <i>v.</i>	
——— ; Knowles <i>v.</i>	
——— ; Spiers & Pond <i>v.</i>	
Bennis ; Proctor <i>v.</i>	

	PAGE
Bent's Brewery Co., Ltd.; Thompson <i>v.</i>	
Bentham Hemp Spinning Co.; Reddaway & Co. <i>v.</i>	
Bergmann <i>v.</i> Macmillan, 17 C. D. 423; 44 L. T. 794; 29 W. R. 890 ...	458
Bernard & Co.; Crawford & Son <i>v.</i>	
Betts; De Vitie <i>v.</i>	
-----; Neilson <i>v.</i>	
Bewlay & Co., Ltd. <i>v.</i> Hughes, 15 R. P. C. 290 ...	51, 444, 508, 518, 548
Biegel's Tm., 4 R. P. C. 525; 57 L. T. 247 ...	211, 245, 260, 297
Bile Bean Manufacturing Co. <i>v.</i> Davidson, 22 R. P. C. 553; 23 R. P. C. 725...	426, 440
Bingham: Licensed Victuallers' Newspaper Co. <i>v.</i>	
Binning; Day <i>v.</i>	
Birmingham Small Arms Co., Ltd. <i>v.</i> Webb & Co., 24 R. P. C. 27 ...	264, 482
Birmingham Small Arms Co.'s Application, [1907] 2 Ch. 396; 24 R. P. C.	
563... ..	25, 76, 100, 108, 609
Birmingham Vinegar Co.'s Application, 11 R. P. C. 195... ..	135
Birmingham Vinegar Brewery Co.; Champion & Co. <i>v.</i>	
----- <i>v.</i> Liverpool Vinegar Co., W. N. (1888)	
139; 4 Times L. R. 613 ...	494, 502, 543
----- <i>v.</i> Powell. See Powell <i>v.</i> Birmingham	
Vinegar Brewery Co.	
Blackwell <i>v.</i> Crabb, 36 L. J. Ch. 504	407
Blair <i>v.</i> Stock, 52 L. T. 123	145, 254, 297, 458
Blanchard <i>v.</i> Hill, 2 Atk. 484 (1742)	2
Blay; Street <i>v.</i>	
Blofeld <i>v.</i> Payne, 4 B. & Ad. 410; 2 L. J. K. B. (N. S.) 68 ...	3, 35, 389, 452, 484, 521
Blyth & Young, <i>Re</i> , 13 C. D. 416	313
Bodega Co. <i>v.</i> Owens, 7 R. P. C. 31; 6 R. P. C. 236; 23 L. R. Ir. 371...	199, 202, 403, 504, 525
Bodega Co., Ltd. <i>v.</i> Riviere, 6 R. P. C. 243	443
Boehm; Mouson <i>v.</i>	
Bolton; Kinahan <i>v.</i>	
Bombay Tea Co.; Longley <i>v.</i>	
Bonnard <i>v.</i> Perryman, [1891] 2 Ch. 269	487, 568
Boord & Son <i>v.</i> Huddart, 21 R. P. C. 149	244, 262, 393, 394, 399, 516
----- <i>v.</i> Thom & Cameron, Ltd., 23 R. P. C. 509; 24 R. P. C. 697 ...	180, 244, 262, 265, 289, 303, 311, 366, 413, 515
Booth <i>v.</i> Jarrett, 52 How. Pr. 169	505
Booth's Distillery Co.'s Application, 21 R. P. C. 18	75, 264
Borthwick <i>v.</i> "The Evening Post," 37 C. D. 449; 57 L. J. Ch. 406; 58 L. T.	
252; 36 W. R. 434	401, 465, 480, 482, 483, 506, 519, 525, 526
Bostock <i>v.</i> Ramsey Urban Council, [1900] 1 Q. B. 357; [1900] 2 Q. B. 616; 69	
L. J. Q. B. 108, 945; 83 L. T. 358	638
Boulnois <i>v.</i> Peake, 13 C. D. 512, n.	504, 525
Bourne <i>v.</i> Swan & Edgar, Ltd., [1903] 1 Ch. 211; 20 R. P. C. 105 ...	31, 201, 203, 257, 258, 290, 299, 310, 312, 375, 396, 402, 463, 467, 482, 487
Boussod, Valadon & Co. <i>v.</i> Marchant, 24 R. P. C. 665; 25 R. P. C. 42 ...	354, 504
Bovril, <i>Re</i> , Tm., [1896] 2 Ch. 600; 13 R. P. C. 382; 65 L. J. Ch. 715; 74 L. T.	
805; 45 W. R. 150	8, 132, 145, 146, 148, 150, 155, 157, 313
Bow <i>v.</i> Hart, [1904] 2 K. B. 693; [1905] 1 K. B. 392; 21 R. P. C. 718; 22	
R. P. C. 222	380
Bowker; Carver <i>v.</i>	
Boyd; Beldow & Sons <i>v.</i>	
----- Punch <i>v.</i>	
Braby & Co.'s Applications, 21 C. D. 222; 51 L. J. Ch. 673; 46 L. T. 380; 30	
W. R. 675	107
Brackell; Schiele <i>v.</i>	
Bradbury <i>v.</i> Beeton, 39 L. J. Ch. 57; 21 L. T. (N. S.) 323; 18 W. R. 33 ...	401
----- <i>v.</i> Dickens, 27 Beav. 53; 28 L. J. Ch. 667; 33 L. T. (O. S.) 54 ...	519
Bradford, Corporation of, <i>v.</i> Pickles, [1894] 3 Ch. 53; 63 L. J. Ch. 587 ...	616
Bradford Patent Truck, &c. Co.; Slingsby <i>v.</i>	
Bradley & Son; Randall, Ltd. <i>v.</i>	
Bradley's Tm., 9 R. P. C. 205	135, 140, 193, 194, 467

TABLE OF CASES.

XXI

	PAGE
Braham <i>v.</i> Beachim, 7 C. D. 848; 47 L. J. Ch. 348; 38 L. T. (N. S.) 640; 26 W. R. 654 ...	443, 504, 517, 548
——— <i>v.</i> Bustard, 1 H. & M. 447; 9 L. T. (N. S.) 199; 11 W. R. 1061; 2 N. R. 572 ...	47, 53, 371, 407, 551
Brain; Purser <i>v.</i>	
Bramble, Wilkins & Co.; Marcovitch <i>v.</i>	
Brandreth's Tm., 9 C. D. 618; 47 L. J. Ch. 816; 27 W. R. 281 ...	101
Brinsmead & Sons, Ltd., <i>Re</i> , T. E., [1897] 1 Ch. 45, 406; 66 L. J. Ch. 290; 76 L. T. 100 ...	502
Brinsmead <i>v.</i> Brinsmead. (<i>See</i> John Brinsmead.)	
British American Shoe Co.; Randall, Ltd. <i>v.</i>	
British Electrozone Co.'s Application, 13 R. P. C. 447 ...	165
British Empire Type Co. <i>v.</i> Linotype Co., 79 L. T. 8 ...	562, 563
British Linen Co. Bank; Mansell <i>v.</i>	
British Motor Syndicate <i>v.</i> Taylor, [1900] 1 Ch. 577; [1901] 1 Ch. 122; 17 R. P. C. 189, 723; 70 L. J. Ch. 21; 83 L. T. 419; 48 W. R. 345; 49 W. R. 183 ...	391, 453, 495
British Motor Traction Co.; Daimler Motor Car Co., Ltd. <i>v.</i>	
British Tea, &c. Association; Hanson <i>v.</i>	
British United Shoe Machinery Co., Ltd. <i>v.</i> A. Fussell & Sons, Ltd., 25 R. P. C. 368 ...	468
British Vacuum Cleaner Co., Ltd. <i>v.</i> New Vacuum Cleaner Co., Ltd., 24 R. P. C. 641 ...	497, 498, 509, 513
——— <i>v.</i> Suction Cleaners, Ltd., 21 R. P. C. 309 ...	566
Britten; Sen Sen Co. <i>v.</i>	
Broad; Woolley <i>v.</i>	
Broadhurst <i>v.</i> Barlow, W. N. (1872) 212; L. R. 17 Eq. 38 ...	53
Brook <i>v.</i> Evans, 29 L. J. Ch. 616; 2 L. T. (N. S.) 740; 3 L. T. 571; 6 Jur. 1025 ...	566
Brooke & Co. <i>v.</i> Commissioners of Inland Revenue, [1896] 2 Q. B. 356; 65 L. J. Q. B. 657; 44 W. R. 670 ...	360
Brooks; Dicks <i>v.</i>	
Brooks (J. B.) & Co., Ltd. <i>v.</i> E. Lycett, Ltd., 20 R. P. C. 390 ...	310
Brooks & Co., Ltd. <i>v.</i> Norfolk Cycle Co. and John Brooks, 16 R. P. C. 523 ...	535, 545
Brotherhood; Halsey <i>v.</i>	
Brown; Coleman <i>v.</i>	
———; Collins Co. <i>v.</i>	
———; Hubbuck <i>v.</i>	
Brown's Tm., 11 R. P. C. 365; 71 L. T. 156 ...	318
Browne <i>v.</i> Freeman (No. 1), 12 W. R. 305 (1864); 4 New Rep. 476 ...	49, 370, 464, 507
——— <i>v.</i> —— (No. 2), W. N. (1873) 178 ...	49, 507
Brownrigg; Day <i>v.</i>	
Broxburn Oil Co.; Burland <i>v.</i>	
Bryant & May's Tm., 8 R. P. C. 69; 59 L. J. Ch. 763; 63 L. T. 676; 4 T. L. R. 675; 17 R. P. C. 396 ...	78, 178, 193, 319, 411
Buchanan; Nicholson <i>v.</i>	
Buchanan's Flour Mills, Ltd.; Vernon & Sons <i>v.</i>	
Budd <i>v.</i> Lucas, [1891] 1 Q. B. 408; 60 L. J. M. C. 95; 64 L. T. 292; 17 Cox, 248 ...	31, 396
Bull; L. C. & D. Railway Co. <i>v.</i>	
Bumsted <i>v.</i> General Reversionary Co., Ltd., 4 Times L. R. 621 ...	500
Burberry <i>v.</i> Watkinson, 23 R. P. C. 141 ...	389, 390, 461
Burberrys <i>v.</i> Raper & Pulleyn, 23 R. P. C. 170 ...	485, 508
Burchell <i>v.</i> Wilde, [1900] 1 Ch. 551; 69 L. J. Ch. 314; 82 L. T. 576; 48 W. R. 491 ...	352, 528
Burchem <i>v.</i> Wren, 21 R. P. C. 683 ...	556
Burgess <i>v.</i> Burgess, 3 De G. M. & G. 896; 22 L. J. Ch. 675; 21 L. T. (O. S.) 53; 17 Jur. 292 ...	468, 485, 487, 501, 523, 532, 533, 544, 550
——— <i>v.</i> Hateley, 26 Beav. 249 ...	382, 459
——— <i>v.</i> Hills, 26 Beav. 244; 28 L. J. Ch. 356; 5 Jur. (N. S.) 233; 32 L. T. (O. S.) 328; 7 W. R. 158 ...	459
Burgon <i>v.</i> Wilkinson, 40 Sol. J. 336 ...	302
Burgoyne & Co., Ltd. <i>v.</i> Godfree & Co., 21 R. P. C. 550; 22 R. P. C. 168 ...	420

	PAGE
Burgoyne's Tm., 6 R. P. C. 227 ; 61 L. T. 39 ; 5 Times L. R. 326	133, 150, 152, 156, 157, 170, 263
Burham Brick, &c. Co.'s Tm., 9 R. P. C. 422 (1892)	317, 319
Burke's Tm., W. N. (1891) 2...	319
Burland v. Broxburn Oil Co., 42 Ch. D. 274 ; 6 R. P. C. 482 ; 58 L. J. Ch. 816 ; 61 L. T. 618 ; 38 W. R. 89	174, 179, 196, 212, 215, 216, 218, 219, 224, 297, 381, 511, 734
Burness ; Behn v.	
Burnett v. Tak, 45 L. T. 743	560
Burroughs, Welcome & Co.'s Tms., [1904] 1 Ch. 736 ; 21 R. P. C. 69, 217 ; 22 R. P. C. 164	146, 149, 157, 289, 310, 312, 331, 467
Burrows v. Foster, 32 Beav. 18 ; 1 N. R. 156	486
Bury v. Bedford, 4 De G. J. & S. 352 ; 32 L. J. Ch. 741 ; 33 L. J. Ch. 465 ; 10 L. T. (N. S.) 470 ; 8 L. T. (N. S.) 847 ; 10 Jur. (N. S.) 503 ; 9 Jur. (N. S.) 956 ; 12 W. R. 727 ; 11 W. R. 973 ; 4 N. R. 180 ; 1 N. R. 5	114, 347, 349, 352
Bussey ; Hammond v.	
Bustard ; Braham v.	
Butcher ; Richards v.	
Butler ; Wood v.	
Byles ; Kelly v.	
Byron (Lord) v. Johnson, 2 Mer. 29	518
Byron : Reuter's Telegram Co. v.	
C.	
CAIRD v. Sime, 12 App. Ca. 326 ; 57 L. J. P. C. 2 ; 57 L. T. 634 ; 36 W. R. 199	572
Californian Fig Syrup Co. v. Taylor's Drug Co., 14 R. P. C. 341, 564	390, 440
Californian Fig Syrup Tm., 40 Ch. D. 620 ; 6 R. P. C. 126 ; 58 L. J. Ch. 341 ; 60 L. T. 590 ; 37 W. R. 268	20, 22, 582
Callow v. Young, 56 L. T. 147	448
Cameron v. Wiggins, [1901] 1 Q. B. 1 ; 70 L. J. M. C. 15	19
Campbell ; Charleston v.	
Canham v. Jones, 2 V. & B. 218	569, 571
Capital and Counties Bank ; London and County Banking Co. v.	
Capsuloid Co., Ltd.'s Application, 23 R. P. C. 782	237, 260, 264
Carey ; Munday v.	
Carlile ; Cartier v.	
Carr v. Crisp, 19 R. P. C. 497	389, 390, 425, 482
Carroll's Application, 16 R. P. C. 82	139, 140, 186
Carron Co. ; Smith & Wellstood v.	
Carter Medicine Co.'s Tms., [1892] 3 Ch. 472 ; 9 R. P. C. 401 ; 61 L. J. Ch. 716 ; 67 L. T. 747 ; 41 W. R. 13 ; 8 Times L. R. 639	21, 22, 582, 583
Cartier v. Carlile, 31 Beav. 292 ; 8 Jur. (N. S.) 183	455
— v. May, Seb. Dig. p. 111	450
Carver v. Bowker, Seb. Dig. 350	191, 233, 444, 549
— v. Pinto Leite, L. R. 7 Ch. 90 ; 41 L. J. Ch. 92 ; 25 L. T. 722 ; 20 W. R. 134	472
Cash v. Cash, 18 R. P. C. 213 ; 19 R. P. C. 181	16, 49, 447, 533, 535, 539, 738
Cave v. Myers (1868), Seb. Dig., p. 181	456
Cellular Clothing Co. v. Maxton & Murray, [1899] A. C. 326 ; 15 R. P. C. 581 ; 16 R. P. C. 387 ; 68 L. J. P. C. 72 ; 80 L. T. 809	43, 479, 482, 509, 510, 511, 513, 535
Celluloid Co. v. Reed, 47 Fed. Rep. 712 ; Cox, p. 509	507
Central News Exchange ; Telegraph Co. v.	
Chadwick ; Coats v.	
Challender v. Royle, 36 Ch. D. 425 ; 4 R. P. C. 363	559
Chamberlain & Hookham v. Mayor of Bradford, 17 R. P. C. 493	466
Chambers ; Martin Hunt v.	
Chameleon Patents Manufacturing Co. v. Marshalls, Ltd., 17 R. P. C. 527	29, 395
Champion & Co. v. Birmingham Vinegar Brewery Co., 10 Times L. R. 163	568
Chandler ; Cocks v.	
Chappell v. Davidson, 2 K. & J. 123 ; 8 De G. M. & G. 1	428
— ; Franke v.	

TABLE OF CASES.

xxiii

	PAGE
Chappell <i>v.</i> Griffiths, 53 L. T. (N. S.) 459 ...	528
— <i>v.</i> Sheard, 2 K. & J. 117; 1 Jur. (N. S.) 996; 3 W. R. 646 ...	428
Charbonnel; Robineau <i>v.</i>	
Charleston <i>v.</i> Campbell, Sess. Cas. 4th Ser. IV. 149 ...	504
Chatteris <i>v.</i> Isaacson, 57 L. T. (N. S.) 177... ..	528
Chatteris Co.; Hudson <i>v.</i>	
Cheavin <i>v.</i> Walker, 5 C. D. 850; 46 L. J. Ch. 686; 36 L. T. (N. S.) 938; reversing 46 L. J. Ch. 265; 33 L. T. (N. S.) 757	14, 53, 431, 432
Chemicals & Drugs Co.; Saccharin Corporation <i>v.</i>	
Chemists' Co-operative Society; Liebig's Extract of Meat Co. <i>v.</i>	
Chesebrough Manufacturing Co.'s Tms., [1902] 2 Ch. 1; 18 R. P. C. 191; 19 R. P. C. 342	45, 48, 200, 207, 253, 289, 331, 332, 507
Chilworth Gunpowder Co.; Starey <i>v.</i>	
Chisholm; Paine <i>v.</i>	
Chivers & Sons <i>v.</i> Chivers & Co., Ltd., 17 R. P. C. 420	343, 482, 500, 510, 513, 534, 538, 544
Chorlton & Dugdale's Tm., 53 L. T. 337; 34 W. R. 60; 1 Times L. R. 643... ..	207
Christiansen's Tm., 3 R. P. C. 54; 2 Times L. R. 317	197, 220, 235, 240, 241, 244, 245, 259
Christie, Manson & Woods <i>v.</i> Cooper, [1900] 2 Q. B. 522; 49 W. R. 46 ...	484
Christy <i>v.</i> Tipper, [1904] 1 Ch. 696; [1905] 1 Ch. 1; 21 R. P. C. 97, 755 ...	160, 162, 476, 508, 513
Chubb <i>v.</i> Griffiths, 35 Beav. 127	461
Churton <i>v.</i> Douglas, Johns. 174; 28 L. J. Ch. 841; 33 L. T. (O. S.) 57; 5 Jur. (N. S.) 887; 7 W. R. 365	485, 529, 531, 544
Civil Service Supply Association <i>v.</i> Dean, 13 C. D. 512	401, 525
Clark; Consolidated Pneumatic Tool Co., Ltd. <i>v.</i>	
—; Ellington <i>v.</i>	
—; Fennessy <i>v.</i>	
— <i>v.</i> Freeman, 11 Beav. 112; 17 L. J. Ch. 142; 12 Jur. 149; 11 L. T. (O. S.) 22	487, 489, 492, 526
— <i>v.</i> Leach, 32 Beav. 14; 1 De G. J. & S. 409; 32 L. J. Ch. 290	485
— <i>v.</i> Sharp, 15 R. P. C. 141, 268	236, 247
Clarke <i>v.</i> Hudson, 18 R. P. C. 310	460
—; Jameson & Son, Ltd. <i>v.</i>	
—; Tipping <i>v.</i>	
Clay and Bock & Co.'s Tm., [1892] 3 Ch. 549; 9 R. P. C. 449; 62 L. J. Ch. 143; 67 L. T. 614... ..	272, 317, 318, 358
Clayton <i>v.</i> Day, 26 Sol. J. 43	543, 550
Clemens <i>v.</i> Belford, 14 Fed. Rep. 728 (1883) Amer. (Mark Twain)	519
Clement et Cie's Tm., [1900] 1 Ch. 114; 16 R. P. C. 173, 611; 69 L. J. Ch. 52; 81 L. T. 400; 48 W. R. 67	135, 153, 171, 192, 194, 195, 196, 217, 254, 297
Clements <i>v.</i> Maddick, 1 Giff. 98; 33 L. T. (O. S.) 117; 5 Jur. (N. S.) 592 ...	483
—, <i>Re</i> , 46 L. J. Ch. p. 383	567
—; Shipright <i>v.</i>	
Clent; Holloway <i>v.</i>	
Clybourn; Moët <i>v.</i>	
Coats <i>v.</i> Chadwick, [1894] 1 Ch. 347	561, 565
Cochrane <i>v.</i> McNish, [1896] A. C. 225; 13 R. P. C. 100; 65 L. J. P. C. 20; 74 L. T. 109	252, 403, 405, 431, 433
Cockle's Tm., 20 R. P. C. 353	318
Cocks <i>v.</i> Chandler, L. R. 11 Eq. 446; 40 L. J. Ch. 575; 24 L. T. (N. S.) 379; 19 W. R. 593	49
—; Oberrheinische Metallwerke <i>v.</i>	
Cocos Butter Manufacturing Co.; Fairbank Co. <i>v.</i>	
Cohen & Co.; Palestine Wine & Trading Co. <i>v.</i>	
Coleman <i>v.</i> Brown, 16 R. P. C. 619	31, 263, 524
— <i>v.</i> West Hartlepool Railway Co., 8 W. R. 734	566
Collard <i>v.</i> Marshall, [1892] 1 Ch. 571	487, 568
Colley <i>v.</i> Hart, 44 C. D. 179; 6 R. P. C. 17; 7 R. P. C. 101	559
—; Hart <i>v.</i>	
Collins Co. <i>v.</i> Brown, 3 K. & J. 423; 3 Jur. (N. S.) 929; 5 W. R. 676; 30 L. T. (O. S.) 62	381

	PAGE
Collins Co. (The) <i>v.</i> Reeves, 28 L. J. Ch. 56 ; 6 W. R. 717 ; 4 Jur. (N. S.) 865 ; 38 L. T. (O. S.) 101 20, 381, 576	
Collyer ; Sayers <i>v.</i>	
Colman <i>v.</i> Farrow, 15 R. P. C. 198 525	
Colman's Application, [1894] 2 Ch. 115 ; 11 R. P. C. 129 99, 137, 139	
Colman's Tms., [1891] 2 Ch. 402 ; 8 R. P. C. 209 ; 60 L. J. Ch. 550 ; 64 L. T. 507 ; 30 W. R. 488 ; 7 Times L. R. 425 272, 298, 318	
Colonial Fire Assurance Co. <i>v.</i> The Home and Colonial Assurance Co., Ltd., 33 Beav. 548 ; 33 L. J. Ch. 741 ; 10 L. T. (N. S.) 448 ; 12 W. R. 783 ; 10 Jur. (N. S.) 967 497, 500, 511	
Commissioners of Inland Revenue <i>v.</i> Muller & Co.'s Margarine, Ltd. (<i>See</i> Inland Revenue.)	
_____ ; Onslow <i>v.</i>	
Compagnia Général de Tobacos <i>v.</i> Rehder, 5 R. P. C. 61 ... 203, 259, 387, 481	
Compagnie Générale d'Eaux Minérales Tms., [1891] 3 Ch. 451 ; 8 R. P. C. 446 ; 60 L. J. Ch. 728 ; 40 W. R. 89... .. 306	
Compagnie Industrielle des Petroles' Application, [1907] 2 Ch. 435 ; 24 R. P. C. 585 162, 166, 228, 265, 270, 524	
Comptroller-General of Patents ; R. <i>v.</i>	
Concoran ; Witt <i>v.</i>	
Coudy ; Sanitas Co. <i>v.</i>	
_____ <i>v.</i> Mitchell, 37 L. T. (N. S.) 268, 766 ; 26 W. R. 269 ... 418, 519, 528, 569	
_____ <i>v.</i> Taylor, 56 L. T. 891 ; 3 Times, 565 394, 443, 569	
Connell Bros. ; Bayer <i>v.</i>	
Consolidated Pneumatic Tool Co., Ltd. <i>v.</i> Clark, 24 R. P. C. 593 468	
Cooper ; Christie, Manson & Woods <i>v.</i>	
_____ ; Hennessy <i>v.</i>	
Cooper & McLeod <i>v.</i> MacLachlan, 18 R. P. C. 380 ; 19 R. P. C. 27 505	
Cooper, Ltd. ; Kerfoot <i>v.</i>	
Co-operative Wholesale Society, Ltd. ; Iron-Ox Remedy Co., Ltd. <i>v.</i>	
Cope <i>v.</i> Evans, L. R. 18 Eq. 138 ; 30 L. T. (N. S.) 292 ; 22 W. R. 453... 230, 259, 397, 401, 475	
Corporation of Accountants ; Society of Accountants in Edinburgh <i>v.</i>	
Cotton <i>v.</i> Gillard, 44 L. J. Ch. 90 32, 349	
Coulson (William) & Sons <i>v.</i> James Coulson & Sons, 3 Times L. R. 740, 876 ... 560, 568	
County Chemical Co., Ltd. <i>v.</i> Frankenburg, 21 R. P. C. 722 451	
County Court Judge of Halifax ; Queen <i>v.</i>	
Courtenay ; Mogford <i>v.</i>	
Couston ; Moët <i>v.</i>	
Cowen <i>v.</i> Miller, 22 R. 833 504	
Cowie Bros. <i>v.</i> Herbert, 14 R. P. C. 436 251, 260, 444	
Crawford & Son <i>v.</i> Bernard & Co., 11 R. P. C. 580 142, 263, 400	
Crisp ; Carr <i>v.</i>	
_____ & Co. ; Knight <i>v.</i>	
Croft <i>v.</i> Day, 7 Beav. 84 ; 28 Leg. Obs. 378 ; Seb. Dig. p. 39 ... 450, 543, 545, 550	
Crompton's Tm., [1902] 1 Ch. 758 ; 19 R. P. C. 265 ... 31, 187, 204, 213, 280	
Crooks & Co. ; Alaska Packers' Association <i>v.</i>	
Cropper Minerva Machines Co., Ltd. <i>v.</i> Cropper, Charlton & Co., Ltd., 23 R. P. C. 388 383, 426	
Crosfield & Son's Application, 15 R. P. C. 754 99	
Crossley <i>v.</i> Derby Gas Light Co., 1 Webs. P. C. 119 456	
Crown Bank, <i>Re</i> , 44 C. D. 649 (1890) 567	
Cruttwell <i>v.</i> Lye, 17 Ves. 335 2	
Cuddell ; Dunlop Pneumatic Tyre Co., Ltd. <i>v.</i>	
Currie's Application, 13 R. P. C. 681 243, 251, 261	
Currie <i>v.</i> Currie, 15 R. P. C. 339 528	
Curtis & Harvey <i>v.</i> Pape, 5 R. P. C. 146 (1888) 407, 461, 481	
Cusenier Fils <i>v.</i> Gaiety Bars, &c., Co., Ltd., 19 R. P. C. 357 390	

D.

D. <i>v.</i> A. & Co., [1900] 1 Ch. 484 ; 69 L. J. Ch. 382 ; 82 L. T. 47 ; 48 W. R. 429 ... 448	
Daimler Motor Car Co., Ltd. <i>v.</i> British Motor Traction Co., 18 R. P. C. 465...42, 497	

TABLE OF CASES.

XXV

	PAGE
Daimler Motor Co. (1904), Ltd. v. London Daimler Co., Ltd., 23 R. P. C. 718 ; 24 R. P. C. 379 42, 462, 495, 497, 508, 509, 515, 540, 544, 547	
Dale ; United Telephone Co. v.	
Dalton ; Oakley v.	
Daniel & Arter v. Whitehouse, [1898] 1 Ch. 685 ; 15 R. P. C. 134 ; 16 R. P. C. 71 ; 67 L. J. Ch. 262...294, 334, 364, 370, 383, 411, 413, 425, 449, 452, 515, 549	
Daniells & Sons' Breweries ; Paine & Co. v.	
Davenport v. Rylands, L. R. 1 Eq. 302 ; 35 L. J. Ch. 204 ; 14 L. T. (N. S.) 53 ; 14 W. R. 243 ; 12 Jur. (N. S.) 71 453	
Davenport (J. T.) Ltd.'s Tm., 21 R. P. C. 726 318, 740	
David & Matthews, <i>Re</i> , [1899] 1 Ch. 378 ; 68 L. J. Ch. 185 ; 80 L. T. 75 ; 47 W. R. 313 418, 528, 531	
Davidson ; Bile Bean Manufacturing Co. v. ----- ; Chappell v.	
Davis ; Malham v.	
Davis & Co. v. Stribolt & Co., 6 R. P. C. 207 ; 59 L. T. 854 ; 5 Times L. R. 13 ... 150, 151	
Davis' Tms., 14 R. P. C. 903... .. 156, 311	
Dawber ; Bass v.	
Dawes v. Wilkinson, [1907] 1 K. B. 279 554	
Dawson ; Labouchere v. ----- v. Stewart, 22 R. P. C. 250... .. 262, 303	
Day v. Binning, C. P. Cooper, 489 409	
----- v. Brownrigg, 10 C. D. 294 ; 48 L. J. Ch. 173 ; 39 L. T. (N. S.) 553 ; 37 W. R. 217 505, 526	
----- ; Clayton v.	
----- ; Croft v.	
----- v. Day, Eden on Injunctions, ed. 1821, p. 314 ; Seb. Dig. p. 10 3	
----- v. Riley & Whittaker, 17 R. P. C. 517 ; 48 W. R. 556 4, 30, 203, 204, 273, 435	
Day & Kossuth ; Emperor of Austria v.	
Day & Martin ; Fennessy v.	
Daylight Incandescent Mantle Co., Ltd. ; Welsbach Incandescent Gaslight Co., Ltd. v.	
Dean ; Civil Service Supply Association v.	
De Bussehe v. Alt, 8 C. D. 286 ; 47 L. J. Ch. 381 ; 38 L. T. 370 421	
De Kuyper v. W. & G. Baird, Ltd., 20 R. P. C. 581 310	
De la Rue v. Dickinson, 3 K. & J. 388 472	
De Otaduy's Tm., W. N. (1885) p. 177 59	
De Vitre v. Betts, 3 Ch. 441 ; L. R. 6 H. L. 319 383, 454	
Defries & Son, Ltd. v. Electric & Ordnance Accessories Co., Ltd., 23 R. P. C. 311 68, 69, 384, 494	
Deighton Patent Tube & Flue Co. ; Leeds Forge Co., Ltd. v.	
Delondre v. Shaw, 2 Sim. 237 393, 526	
Del Valle v. Mayer, Seb. Dig. p. 195 447	
Dence v. Mason, W. N. (1877) 23 ; W. N. (1878) 42 409, 494, 543	
Denham ; Hirst v.	
Dennis ; Edwards v.	
Densham's Tm., [1895] 2 Ch. 176 ; 12 R. P. C. 75, 271 ; 64 L. J. Ch. 634 ; 72 L. T. 614 ; 43 W. R. 515 147, 151, 157, 158, 167, 169, 171, 274	
Dent v. Turpin, 2 John. & Hem. 139 ; 30 L. J. Ch. 495 ; 7 Jur. (N. S.) 673 ; 6 W. R. 548 ; 4 L. T. (N. S.) 637 329, 385, 450, 457, 493, 570	
Derby Photographic Dry Plate Co., Ltd. v. Pollard, 2 Times L. R. 276 ... 446	
Derbyshire v. Houlston, [1897] 1 Q. B. 772 ; 66 L. J. Q. B. 569 ; 76 L. T. 624 ; 45 W. R. 527 ; 61 J. P. 374 554	
Derry v. Peek, 14 App. Ca. 337 482	
Devey ; Earl of Lytton v.	
Dewar & Son v. J. H. Dewar, 17 R. P. C. 341 175, 203, 205, 298, 289, 303 387, 535	
Dewhurst's Application, [1896] 2 Ch. 137 ; 13 R. P. C. 288 59, 72, 75, 76, 95, 107, 126, 211, 230, 231, 232, 233, 234, 243, 248, 251, 269	
Dexter's Tm., [1893] 2 Ch. 262 ; 10 R. P. C. 269 ; 62 L. J. Ch. 545 ; 68 L. T. 793 180, 255, 270, 300, 428, 435, 439	
Diaper ; Orr v.	
Dickens ; Bradbury v.	

	PAGE
Dickinson ; De la Rue <i>r.</i>	
Dicks <i>r.</i> Brooks, 15 C. D. 22 ; 40 L. J. Ch. 812 ; 43 L. T. 71 ; 29 W. R. 87	560, 562
— <i>r.</i> Jackson, Sebastian, 3rd ed., p. 255, 4th ed. 291 ...	457
— ; Weldon <i>r.</i>	
— <i>r.</i> Yates, 18 C. D. 76 ; 50 L. J. Ch. 809 ; 44 L. T. 660 ...	519
Dickson <i>r.</i> McMaster & Co., 18 Ir. Jur. 202	529
Dixon <i>r.</i> Fawcus, 3 E. & E. 537 ; 30 L. J. Q. B. 137 ; 3 L. T. (N. S.) 693 ; 9 W. R. 414 ; 7 Jur. (N. S.) 895	452, 558
Dobbin ; Wright, Crossley & Co. <i>r.</i>	
Dockrell <i>r.</i> Dougall, 80 L. T. 556, C. A.	488
Domestic Inventions Co. ; Peters <i>r.</i>	
Dompé ; Hennessy <i>r.</i>	
Dougall ; Dockrell <i>r.</i>	
Douglas ; Churton <i>r.</i>	
Dowman ; Motley <i>r.</i>	
Dowsing Radiant Heat Co. ; Zollerman <i>r.</i>	
Dublin Distillers' Co. ; Jameson <i>r.</i>	
Du Boulay <i>r.</i> Du Boulay, L. R. 2 P. C. 430 ; 17 W. R. 594 ; 38 L. J. P. C. 35 ; 6 Moo. P. C. (N. S.) 31 ; 22 L. T. (N. S.) 228	492, 526
Duckworth & Co. ; Apollinaris Co., Ltd. <i>r.</i>	
Dugdale, <i>Re</i> , 49 L. J. Ch. 303 ; 28 W. R. 436	122
Duncan <i>r.</i> Sparling, Times Newspaper, 9 March, 1894	567
Dunlop Pneumatic Tyre Co., Ltd. <i>r.</i> Actien Gesellschaft vorm. Cudell, 19 R. P. C. 46	381
— <i>r.</i> Dunlop Motor Co., Ltd., [1907] A. C. 430 ; 22 R. P. C. 533 ; 23 R. P. C. 761 ; 24 R. P. C. 757	45, 393, 495, 500, 503, 532, 537, 540
Dunlop Pneumatic Tyre Co. <i>r.</i> Dunlop Lubricant Co., 16 R. P. C. 12...393, 499, 503	
— <i>r.</i> Neal, [1899] 1 Ch. 807 ; 16 R. P. C. 247 ; 68 L. J. Ch. 378 ; 80 L. T. 746 ; 47 W. R. 632	390
— <i>r.</i> Wapshare Co., 17 R. P. C. 433	466
Dunn's Tm. (<i>See</i> Eno <i>r.</i> Dunn.)	
Dunn ; Eno <i>r.</i>	
Dunnett ; Batt & Co. <i>r.</i>	
E.	
EASTERBROOK ; Saxby <i>r.</i>	
Eastman Photographic Materials Co., Ltd. <i>r.</i> John Griffiths Cycle Corp., Ltd., 15 R. P. C. 105	33, 228, 266, 283, 290, 296, 393, 414, 415, 498, 506, 738
Eastman Photographic Materials Co.'s Application, [1898] A. C. 571 ; 13 R. P. C. 707 ; 14 R. P. C. 487 ; 15 R. P. C. 476 ; 67 L. J. Ch. 628 ; 76 L. T. (N. S.) 730 ; 79 L. T. (N. S.) 195 ; 47 W. R. 152	9, 75, 99, 100, 136, 143, 158, 166, 167, 168, 169, 194, 269, 300
Ede & Co., <i>Ex parte</i> , 28 W. R. 436	122
Edelsten <i>r.</i> Edelsten, 1 De G. J. & S. 185 ; 10 L. T. (N. S.) 780 ; 7 L. T. (N. S.) 768 ; 9 Jur. (N. S.) 479 ; 12 W. R. 1026 ; 11 W. R. 328	4, 29, 35, 259, 389, 402, 443, 454
— <i>r.</i> Vick. 11 Hare, 78 ; 18 Jur. 7 ; 1 Eq. Rep. 413	430, 433, 455, 456, 458, 484, 550, 584
Edge's Tm., 8 R. P. C. 207	147, 166, 168, 169, 196, 218, 297
Edge <i>r.</i> Johnson, 9 R. P. C. 134	468
— ; Johnson <i>r.</i>	
Edge & Sons, Ltd. <i>r.</i> Gallon, 15 R. P. C. 689 ; 16 R. P. C. 509 ; 17 R. P. C. 557	418, 465, 483, 515
Edgington's Tm. (Edgington <i>r.</i> Edgington), 6 R. P. C. 513 ; 61 L. T. 323	207, 289, 290, 466
Edgington <i>r.</i> Edgington, 10 L. T. (N. S.) 299	487
Edison-Bell Consolidated Phonograph Co., Ltd. <i>r.</i> Waterfield, Clifford & Co., 19 R. P. C. 329	310
Edisonia, Ltd. <i>r.</i> Forse, 25 R. P. C. 546	574
Edney ; Truefitt <i>r.</i>	
Edwards <i>r.</i> Dennis, 30 C. D. 454 ; 55 L. J. Ch. 125 ; 54 L. T. 112 ; 2 Times L. R. 112	7, 104, 228, 289, 299, 323, 324, 328, 331, 339, 342, 351, 363, 380, 387, 393, 397, 400, 410

TABLE OF CASES.

xxvii

	PAGE
Edwards <i>v.</i> Elkan, 5 R. P. C. 70	401, 411, 448
Ehrmann's Tms., [1897] 2 Ch. 495 ; 14 R. P. C. 665 ; 66 L. J. Ch. 699 ; 77 L. T. 200 ; 45 W. R. 698	225, 264, 315, 353, 385, 413, 418
Electrical & Ordnance Accessories Co., Ltd. ; Defries & Son, Ltd. <i>v.</i>	
Electromobile Co., Ltd. <i>v.</i> British Electromobile Co., Ltd., 24 R. P. C. 688 ; 25 R. P. C. 149	497, 498
Ellam's Duplicator Co. ; Neostyle Manufacturing Co. <i>v.</i>	
Ellen <i>v.</i> Slack, 24 Sol. J. 290	455
Ellinger & Co. ; Twentsche Stoom Bleekery Goor <i>v.</i>	
Ellington <i>v.</i> Clark, 5 R. P. C. 328 ; 58 L. T. 818	466
Elliot ; Free Fishers of Whitstable <i>v.</i>	
Elliott <i>v.</i> Pilcher, [1901] 2 K. B. 817	553
Elliott & Co., Ltd. <i>v.</i> Hodgson, 19 R. P. C. 518	188, 520
Ellis & Co.'s Tm., 21 R. P. C. 617	167, 169, 282
Emmott ; Walker <i>v.</i>	
Emperor of Austria <i>v.</i> Day & Kossuth, 3 De G. F. & J. 217 ; 30 L. J. Ch. 690 ; 2 Giff. 628 ; 4 L. T. (N. S.) 274, 494 ; 9 W. R. 568, 712	442
English Card Clothing Co. ; Ashworth <i>v.</i>	
Euo <i>v.</i> Dunn, 15 App. Ca. 252 ; 7 R. P. C. 311 ; 41 C. D. 439 ; 58 L. J. Ch. 604 ; 63 L. T. 6 ; 39 W. R. 161	10, 73, 134, 228, 231, 237, 260, 263, 267, 286, 407
— <i>v.</i> —, 10 R. P. C. 261	393, 429, 507
— <i>v.</i> Stephens, Seb. Dig. 372	407
Ermen & Roby's Tm., 4 R. P. C. 70 ; 56 L. J. Ch. 177 ; 56 L. T. 230	319
Estcourt <i>v.</i> The Estcourt Hop Essence Co., L. R. 10 Ch. 276 ; 44 L. J. Ch. 223 ; 32 L. T. (N. S.) 80 ; 31 L. T. (N. S.) 567 ; 23 W. R. 313	259, 423, 463, 464
European Blair Camera Co.'s Tm., 13 R. P. C. 600	63, 69, 204, 207, 284, 351
Evans ; Brook <i>v.</i>	
— ; Cope <i>v.</i>	
— <i>v.</i> Harlow, 5 Q. B. 624	562
— ; Lamb <i>v.</i>	
— <i>v.</i> Noton, [1893] 1 Ch. 252 ; 62 L. J. Ch. 413 ; 68 L. T. 271 ; 41 W. R. 230	418
— ; Ratcliffe <i>v.</i>	
— ; Rose <i>v.</i>	
— <i>v.</i> Smith, 3 Times L. R. 390	445, 447
— <i>v.</i> Weatheritt, [1907] 2 K. B. 80	553
"Evening Post" ; Borthwick <i>v.</i>	
Exchange Telegraph Co. <i>v.</i> Central News, [1897] 2 Ch. 48 ; 66 L. J. Ch. 672 ; 76 L. T. 591 ; 45 W. R. 595	573
— <i>v.</i> Gregory, [1896] 1 Q. B. 147 ; 65 L. J. Q. B. 262	573
Extract of Meat (Baron Liebig) Photograph Brand, 17 R. P. C. 161	93, 96, 97

F.

FABER <i>v.</i> Hovey Cold, Dig. 79, 249	453
Fabry Automobile Co., Ltd. ; Lucas, Ltd. <i>v.</i>	
Fairbank Co. <i>v.</i> Cocos Butter Manufacturing Co., 21 R. P. C. 23	257, 264, 524, 526
Farbenfabriken vormals Friedl. Bayer & Co.'s Tm., [1894] 1 Ch. 645 ; 11 R. P. C. 84	74, 99, 100, 136, 158, 165, 167, 169, 372
Farina. <i>Re</i> , 27 W. R. 456	421
— <i>v.</i> Silverlock, 1 K. & J. 509 ; 6 De G. M. & G. 214 ; 24 L. J. Ch. 632 ; 26 L. J. Ch. 11 ; 27 L. T. (O. S.) 277 ; 30 L. T. (O. S.) 342 ; 31 L. T. (O. S.) 99 ; 2 Jur. (N. S.) 1008 ; 3 W. R. 532 ; 4 W. R. 731 ; 4 K. & J. 650	33, 36, 141, 394, 395, 451, 569, 731
Farina's Tm., 44 L. T. 99, n. ; 29 W. R. 391	70, 301
Farquharson ; Plating Co. <i>v.</i>	
Farrow's Tm., W. N. (1890) 113 ; 7 R. P. C. 260 ; 63 L. T. 233 ; 6 Times L. R. 319	97, 241, 259, 520
Faulder <i>v.</i> Rushton, Ltd., 20 R. P. C. 477	481, 490, 503, 510
Faulder's Tm., [1902] 1 Ch. 125 ; 18 R. P. C. 37 and 535	174, 179, 196, 213, 214, 215, 216, 218, 270, 275, 297
Fawcus ; Dixon <i>v.</i>	

	PAGE
Fels <i>v.</i> Christopher Thomas & Bros., Ltd., 20 R. P. C. 447; 21 R. P. C. 85	... 252, 489, 507, 510
— <i>v.</i> Hedley & Co., Ltd., 20 R. P. C. 487; 21 R. P. C. 91	... 216, 218, 340
— <i>v.</i> Stephenson Bros., Ltd., 20 R. P. C. 443; 21 R. P. C. 89	... 392, 440, 481, 490, 509, 510
Feltham; Slazenger <i>v.</i>	
Fenner <i>v.</i> Wilson, [1893] 2 Ch. 656...	... 567
Fennessy <i>v.</i> Clark, 37 C. D. 184; 57 L. J. 398; 58 L. T. 289	... 380, 472
— <i>v.</i> Day & Martin, 55 L. T. 161	... 459
— <i>v.</i> Rabbits, 56 L. T. 138	... 380
Field <i>v.</i> Lewis, Seb. Dig. 167...	... 458
— ; Schauer <i>v.</i>	
Field, Ltd. <i>v.</i> Wagel Syndicate, [1900] 1 Ch. 651; 17 R. P. C. 266; 69 L. J. Ch. 365; 82 L. T. 231; 18 W. R. 390	... 160, 162, 263, 310, 467
Findlater, Mackie, Todd & Co. <i>v.</i> Newman, 19 R. P. C. 235	... 31, 463, 493, 505
Findlater; Raggett <i>v.</i>	
— ; Siegert <i>v.</i>	
Findlay; Robinson <i>v.</i>	
Fine Cotton Spinners & Doublers' Association, Ltd. <i>v.</i> Harwood Cash & Co., Ltd., [1907] 2 Ch. 184; 24 R. P. C. 533	... 502, 544
Finlay <i>v.</i> Shamrock Co., 22 R. P. C. 301	... 228, 393, 399
Fisher <i>v.</i> Apollinaris Co., L. R. 10 Ch. 297; 44 L. J. Ch. 500; 23 W. R. 460; 32 L. T. (N. S.) 628	... 5, 565
Flavel <i>v.</i> Harrison, 10 Hare, 467; 22 L. J. Ch. 866; 1 W. R. 213; 17 Jur. 368...	430, 432
Fleming; McLean <i>v.</i>	
Fleming, Birkley & Goodall, Ltd.; Gandy Belt Manufacturing Co. <i>v.</i>	
Folgham; Green <i>v.</i>	
Foot <i>v.</i> Lea, Ir. 13 Eq. Rep. 484	... 409, 487
Footman; Symington <i>v.</i>	
Ford <i>v.</i> Foster, L. R. 7 Ch. 611; 41 L. J. Ch. 682; 27 L. T. (N. S.) 219; 20 W. R. 818...	... 4, 27, 38, 177, 235, 363, 364, 365, 367, 372, 398, 399, 407, 424, 426, 427, 440, 455, 456, 508, 731
Forester; Upmann <i>v.</i>	
Formalin Hygienic Co.'s Application, 17 R. P. C. 486	... 45, 46, 165, 253
Foster; Burrows <i>v.</i>	
— ; Ford <i>v.</i>	
— ; Savage <i>v.</i>	
Fownes Bros. & Co. (<i>See</i> Ryden <i>v.</i> Jones.)	
Fox; Millington <i>v.</i>	
— <i>v.</i> Star Newspaper Co., [1900] A. C. 19; 69 L. J. Q. B. 117; 81 L. T. 562; 48 W. R. 321	... 469
Franke <i>v.</i> Chappell, 57 L. T. (N. S.) 141	... 494
Frankenburg; County Chemical Co., Ltd. <i>v.</i>	
Frankenburgs; Star Cycle Co., Ltd. <i>v.</i>	
Franklin; Major Bros. <i>v.</i>	
Franks <i>v.</i> Weaver, 10 Beav. 297; 8 L. T. (O. S.) 510	... 487, 521
Free Fishers of Whitstable <i>v.</i> Elliot, W. N. (1888) 27; 4 Times L. R. 273	387, 518
Freeman; Browne <i>v.</i>	
— ; Clark <i>v.</i>	
— ; Hargreaves <i>v.</i>	
— <i>v.</i> Sharpe, 16 R. P. C. 205...	... 69, 369
Frictionless Engine Packing Co., Ltd.; Reddaway <i>v.</i>	
Friedlander's Tm., W. N. (1885) 85...	... 157
Fuente's Tm., [1891] 2 Ch. 166; 8 R. P. C. 214; 60 L. J. Ch. 308; 64 L. T. 196; 39 W. R. 489; 7 Times L. R. 289	... 101, 205, 274, 439
Fullwood <i>v.</i> Fullwood, 9 C. D. 178; 47 L. J. Ch. 459; 38 L. T. (N. S.) 380; 26 W. R. 435	... 423
— <i>v.</i> —, W. N. (1873) 93, 185	... 485, 545
Fussell; British United Shoe Machinery Co. <i>v.</i>	

G.

GADD <i>v.</i> Mayor of Manchester, 9 R. P. C. 516	... 466
Gaiety Bars, &c., Co., Ltd.; Cusenier Films <i>v.</i>	

TABLE OF CASES.

XXIX

	PAGE
Gainsborough ; Louise & Co., Ltd. <i>v.</i>	
Gallon ; Edge & Sons, Ltd. <i>v.</i>	
Gamage, Ltd. ; Gillette Safety Razor Co. <i>v.</i>	
————— <i>v.</i> Randall, Ltd., 16 R. P. C. 185	188, 511, 513
Game, Harrison & Larner, Ltd. ; Hanson <i>v.</i>	
Gandy Belt Manufacturing Co. <i>v.</i> Fleming, Birkley & Goodall, Ltd., 18 R. P. C. 276	459
Gawthorp <i>v.</i> Mason, 23 R. P. C. 401	463
General Reversionary Co., Ltd. ; Bumsted <i>v.</i>	
Gestetner's Tm., [1907] 2 Ch. 478 ; [1908] 1 Ch. 513 ; 24 R. P. C. 545 ; 25 R. P. C. 156, ... 45, 46, 133, 149, 150, 151, 156, 164, 165, 253, 292, 364, 612	
Gianacis' Tm., 6 R. P. C. 467 ; 58 L. J. Ch. 782	140, 282, 312, 467
Gibbens ; Schweppes, Ltd. <i>v.</i>	
Gibbinge ; Lee <i>v.</i>	
Gibson ; Banks <i>v.</i>	
————— ; Parozone, Ltd. <i>v.</i>	
Gill ; Universities of Oxford and Cambridge <i>v.</i>	
Gillard ; Cotton <i>v.</i>	
Gillard & Co., Ltd. ; King & Co., Ltd. <i>v.</i>	
Gillespie ; Parsons <i>v.</i>	
Gillette Safety Razor Co. <i>v.</i> A. W. Gamage, Ltd., 24 R. P. C. 1	566
Gillingham <i>v.</i> Beddow, [1900] 2 Ch. 242	529
Glenny <i>v.</i> Smith, 2 Dr. & Sm. 476 ; 11 Jur. (N. S.) 964 ; 13 W. R. 1032 ; 13 L. T. (N. S.) 11 ; 6 N. R. 363... ..	409
Glover ; Leahy, Kelly & Leahy <i>v.</i>	
Godfree & Co. ; Burgoyne <i>v.</i>	
Golding's Tm., 19 R. P. C. 375	305
Goldsmiths' Co. <i>v.</i> Wyatt, [1907] 1 K. B. 95	818
Goodall ; Pirie <i>v.</i>	
Goodall's Tm., 42 C. D. 566 ; 38 W. R. 189	218, 254
Goodbody ; Lambert & Butler <i>v.</i>	
————— ; Lewis <i>v.</i>	
Goodfellow <i>v.</i> Prince, 35 C. D. 9 ; 56 L. J. Ch. 545 ; 56 L. T. 617 ; 35 W. R. 488 ; 3 Times L. R. 385 69, 337, 339, 343, 382, 384, 385, 489, 525, 576	
Goodway ; Society of Accountants and Auditors <i>v.</i>	
Goodwin <i>v.</i> Ivory Soap Co., 17 R. P. C. 689 ; 18 R. P. C. 389	263, 405
————— ; Lever <i>v.</i>	
————— <i>v.</i> Venning, 24 Sol. J. 690... ..	414
Gordon & Dilworth's Tm., 13 R. P. C. 629	296
Gormully ; North British Rubber Co. <i>v.</i>	
Goulard <i>v.</i> Lindsay, 4 R. P. C. 189	565, 566
Gout <i>v.</i> Aleploglu, 6 Beav. 69, n.	185
Graham ; Ransome <i>v.</i>	
Grand Hotel Co. of Caledonian Springs, Ltd. <i>v.</i> Wilson, [1904] A. C. 103 ; 21 R. P. C. 117	52, 511, 518, 549
Grant <i>v.</i> Levitt, 18 R. P. C. 361	233, 392, 424
Graveley <i>v.</i> Winchester, Seb. Dig. 162	486, 544
Gray <i>v.</i> Smith, 43 C. D. 208 ; 59 L. J. Ch. 145 ; 62 L. T. 335 ; 38 W. R. 310... ..	529
Great North of Scotland Railway Co. <i>v.</i> Mann, 19 R. 10, 35	504
Great Tower Street Tea Co. <i>v.</i> Langford, 5 R. P. C. 66 341, 481, 521, 522	
————— <i>v.</i> Smith, 6 R. P. C. 165 ; 5 Times L. R. 232 131, 156, 157, 179, 191, 192, 197, 290, 465, 511	
Great Western Colliery Co. ; Agius <i>v.</i>	
Green <i>v.</i> Folgham, 1 S. & S. 398 ; 1 L. J. (O. S.) Ch. 203	571
————— ; Robb <i>v.</i>	
Green & Balfour, <i>Re</i> , 63 L. T. 97, 325 ; W. N. (1890) 139	557
Greenlees' Tm., 9 R. P. C. 93	70, 301, 351
Gregory ; Exchange Telegraph Co. <i>v.</i>	
Grezier <i>v.</i> Autran, 13 R. P. C. 1	420, 450, 548, 549, 736
Gridley <i>v.</i> Swinborne, 52 J. P. 739, 791 ; 5 Times L. R. 71	18, 430, 585
Grierson, Oldham & Co. <i>v.</i> Birmingham Hotel Co., 18 R. P. C. 158	383, 390
Griffiths ; Chappell <i>v.</i>	
————— ; Chubb <i>v.</i>	
————— ; Ripley <i>v.</i>	

	PAGE
Griffiths ; Wilkinson <i>v.</i>	
Grocott's Design, 17 R. P. C. 139	70, 301
Greenings ; Moul <i>v.</i>	
Grossmith's Tm., 6 R. P. C. 180 ; 9 R. P. C. 93 ; 60 L. T. 612 ...	72, 156, 202, 262
Grosvenor Library Co., Ltd. ; Hoby <i>v.</i>	
Grueber's Case, <i>Times</i> , Nov. 22nd, 1894	585
Guardian and General Insurance Co. ; Guardian Fire and Life Assurance Co. <i>v.</i>	
Guardian Fire and Life Assurance Co. <i>v.</i> Guardian and General Insurance Co., 50 L. J. Ch. 253 ; 43 L. T. 791	497
Guest ; American Tobacco Co. <i>v.</i>	
Guinness & Co.'s Tm., 5 R. P. C. 316 (1888)	316, 317, 319, 358
Guinness <i>v.</i> Heap, Seb. Dig. 377	442
——— <i>v.</i> Ullmer, 10 L. T. (O. S.) 127	395
H.	
Haines, Batchelor & Co.'s Tm., 5 R. P. C. 669	244, 245, 261
Haley ; Lee <i>v.</i>	
Hall <i>v.</i> Barrows, 4 De G. & S. 150 ; 32 L. J. Ch. 548 ; 33 L. J. Ch. 204 ; 9 L. T. (N. S.) 561 ; 12 W. R. 322 ; 1 N. R. 543 ; 3 N. R. 259 ; 10 Jur. (N. S.) 55	4, 35, 36, 154, 342, 347, 349, 352, 392, 400, 490, 491, 528
—— ; Haslam <i>v.</i>	
—— ; Roach <i>v.</i>	
Hall & Woodhouse's Application. (<i>See</i> Verity's Tm.)	229, 264, 413
Hallam ; Vernon <i>v.</i>	
Hallworth ; Jones <i>v.</i>	
Halsey <i>v.</i> Brotherhood, 15 C. D. 514 ; 19 C. D. 386 ; 51 L. J. Ch. 233 ; 45 L. T. (N. S.) 640 ; 30 W. R. 279	560
Hammond <i>v.</i> Bussey, 20 Q. B. D. 79 ; 57 L. J. Q. B. 58... ..	557
——— <i>v.</i> Malcolm, Brunker & Co., 9 R. P. C. 301 ; 8 Times L. R. 324 ...	197, 219, 246, 263, 272, 351, 352, 369, 419, 421, 434, 521
Hammond & Stow's Tm., 22 R. P. C. 299	316, 319
Hanbury ; Liebig's Extract of Meat Co. <i>v.</i>	
Hannay's Tm., 7 R. P. C. 46... ..	156
Hanson's Tm., 87 C. D. 112 ; 5 R. P. C. 130 ; 57 L. J. Ch. 173 ; 57 L. T. 859 ; 36 W. R. 134 ; 4 Times L. R. 77	157, 183, 210, 245, 406
Hanson <i>v.</i> British Tea, &c., Association, Sebastian, 4th ed., p. 338	210
——— <i>v.</i> Game, Harrison & Larner, Ltd., 9 R. P. C. 186	352, 418, 422
Harbord ; Perry-Davis & Son <i>v.</i>	
Harbord's Tm. (<i>See</i> Perry-Davis <i>v.</i> Harbord.)	
Harden Star Hand Grenade Co.'s Tm., 3 R. P. C. 132 ; 55 L. J. Ch. 596 ; 54 L. T. 834	157
Hare's Tm., 24 R. P. C. 263	299, 311
Hargreaves' Case, 11 C. D. 669 ; 27 W. R. 450	248
Hargreaves <i>v.</i> Freeman, [1891] 3 Ch. 39 ; 8 R. P. C. 237 ; 61 L. J. Ch. 23 ; 65 L. T. 487 ; 7 Times L. R. 535	105, 229, 328, 337, 393, 439, 464
Harlow ; Evans <i>v.</i>	
Harness' Tm., 17 R. P. C. 40... ..	282, 287, 301, 303, 311, 350, 367
Harpers <i>v.</i> Pearson, 3 L. T. (N. S.) 547	384, 486
Harris' Tms., 9 R. P. C. 492	154, 156
Harris ; Morocco Bound Syndicate <i>v.</i>	
—— ; Robertson <i>v.</i>	
—— ; Smith <i>v.</i>	
Harrison ; Flavel <i>v.</i>	
——— <i>v.</i> Taylor, 11 Jur. (N. S.) 408 ; 12 L. T. (N. S.) 339	456
——— <i>v.</i> Woodroffe (Harrison's Tm.), 42 C. D. 691 ; 7 R. P. C. 25	206, 313
Harrison, McGregor & Co.'s Tm., 42 C. D. 691 ; 7 R. P. C. 25 ; 59 L. J. Ch. 22 ; 61 L. T. 484	204, 288, 508
Harrison's and Crosfield's Application, 18 R. P. C. 34	168, 169
Hart ; Bow <i>v.</i>	
—— <i>v.</i> Colley, 44 C. D. 193 ; 7 R. P. C. 93 ; 59 L. J. Ch. 355 ; 62 L. T. 623 ; 6 Times L. R. 216	104, 327, 337, 341, 393, 481, 522
Hart's Tm., [1902] 2 Ch. 621 ; 19 R. P. C. 569	292, 371

TABLE OF CASES.

XXXI

	PAGE
Harter <i>v.</i> Souvazoglu, W. N. (1875) pp. 11, 101	191
Hartley ; Heap <i>v.</i>	
Harvey <i>v.</i> Harvey, 26 C. D. p. 654	448
Harwood Cash & Co., Ltd. ; Fine Cotton Spinners, &c., Association, Ltd. <i>v.</i>	
Haskell Golf Ball Co. <i>v.</i> Hutchison, 21 R. P. C. 497	566
Haslam & Co. <i>v.</i> Hall, 5 R. P. C. 144	310, 467
Hat Manufacturers' Supply Co., Ltd. <i>v.</i> Tomlin Bros., 23 R. P. C. 413	460
Hatchard <i>v.</i> Mege, 18 Q. B. D. 771 ; 56 L. J. Q. B. 397 ; 56 L. T. 662 ; 35 W. R. 576... ..	568
Hateley ; Burgess <i>v.</i>	
Hayling Fisheries Ltd. ; Whitstable Oyster Co. <i>v.</i>	
Hayward's Tms., 34 L. J. Ch. 1003 ; 53 L. T. (N. S.) 487...80, 204, 218, 291, 297, 300	
Hayward & Co. <i>v.</i> Hayward & Sons, 34 C. D. 198 ; 56 L. J. Ch. 287 ; 55 L. T. 729 ; 35 W. R. 392	562, 563, 564
Hayward & Sons' Tms., 13 R. P. C. 729 (1896)	316
Hazzopulo <i>v.</i> Kaufmann, 23 Sol. J. 819	337, 386
Heap ; Guinness <i>v.</i>	
— <i>v.</i> Hartley, 42 C. D. 461 ; 5 R. P. C. 603	355, 385
Hearnshaw ; Rodgers <i>v.</i>	
Heaton's Tm., 27 C. D. 570 ; 53 L. J. Ch. 959 ; 51 L. T. 220 ; 32 W. R. 591	92, 207, 365
Hedde ; Melrose Drover, Ltd. <i>v.</i>	
Hedde & Co.'s Application, 20 R. P. C. 599	68, 78, 205
Hedley's Tms., 17 R. P. C. 719 (1900)	106, 263, 324
Hedley & Co., Ltd. ; Fels <i>v.</i>	
Helleley ; Johnson <i>v.</i>	
Henderson <i>v.</i> Jorss, Seb. Dig. p. 110	407
— <i>v.</i> Shiels, 24 R. P. C. 109	556
Hendriks <i>v.</i> Montagu, 17 C. D. 638 ; 50 L. J. Ch. 257, 456 ; 44 L. T. 89, 879 ; 30 W. R. 168	495, 496, 502, 523, 542, 546, 732
Henley ; Rose <i>v.</i>	
Hennessy <i>v.</i> Cooper, Seb. Dig. p. 327	395
— <i>v.</i> Dompé, 19 R. P. C. 338 ; 20 R. P. C. 175 ... 215, 241, 257, 399, 453, 558	
— <i>v.</i> Keating, 24 R. P. C. 485 ; 25 R. P. C. 125, 361 ... 215, 241, 257, 399, 523, 524	
— <i>v.</i> Kennett, Seb. Dig. p. 331	389
— <i>v.</i> Neary, 19 R. P. C. 36	390
Henry ; Alexander <i>v.</i>	
— ; Mitchell <i>v.</i>	
Henry Clay. (<i>See</i> Clay.)	
Henshaw ; Ihlee <i>v.</i>	
— ; Steinway <i>v.</i>	
Herbert ; Cowie Bros. <i>v.</i>	
Herbert & Co. ; Upper Assam Tea Co. <i>v.</i>	
Herrfeldt ; Apollinaris Co. <i>v.</i>	
Hessin ; Morrall <i>v.</i>	
Hewitt <i>v.</i> Mansell, 29 Sol. J. 66	449
Heywood <i>v.</i> Whitehead, 76 L. T. 781	554
Heyworth <i>v.</i> Hutchinson, L. R. 2 Q. B. 447	557
Hill ; Batty <i>v.</i>	
— ; Blanchard <i>v.</i>	
— ; Thorneloe <i>v.</i>	
Hill's Tm., 10 R. P. C. 113	273, 286, 297, 312
Hills ; Burgess <i>v.</i>	
Hine <i>v.</i> Lart, 7 L. T. (O. S.) 41 ; 10 Jur. 106	385
Hipkins <i>v.</i> Plant, 15 R. P. C. 294	459, 461, 462
Hirsch <i>v.</i> Jonas, 3 C. D. 584 ; 45 L. J. Ch. 364 ; 35 L. T. (N. S.) 228 ...54, 68, 69, 384	
Hirschfeld ; Leather Cloth Co. <i>v.</i>	
Hirst <i>v.</i> Denham, L. R. 14 Eq. 542 ; 41 L. J. Ch. 752 ; 27 L. T. (N. S.) 56	147, 508
Hitcheock ; Hopkins <i>v.</i>	
Hoby <i>v.</i> The Grosvenor Library Co., Ltd., 28 W. R. 386... ..	494, 499
Hodge ; Williams <i>v.</i>	
Hodgson <i>v.</i> Sinclair, 9 R. P. C. 22 ; 8 Times L. R. 45	147, 151, 153, 154, 288
Hodgson & Simpson <i>v.</i> Kynoch, 15 R. P. C. 465	252, 406, 417, 454, 462

	PAGE
Hogg <i>v.</i> Kirby, 8 Ves. 215 ; 7 R. R. 30	2, 428
— ; Maxwell <i>v.</i>	
— <i>v.</i> Scott, L. R. 18 Eq. 444	422
Holbrook Tms., 18 R. P. C. 447	319
Holland ; Sarpy <i>v.</i>	
Holloway <i>v.</i> Clent, 20 R. P. C. 525	503
— <i>v.</i> Holloway, 13 Beav. 209	428, 525, 535, 545
Holt ; Menendez <i>v.</i>	
— <i>v.</i> Smith, 4 Times L. R. 329	545
Holt's Tm., [1896] 1 Ch. 711 ; 13 R. P. C. 16, 118 ; 65 L. J. Ch. 410 ; 74 L. T. 225 ; 44 W. R. 369 136, 137, 138, 154, 156, 163, 164, 165, 167, 169, 190	
Home & Colonial Assurance Co., Ltd. ; Colonial Fire Assurance Co. <i>v.</i>	
Hommel <i>v.</i> Gebrüder Bauer & Co., 20 R. P. C. 801 ; 21 R. P. C. 576 ; 22 R. P. C. 43 162, 164, 165, 169, 313, 387, 445, 447, 481, 510, 514	
Hookham <i>v.</i> Pottage, L. R. 8 Ch. 91 ; 27 L. T. (N. S.) 595 ; 26 L. T. 755 ; 21 W. R. 47 ; 20 W. R. 720... .. 352, 409, 487	
Hooper <i>v.</i> Balfour, W. N. (1890) 61 ; 62 L. T. 646	557
Hope ; Jenkins <i>v.</i>	
—, <i>Re</i> , 43 Sol. J. 649 ; W. N. (1899) 113	313
Hopkins <i>v.</i> Hitchcock, 14 C. B. (N. S.) 65 ; 32 L. J. C. P. 154 ; 8 L. T. (N. S.) 204 ; 11 W. R. 597	554
Hopkinson's Tm., [1892] 2 Ch. 116 ; 9 R. P. C. 102 ; 61 L. J. Ch. 387 ; 66 L. T. 487 37, 140, 174, 175, 199, 201	
Horsburgh & Co.'s Application, 53 L. J. Ch. 237, n. ; 50 L. T. 23, n. ; 32 W. R. 530, n.	197, 267
Houlston ; Derbyshire <i>v.</i>	
Hovenden <i>v.</i> Lloyd, 18 W. R. 1132	423
Hovey ; Faber <i>v.</i>	
How ; Pidding <i>v.</i>	
— ; Southern <i>v.</i>	
Howard <i>v.</i> Press Printers, Ltd., (1904) W. N. 198	447
Howe <i>v.</i> McKernan, 30 Beav. 547	472, 486
Hubbuck <i>v.</i> Brown, 17 R. P. C. 148, 638 ; (1899) W. N. 250 72, 219, 235, 243, 244, 245, 248, 254, 255, 258, 271, 298, 318, 338, 388, 405, 429, 430, 432, 433, 438, 521	
— <i>v.</i> Wilkinson, [1899] 1 Q. B. 86 ; 68 L. J. Q. B. 34 ; 79 L. T. 429	485, 562
Huldart ; Boord & Son <i>v.</i>	
Hudson <i>v.</i> Bennett, 14 L. T. (N. S.) 698 ; 14 W. R. 911 ; 12 Jur. (N. S.) 519... ..	459
— <i>v.</i> Chatteris Co., 15 R. P. C. 438	442, 459, 460
— ; Clarke <i>v.</i>	
— <i>v.</i> Osborne, 39 L. J. Ch. 79 ; 21 L. T. (N. S.) 386... .. 349, 419, 428, 485, 504, 531	
— <i>v.</i> Osgerby, 50 L. T. 323 ; 32 W. R. 566	466
Hudson's Application for a Trade Mark, 24 R. P. C. 582... ..	95, 178, 365
Hudson's Tm., 32 C. D. 311 ; 3 R. P. C. 155 ; 55 L. J. Ch. 531 ; 55 L. T. 228 ; 34 W. R. 616 ; 2 Times L. R. 466 25, 55, 56, 68, 71, 101, 131, 133, 196, 215, 217, 226, 271, 323, 328, 337, 399, 434	
Hughes ; Bewlay <i>v.</i>	
Hughes & Young's Tm., 10 R. P. C. 369	248
Humphries <i>v.</i> Taylor Drug Co., 39 C. D. 693 ; 5 R. P. C. 687 ; 59 L. T. 177 ; 37 W. R. 192	309, 471
— <i>v.</i> ————, 59 L. T. 820 ; 5 Times L. R. 41	157, 179, 216 311, 399, 464
Hunt <i>v.</i> Chambers. (<i>See Re' Martin.</i>)	
— <i>v.</i> Maniere, 34 Beav. 157 ; 34 L. J. Ch. 142 ; 11 L. T. (N. S.) 469, 723 ; 13 W. R. 312 ; 11 Jur. (N. S.) 28	452
— ; Trego <i>v.</i>	
Hunter ; Monroe <i>v.</i>	
Huntley & Palmer <i>v.</i> The Reading Biscuit Co., 10 R. P. C. 277... ..	51, 508, 543
Hutchinson ; Abernethy <i>v.</i>	
— ; Heyworth <i>v.</i>	
Hutchison ; Haskell Golf Ball Co. <i>v.</i>	
Hyde & Co.'s Tm., 7 C. D. 724 ; 54 L. J. Ch. 395, n. ; 38 L. T. 777 ; 26 W. R. 625	178, 311, 366, 424, 458

TABLE OF CASES.

xxxiii

I.

PAGE

INLEE <i>v.</i> Henshaw, 31 C. D. 323 ; 3 R. P. C. 15 ; 55 L. J. Ch. 273 ; 53 L. T. 949 ; 34 W. R. 269	...	...	...	338, 357, 387
Imperial Tobacco Co., Ltd. <i>v.</i> Purnell & Co., 20 R. P. C. 718 ; 21 R. P. C. 368, 598	...	...	...	471, 521, 523
Incandescent Gas Light Co. <i>v.</i> Riemer, 17 R. P. C. 378	...	...	...	448
————— <i>v.</i> Sunlight Incandescent Co., 14 R. P. C. 180	...	...	...	564
India and China Tea Co. <i>v.</i> Teede, W. N. (1871) 241	...	...	...	497
Inland Revenue <i>v.</i> Muller & Co.'s Margarine, Ltd., [1900] 1 Q. B. 310 ; [1901] A. C. 217	...	...	...	345, 360
International Hygienic Society ; Automatic Weighing Machine Co. <i>v.</i> International Plasmon, Ltd. <i>v.</i> Plasmon, Ltd., 22 R. P. C. 543	...	...	...	537
Iron-Ox Remedy Co., Ltd. <i>v.</i> Co-operative Wholesale Society, Ltd., 24 R. P. C. 425	...	...	...	402, 512, 524, 525
————— <i>v.</i> Leeds Industrial Co-operative Society, Ltd., 24 R. P. C. 434	...	...	...	457
Irwell & Eastern Rubber Co. ; Reldaway <i>v.</i> Isaacson ; Chatteris <i>v.</i> ———— <i>v.</i> Thompson, 41 L. J. Ch. 101 ; 20 W. R. 196	...	...	...	425, 446, 494, 543
Ivory Soap Co. ; Goodwin <i>v.</i> ————	...	...	...

J.

JACKSON & Co.'s Tm., 6 R. P. C. 80 ; 60 L. T. 93	...	...	...	151, 152, 233, 263, 295
Jackson & Co. <i>v.</i> Napper, 35 C. D. 162 ; 4 R. P. C. 45 ; 56 L. J. Ch. 406 ; 55 L. T. 836 ; 35 W. R. 228 ; 3 Times L. R. 238	...	...	...	70, 206, 207, 224, 225, 264, 325, 412, 462, 607
Jackson ; Dicks <i>v.</i> Jaeger's Sanitary Woollen System Co. ; Watson <i>v.</i> James' Tm., 31 C. D. 340 ; 33 C. D. 392 ; 3 R. P. C. 340 ; 55 L. J. Ch. 915 ; 55 L. T. 415 ; 35 W. R. 67 ; 1 Times L. R. 318	...	...	...	37, 176, 187, 246, 437, 584
James <i>v.</i> James, L. R. 13 Eq. 9, 421 ; 41 L. J. Ch. 353 ; 26 L. T. 568 ; 20 W. R. 434	...	...	...	514, 544, 569
————— ; Oldham <i>v.</i> ———— <i>v.</i> Parry. (<i>See</i> James' Tm.)	...	...	...
Jameson & Son, Ltd. <i>v.</i> Clarke, 19 R. P. C. 255	...	...	...	394, 459, 488
————— <i>v.</i> Johnston & Co., Ltd., 18 R. P. C. 249	...	...	...	395
Jamieson <i>v.</i> Jamieson, 15 R. P. C. 169	...	...	...	242, 247, 408, 422, 426, 429, 482, 483, 491, 493, 520, 525, 534, 536
Jandus Arc Lamp, &c., Co. <i>v.</i> Arc Lamp Co., 22 R. P. C. 277	...	...	...	468
Jarman ; Townsend <i>v.</i> Jarrett ; Booth <i>v.</i> Jay <i>v.</i> Ladler, 40 C. D. 649 ; 6 R. P. C. 136 ; 60 L. T. 27 ; 37 W. R. 505 ; 5 Times L. R. 57	...	...	...	31, 104, 327, 337, 339, 341, 393, 395, 421, 462, 481, 482, 522, 523, 547, 734
Jeffrey & Co., <i>Re</i> , Sebastian, 4th ed. p. 338	...	...	...	211
Jelley, Son & Jones' Application, 51 L. J. Ch. 639, n. ; 46 L. T. 381, n.	...	...	...	107, 206, 215, 224, 229, 244, 245, 256, 260
Jenkins <i>v.</i> Hope, [1896] 1 Ch. 278 ; 13 R. P. C. 57 ; 65 L. J. Ch. 249 ; 73 L. T. 705 ; 44 W. R. 358	...	...	...	459
Jerdwine <i>v.</i> Slade, 2 Esp. N. P. C. 572	...	...	...	555
Jeyes' Sanitary Compounds Co. ; Price's Patent Candle Co. <i>v.</i> John Brinsmead & Co. <i>v.</i> Thos. Brinsmead & Sons, Ltd., 12 T. L. R. 631 ; 13 T. L. R. 3	...	...	...	502
John Griffiths Cycle Corp., Ltd. ; Eastman, &c. Materials Co., Ltd. <i>v.</i> Johnson ; Badische Anilin <i>v.</i> ———— ; Barlow <i>v.</i> ———— ; Byron (Lord) <i>v.</i> ———— ; Edge <i>v.</i> ———— <i>v.</i> Edge, [1892] 2 Ch. 1 ; 9 R. P. C. 142	...	...	...	559
————— <i>v.</i> Helleley, 34 Beav. 63 ; 34 L. J. Ch. 32, 179 ; 2 De G. J. & S. 446 ; 11 L. T. (N. S.) 581 ; 13 W. R. 220	...	...	...	529
————— <i>v.</i> Raylton, 7 Q. B. D. 438 ; 50 L. J. Q. B. 735 ; 45 L. T. 374 ; 30 W. R. 350	...	...	...	54, 554
Johnson, Philpott & Co., <i>Re</i> , Sebastian, 4th ed. p. 338	...	...	...	211

T.M.

c

	PAGE
Johnston & Co., Ltd. ; Jameson & Son, Ltd. <i>v.</i>	
Johnston <i>v.</i> Orr-Ewing, 7 App. Ca. 219 ; 13 C. D. 434 ; 51 L. J. Ch. 797 ; 46 L. T. 416 ; 30 W. R. 419	233, 236, 239, 244, 248, 251, 256, 382, 391, 398, 402, 403, 406, 407, 408, 417, 442, 444, 475, 482, 548, 732
Jonas ; Hirsch <i>v.</i>	
Jones ; Canham <i>v.</i>	
——— <i>v.</i> Hallworth, 14 R. P. C. 225...	520
——— ; Rigden <i>v.</i>	
Jones' Tm., 53 L. T. (N. S.) 1	55, 69, 273, 384, 418
Jorss ; Henderson <i>v.</i>	
Joule's Tms. (<i>See</i> Montgomery <i>v.</i> Thompson.)	
Junior Army and Navy Stores Ltd. ; Army and Navy Co-operative Society. Ltd. <i>v.</i>	

K.

KALLÉ ; Leonhardt <i>v.</i>	
Kaufmann ; Hazzopulo <i>v.</i>	
Keep's Tm., 26 C. D. 187 ; 54 L. J. Ch. 637 ; 50 L. T. 453 ; 32 W. R. 427	59, 107, 230
Kelly <i>v.</i> Byles, 13 C. D. 682 ; 49 L. J. Ch. 131 ; 42 L. T. 338 ; 28 W. R. 587...	511
Kennett ; Hennessy <i>v.</i>	
Kenrick & Jefferson's Tm., 7 R. P. C. 321	95, 97, 107
Kerfoot <i>v.</i> R. A. Cooper, Ltd., 25 R. P. C. 508	443, 549
Kimbal ; Singer Manufacturing Co. <i>v.</i>	
Kinahan & Co.'s Tm., 10 R. P. C. 393	31, 204
Kinahan <i>v.</i> Bolton, 15 Ir. Ch. 75	365, 372, 407, 422
——— <i>v.</i> Kinahan, 45 C. D. 78 ; 8 R. P. C. 18 ; 62 L. T. 715	307, 381
Kinahan's Application, 24 R. P. C. 37, 249	439
King & Co.'s Tm., [1892] 2 Ch. 462 ; 9 R. P. C. 350 ; 62 L. J. Ch. 153 ; 67 L. T. 33 ; 40 W. R. 580 ; 8 Times L. R. 593	96, 303, 304, 306
King & Co., Ltd. <i>v.</i> Gillard & Co., Ltd., 21 R. P. C. 589 ; 22 R. P. C. 327	408, 463, 464, 487, 520, 525
Kingsford & Son's Application, 6 R. P. C. 413 ; 61 L. T. 426	70, 301
Kingsford's Application, 15 R. P. C. 197	97
Kirby ; Hogg <i>v.</i>	
Kiteat <i>v.</i> Sharp, 31 W. R. 227	565
Knight ; Salmons <i>v.</i>	
Knight & Sons, Ltd. <i>v.</i> Crisp & Co., Ltd., 21 R. P. C. 671	389
Knott <i>v.</i> Marshall, W. N. (1894) 214	55
——— <i>v.</i> Morgan, 2 Keen, 213	517, 520
——— ; Prudential Assurance Association <i>v.</i>	
——— ; Welch <i>v.</i>	
Knowles <i>v.</i> Bennett, 12 R. P. C. 137	447, 452
Kodak, Ltd., Tms., 20 R. P. C. 337. (<i>See next case.</i>)	
——— <i>v.</i> London Stereoscopic, &c. Co., 20 R. P. C. 337	31, 45, 48, 159, 163, 164, 165, 169, 329, 396, 467, 508
——— <i>v.</i> Grenville, 25 R. P. C. 416	390
Kodak Cycle Co., Ltd. ; Eastman, &c., Materials Co., Ltd. <i>v.</i>	
König & Ebhardt's Tm., [1896] 2 Ch. 236 ; 13 R. P. C. 449 ; 65 L. J. Ch. 404 ; 45 W. R. 230	95, 97, 107, 218, 229, 232, 249
Kuhn & Co.'s Tm., 53 L. J. Ch. 238, n.	178, 186, 311, 366, 458
Kutnow's Tm., 10 R. P. C. 401	234, 245, 259, 271, 442
Kuyper & Son <i>v.</i> Baird, Ltd., 20 R. P. C. 581	395
Kynoch ; Hodgson & Sinclair <i>v.</i>	
Kynoch & Co.'s Tm., 14 R. P. C. 905	168, 169, 737

L.

L. C. & D. RAILWAY Co. <i>v.</i> Bull, 47 L. T. 413	423
La Union Agricola. (<i>See</i> Union Agricola.)	
Labouchere <i>v.</i> Dawson, L. R. 13 Eq. 322 ; 41 L. J. Ch. 427 ; 25 L. T. 894 ; 20 W. R. 309	485, 529

	PAGE
Ladler ; Jay <i>v.</i>	
Laidlaw <i>v.</i> Wilson, [1894] 1 Q. B. 74 ; 63 L. J. M. C. 35 ; 42 W. R. 78 ; 48 J. P. 58	553
Laight ; Shrimpton <i>v.</i>	
Lake & Elliott's Application, 20 R. P. C. 605	32, 229
Lamb <i>v.</i> Evans, [1892] 3 Ch. 462 ; [1893] 1 Ch. 218	572
Lambert's Tm., 5 R. P. C. 542 ; 6 R. P. C. 344 ; 61 L. T. 138 ; 37 W. R. 154 ; 4 Times L. R. 677 ; 5 Times L. R. 367	116, 118, 244, 245, 259, 261
Lambert ; Wood <i>v.</i>	
Lambert & Butler, Ltd. <i>v.</i> Goodbody, 19 R. P. C. 377	257, 262, 397, 400, 402, 463, 524
Lamplough <i>v.</i> Balmer, W. N. (1867) 293	432
Langford ; Great Tower Street Tea Co. <i>v.</i>	
Larned ; Lowell Manufacturing Co. <i>v.</i>	
Lart ; Hine <i>v.</i>	
Laurence Co. <i>v.</i> Tennessee Co., 138 U. S. 537 (1891)	479
Lavell ; London General Omnibus Co. <i>v.</i>	
Lawford, The, W. N. (1885) 124	154, 157
Lawrence, <i>Ex parte.</i> (<i>See</i> Marler's Tm.)	
Lawrie <i>v.</i> Baker, 2 R. P. C. 213	398, 487
Lawson <i>v.</i> The Bank of London, 18 C. B. 84 ; 25 L. J. C. P. 188 ; 27 L. T. (O. S.) 134 ; 4 W. R. 481	34, 489
Lazenby <i>v.</i> White, 41 L. J. Ch. 354, n. ; L. R. 6 Ch. 89 ; 24 L. T. (N. S.) 280 ; 19 W. R. 595	49, 365, 468
Lea ; Foot <i>v.</i>	
— <i>v.</i> Miller, Seb. Dig. p. 305	371
Leach ; Clark <i>v.</i>	
Leaf's Tm., 33 C. D. 477 ; 34 C. D. 623 ; 3 R. P. C. 289 ; 4 R. P. C. 31 ; 56 L. J. Ch. 370 ; 56 L. T. 286 ; 35 W. R. 294	99, 145, 157, 205
Leahy, Kelly & Leahy <i>v.</i> Glover, 10 R. P. C. 141	351, 389, 461, 482, 507, 525
Leather Cloth Co. <i>v.</i> American Leather Cloth Co., 1 H. & M. 271 ; 4 De G. J. & S. 137 ; 11 H. L. C. 523 ; 12 W. R. 289 ; 13 W. R. 873 ; 9 L. T. (N. S.) 558 ; 12 L. T. (N. S.) 742 ; 2 N. R. 481 ; 3 N. R. 264 ; 6 N. R. 209 ; 11 Jur. (N. S.) 513 ; 32 L. J. Ch. 721 ; 33 L. J. Ch. 199 ; 35 L. J. Ch. 53	4, 27, 36, 52, 175, 201, 342, 347, 349, 397, 400, 426, 429, 430, 432, 463, 465
— <i>v.</i> Hirschfeld, L. R. 1 Eq. 299 ; 1 H. & M. 295 ; 1 N. R. 551 ; 11 W. R. 933	453, 473
— <i>v.</i> Lonsont, L. R. 9 Eq. 347 ; 35 L. J. Ch. 86 ; 21 L. T. (N. S.) 661 ; 18 W. R. 572	427, 431, 432
Lecouturier's Tms. (<i>See</i> Rey <i>v.</i> Lecouturier.)	
Lee <i>v.</i> Gibbings, 67 L. T. 263	488, 519, 568
— <i>v.</i> Haley, L. R. 5 Ch. 155 ; 39 L. J. Ch. 284 ; 21 L. T. (N. S.) 546 ; 22 L. T. 251 ; 18 W. R. 181, 242	439, 456, 479, 546
Leeds Forge Co., Ltd. <i>v.</i> Peighton Patent Flue & Tube Co., Ltd., 25 R. P. C. 209	453, 468
Lees ; Osborn <i>v.</i>	
Leiner's Application, 20 R. P. C. 253	229, 246
Leonard & Ellis' Tm. (Leonard <i>v.</i> Wells), 26 C. D. 288 ; 53 L. J. Ch. 603 ; 51 L. T. 35 ; 32 W. R. 520	41, 48, 174, 190, 191, 197, 202, 205, 206, 207, 253, 254, 289
Leonhardt <i>v.</i> Kallé, 12 R. P. C. 103	466
Leuba ; Ullmann <i>v.</i>	
Leuchars ; Barnett <i>v.</i>	
Lever <i>v.</i> Bedingfield, 15 R. P. C. 453 ; 16 R. P. C. 3 ; 80 L. T. 100	211, 241, 243, 251, 339, 398, 400, 462, 520, 522, 524
— <i>v.</i> Goodwin, 36 C. D. 1 ; 4 R. P. C. 492 ; 57 L. T. 583 ; 36 W. R. 177 ; 3 Times L. R. 650	156, 157, 235, 236, 330, 387, 399, 400, 454, 456, 481, 489, 517, 520, 522, 723
Levitt ; Grant <i>v.</i>	
Levy ; Teacher <i>v.</i>	
— <i>v.</i> Walker, 10 C. D. 436 ; 48 L. J. Ch. 273 ; 27 W. R. 370 ; 39 L. T. 654	391, 492, 526, 528
Lewis ; Field <i>v.</i>	
— <i>v.</i> Goodbody, 67 L. T. 194	338, 437, 438

	PAGE
Licensed Victuallers' Newspaper Co. v. Bingham, 38 C. D. 139 ; 58 L. J. Ch. 36 ; 59 L. T. 187 ; 36 W. R. 433	490, 519
Liebig's Extract of Meat Co. v. Anderson, 55 L. T. 206	42, 185, 507, 561, 564
----- v. Chemists' Co-operative Society, 13 R. P. C. 635, 736	42, 259, 424, 475, 507
Liebig's Extract of Meat Co., Ltd. v. Hanbury, 17 L. T. (N. S.) 298	42, 185, 507
Lindner ; Pneumatic Stamp Co. v.	
Lindsay ; Goulard v.	
Linoleum Manufacturing Co. v. Nairn, 7 C. D. 834 ; 47 L. J. Ch. 430 ; 38 L. T. 448 ; 26 W. R. 463	253, 332, 364, 396, 399, 507, 551
Linotype Co.'s Application (No. 1), 14 R. P. C. 900	75, 167, 168, 169
----- (No. 2) ; [1900] 2 Ch. 238 ; 17 R. P. C. 380 ; 69 L. J. Ch. 625 ; 82 L. T. 794	163, 165, 350
Liverpool Vinegar Co. ; Birmingham Vinegar Brewery Co. v.	
Lloyd & Sons' Tm., 27 C. D. 646 ; 54 L. J. Ch. 66 ; 51 L. T. 898	289
-----, 10 R. P. C. 281	145, 150
Lloyd ; Hovenden v.	
Locke ; Worcester Royal Porcelain Co., Ltd. v.	
Loftus' Tm., [1894] 1 Ch. 193 ; 11 R. P. C. 29	80, 197, 220, 254
Loftus ; Rose v.	
London and County Banking Co. v. Capital and Counties Bank, 9 C. D. 560	409, 500
London and Provincial Law Ass. Society v. London and Provincial Joint Stock Life Ass. Co., 17 L. J. Ch. 37 ; 10 L. T. (O. S.) 127 ; 11 Jur. 938	409, 500
London and Westminster Ass. Corp. ; London Ass. v.	
London Ass. v. London & Westminster Ass. Corp., 32 L. J. Ch. 664 ; 8 L. T. (N. S.) 497 ; 9 Jur. (N. S.) 497	409, 500
London Daimler Co., Ltd. ; Daimler Motor Co., Ltd. v.	
London General Omnibus Co. v. Felton, 12 T. L. R. 213	520
----- v. Lavell, [1901] 1 Ch. 135 ; 18 R. P. C. 74 ; 70 L. J. Ch. 17	258, 482
London Road Car Co. v. Era Omnibus Association, (1898) <i>Times</i> , June 23 ; (1899) <i>Times</i> , April 28	520
London Stereoscopic, &c. Co. ; Kodak, Ltd. v.	
Londonderry (Marquis of) v. Russel, 2 Times L. R. 843 ; 3 Times L. R. 360	426, 444
Longley v. Bombay Tea Co., Ltd., [1900] 2 Q. B. 460	19
Longman v. Winchester, 16 Ves. 269	2
Loog ; Singer Manufacturing Co. v.	
Lorsont ; Leather Cloth Co. v.	
Louise & Co., Ltd. v. Gainsborough, 20 R. P. C. 61	176, 184, 204, 292, 296, 366, 371
Low ; Benbow v.	
Lowell Manufacturing Co. v. Iarned, Cox, 2nd ed. p. 241	520
Lucas ; Budd v.	
----- ; Plotzker v.	
Lucas, Ltd. v. Fabry Automobile Co., Ltd., 23 R. P. C. 33	393, 507
Lycett, Ltd. ; Brooks & Co., Ltd. v.	
Lye ; Cruttwell v.	
Lyle & Kinahan's Application, 24 R. P. C. 37, 249	72, 75, 197, 220, 233, 244, 245, 274, 412, 415, 418, 528, 584
Lyndon's Tm., 32 C. D. 109 ; 3 R. P. C. 102 ; 55 L. J. Ch. 456 ; 54 L. T. 405 ; 34 W. R. 403 ; 1 Times L. R. 629 ; 2 Times L. R. 356	224, 234, 244, 245, 246, 260, 322, 323, 342
Lytton (Earl of) v. Devey, 54 L. J. Ch. 293	572

M.

MCADAM ; Morgan v.	
McAndrew v. Bassett, 4 De G. J. & S. 380 ; 33 L. J. Ch. 561 ; 10 L. T. (N. S.) 65, 442 ; 10 Jur. (N. S.) 492, 550 ; 4 N. R. 12, 123 ; 12 W. R. 777	35, 49, 392, 455, 459, 490, 508
McCaw, Stevenson & Orr, Ltd. v. Lee, 23 R. P. C. 1	425, 444
----- v. Nichols & Co., 21 R. P. C. 15	264

McColgan ; Maréchal & Ruchon <i>v.</i>	
McEvelly ; Thwaites <i>v.</i>	
McKernan ; Howe <i>v.</i>	
McLean <i>v.</i> Fleming, 96 U. S. Rep. 245	424
McMaster & Co. ; Dickson <i>v.</i>	
Macmillan ; Bergmann <i>v.</i>	
————— <i>v.</i> Ehrmann Bros., Ltd., 21 R. P. C. 357, 647...	138, 141, 351, 414, 471, 493, 499, 543
McNish ; Cochrane <i>v.</i>	
Macrae ; Young <i>v.</i>	
MacSymons Stores, Ltd. <i>v.</i> Shuttleworth, 15 R. P. C. 740 ...	273, 438, 585
Maddick ; Clements <i>v.</i>	
Magnolia Metal Co.'s Tms., [1897] 2 Ch. 371 ; 14 R. P. C. 265, 621 ; 66 L. J. Ch. 598 ; 76 L. T. 672 ; 45 W. R. 406... ..	28, 36, 46, 150, 153, 168, 169, 170, 189, 253, 338, 350, 355, 357, 361, 548
Magnolia Metal Co. <i>v.</i> Atlas Metal Co., 14 R. P. C. 389	383, 386, 453, 455, 459, 511, 515
————— <i>v.</i> Tandem Smelting Syndicate, Ltd., 15 R. P. C. 701 ; 17 R. P. C. 477	485, 562
Mair & Dougall ; Barr & Co. <i>v.</i>	
Maison Pinet. (<i>See</i> Pinet.)	
Major Bros. <i>v.</i> Franklin, 25 R. P. C. 406	26, 55, 311, 740
Malachy <i>v.</i> Soper, 3 Bing. N. C. 371	560
Malcolm, Brunker & Co. ; Hammond <i>v.</i>	
Mallam <i>v.</i> Davis, 3 Times L. R. 221... ..	486
Manchester Brewery Co. ; North Cheshire and Manchester Brewery Co. <i>v.</i>	
Manico ; Barber <i>v.</i>	
Maniere ; Hunt <i>v.</i>	
Mann ; Great North of Scotland Railway Co. <i>v.</i>	
Mansell <i>v.</i> The British Linen Co. Bank, [1892] 3 Ch. 159	447
————— ; Hewitt <i>v.</i>	
Mappin & Webb <i>v.</i> Leapman, 22 R. P. C. 398	493
Marcovitch <i>v.</i> Bramble, Wilkins & Co., Seb. Dig. 363	448
Maréchal & Ruchon <i>v.</i> McColgan, 18 R. P. C. 262.	262, 451, 739
Marler's Tm., 44 L. T. 98, n. ; 29 W. R. 392, n.	70, 301
Marshall ; Collard <i>v.</i>	
————— <i>v.</i> Marshall, 38 C. D. 330 ; 59 L. T. 484	307, 381
————— <i>v.</i> Ross, L. R. 8 Eq. 651 ; 39 L. J. Ch. 225 ; 21 L. T. (N. S.) 260 ; 17 W. R. 1086	431, 433
————— <i>v.</i> Sidebotham, 18 R. P. C. 43	236, 242, 247, 264, 405
Marshalls, Ltd. ; Chameleon Patents Manufacturing Co. <i>v.</i>	
Martin, <i>Re</i> , Hunt <i>v.</i> Chambers, 20 C. D. 365 ; 51 L. J. Ch. 683 ; 46 L. T. 399 ; 30 W. R. 527	380
————— <i>v.</i> Wright, 6 Sim. 297	518
Martindale. <i>Re</i> , [1894] 3 Ch. 193 ; 64 L. J. Ch. 9 ; 71 L. T. 468 ; 43 W. R. 53	567
Mason ; Dence <i>v.</i>	
————— <i>v.</i> Queen, 23 Scot. Law Rep. 641	350, 504
Masam <i>v.</i> Thorley's Cattle Food Co., 6 C. D. 574 ; 14 C. D. 748 ; 46 L. J. Ch. 707 ; 36 L. T. (N. S.) 848 ; 41 L. T. 543 ; 42 L. T. 851 ; 28 W. R. 966	36, 386, 508, 514, 521, 523, 542, 544, 545, 546, 547, 732
Massey ; Pilkington <i>v.</i>	
Maw, Son & Thompson's Tm., 19 R. P. C. 260	318
Maxton & Murray ; Cellular Clothing Co. <i>v.</i>	
Maxwell <i>v.</i> Hogg, L. R. 2 Ch. 307 ; 36 L. J. Ch. 433 ; 15 L. T. (N. S.) 204 ; 16 L. T. 130 ; 15 W. R. 467, 841	34, 35, 420, 463, 488, 490
May ; Cartier <i>v.</i>	
Mayer ; Del Valle <i>v.</i>	
Mayor of Bradford ; Chamberlain & Hookham <i>v.</i>	
Mayor of Manchester ; Gadd <i>v.</i>	
Meaby & Co., Ltd. <i>v.</i> Triticine, Ltd., 15 R. P. C. 1	47, 146, 147, 149, 151, 157, 253, 263, 418, 432, 463
Meeus' Tm., [1891] 1 Ch. 41 ; 8 R. P. C. 25 ; 60 L. J. Ch. 96 ; 63 L. T. 610 ; 39 W. R. 216	98, 205, 207, 218, 252, 254

	PAGE
Mege; Hatchard <i>v.</i>	
Meikle's Tm., 46 L. J. Ch. 17; 24 W. R. 1067	273
Melachrino & Co. <i>v.</i> Melachrino Egyptian Cigarette Co., 4 R. P. C. 215	197,
220, 246, 421, 437, 544, 545, 550, 733	
Mollin <i>v.</i> White, [1894] 3 Ch. 276; [1895] A. C. 154; 64 L. J. Ch. 308; 72	
L. T. 334; 43 W. R. 353... ..	485, 502
Melrose Drover, Ltd. <i>v.</i> Heddle & Co., 4 Fraser, 1120, 1121	352, 419, 530
Menendez <i>v.</i> Holt, 128 U. S. Rep. 514	424
Merchant Banking Co. of London <i>v.</i> Merchants' Joint Stock Bank, 9 C. D.	
560; 47 L. J. Ch. 828; 26 W. R. 847	496, 500
Meriden Britannia Co. <i>v.</i> Parker, 12 Amer. Rep. 401	428
Merryweather <i>v.</i> Moore, [1892] 2 Ch. 518; 61 L. J. Ch. 505; 66 L. T. 719;	
40 W. R. 540	572, 573, 574
Metcalf; Anglo-Swiss, &c. Co. <i>v.</i>	
Metzler <i>v.</i> Wood, 8 C. D. 606; 47 L. J. Ch. 625; 38 L. T. (N. S.) 541; 26	
W. R. 577... ..	439, 461
Meyerstein's Tm., 43 C. D. 604; 7 R. P. C. 114; 59 L. J. Ch. 401; 62 L. T.	
526; 38 W. R. 440	145, 158, 161, 165, 169
Michell; Rowland <i>v.</i>	
Midland Railway Co.; Stark <i>v.</i>	
Miesso Petrol Car Syndicate, Ltd.; Turner's Motor Manufacturing Co., Ltd. <i>v.</i>	
Miller; Lea <i>v.</i>	
——— Thompson <i>v.</i>	
Miller's Patent, W. N. (1894) 4; 11 R. P. C. 55	307
15 R. P. C. 205	46
Millington <i>v.</i> Fox, 3 My. & Cr. 338	4, 12, 14, 38, 191, 402, 443, 459, 550
Mitchell's Tm., 7 C. D. 36; 46 L. J. Ch. 876; 16 W. R. 326	25, 184, 198, 199,
229	
Mitchell & Co.'s Tm., 28 C. D. 666; 54 L. J. Ch. 216, 809; 51 L. T. 900; 52	
L. T. 575; 33 W. R. 148, 480	59, 60, 230, 300, 322
Mitchell; Condy <i>v.</i>	
——— <i>v.</i> Henry, 15 C. D. 181; 43 L. T. 186	211, 244, 249, 250, 259, 339, 342,
363, 400, 448	
——— <i>v.</i> Reynolds, 1 Sm. L. C., 10th ed. p. 391	524
Moat; Morison <i>v.</i>	
Moët's Tm., 7 R. P. C. 226	90, 92, 94
Moët <i>v.</i> Clybouw, Seb. Dig. p. 316	545
——— <i>v.</i> Couston, 33 Beav. 578; 10 L. T. (N. S.) 395; 10 Jur. (N. S.) 1012; 4	
N. R. 86	443, 455, 459, 461
——— <i>v.</i> Pickering, 6 C. D. 770; 8 C. D. 372; 47 L. J. Ch. 527; 38 L. T. (N. S.)	
799; 26 W. R. 637	31, 451, 452, 459, 460
Mogford <i>v.</i> Courtenay, 45 L. T. (N. S.) 303; 29 W. R. 864	486, 531
Mogul Steamship Co. <i>v.</i> McGregor, Gow & Co., 15 Q. B. D. 476	568
Monck's Application, 50 L. T. 12	207
Monkseaton, The (1889), 14 P. D. 51	616
Monro <i>v.</i> Hunter, 21 R. P. C. 296	390
Monson <i>v.</i> Tussaud, 10 Times L. R. 227	487, 568
Montagu; Hendriks <i>v.</i>	
Montgomerie & Co., Ltd. <i>v.</i> Young, 20 R. P. C. 781; 21 R. P. C. 285	31, 390,
396, 455, 462	
Montgomery <i>v.</i> Thompson, 41 C. D. 35; [1891] A. C. 217; 8 R. P. C. 361; 60	
L. J. Ch. 757; 64 L. T. 784; 5 Times L. R. 51, 305	12, 51, 204, 205,
256, 271, 339, 343, 443, 444, 479, 481,	
504, 508, 518, 548, 734	
Montreal Lithographing Co. <i>v.</i> Sabiston, [1899] A. C. 610; 68 L. J. P. C. 121;	
81 L. T. 135	499
Moore; Merryweather <i>v.</i>	
Moore & Seantlebury; Aquascutum, Ltd. <i>v.</i>	
Morgan; Knott <i>v.</i>	
——— <i>v.</i> McAdam, 36 L. J. Ch. 228; 15 L. T. (N. S.) 348	430, 432, 464
Morison <i>v.</i> Moat, 9 Hare, 241; 20 L. J. (N. S.) Ch. 513; 21 L. J. Ch. 218; 15	
Jur. 787; 16 Jur. 321	571, 573, 575, 730
Morocco Bound Syndicate <i>v.</i> Harris, [1895] 1 Ch. 534; 64 L. J. Ch. 400; 72	
L. T. 415; 43 W. R. 393	391

TABLE OF CASES.

xxxix

	PAGE
Morrall, Ltd. <i>v.</i> Hessin, 19 R. P. C. 557 ; 20 R. P. C. 429 ...	503, 532, 535, 540
Morrison ; Woolley & Son <i>v.</i>	
Moseley & Sons, Ltd. <i>v.</i> Nathan & Co., 23 R. P. C. 345 ...	394
Motley <i>v.</i> Downman, 3 My. & Cr. 1 ; 6 L. J. Ch. (N. S.) 308 ...	346, 384
Mottram ; Walker <i>v.</i>	
Mouchel <i>v.</i> Coignet, 23 R. P. C. 649 ...	468
Moul <i>v.</i> Groenings, [1891] 2 Q. B. 443 ; 39 W. R. 691 ...	577
Mouson <i>v.</i> Boehm, 26 C. D. 398 ; 53 L. J. Ch. 932 ; 50 L. T. 748 ; 32 W. R. 612 ...	181, 206, 264, 288, 294, 296, 325, 333, 370, 411, 413, 421
Mrs. Pomeroy. (<i>See</i> Pomeroy, Ltd.)	
Muller & Co.'s Margarine, Ltd. ; Commissioners of Inland Revenue <i>v.</i>	
Milneh's Application, 50 L. T. 12 ...	68, 224
Munday <i>v.</i> Carey, 22 R. P. C. 273 ...	262
Munn's Patent Maizena Co. ; National Starch Manufacturing Co. <i>v.</i>	
Murphy's Tm., 7 R. P. C. 163 ; W. N. (1890) 84 ...	249, 261, 318, 358
Myers ; Cave <i>v.</i>	

N.

NADEL <i>v.</i> Martin, 20 R. P. C. 129, 720 ; 23 R. P. C. 41 ...	556
Nähmaschinen Fabrik, &c. <i>v.</i> Singer Manufacturing Co., 10 R. P. C. 310 ...	564
Nairn ; Linoleum Manufacturing Co. <i>v.</i>	
Napper ; Jackson <i>v.</i>	
Nathan & Co., Moseley & Sons, Ltd. <i>v.</i>	
National Biscuit Co.'s Application, [1901] 1 Ch. 550 ; [1902] 1 Ch. 783 ; 18 R. P. C. 170 ; 19 R. P. C. 281 ...	160, 165, 168, 169, 193
National Cash Register Co., Ltd. <i>v.</i> Theeman, 24 R. P. C. 211 ...	500
National Starch Manufacturing Co. <i>v.</i> Munn's Patent Maizena Co., [1894] A. C. 275 ; 11 R. P. C. 281 ...	364, 425, 487, 526
National Wholesale Tea Supply Association's Tms., 10 R. P. C. 164 ...	316, 319
Native Guano Co. <i>v.</i> Sewage Manure Co., 4 R. P. C. 478 ; 8 R. P. C. 125 ; 3 Times L. R. 693 ; 4 Times L. R. 372 ...	399, 469, 481, 526
Neal ; Dunlop Pneumatic Tyre Co. <i>v.</i>	
Neilson <i>v.</i> Betts, L. R. 5 H. L. 1 ; 40 L. J. Ch. 317 ; 19 W. R. 1121 ...	454, 473
Neostyle Manufacturing Co.'s Tm., 20 R. P. C. 329, 803 ...	207, 264, 283, 290, 313
Neostyle Manufacturing Co. <i>v.</i> Ellam's Duplicator Co., 21 R. P. C. 185, 569 ...	508
New Gold Coast Exploration Co., [1901] 1 Ch. 860 ...	565
New Ixion Tyre and Cycle Co. <i>v.</i> Spilsbury, [1898] 2 Ch. 137, 484 ; 15 R. P. C. 380, 567 ; 67 L. J. Ch. 557 ; 79 L. T. 229 ...	356
New Ormonde Cycle Co.'s Tm., [1896] 2 Ch. 520 ; 13 R. P. C. 475 ; 65 L. J. Ch. 785 ; 75 L. T. 50 ...	285, 302, 314, 316, 319, 320
New Vacuum Cleaner Co., Ltd. ; British Vacuum Cleaner Co. <i>v.</i>	
Newman ; Findlater, Mackie, Todd & Co. <i>v.</i>	
Newman <i>v.</i> Pinto, 4 R. P. C. 508 ; 57 L. T. 31 ; 3 Times L. R. 386 ; 4 Times L. R. 685 ...	246, 421, 429, 439, 464, 465
Nichols & Co. ; McCaw, Stevenson & Co., Ltd. <i>v.</i>	
Nicholson <i>v.</i> Buchanan, 19 R. P. C. 321 ; 44 Sol. J. 408 ...	504
Nixey <i>v.</i> Roffey, W. N. (1870) 227 ...	432
Nopitsch ; Wolf <i>v.</i>	
Norfolk Cycle Co. ; Brooks & Co., Ltd. <i>v.</i>	
Normal Co.'s Tm., 35 Ch. D. 231 ; 3 R. P. C. 232, 269 ; 4 R. P. C. 123 ; 56 L. J. Ch. 513 ; 56 L. T. 246 ; 35 W. R. 464 ; 2 Times L. R. 885 ; 3 Times L. R. 407 ...	77, 295, 305, 335
Norman ; Raddle <i>v.</i>	
Norris ; Rivero <i>v.</i>	
North British Rubber Co. <i>v.</i> Gormully, 12 R. P. C. 17 ...	446
North Cheshire and Manchester Brewery Co. <i>v.</i> Manchester Brewery Co., [1898] 1 Ch. 539 ; [1899] A. C. 83 ; 67 L. J. Ch. 351 ; 68 L. J. Ch. 74 ; 78 L. T. 537 ; 79 L. T. 645 ...	83, 257, 495, 498, 506
North Metropolitan Tramways Co. ; Att.-Gen. <i>v.</i>	
North Shore Mill Co., Ltd.'s Tm., 22 R. P. C. 599 ...	312
Norwich Town Close Estate Charity, <i>Re.</i> 40 C. D. 310 ...	308

	PAGE
Noton ; Evans <i>v.</i>	
Nowill ; Rodgers <i>v.</i>	
Nuthall <i>v.</i> Vining, 28 W. R. 330	406
O.	
OAKEY <i>v.</i> Dalton, 35 C. D. 700 ; 4 R. P. C. 313 ; 56 L. J. Ch. 823 ; 57 L. T. 18 ; 35 W. R. 709 ; 3 Times L. R. 701	386
Oberrheinische Metallwerke <i>v.</i> Cocks, (1906) W. N. 127	447
O'Connor ; Wolmershausen <i>v.</i>	
Ogden ; Phillips <i>v.</i>	
Oldham <i>v.</i> James, 13 Ir. Ch. 393 ; 14 Ir. Ch. 81	354, 420
O'Meara ; Reed <i>v.</i>	
Onslow <i>v.</i> The Commissioners of Inland Revenue, 25 Q. B. 465 ; 59 L. J. Q. B. 556 ; 63 L. T. 513 ; 38 W. R. 728	313
Orlando Jones & Co.'s Tms. 12 R. P. C. 278	298, 318, 319
Orr <i>v.</i> Diaper, 4 C. D. 92 ; 46 L. J. Ch. 41 ; 35 L. T. 468 ; 25 W. R. 23 ...	471
Orr-Ewing & Co.'s Tms., 28 W. R. 412	94
Orr-Ewing's Tm. (<i>See</i> Orr-Ewing <i>v.</i> The Registrar of Tms.)	
Orr-Ewing ; Johnston <i>v.</i>	
_____ <i>v.</i> The Registrar of Tms., 8 C. D. 794 ; 4 App. Ca. 479 ; 47 L. J. Ch. 807 ; 48 L. J. Ch. 180, 707 ; 38 L. T. 313, 695 ; 41 L. T. 239 ; 26 W. R. 259, 777 ; 28 W. R. 17 36, 71, 92, 122, 134, 174, 178, 186, 194, 197, 241, 317, 336, 337, 342	
Osborn <i>v.</i> Lees, 9 Mod. 96	420
Osborne ; Hudson <i>v.</i>	
Osgerby ; Hudson <i>v.</i>	
Otaday's (De) Tm., W. N. (1885) 177	59, 60
Owen, <i>Re</i> , Sol. J. 45, p. 103, Dec. 8, 1900	311
Owens ; Bodega Co. <i>v.</i>	
Oxford and Cambridge (Universities of) <i>v.</i> Gill. (<i>See</i> Universities.)	
P.	
PACKHAM <i>v.</i> Sturgess, 15 R. P. C. 669	219, 520
Paine <i>v.</i> Chisholm. [1891] 1 Q. B. 531	466
_____ ; Stevens <i>v.</i>	
Paine & Co. <i>v.</i> Daniells & Sons' Breweries. [1893] 2 Ch. 567 ; 10 R. P. C. 217 ; 62 L. J. Ch. 732 ; 68 L. T. 801 ; 42 W. R. 40 98, 181, 190, 196, 205, 233, 259, 285, 286, 290, 296, 392, 398, 402, 403, 467, 482, 487, 493, 516, 735	
Paine & Co., Ltd., In the matter of the Trade Marks of. (<i>See</i> Paine & Co. <i>v.</i> Daniells.)	
Paine's Tm., W. N. (1892) 56 ; 9 R. P. C. 130 ; 61 L. J. Ch. 365 ; 66 L. T. 642 ...	145, 153, 154, 169
Palestine Wine and Trading Co., Ltd. <i>v.</i> Cohen & Co., 23 R. P. C. 568... ..	391, 443
Palmer's Tm., 21 C. D. 47 ; 24 C. D. 504 ; 46 L. T. 787 ; 50 L. T. 30 ; 32 W. R. 306 ; 51 L. J. Ch. 673 7, 200, 203, 207, 253, 418	
_____. 22 C. D. 88 ; 48 L. T. 52 ; 31 W. R. 33	313, 468
Panhard et Levassor (Société Anonyme) <i>v.</i> Panhard Levassor Motor Co., Ltd., [1901] 2 Ch. 513 ; 18 R. P. C. 405 350, 361, 382, 490, 497, 739	
Pape ; Curtis & Harvey <i>v.</i>	
Parker ; Meriden Britannia Co. <i>v.</i>	
Parker & Smith <i>v.</i> Satchwell, 17 R. P. C. 713	446, 466, 520
Parozone, Ltd. <i>v.</i> Gibson, 21 R. P. C. 317	390
Parsons <i>v.</i> Gillespie, [1898] A. C. 239 ; 15 R. P. C. 57 ; 67 L. J. P. C. 21	43, 510, 511, 513
Patent Plumbago Crucible Co.'s Tms., 7 R. P. C. 282	285, 316, 430
Payne ; Blofeld <i>v.</i>	
Payton & Co., Ltd. <i>v.</i> Snelling, Lampard & Co., 16 R. P. C. 283 ; 17 R. P. C. 48, 628... .. 236, 242, 247, 257, 404, 408, 520, 521, 524	
_____ <i>v.</i> Titus Ward & Co., Ltd., 16 R. P. C. 424 ; 17 R. P. C. 58... ..	236, 242, 247, 404, 408

TABLE OF CASES.

xli

	PAGE
Peake ; Boulnois <i>r.</i>	
Pearks, Gunston and Tee, Ltd. ; Anglo-Swiss Condensed Milk Co. <i>r.</i>	
----- <i>r.</i> Houghton, [1902] 1 K. B. 889	554
----- <i>r.</i> Thompson, Talmey & Co., 18 R. P. C. 185	441, 499, 543
Pearson ; Harpers <i>r.</i>	
----- <i>r.</i> Pearson, 27 C. D. 145 ; 54 L. J. Ch. 32 ; 51 L. T. 311 ; 32 W. R. 1006	529
Peek ; Derry <i>r.</i>	
Peel ; Stephens <i>r.</i>	
Perceval <i>r.</i> Phipps, 2 Ves. & B. 10	572
Perry ; Skinner <i>r.</i>	
Perry <i>r.</i> Trucfitt, 6 Beav. 66 ; 1 L. T. (O. S.) 384... ..	407
Perry-Davis & Son <i>r.</i> Harbord, 15 App. Ca. 316 ; 7 R. P. C. 336 ; 58 L. T. 695 ; 60 L. J. Ch. 16 ; 4 Times L. R. 483	155, 175, 194, 200, 202, 205
Perry-Davis' Tm., 5 R. P. C. 333 ; 58 L. T. 695	311, 467
Perryman ; Bonnard <i>r.</i>	
Peters <i>r.</i> Domestic Inventions Co., 25 R. P. C. 387	31, 397
Peto ; Ponsardin <i>r.</i>	
Pharmaceutical Society <i>r.</i> Armson, [1894] 2 Q. B. 720 ; 64 L. J. Q. B. 32 ; 71 L. T. 315 ; 42 W. R. 662 ; 59 J. P. 52	432
----- <i>r.</i> Piper, [1893] 1 Q. B. 686 ; 62 L. J. Q. B. 305 ; 68 L. T. 490 ; 41 W. R. 447	432
Phillippart <i>r.</i> Whiteley, Ltd., [1908] 2 Ch. 274 ; 25 R. P. C. 565	165, 166
Phillips' Tm., [1891] 3 Ch. 139 ; 8 R. P. C. 469 ; 61 L. J. Ch. 40 ; 65 L. T. 373	272, 317, 318
Phillips <i>r.</i> Ogden, 12 R. P. C. 325	255, 259
Philpott & Co. ; Johnson <i>r.</i>	
Phipps ; Perceval <i>r.</i>	
Photographic Co. ; Pollard <i>r.</i>	
Pianotist Co.'s Application, 23 R. P. C. 774	231, 236, 246, 264, 524
Pickering ; Moët <i>r.</i>	
Pickles ; Bradford, Corporation of, <i>r.</i>	
Pidding <i>r.</i> How, 8 Sim. 477 ; 6 L. J. Ch. (N. S.) 345	427
Pierce <i>r.</i> Franks, 15 L. J. Ch. 122 ; 10 Jur. 25	382, 461
Pigott ; Slazenger <i>r.</i>	
Pilcher ; Elliott <i>r.</i>	
Pilkington <i>r.</i> Massey, 21 R. P. C. 421	468
Pillow ; Barnard <i>r.</i>	
Pinet et Cie. <i>r.</i> Maison Pinet, 14 R. P. C. 933 ; 77 L. T. 322	503, 538, 548
----- <i>r.</i> Maison Louis Pinet, Ltd., 15 R. P. C. 65 ; 67 L. J. Ch. 41	503, 538, 543, 544, 548, 737
Pinto <i>r.</i> Badman, 8 R. P. C. 181 ; 7 Times L. R. 317	23, 154, 170, 194, 195, 196, 217, 256, 263, 304, 330, 341, 346, 350, 367, 388, 410, 469
----- ; Newman <i>r.</i>	
----- <i>r.</i> Trott, 8 R. P. C. 173	263
Pinto Leite ; Carver <i>r.</i>	
Piper ; Pharmaceutical Society <i>r.</i>	
Pirie <i>r.</i> Goodall, [1892] 1 Ch. 35 ; 9 R. P. C. 17 ; 61 L. J. Ch. 79 ; 65 L. T. 640 ; 66 L. T. 255 ; 40 W. R. 81 ; 8 Times L. R. 62... ..	136, 139, 155, 174, 190, 219, 254, 388
Pirie & Sons ; Towgood Brothers <i>r.</i>	
Plasmonade, Ltd. ; International Plasmon, Ltd. <i>r.</i>	
Plating Co. <i>r.</i> Farquharson, 17 C. D. 49	567
Player's Application, [1901] 1 Ch. 382 ; 18 R. P. C. 65 ; 70 L. J. Ch. 359 ; 84 L. T. 190	72, 97, 108, 218, 232, 254, 609
Plotzker <i>r.</i> Lucas, 24 R. P. C. 551	488
Plumbago Crucible Co.'s Tms., 7 R. P. C. 282	302
Pneumatic Stamp Co. <i>r.</i> Lindner, 15 R. P. C. 525	358, 462, 487
Pollard, <i>In re</i> , (1902) W. N. 49	312, 463
----- ; Derby Photographic Dry Plate Co., Ltd. <i>r.</i>	
----- <i>r.</i> Photographic Co., 40 C. D. 345 ; 58 L. J. Ch. 251	572
Pomeroy, Ltd. <i>r.</i> Scalé, 24 R. P. C. 177	492, 529, 543
Pomril, Ltd.'s Application, 18 R. P. C. 181	95, 243, 251, 252, 262

	PAGE
Ponsardin v. Peto, 33 Beav. 642 ; 33 L. J. Ch. 371 ; 3 N. R. 237 ; 9 L. T. (N. S.) 567 ; 10 Jur. (N. S.) 66 ; 12 W. R. 198	451
Pooley's Trustee v. Whetham, 33 C. D. 120	466
Pottage ; Hookham v.	
Powell's Tm., [1893] 2 Ch. 388 ; [1894] A. C. 8 ; 10 R. P. C. 63, 195 ; 11 R. P. C. 4 ; 62 L. J. Ch. 818 ; 69 L. T. 60 ; 41 W. R. 627 ... 25, 29, 33, 35, 54, 204, 205, 280, 281, 283, 285, 735	735
Powell v. Birmingham Vinegar Brewery Co., [1894] 3 Ch. 449 ; [1896] 2 Ch. 54 ; [1897] A. C. 710 ; 11 R. P. C. 563 ; 12 R. P. C. 496 ; 13 R. P. C. 235 ; 14 R. P. C. 720 ; 65 L. J. Ch. 563 ; 66 L. J. Ch. 763 ; 71 L. T. 393 ; 74 L. T. 509 ; 76 L. T. 792 ; 44 W. R. 688	32, 47, 53, 235, 236, 252, 340, 342, 402, 473, 473, 480, 481, 489, 493, 509, 512, 513, 516, 532, 548, 549, 550, 568, 570, 735
Power v. Barham, 7 C. & P. 356 ; 4 Ad. & E. 472 ; 5 L. J. K. B. (N. S.) 88	555
Premier Cycle Co., Ltd. v. Premier Tube Co., Ltd., 12 T. L. R. 481	499
Press Printers, Ltd. ; Howard v.	
Presto Gear Case, &c., Co., Ltd. v. Orme, Evans, & Co., Ltd., 17 R. P. C. 218, at p. 227	468
Price's Patent Candle Co.'s Case, 27 C. D. 681 ; 54 L. J. Ch. 210 ; 51 L. T. 653	135, 140, 193, 194
Price's Patent Candle Co., Ltd. v. Jeyes' Sanitary Compounds Co., Ltd., 19 R. P. C. 17	31, 251, 396
Priester ; Tuck & Sons v.	
Prince ; Goodfellow v.	
Printing Machinery Co., Ltd.'s Application, 23 R. P. C. 38	168, 169
Proctor v. Bennis, 36 C. D. 740	420, 422
Provezende ; Seixo v.	
Prudential Assurance Association v. Knott, L. R. 10 Ch. 142 ; 44 L. J. Ch. 192 ; 31 L. T. (N. S.) 866 ; 23 W. R. 249	529, 567
Punch v. Boyd, 16 L. R. Ir. 476	568
Purnell & Co. ; Imperial Tobacco Co., Ltd. v.	
Purser v. Brain, 17 L. J. (N. S.) Ch. 141	486, 490

Q.

QUEEN v. County Court Judge of Halifax, [1891] 2 Q. B. 263 ; 8 R. P. C. 338	380
——— ; Mason v.	

R.

R. v. Comptroller-General of Patents, <i>Ex parte</i> Tomlinson, [1899] 1 Q. B. 909 ; 16 R. P. C. 233 ; 68 L. J. Q. B. 568 ; 80 L. T. 777 ; 47 W. R. 567...	77, 85
R. v. Payne, [1896] 1 Q. B. 577	565, 567
R. v. Townsend, 13 R. P. C. 265	585
Rabbits ; Fennessy v.	
Rabone Bros. & Co., <i>Re</i> , Seb. Dig. p. 395	59, 202, 229
Radeliff ; Woollam v.	
Radde v. Norman, L. R. 14 Eq. 348 ; 41 L. J. Ch. 523 ; 26 L. T. 788 ; 20 W. R. 766	446
Raggett v. Findlater, L. R. 17 Eq. 29 ; 43 L. J. Ch. 64 ; 29 L. T. (N. S.) 448 ; 22 W. R. 53	52, 202
Ralph's Tm., 25 C. D. 194 ; 53 L. J. Ch. 188 ; 49 L. T. 504 ; 32 W. R. 168	283, 368, 369
Ramsey Urban Council ; Bostock v.	
Randall, Ltd. v. British American Shoe Co., [1902] 2 Ch. 354 ; 19 R. P. C. 393	441
——— v. E. Bradley & Son, 24 R. P. C. 657, 773	441, 497, 498, 499, 510
——— ; Gamage, Ltd. v.	
Ransome v. Graham, 51 L. J. Ch. 897 ; 47 L. T. 218	432, 433
Raper & Pulleyer ; Burburys v.	
Ratcliffe v. Evans, [1892] 2 Q. B. 524 ; 61 L. J. Q. B. 535 ; 66 L. T. 794 ; 40 W. R. 578 ; 56 J. P. 837...	562

TABLE OF CASES.

xliii

PAGE

Rawson ; Baker <i>v.</i>	
Raylton ; Johnson <i>v.</i>	
Read <i>v.</i> Richardson, 45 L. T. (N. S.) 54	... 251, 414, 437, 445, 447, 527, 733
Reading Biscuit Co. ; Huntley & Palmer <i>v.</i>	
Reay ; Rickerby <i>v.</i>	
Reddaway <i>v.</i> Ahlers, 19 R. P. C. 12...	... 549
————— <i>v.</i> Banham, [1895] 1 Q. B. 286 ; [1896] A. C. 199, 209 ; 12 R. P. C., 83 ; 13 R. P. C. 218 ; 64 L. J. Q. B. 321 ; 65 L. J. Q. B. 381 ; 72 L. T. 73 ; 74 L. T. 289 ; 43 W. R. 294 ; 44 W. R. 638	... 4, 33, 42, 45, 47, 52, 150, 152, 201, 339, 340, 343, 398, 444, 466, 479, 483, 509, 511, 524, 532, 534, 540, 548, 549
————— <i>v.</i> Frictionless Engine Packing Co., Ltd., 19 R. P. C. 505	... 407, 549
————— <i>v.</i> Irwell & Eastern Rubber Co., Ltd., 23 R. P. C. 621 ; 24 R. P. C. 93, 203...	... 264, 524
————— <i>v.</i> Stevenson, 20 R. P. C. 276	... 407, 422, 424, 444, 456, 549
Reddaway & Co. <i>v.</i> Bentham Hemp Spinning Co., [1892] 2 Q. B. 639 ; 9 R. P. C. 503 ; 67 L. T. 301 ; 8 Times L. R. 734	... 259, 402, 452, 481, 482, 512
Reed ; Celluloid Co. <i>v.</i>	
————— <i>v.</i> O'Meara, 21 L. R. Ir. 216	... 506
Reeves ; Collins Co. <i>v.</i>	
Registrar of Trade Marks ; Orr-Ewing <i>v.</i>	
Rehder ; Compagnia Général de Tabacos <i>v.</i>	
Reid <i>v.</i> Thomson & Co., 22 R. P. C. 376 ; 23 R. P. C. 153	... 279, 303
Reinhardt <i>v.</i> Spalding, 49 L. J. Ch. 57 ; 28 W. R. 300	... 191, 418
Reiss' Tm., 5 R. P. C. 291	... 319
Rendle <i>v.</i> Rendle, 63 L. T. 94	... 544
Reuter's Telegram Co. <i>v.</i> Byron, 43 L. J. Ch. 661...	... 572, 573
Rey <i>v.</i> Lecouturier, 25 R. P. C. 265	... 302, 350, 518, 548, 569
Reynolds ; Mitchell <i>v.</i>	
————— ; Rosenthal <i>v.</i>	
————— ; Southorn <i>v.</i>	
Richards ; Aplin & Barrett <i>v.</i>	
————— <i>v.</i> Butcher, [1891] 2 Ch. 522 ; 8 R. P. C. 249 ; 60 L. J. Ch. 530 ; 62 L. T. 867	... 28, 30, 31, 175, 200, 202, 204, 205, 467
————— <i>v.</i> ———, 7 R. P. C. 288...	... 338, 355, 357, 385, 391
————— <i>v.</i> Williamson, 30 L. T. (N. S.) 746 ; 22 W. R. 765	... 395
Richardson ; Read <i>v.</i>	
Richmond & Co., Ltd. <i>v.</i> Wrightson, 22 R. P. C. 25	... 574
Rickerby <i>v.</i> Reay, 20 R. P. C. 380	... 355, 361, 505, 528
Rickett, Cockerell & Co., Ltd. <i>v.</i> Nevill, 21 R. P. C. 394...	... 409
Riemer ; Incandescent Gas Light Co. <i>v.</i>	
Rigden <i>v.</i> Jones, 22 R. P. C. 417	... 533, 545
Riley ; Springhead Spinning Co. <i>v.</i>	
Riley and Whittaker ; Day <i>v.</i>	
Ripley <i>v.</i> Arthur, 18 R. P. C. 82	... 443, 449, 560
————— <i>v.</i> Bandy, 14 R. P. C. 591, 944	... 156, 177, 188, 367, 422, 425, 520
————— <i>v.</i> Griffiths, 19 R. P. C. 590	... 510
Ripley's Application, 15 R. P. C. 151 ; 77 L. T. 495	... 160, 165, 168, 169
Rivero <i>v.</i> Norris, Seb. Dig. p. 178	... 447
Rivière ; Bodega Co., Ltd. <i>v.</i>	
Rivière's Tm., 26 C. D. 48 ; 53 L. J. Ch. 455, 578 ; 55 L. J. Ch. 545 ; 49 L. T. 506 ; 50 L. T. 763 ; 53 L. T. 237 ; 32 W. R. 390	... 70, 280, 283, 295, 301, 313, 384, 488
Roach <i>v.</i> Hall, 2 Atk. 469	... 565
Robb <i>v.</i> Green, [1895] 2 Q. B. 1. 315 ; 64 L. J. Q. B. 593 ; 73 L. T. 15 ; 44 W. R. 25 ; 59 J. P. 695	... 485, 572, 573
Robertson <i>v.</i> Harris, [1900] 2 Q. B. 117 ; 69 L. J. Q. B. 526 ; 82 L. T. 536 ; 48 W. R. 571 ; 64 J. P. 565	... 553
Robertson, Sanderson & Co.'s Tm., [1892] 2 Ch. 245 ; 9 R. P. C. 213, 264 ; 61 L. J. Ch. 470 ; 66 L. T. 673 ; 40 W. R. 569 ; 8 Times L. R. 497	... 91, 96, 97, 307
Robin, The, [1892] P. 95 ; 67 L. T. 298	... 466
Robineau <i>v.</i> Charbonnel, W. N. (1876) 160...	... 490
Robinson & Barnsdale, Ltd.'s Case. <i>Times</i> newspaper, April 2nd, 1901	... 439

	PAGE
Robinson's Tm., 29 W. R. 31 ...	209, 244
Robinson <i>v.</i> Finlay, 9 C. D. 487; 39 L. T. (N. S.) 398; 27 W. R. 294 ...	55, 69, 191, 383, 418
Rodgers <i>v.</i> Nowill, 3 De G. M. & G. 614; 6 Hare, 325; 22 L. J. Ch. 404; 1 W. R. 122, 205, 216; 17 Jur. 109, 171; 5 C. B. 109; 17 L. J. C. P. 52	5, 401, 421, 450, 452
— <i>v.</i> Rodgers, 31 L. T. (N. S.) 285; 22 W. R. 837 ...	259, 423, 425, 463
Rodgers & Sons <i>v.</i> Rottgen, 5 Times L. R. 678 ...	391, 445, 466
Rodgers (Joseph) & Sons, Ltd. <i>v.</i> Hearnshaw, 23 R. P. C. 349 ...	503
— <i>v.</i> Joseph Rodgers Simpson, 23 R. P. C. 297, 348	545
Roffey; Nixey <i>v.</i>	
Roger's Tm., 12 R. P. C. 149 ...	55, 68, 71, 97, 261, 347, 354, 355
Rose <i>v.</i> Evans, 48 L. J. Ch. 618 ...	143, 283
— <i>v.</i> Henley, 47 L. J. Ch. 577; 38 L. T. (N. S.) 410 ...	395
— <i>v.</i> Loftus, 47 L. J. Ch. 576; 38 L. T. (N. S.) 409 ...	395, 407, 442, 453, 461
Rosenthal <i>v.</i> Reynolds, [1892] 2 Ch. 301; 9 R. P. C. 189; 61 L. J. Ch. 508; 67 L. T. 162; 40 W. R. 521 ...	213, 219, 254, 388, 606
— ; Weingarten <i>v.</i>	
Rosher <i>v.</i> Young, Sol. J. vol. 45, p. 344 ...	529
Rosing's Tm., 54 L. J. Ch. 975, n. ...	115, 244, 260, 516
Ross; Marshall <i>v.</i>	
Rotherham's Tm., 11 C. D. 250; 14 C. D. 585; 49 L. J. Ch. 511; 40 L. T. 387; 43 L. T. 1; 27 W. R. 503 ...	99, 185
Rottgen; Rodgers & Sons <i>v.</i>	
Routh <i>v.</i> Webster, 10 Beav. 561 ...	529
Rowe; Rudd <i>v.</i>	
Rowland; Scott <i>v.</i>	
— <i>v.</i> Michell, 13 R. P. C. 457; 14 R. P. C. 37; 66 L. J. Ch. 110; 75 L. T. 498 ...	185, 246, 367, 372, 421, 422, 425, 462, 471
Royal Baking Powder Co. <i>v.</i> Wright, Crossley & Co., 15 R. P. C. 677; 16 R. P. C. 217; 18 R. P. C. 95 ...	441, 560, 562, 563
Royal Baking Powder Co.'s Application, 19 R. P. C. 261 ...	193, 195, 213, 217
Royal Baking Powder Co.'s Tm., 14 R. P. C. 425 ...	208, 306, 737
Royal Warrant Holders' Ass. <i>v.</i> Slade & Co., Ltd., 25 R. P. C. 245 ...	386, 446, 587
Royle; Challenger <i>v.</i>	
Rudd <i>v.</i> Rowe, L. R. 10 Eq. 610 ...	460
Rugby Portland Cement Co., Ltd. <i>v.</i> Rugby & Newbold Portland Cement Co., Ltd., 8 R. P. C. 241; 9 R. P. C. 46 ...	396, 399, 508, 511
Rushton, Ltd.; Faulder & Co. <i>v.</i>	
Russel; Marquis of Londonderry <i>v.</i>	
Rust's Tm., 44 L. T. 98, n.; 29 W. R. 393, n. ...	70, 301
Rutter <i>v.</i> Smith, 18 R. P. C. 49 ...	389, 461, 525
Rylands; Davenport <i>v.</i>	

S.

SABISTON; Montreal Lithographing Co. <i>v.</i>	
Saccharin Corp. <i>v.</i> Chemicals and Drugs Co., [1900] 2 Ch. 556; 17 R. P. C. 612; 69 L. J. Ch. 820; 83 L. T. 206; 49 W. R. 1 ...	473
Saccharin Corp., Ltd. <i>v.</i> Dawson, 19 R. P. C. 173 ...	310
St. Pancras Vestry; Cree <i>v.</i>	
Salomons <i>v.</i> Knight, [1891] 2 Ch. 294; 60 L. J. Ch. 743; 64 L. T. 589; 39 W. R. 506 ...	568
Salt's Application, [1894] 3 Ch. 166; 11 R. P. C. 517; 63 L. J. Ch. 756; 71 L. T. 386; 42 W. R. 666 ...	164, 171, 172
Sanitas Co.'s Tm., 4 R. P. C. 533; 58 L. T. 166 ...	98, 100, 151, 152, 157
Sanitas Co. <i>v.</i> Condy, 4 R. P. C. 195, 530; 56 L. T. 621; 3 Times L. R. 226; 4 Times L. R. 474 ...	262, 454, 466, 525
Sarpy <i>v.</i> Holland, [1908] 1 Ch. 443 ...	577
Satchwell; Parker & Smith <i>v.</i>	
Saunders <i>v.</i> Sun Life Ass. Co., [1894] 1 Ch. 537; 70 L. T. 755; 10 Times L. R. 183 ...	499
Savage <i>v.</i> Foster, 2 White & Tudor's L. C., 6th ed. 680 ...	420
Savin's Tm., 13 R. P. C. 21 ...	318, 420

TABLE OF CASES.

xliv

	PAGE
Saxby <i>v.</i> Easterbrook, 3 C. P. D. 339; 27 W. R. 188	567
Saxlehner <i>v.</i> Apollinaris Co., [1897] 1 Ch. 893; 14 R. P. C. 645; 66 L. J. Ch. 533; 76 L. T. 617	4, 69, 252, 457, 461, 462, 482, 523, 524, 737
Sayers <i>v.</i> Collyer, 28 C. D. 103	444
Scalé; Pomeroy, Ltd. <i>v.</i>	
Schauer <i>v.</i> Field, [1893] 1 Ch. 35; 62 L. J. Ch. 72; 68 L. T. 81; 41 W. R. 201	92, 577
Schembri; Somerville <i>v.</i>	
Schiele <i>v.</i> Brackell, 11 W. R. 796	487
Schmidt's Tm. (<i>See</i> Jackson <i>v.</i> Napper.)	
Schmincke; Schove <i>v.</i>	
Schove <i>v.</i> Schmincke, 33 C. D. 546; 55 L. J. Ch. 892; 55 L. T. 212; 34 W. R. 700	511, 519
Schweitzer <i>v.</i> Atkins, 37 L. J. Ch. 847; 19 L. T. (N. S.) 6; 16 W. R. 1080	543, 545
Schweppes <i>v.</i> Gibbens, 22 R. P. C. 113, 601	309, 523, 524
Scott; Hogg <i>v.</i>	
—— <i>v.</i> Rowland, 26 L. T. (N. S.) 391; 20 W. R. 508	529
—— <i>v.</i> Scott, 16 L. T. (N. S.) 143	486, 487
Scottish Union and National Insurance Co. <i>v.</i> Scottish National Insurance Co., Ltd., 25 R. P. C. 560	500
Scottish Val de Travers Paving Co.; Stuart & Co. <i>v.</i>	
Seixo <i>v.</i> Provezende, L. R. 1 Ch. 192; 14 L. T. (N. S.) 314; 14 W. R. 357; 12 Jur. (N. S.) 215	50, 149, 154, 191, 230, 237, 244, 250, 444, 508, 548, 731
Selby <i>v.</i> Anchor Tube Co., W. N. (1877) 191	485, 486
Sen Sen Co. <i>v.</i> Britten, [1899] 1 Ch. 692; 16 R. P. C. 137; 68 L. J. Ch. 250; 8 L. T. 278; 47 W. R. 358	24, 335, 337, 338, 437, 438, 585
Sewage Manure; Native Guano Co. <i>v.</i>	
Seyd & Kelly's Credit Index Co.; Snuggs <i>v.</i>	
Shakespear; Wheeler & Wilson Manufacturing Co. <i>v.</i>	
Shamrock Co.; Finlay <i>v.</i>	
Shamrock & Co.'s Application. <i>In re</i> , 24 R. P. C. 569	100, 262
Sharp; Clark <i>v.</i>	
——; Kiteat <i>v.</i>	
Sharpe; Freeman <i>v.</i>	
——; Viola <i>v.</i>	
Shaw; Delondre <i>v.</i>	
Sheard; Chappell <i>v.</i>	
Shew; Skinner <i>v.</i>	
Shipright <i>v.</i> Clements, 19 W. R. 599	346
Shove; Thynne <i>v.</i>	
Shrimpton <i>v.</i> Laight, 18 Beav. 164	404, 543
Shuttleworth; MacSymon's Stores, Ltd. <i>v.</i>	
Sidebotham; Marshall <i>v.</i>	
Siegert <i>v.</i> Abbott (2), (1891). Cox. p. 486	440
—— <i>v.</i> Findlater, 7 C. D. 801; 47 L. J. Ch. 233; 38 L. T. (N. S.) 349; 26 W. R. 459	394, 440, 443, 548, 569, 570
Silverlock; Farina <i>v.</i>	
Sime; Caird <i>v.</i>	
Simpson, Davies & Sons' Tm., <i>Re</i> , 15 C. D. 525; 42 L. T. 675; 28 W. R. 760...95, 225	
Simpson; Rodgers <i>v.</i>	
Sinclair; Hodgson <i>v.</i>	
Singer Manufacturing Co. <i>v.</i> British Empire Manufacturing Co., 20 R. P. C. 313	41, 366, 508
—— <i>v.</i> Kimbal, 11 Ct. of Sess. Cas. 3rd ser. 267	39
—— <i>v.</i> Loog, 18 C. D. 395; 8 App. Ca. 15; 52 L. J. Ch. 481; 44 L. T. (N. S.) 888; 48 L. T. 3; 29 W. R. 699; 31 W. R. 325	1, 4, 40, 235, 236, 339, 389, 395, 400, 401, 402, 403, 482, 484, 491
—— <i>v.</i> ——, 11 C. D. 656; 48 L. J. Ch. 649; 27 W. R. 903	380
——; Nähmaschinen Fabrik, &c. <i>v.</i>	
—— <i>v.</i> Spence & Co., 10 R. P. C. 297	41, 366, 508

	PAGE
Singer Manufacturing Co. <i>v.</i> Wilson, 2 C. D. 434 ; 3 App. Ca. 376 ; 45 L. J. Ch. 490 ; 47 L. J. Ch. 481 ; 34 L. T. (N. S.) 858 ; 38 L. T. (N. S.) 303 ; 24 W. R. 1023 ; 26 W. R. 664... 13, 29, 32, 39, 253, 364, 397, 402, 482, 483, 508	508
Skinner <i>v.</i> Perry, 11 R. P. C. 406 559	559
Skinner <i>v.</i> Shew, [1893] 1 Ch. 413 ; [1894] 2 Ch. 581 ; 63 L. J. Ch. 826 ; 71 L. T. 110 559	559
Slack ; Ellen <i>v.</i>	
Slade & Co., Ltd. ; Royal Warrant Holders' Association <i>v.</i>	
Slade ; Jeudwine <i>v.</i>	
Slazenger & Sons <i>v.</i> Feltham & Co., 6 R. P. C. 531 ; 5 Times L. R. 365 253, 263, 398, 443, 451, 524, 544, 547	253, 263, 398, 443, 451, 524, 544, 547
Slazenger <i>v.</i> Pigott, 12 R. P. C. 439... .. 459	459
Slingsby <i>v.</i> Bradford Patent Truck & Trolley Co., (1906) W. N. 50 432	432
Smelting Co. of Australia <i>v.</i> Commissioners of Inland Revenue, [1896] 2 Q. B. 179 ; [1897] 1 Q. B. 175 ; 66 L. J. Q. B. 137 ; 75 L. T. 534 ; 45 W. R. 203 ; 61 J. P. 116 360	360
Smith ; Evans <i>v.</i>	
— ; Glenny <i>v.</i>	
— ; Gray <i>v.</i>	
— ; Great Tower Street Tea Co. <i>v.</i>	
— <i>v.</i> Harris, 48 L. T. 869 473	473
— ; Holt <i>v.</i>	
— ; Rutter <i>v.</i>	
— <i>v.</i> Smith, L. R. 20 Eq. 500 422	422
Smith & Wellstood <i>v.</i> Carron Co., 13 R. P. C. 108 263	263
Smokeless Powder Co.'s Tm., [1892] 1 Ch. 590 ; 9 R. P. C. 109 ; 61 L. J. Ch. 391 ; 66 L. T. 407 ; 40 W. R. 507 ; 8 Times L. R. 348... .. 135, 195, 217, 275, 297	135, 195, 217, 275, 297
Snelling, Lampard & Co. ; Payton & Co., Ltd. <i>v.</i>	
Snook ; Apollinaris Co. <i>v.</i>	
Snuggs <i>v.</i> Seyd & Kelly's Credit Index Co., W. N. (1894) 95 460	460
Soares ; Beazley <i>v.</i>	
Société Anonyme des Manufactures des Glaces <i>v.</i> Tilghman's Patent Sand Blast Co., 25 C. D. 1 ; 53 L. J. Ch. 1 ; 49 L. T. 451 ; 32 W. R. 71... .. 568	568
Société Anonyme des Verreries de l'Étoile, [1894] 1 Ch. 61 ; [1894] 2 Ch. 26 ; 10 R. P. C. 436 ; 11 R. P. C. 142 ; 10 Times L. R. 314 211, 231, 232, 243, 251, 252, 283, 289, 290, 391, 392, 444, 549	211, 231, 232, 243, 251, 252, 283, 289, 290, 391, 392, 444, 549
Société Anonyme des Verreries de l'Étoile's Tm., 10 R. P. C. 290 307	307
Société Anonyme Panhard et Levassor. (<i>See</i> Panhard et Levassor.)	
Society of Accountants and Auditors <i>v.</i> Goodway, [1907] 1 Ch. 489 ; 24 R. P. C. 159 493	493
Society of Accountants in Edinburgh <i>v.</i> Corporation of Accountants, Ltd., 20 R. 750 493	493
Somerville <i>v.</i> Schembri, 12 App. Ca. 453 ; 4 R. P. C. 179 ; 56 L. J. P. C. 61 ; 56 L. T. 454 ; 3 Times L. R. 443 31, 103, 406, 479	31, 103, 406, 479
Soper ; Malachy <i>v.</i>	
Southern <i>v.</i> How. Cro. Jac. 471 ; 2 Rolle, 28 ; Popham, 144 2	2
Southern <i>v.</i> Reynolds, 12 L. T. (N. S.) 75 385, 457, 493, 543	385, 457, 493, 543
Souvazoglu ; Harter <i>v.</i>	
Sowerby Society ; Van Gelder <i>v.</i>	
Spalding ; Reinhardt <i>v.</i>	
Sparling ; Duncan <i>v.</i>	
Spear ; Amosteag Co. <i>v.</i>	
Speer's Tm., 1 R. P. C. 521 ; 55 L. T. 880 215, 251, 260	215, 251, 260
Spence & Co. ; Singer Manufacturing Co. <i>v.</i>	
Spencer's Tm., 3 R. P. C. 73 ; 54 L. T. 659 ; 2 Times L. R. 243 ; 3 Times L. R. 270 203, 205	203, 205
Sphincter Co.'s Tm., 10 R. P. C. 84 182, 188	182, 188
Spiers & Pond <i>v.</i> Bennett, [1896] 2 Q. B. 65 ; 65 L. J. M. C. 144 ; 74 L. T. 697 ; 44 W. R. 510 ; 60 J. P. 437 554	554
Spilsbury ; New Ixion Tyre & Cycle Co. <i>v.</i>	
Spratt's Patent <i>v.</i> Ward & Co., 11 C. D. 240 ; 48 L. J. Ch. 649 ; 40 L. T. 250 ; 27 W. R. 470 380	380

TABLE OF CASES.

xlvii

	PAGE
Springhead Spinning Co. v. Riley, L. R. 6 Eq. 551 ; 37 L. J. Ch. 889 ; 19 L. T. (N. S.) 64 ; 16 W. R. 1138	488
Standish v. Whitwell, 14 W. R. 512... ..	411, 461
Star Cycle Co., Ltd. v. Frankenburgs, 24 R. P. C. 46, 405	180, 264, 406, 510, 515, 526
Star Newspaper Co. ; Fox v.	
Starey v. Chilworth Gunpowder Co., 24 Q. B. D. 90 ; 59 L. J. M. C. 13 ; 62 L. T. 73 ; 38 W. R. 204 ; 54 J. P. 436	54, 554
Stark v. Midland Railway Co., 16 C. D. 81... ..	457
Steinway v. Henshaw, 5 R. P. C. 77	262
Stephens, <i>Ex parte</i> , 3 C. D. 659 ; 46 L. J. Ch. 46 ; 24 W. R. 963	8, 25, 137, 143, 184, 198
———— ; Eno v.	
———— v. Peel, 16 L. T. (N. S.) 145	521
Stevens v. Paine, 18 L. T. (N. S.) 600	486
———— ; Watts v.	
Stevenson Bros., Ltd. ; Fels v.	
Stevenson ; Redclaway v.	
Stewart, Cooper & Co. ; Wertheimer v.	
Stewart ; Dawson v.	
———— ; United Horseshoe Co. v.	
Stock ; Blair v.	
Stockowners' Meat Co. of New South Wales, Ltd. Tms., 14 R. P. C. 733	319
Strange ; Albert (Prince) v.	
Street v. Blay, 2 B. & Ad. 460	557
——— v. Union Bank of Spain and England, 30 C. D. 156 ; 55 L. J. Ch. 31 ; 53 L. T. 262 ; 33 W. R. 901... ..	505, 526
Stribold ; Davis v.	
Stringer's Application, 8 R. P. C. 445	96
Stuart & Co. v. Scottish Val de Travers Paving Co., 13 Sess. Cas. 4th Ser. 1	155, 157, 387
Sturgess ; Packham v.	
Sullivan, Powell & Co. ; Benedictus v.	
Sun Life Assurance Co. ; Saunders v.	
Sunlight Incandescent Co. ; Incandescent Gas Light Co. v.	
Suter, &c., Composition Co.'s Tms., 19 R. P. C. 42	229, 292, 299
Sweet ; Archbold v.	
Swift Specific Co.'s Tm., 6 R. P. C. 352	97, 263
Swinborne ; Gridley v.	
Swiss Condensed Milk Co. ; Anglo-Swiss Condensed Milk Co. v.	
Sykes' Tms., 43 L. T. 626 ; 29 W. R. 235	122, 230
Sykes v. Sykes, 3 B. & Cr. 541 ; 3 L. J. K. B. (O. S.) 46... ..	3, 29, 34, 433, 453, 550
Symington v. Footman, 56 L. T. 696	508

T.

TAK ; Burnett v.	
Talbot's Tm., 11 R. P. C. 77 ; W. N. (1894) 12	99, 156, 158, 165, 169, 259, 263, 281, 283, 290, 312
Talbot v. Webley, 3 R. P. C. 276	204, 395, 508
Tallerman v. Dowsing Radiant Heat Co., [1900] 1 Ch. 1 ; 68 L. J. Ch. 618 ; 69 L. J. Ch. 46 ; 48 W. R. 146	487
Tandem Smelting Syndicate ; Magnolia Metal Co. v.	
Taylor ; Condy v.	
———— ; Harrison v.	
——— v. Taylor, 23 L. J. Ch. 255 ; 2 Eq. Rep. 290 ; 22 L. T. (O. S.) 271	203, 398, 524, 544, 545
Taylor Drug Co. ; Californian Fig Syrup Co. v.	
———— ; Humphries v.	
Taylor's Agreement Trusts, 21 R. P. C. 713	351
Teacher v. Levy, 23 R. P. C. 117	394, 488
Teede ; India and China Tea Co. v.	
Tennessee Co. ; Laurence Co. v.	

	PAGE
The Robin, [1892] P. 25 ; 67 L. T. 298	466
Thecman ; National Cash Register Co., Ltd. <i>v.</i>	
Thewlis & Blakey's Tm., 10 R. P. C. 369	178, 248, 251, 308
Thom & Cameron, Ltd. ; Boord & Son <i>v.</i>	
Thomas & Bros., Ltd. ; Fels <i>v.</i>	
Thomas E. Brinsmead & Sons, Ltd. ; John Brinsmead & Co. <i>v.</i>	
Thomas <i>v.</i> Williams, 14 C. D. 864 ; 49 L. J. Ch. 605 ; 43 L. T. 91 ; 28 W. R. 983	561, 567
Thompson <i>v.</i> Bent's Brewery Co., Ltd., 8 R. P. C. 479	548
————— ; Isaacson <i>v.</i>	
————— <i>v.</i> Miller, 13 R. P. C. 35... 157, 179, 196, 215, 216, 218, 219, 297, 312, 340	
————— <i>v.</i> Montgomery, [1891] A. C. 217 ; 41 C. D. 85 ; 6 R. P. C. 213, 404 ; 8 R. P. C. 361 ; 58 L. J. Ch. 93, 374 ; 60 L. J. Ch. 757 ; 64 L. T. 748 ; 5 Times L. R. 51, 305	29, 33, 49, 179, 183, 215, 285, 312
Thompson, Talmey & Co. ; Pearks, Gunston and Tee, Ltd. <i>v.</i>	
Thompson's Tm., 6 R. P. C. 213	100, 157
—————, (No. 2). (<i>See</i> Thompson <i>v.</i> Miller.)	
Thomson ; American Wire Co. <i>v.</i>	
Thomson & Co. ; Reid <i>v.</i>	
Thorley's Cattle Food Co. <i>v.</i> Massam, 6 C. D. 582 ; 14 C. D. 763 ; 46 L. J. Ch. 713 ; 41 L. T. 543 ; 42 L. T. 851 ; 28 W. R. 295, 966	560, 567
Thorn <i>v.</i> Worthing Skating Rink Co., 6 C. D. 415, n.	475
Thorneloe <i>v.</i> Hill, [1894] 1 Ch. 569 ; 11 R. P. C. 61 ; 63 L. J. Ch. 331 ; 70 L. T. 124 ; 42 W. R. 397	138, 274, 297, 341, 343, 349, 354, 367, 464, 491
Three Towns Banking Co. <i>v.</i> Maddever, 27 C. D. 533 ; 53 L. J. Ch. 998 ; 52 L. T. 35 ; 33 W. R. 286	423
Thwaites <i>v.</i> McEvelly, 20 R. P. C. 663 ; 21 R. P. C. 397	395, 484
Thynne <i>v.</i> Shove, 45 C. D. 577 ; 49 L. J. Ch. 509	352, 529
Tilghman's Patent Sand Blast Co. ; Société Anonyme des Manufactures des Glaces <i>v.</i>	
Tipper ; Christy <i>v.</i>	
Tipping <i>v.</i> Clarke, 2 Hare, 383	572
Titus Ward & Co., Ltd. ; Payton & Co., Ltd. <i>v.</i>	
Tollit ; Aerators, Ltd. <i>v.</i>	
Tomlin Bros. ; Hat Manufacturers' Supply Co., Ltd. <i>v.</i>	
Tomlinson, <i>Ex parte</i> ; R. <i>v.</i> Comptroller-General of Patents.	
Tonge ; Kearley <i>v.</i>	
————— <i>v.</i> Ward, 21 L. T. (N. S.) 480	390, 442, 457, 458
Towgood Brothers <i>v.</i> Pirie & Sons, 4 R. P. C. 67 ; 56 L. T. 394 ; 35 W. R. 729 ; 3 Times L. R. 356	145
Townsend <i>v.</i> Jarman, [1900] 2 Ch. 698 ; 17 R. P. C. 649 ; 69 L. J. Ch. 823 ; 83 L. T. 366 ; 49 W. R. 158	352, 486, 487, 499, 529, 544
————— ; R. <i>v.</i>	
Trego <i>v.</i> Hunt, [1895] 1 Ch. 462 ; [1896] A. C. 7 ; 64 L. J. Ch. 392 ; 65 L. J. Ch. 1 ; 72 L. T. 269 ; 73 L. T. 514 ; 43 W. R. 371 ; 44 W. R. 225	529
Triticine, Ltd. ; Meaby & Co., Ltd. <i>v.</i>	
Trott ; Pinto <i>v.</i>	
Truefitt <i>v.</i> Edney, 20 R. P. C. 321	543
————— ; Perry <i>v.</i>	
Tuck & Sons <i>v.</i> Priester, 19 Q. B. D. 629 ; 56 L. J. Q. B. 553	572
Turner ; Beard <i>v.</i>	
Turner's Motor Manufacturing Co., Ltd. <i>v.</i> Miesse Petrol Car Syndicate, Ltd., 24 R. P. C. 531	524
Turney & Sons' Tm., 11 R. P. C. 37 ; 10 Times L. R. 175	72, 211, 228, 260, 393
Turpin ; Dent <i>v.</i>	
Turton <i>v.</i> Turton, 42 C. D. 128 ; 58 L. J. Ch. 677 ; 61 L. T. 571, 575 ; 38 W. R. 22	15, 49, 259, 475, 482, 483, 501, 532, 540, 542, 543, 545, 546, 550
Tussaud ; Monson <i>v.</i>	
————— <i>v.</i> Tussaud, 44 C. D. 678 ; 59 L. J. Ch. 631 ; 62 L. T. 633 ; 38 W. R. 503	501, 538, 542, 543, 544
Twentsche Stoom Bleekery Goor <i>v.</i> Ellinger & Co., 26 W. R. 70	382, 390

TABLE OF CASES.

xlix

U.

	PAGE
ULLMANN <i>v.</i> Leuba, <i>Times</i> , July 21st, 1908	350
Ullmer ; Guinness <i>v.</i>	
Unceda. <i>Re</i> , Tm. (<i>See</i> National Biscuit Co.'s Application.)	
Union Agricola's Tms., 25 R. P. C. 295	262
Union Bank of Spain and England : Street <i>v.</i>	
United Horseshoe Co. <i>v.</i> Stewart, 13 App. Ca. 401 ; 5 R. P. C. 260 ; 59 L. T.	
561	453
United States Playing Card Co.'s Application, [1908] 1 Ch. 197	24, 174
United Telephone Co. <i>v.</i> Dale, 25 C. D. 778 ; 53 L. J. Ch. 295 ; 50 L. T. 85 ;	
32 W. R. 428	448
United Vineyards, &c. Co. (1889), Seb. 4th ed. 349	411
Universities of Oxford and Cambridge <i>v.</i> Gill, [1899] 1 Ch. 55 ; 68 L. J. Ch.	
34 ; 79 L. T. 338 ; 47 W. R. 248	385
Upmann <i>v.</i> Elkan, L. R. 7 Ch. 130 ; L. R. 12 Eq. 140 ; 41 L. J. Ch. 246 ; 25	
L. T. (N. S.) 813 ; 20 W. R. 131	442, 450, 451, 452, 459, 460
— <i>v.</i> Forester, 24 C. D. 231 ; 52 L. J. Ch. 946 ; 49 L. T. 122 ; 32 W. R.	
28	382, 391, 403, 442, 452, 458
Upper Assam Tea Co. <i>v.</i> Herbert & Co., 7 R. P. C. 183	230, 261, 400, 414

V.

VALENTINE MEAT JUICE Co. <i>v.</i> Valentine Extract Co., Ltd., 17 R. P. C. 1, 673 ;	
83 L. T. 259	263, 393, 414, 469, 503, 533, 534, 537, 738
Valentine's Tm., 18 R. P. C. 175	292, 350, 414, 538
Van Duzer's Tm., 34 C. D. 634 ; 3 R. P. C. 243 ; 4 R. P. C. 31	7, 8, 99, 100,
	134, 143, 145, 150, 152, 157, 203, 336
Van Gelder <i>v.</i> Sowerby Society, 44 C. D. 374 ; 7 R. P. C. 298 ; 59 L. J. Ch.	
292 ; 62 L. T. 105	458
Van Oppen & Co., Ltd. <i>v.</i> Van Oppen, 20 R. P. C. 617	446, 485, 535
Van Zeller <i>v.</i> Mason, Cattley & Co., 25 R. P. C. 37	33, 55, 384, 494, 528
Venning ; Goodwin <i>v.</i>	
Verity's Tm., 19 R. P. C. 58	30, 181, 182, 288, 289, 331, 333, 387
Vernon <i>v.</i> Hallam, 34 C. D. 748 ; 56 L. J. Ch. 115 ; 55 L. T. (N. S.) 676 ; 35	
W. R. 156	486
Vernon & Sons <i>v.</i> Buchanan's Flour Mills, Ltd., 23 R. P. C. 17	460
Verschure & Zoon's Application, 22 R. P. C. 568	59, 74, 75, 76, 98, 163, 165,
	170, 185
Vick ; Edelsten <i>v.</i>	
Vidal's Patent, 15 R. P. C. 721	583
Vignier's Tm., 6 R. P. C. 490 ; 61 L. T. 495 ; 5 Times L. R. 686	151, 192, 583
Vining ; Nuthall <i>v.</i>	
Viola <i>v.</i> Sharpe, 22 R. P. C. 23	601

W.

WAGEL SYNDICATE, LTD. ; Field, Ltd., <i>v.</i>	
Walkden, &c. Co.'s Application, 54 L. J. Ch. 394, n.	215
Walker <i>v.</i> Baird, [1892] A. C. 491 ; 61 L. J. P. C. 92 ; 67 L. T. 513	582
— ; Cheavin <i>v.</i>	
— ; Levy <i>v.</i>	
— <i>v.</i> Mottram, 19 C. D. 355 ; 51 L. J. Ch. 108 ; 45 L. T. (N. S.) 659 ; 30	
W. R. 165	530
Walmsley ; Ainsworth <i>v.</i>	
Walter <i>v.</i> Ashton, [1902] 2 Ch. 282	393, 485
— <i>v.</i> Emmott, 54 L. J. Ch. 1059 ; 53 L. T. 437	506, 519
Wapshare Co. ; Dunlop Co. <i>v.</i>	
Ward <i>v.</i> Beeton, L. R. 19 Eq. 207 ; 23 W. R. 533	519
— ; Tonge <i>v.</i>	
Ward & Co. ; Spratt's Patent <i>v.</i>	
Ward, Sturt & Sharp, <i>Re</i> , 50 L. J. Ch. 347 ; 44 L. T. (N. S.) 97 ; 29 W. R. 395	122
	132, 296

T.M.

d

	PAGE
Warner <i>v.</i> Warner, 5 Times L. R. 327, 359... ..	502, 532, 543
Warsop & Sons, Ltd. <i>v.</i> Warsop, 21 R. P. C. 481	399, 464, 539, 549
Warwick Trading Co. <i>v.</i> Urban, 21 R. P. C. 240	165, 168
Waterfield, Clifford & Co.; Edison-Bell Consolidated Phonograph Co. <i>v.</i>	
Waterman <i>v.</i> Ayres, 39 C. D. 29; 5 R. P. C. 368; 57 L. J. Ch. 893; 59 L. T.	
17; 37 W. R. 110; 4 Times L. R. 533	145, 147, 150, 151, 174, 253
Watkinson; Burberrys <i>v.</i>	
Watson <i>v.</i> Dr. Jaeger's Sanitary Woollen System Co., 13 T. L. R. 150	583
Watt <i>v.</i> O'Hanlon, 4 R. P. C. 1	202, 254, 399
Watts <i>v.</i> Stevens, [1906] 2 K. B. 323... ..	553
Weatheritt; Evans <i>v.</i>	
Weaver; Franks <i>v.</i>	
Webb & Co.; Birmingham Small Arms Co., Ltd. <i>v.</i>	
Webb <i>v.</i> Leapman, 22 R. P. C. 398	503
Webber & Co.'s Case, <i>Times</i> , Feb. 2nd, 1897	587
Webley; Talbot <i>v.</i>	
Webster; Routh <i>v.</i>	
— <i>v.</i> Webster, 3 Swan. 490	346, 529
Weild; Wren <i>v.</i>	
Weingarten <i>v.</i> Bayer & Co., 20 R. P. C. 289; 22 R. P. C. 341	329, 454, 456, 458, 481, 490, 522, 549, 550, 740
— <i>v.</i> Rosenthal, 21 R. P. C. 212	467
Welch <i>v.</i> Knott, 4 K. & J. 747; 4 Jur. (N. S.) 330	389, 395
Welcome's Tm., 32 C. D. 213; 3 R. P. C. 76; 55 L. J. Ch. 542; 51 L. T. 493;	
34 W. R. 453	70, 301, 351, 369
Weldon <i>v.</i> Dicks, 10 C. D. 247; 48 L. J. Ch. 201; 39 L. T. 467; 27 W. R. 639... ..	421, 422
Welsbach Incandescent Gas Light Co., Ltd. <i>v.</i> Daylight Incandescent Mantle	
Co., Ltd., 16 R. P. C. 344... ..	310
Wertheimer <i>v.</i> Stewart, Cooper & Co., 23 R. P. C. 481	488
West Hartlepool Railway Co.; Coleman <i>v.</i>	
Wheeler & Wilson Manufacturing Co. <i>v.</i> Shakespear, 39 L. J. Ch. 36	44, 253, 486
Whetham; Pooley's Trustee <i>v.</i>	
White; Lazenby <i>v.</i>	
—; Mellin <i>v.</i>	
White Rose Tm., 30 C. D. 505; 54 L. J. Ch. 961; 53 L. T. 33; 33 W. R. 796... ..	224, 262
Whitehead; Heywood <i>v.</i>	
Whitehouse; Daniel & Arter <i>v.</i>	
Whiteley, Ltd.; Phillippart <i>v.</i>	
Whiteley's Tm., 43 L. T. 627, n.; 29 W. R. 235, n.	230
Whitstable. (<i>See</i> Free Fishers, &c. <i>v.</i> Elliot.)	
Whitstable Oyster Co. <i>v.</i> Hayling Fisheries, Ltd., 17 R. P. C. 461	38, 309, 471, 508, 516, 518
Whitwell; Standish <i>v.</i>	
Wiggins; Cameron <i>v.</i>	
Wilde; Burchell <i>v.</i>	
— <i>v.</i> Thompson, 20 R. P. C. 361, 775	563
Wilkinson; Burgon <i>v.</i>	
—; Dawes <i>v.</i>	
— <i>v.</i> Griffith, 8 R. P. C. 370... ..	235, 236, 244, 248, 251, 256, 260, 261, 417, 444, 734
—; Hubbuck <i>v.</i>	
Williams <i>v.</i> Hodge, 4 Times L. R. 175	488, 526
Williamson; Richards <i>v.</i>	
Willmott <i>v.</i> Barber, 15 C. D. 96; 17 C. D. 772	420, 421
Wills' Tm., [1892] 3 Cn. 201; 9 R. P. C. 346; 61 L. J. Ch. 546; 67 L. T. 453... ..	308, 472, 474
—, <i>Re</i> , [1893] 2 Ch. 262; 10 R. P. C. 269; 62 L. J. Ch. 545; 69 L. T. 793... ..	180, 255, 271, 272, 405, 435
Wilson; Fenner <i>v.</i>	
—; Grand Hotel Co. of California Springs <i>v.</i>	
—; Laidlaw <i>v.</i>	
Winchester; Graveley <i>v.</i>	

TABLE OF CASES.

li

	PAGE
Winchester ; Longman <i>v.</i>	
Winer & Co., Ltd. <i>v.</i> Armstrong & Co., 16 R. P. C. 167	49, 438, 508
Winyard ; Youatt <i>v.</i>	
Witt <i>v.</i> Concoran, 2 C. D. 69 ; 45 L. J. Ch. 603 ; 34 L. T. (N. S.) 550 ; 24 W. R. 501 ... ..	...487, 531, 544
Wittingham ; Cooper <i>v.</i>	
Wolf <i>v.</i> Nopitsch, 17 R. P. C. 321 ; 18 R. P. C. 27	51, 174, 200, 242, 364, 426, 439, 515, 518
Wolmershausen <i>v.</i> G. S. Wolmershausen & Co., Ltd., W. N. (1892) 87	499
————— <i>v.</i> O'Connor, 36 L. T. (N. S.) 921	485
Wood's Case, <i>Times</i> , May 14th, 1903	587
Wood's Tm. (<i>See</i> Wood <i>v.</i> Butler.)	
Wood <i>v.</i> Butler (Wood <i>v.</i> Lambert), 32 C. D. 247 ; 3 R. P. C. 81 ; 55 L. J. Ch. 377 ; 54 L. T. 314 ; 1 <i>Times</i> L. R. 435 ; 2 <i>Times</i> L. R. 232... ..	174, 200, 203, 253, 363, 428, 429, 439, 515
————— ; Metzler <i>v.</i>	
Woodroffe ; Harrison <i>v.</i>	
Woollam <i>v.</i> Radcliff, 1 H. & M. 259	401, 517
Woolley <i>v.</i> Broad, [1892] 1 Q. B. 806 ; 9 R. P. C. 208, 429 ; 40 W. R. 511 ; 8 <i>Times</i> L. R. 213	94, 355, 385
Woolley & Son <i>v.</i> Morrison, 21 R. P. C. 63, 349	395
Worcester Royal Porcelain Co., Ltd. <i>v.</i> Locke, 19 R. P. C. 479	51, 468, 493, 508, 515, 518
Worsley ; Ajello <i>v.</i>	
Worthing Skating Rink Co. ; Thorn <i>v.</i>	
Worthington Pumping Engine Co. <i>v.</i> Moore, 20 R. P. C. 41	462, 574
Worthington's Tm., 14 C. D. 8 ; 49 L. J. Ch. 646 ; 42 L. T. 563 ; 28 W. R. 747	211, 245, 260
Wotherspoon <i>v.</i> Currie, L. R. 5 H. L. 508 ; 42 L. J. Ch. 130 ; 22 L. T. (N. S.) 443 ; 27 L. T. (N. S.) 393 ; 18 W. R. 942... ..	51, 145, 154, 236, 256, 402, 407, 508, 571, 731
Wragg's Tm., 29 C. D. 551 ; 54 L. J. Ch. 391 ; 52 L. T. 467 ; 1 <i>Times</i> L. R. 268... ..	215
Wren <i>v.</i> Weild, L. R. 4 Q. B. 213, 730 ; 38 L. J. Q. B. 88 ; 20 L. T. (N. S.) 277	560
Wright, Crossley & Co.'s Application, [1900] 2 Ch. 218 ; 17 R. P. C. 386 ; 69 L. J. Ch. 589 ; 83 L. T. 150	71, 78, 101, 135, 194, 195, 196, 198, 199, 202, 205, 206, 218, 371, 438
Wright, Crossley & Co.'s Tm., 15 R. P. C. 131, 377	280, 282, 285, 286
Wright, Crossley & Co. <i>v.</i> Dobbin, 15 R. P. C. 21	273, 585
————— ; Royal Baking Powder Co. <i>v.</i>	
Wright ; Martin <i>v.</i>	
Wurm <i>v.</i> Webster & Girling, 21 R. P. C. 373	490, 493
Wyatt ; Goldsmiths' Co. <i>v.</i>	

Y.

YATES ; Dicks <i>v.</i>	
Yost Typewriter Co., Ltd. <i>v.</i> Typewriter Exchange Co., 19 R. P. C. 422	446
Youatt <i>v.</i> Winyard, 1 Jac. & W. 394	572
Young ; Callow <i>v.</i>	
————— <i>v.</i> Macrae, 9 Jur. (N. S.) 322... ..	44, 47, 144, 551
————— ; Montgomerie & Co., Ltd. <i>v.</i>	
————— ; Rosher <i>v.</i>	
Younge ; Blyth <i>v.</i>	

Z.

ZONOPHONE, In the Matter of the Trade Mark, 20 R. P. C. 450	283, 307
--	----------

THE LAW OF TRADE MARKS.

CHAPTER I.

INTRODUCTION.

	PAGE
1. Trade Marks before the Registration Acts	1
2. Registration of Trade Marks	4
3. Passing-off and trade name actions	12
4. The Criminal Law of false marking	18
5. International and Colonial arrangements	20

1. Trade Marks before the Registration Acts.

THE foundation upon which the law relating to trade marks and trade names rests is that the deception of the public by the offer for sale of goods as possessing some connection with a particular trader, which they do not in fact possess, is a wrong in respect of which the trader has a cause of action against any person who is the author of, or is responsible for, the deception

“No man,” said James, L.J.¹ “is entitled to represent his goods as being the goods of another man; and no man is permitted to use any mark, sign or symbol, device or means, whereby, without making a direct false representation himself to a purchaser who purchases from him, he enables such purchaser to tell a lie or to make a false representation to somebody else who is the ultimate customer. That being, as it appears to me, a comprehensive statement of what the law is upon the question of trade mark or trade designation, I am of opinion that there is no such thing as a monopoly or a property in the nature of a copyright, or in the nature of a patent, in the use of any name. Whatever name is used to designate goods, anybody may use that name to designate goods; always subject to this, that he must not, as I said,

The leading principle as stated by James, L.J.

¹ *Singer Manufacturing Co. v. Looy*, 18 C. D. p. 412; 52 L. J. Ch. 481 (1880).

make, directly or through the medium of another person, a false representation that his goods are the goods of another person."

Early trade
mark cases at
law and in
equity.

The law on this subject cannot be traced back further than the nineteenth century. It is, indeed, sometimes alleged, upon the authority of *Southern v. How*,¹ that an action lay for the infringement of a trade mark as early as the reign of James I. In that case the defendant, a clothier, had applied the mark of another clothier to his own inferior cloth, and it was held that for this an action for deceit could be brought. According to one report,² the action was brought by the owner of the mark, and if this is correct the case does undoubtedly establish the proposition suggested. According to another report,³ however, the plaintiff was the defrauded purchaser, and the action, therefore, an ordinary action of deceit. In the case of *Blanchard v. Hill*,⁴ Lord Hardwicke refused to grant an injunction to restrain a trader from imitating the mark of another: but the language of his judgment suggests that if the defendant had used the mark with a fraudulent design to pass off inferior goods by that means, or to draw away customers from the owner of the mark, he might have granted the injunction.

Lord Eldon, who so greatly extended the jurisdiction of the Court of Chancery in regard to injunctions,⁵ in several instances granted injunctions to restrain a defendant from pretending that his goods were those of, or were connected with the plaintiff;⁶ and in *Crutwell v. Lye*⁶ he stated the principle on which he acted in similar language to that of James, L.J., cited above. "There can be no doubt," he said, "that this Court would interpose against that sort of fraud which has been attempted by setting up the same trade in the same place, under the same sign or name, the party giving himself out as the same person." The earliest reported case in which the infringement of a trade mark, in the particular case a label placed upon blacking, was restrained is *Day v. Day*,⁷ in 1816.

Early cases at
common law.

The interference of the common law courts for the protection of trade marks seems to have been a little later in date. The

¹ Popham, 144; Cro. Jac. 471; 2 Rolle, 28. See *Magnolia Metal Co. v. Tandem Smelting Syndicate, Ltd.*, 17 R. P. C. 477, at p. 484, (1900) H. L.

² Popham, p. 144.

³ Cro. Jac. 471.

⁴ 2 Atk. 484 (1742), *Great Mogul Stamp on playing cards.*

⁵ See 2 Law Review, p. 282; Kerly's *History of Equity*, p. 258.

⁶ *Hogg v. Kirby*, 8 Ves. 215 (1803); *Longman v. Winchester*, 16 Ves. 269 (1809); *Crutwell v. Lye*, 17 Ves. 335 (1810).

⁷ Eden on Injunctions, ed. 1821, p. 314; Seb. Dig. p. 10.

first reported case is *Sykes v. Sykes*,¹ in 1824. The declaration in that case alleged that the plaintiff carried on the business of a shot-belt and powder-flask manufacturer: that he was accustomed to mark his goods with the words *Sykes' Patent*, to distinguish them from articles of the same description made by other persons; that they enjoyed a great reputation; that the defendants fraudulently marked their own inferior goods with the same mark in imitation of the plaintiff's, and sold them "as and for" goods of the manufacture of the plaintiff, and that the plaintiff thereby had suffered damage in loss of custom and loss of reputation. Bayley, J., who tried the case, asked the jury "whether the defendants adopted the mark in question for the purpose of inducing the public to suppose that the articles were not manufactured by them, but by the plaintiff," and the jury found a verdict for the plaintiff. A new trial was moved for on the ground that the evidence did not support the declaration, since the purchasers from the defendants knew whose manufacture the goods were. No authorities were cited, so far as can be judged from the report, but Abbott, C.J., who delivered the judgment of the Court, treated the law as fully settled. "I think," he said, "that the substance of the declaration was proved. It was established most clearly that the defendants marked the goods manufactured by them with the words *Sykes' Patent* in order to denote that they were the genuine manufacture of the plaintiff; and although they did not themselves sell them as goods of the plaintiff's manufacture, yet they sold them to retail dealers for the express purpose of being resold as goods of the plaintiff's manufacture. I think that is substantially the same thing, and that we ought not to disturb the verdict." This judgment has frequently been cited in subsequent cases as fully establishing, so far as it went, not only the jurisdiction of the Courts, but also the principle upon which they proceed in trade mark cases.²

Sykes v. Sykes.

In 1833, in *Blofeld v. Payne*,³ the Court of King's Bench decided that it was not necessary for the plaintiff, in an action for damages at common law, to prove that the goods sold by the infringer were inferior to those to which the mark in question might rightly be applied, or to prove that he had suffered special

Inferiority of the infringer's goods.

¹ 3 B. & C. 541; 3 L. J. K. B. (O. S.) 46.

² *Ford v. Foster*, L. R. 7 Ch. p. 630 (1872); *Singer Manufacturing Co. v.*

Loog, 18 C. D. p. 403; 52 L. J. Ch. 481 (1880), both C. A.

³ 4 B. & Ad. 410; 2 L. J. K. B. (N. S.) 68.

damage by the defendant's acts; and in 1863, in *Edelsten v. Edelsten*,¹ the same rule was referred to as being settled beyond question in suits in equity.²

Proof of fraud unnecessary in equity.

Millington v. Fox.

Property in a trade mark.

An important step was taken in 1838, by the decision of Lord Cottenham in *Millington v. Fox*,³ that an injunction could be obtained to restrain infringement of a trade mark, even though the infringement was due to ignorance, and was without fraudulent intent. This decision led, by an obvious deduction, to the establishment of a right of property in trade marks; and, although the nature of this right gave rise to much discussion, and was defined in different terms by Chancery judges in subsequent cases, it soon became firmly established, and the protection of trade marks in equity was expressly based upon it.⁴ No similar step was taken by the common law courts, and in them fraud remained an essential ingredient of a cause of action for the infringement of a trade mark down to the date of the amalgamation effected by the Judicature Acts.

2. Registration of Trade Marks.

Development of the specialised action of infringement.

The principle stated at the beginning of this chapter, and the dicta there cited, have, obviously, a wider application than merely to the case of trade marks proper. Conduct of every kind, which is calculated to pass off the goods of the defendant as those of the plaintiff, falls within them, whether it consist of the imitation of the symbol expressly adopted by the plaintiff to distinguish his goods and to identify them with him, that is, his trade mark; or of the imitation of any other symbols which have become associated with his goods, so as, in fact, to distinguish and identify them; or of the imitation of the general appearance, the "get up," of his goods as they appear in the market; or of the imitation of the name under which he trades. The trade mark cases,

¹ 1 De G. J. & S. 185.

² See per Ld. Blackburn in *Singer Manufacturing Co. v. Looy*, 8 App. Ca. p. 30; 52 L. J. Ch. 481, at p. 489 (1880).

³ 3 My. & Cr. 338.

⁴ *Edelsten v. Edelsten*, 1 De G. J. & S. 185; *Hall v. Barrows*, 4 De G. & S. 150; 32 L. J. Ch. 548; 33 L. J. Ch. 204; *Leather Cloth Co. v. American Leather Cloth Co.*, 1 H. & M. 271; 4 De G. J. & S. 137; 11 H. L. C. 523; 32 L. J. Ch. 721; 33 L. J. Ch. 109; 35 L. J. Ch. 53

(all in 1863) and decisions of Ld. Westbury, L.C. And see *Day v. Riley and Whittaker*, 17 R. P. C. 517, at p. 520, (1900) *obiter* by Buckley, J. Also the judgments of Ld. Herschell in *Reddaway v. Banham*, [1896] A. C. p. 209; 13 R. P. C. p. 228; and of Kekewich, J., in *Saxlehner v. Apollinaris Co.*, [1897] 1 Ch. p. 903; 14 R. P. C. p. 656, as to whether there can be "property" in any common law trade mark.

however, were so much the more numerous and important, that, as already stated, a definite property-right in the use of a trade mark was set up, and the action for infringement became a specialised and distinct form of the more general action to restrain, or to obtain damages for "passing-off."

The litigation of trade mark cases was, however, found to be extremely costly, and otherwise unsatisfactory. The essence of a trade mark right being the reputed association in the market of the symbol in question with the goods of the plaintiff, it was often necessary to call a large number of witnesses to give evidence of the reputation, especially if the defendant alleged that the pretended trade mark was either mere descriptive matter, or was, on any other grounds, a mark common to the trade; and, as infringers were usually persons of no substance, it was often impossible to recover the costs after the plaintiff had conducted his action to a successful issue. Moreover, success against one infringer did not relieve the owner of a trade mark from the necessity of proving his title afresh if, in any action against another infringer, the defendant chose to dispute it. Thus, the case of *Rodgers v. Nowill*¹ lasted five years and cost the plaintiff 2,211*l.*, without in the end giving him any security that he might not have to incur equal delay and expense in proceeding against any subsequent infringer of his mark who should venture to run the risk of disputing his title to the exclusive use of it. And these dilatory and expensive proceedings were, practically, the only means available of preventing the infringement of a trade mark; for such infringement, except in cases where the spuriously-marked goods were sold to persons who were cheated by the seller into buying them under the belief that they were goods upon which the imitated trade mark might properly be put, was not within the reach of the criminal law.²

Difficulty and cost of the old trade mark suits.

These evils, and the unsatisfactory state of the law in regard to the false marking of goods in general, led to an urgent demand from the traders of the country for more efficient protection, and in 1862 a Select Committee of the House of Commons were appointed to consider several Trade Marks and Merchandise

The Committee of 1862.

¹ Evidence of G. J. Rodgers before the Committee of 1862. M. M. A. Report, 1862. Q. 458. The case is reported in its various stages, 6 Hare, 325; 5 C. R. 109; 17 L. J. C. P. 52; 3 De G. M. &

G. 614; 22 L. J. Ch. 404 (1846).

² See below, p. 16, and per Mellish, L.J., in *Fisher v. Apollinaris Co.*, L. R. 10 Ch. p. 303; 44 L. J. Ch. p. 502 (1875).

Marks Bills then before Parliament. The Committee were strongly urged to report in favour of the establishment of a Register of trade marks and the creation of trade mark rights by registration, in the manner already adopted by several foreign States, and long familiar, as regards cutlers' marks, in and within six miles of the lordship of Hallamshire, in England.¹ And Mr. Leonard Edmunds, then Clerk of the Patents, explained to the Committee a scheme which he had drawn up for registering and indexing trade marks in the manner at that time adopted for patents, many of the features of which were embodied in the Registration Acts subsequently passed. The proposals were, however, strenuously opposed by Mr. Hindmarch, Q.C., the leading patent and trade mark lawyer of the day, and by the Attorney-General, and they were not indorsed by the Committee. Registration of trade marks was, in consequence, postponed for some years; but the Bill upon which the Merchandise Marks Act of 1862² was founded was amended and favourably reported upon by the Committee, and was forthwith passed into law.

The Merchandise Marks Act of 1862.

The Act just mentioned dealt principally with the criminal law, but it contained some provisions affecting the civil law of trade marks. It provided that there should be implied, on the sale of any article with a trade mark attached to it, a warranty that the trade mark was genuine.³ It gave a statutory right of action for damages, and for an injunction to any person aggrieved, against anyone who should apply a forged or counterfeited trade mark to any article, or to the covering of any article, for the purpose of sale, manufacture, or trade,⁴ and empowered the Court to order the destruction of goods marked with spurious trade marks.⁵ It also authorised Courts of Law to grant injunctions in trade mark cases.⁵ These provisions are, however, believed to have been of as little practical service as were the amendments of the criminal law effected by the Act, which are referred to in a later section of this chapter.

The Registration Act of 1875.

Thirteen years later the Trade Marks Registration Act, 1875,⁶ which came into operation on August 13th, 1875, established the present Register of Trade Marks. The object of this Act was twofold: it was directed, on the one hand, to diminish

¹ See "Sheffield Marks," below, p. 112.

² 25 & 26 Vict. c. 38.

³ Sec. 19, see now M. M. A. 1887, s. 17; Chap. XVII., p. 552.

⁴ Sec. 22.

⁵ Sec. 21.

⁶ 38 & 39 Vict. c. 91. See the chapter on "The Register," below, p. 57.

the difficulty and cost of, or to altogether remove the necessity for the proof of title by use and reputation, which had cast so great a burden upon the owners of trade marks in proceedings to restrain infringement; and, on the other, to secure the publication of marks which had been appropriated as trade marks, and to define the rights of their proprietors, for the information of traders, and, further, to limit the classes of marks which should be capable of being so appropriated.¹ The Act, accordingly, provided that registration should be *prima facie* evidence of the right of the registered proprietor to the exclusive use of the trade mark² in connection with goods of the class for which it was registered and used,³ and should, after the expiration of five years, be conclusive evidence of such right, so long as the trade mark remained upon the Register;⁴ provided that the proprietor of the mark remained the owner of the goodwill of the business in which it was used. And, with a view to compelling registration, the Act provided that from and after July 1st, 1876 (a date which was extended by the amending Acts⁵), a person should not be entitled to institute any proceeding to prevent the infringement of any trade mark as defined by the Act until and unless such trade mark was registered in pursuance of the Act, or, according to a subsequent modification, in the case of any mark in use as a trade mark before the passing of the Act of 1875, until and unless registration of the mark as a trade mark should have been refused.⁶

The marks admitted to registration as trade marks under the first Registration Act were required⁷ to consist of one or more of the following essential particulars: a name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or a written signature or copy of a written signature of an individual or firm; or a distinctive device, mark, heading, label, or ticket; and to these essential particulars there might be added any letters, words, or figures, or combination of letters, words, or figures; and it was further provided that any special

What might be registered as trade marks under the Act of 1875.

¹ Per Fry, L.J., in the *Apollinaris Co.'s Tm.*, [1891] 2 Ch. p. 235; 8 R. P. C. 137; and Cotton, L.J., in *Van Duzer's Tm.*, 34 C. D. p. 634; 4 R. P. C. 31 (1887).

² Sec. 3.

³ *Edwards v. Dennis*, 30 C. D. 454 (1885), C. A.; below, p. 327.

⁴ *Palmer's Tm.*, 21 C. D. 47; 24 C. D. 504 (1882), C. A.; below, pp. 330 and 331.

⁵ 39 & 40 Vict. c. 33, and 40 & 41 Vict. c. 37.

⁶ 39 & 40 Vict. c. 33, s. 1. See now sec. 42 of the Act of 1905, below, p. 334, replacing sec. 77 of the Act of 1883.

⁷ Sec. 10.

and distinctive word or words, or combination of figures or letters, used as a trade mark before the passing of the Act might be registered as such under the Act.

The Registration Act of 1883.

The Act attained a considerable measure of success, and 27,844 trade marks were registered under it, but its provisions did not allow words to be registered as trade marks¹ unless they were old marks, or were registered in combination with one or more of the enumerated essential particulars; and as word marks are exceedingly popular in this country, and were admitted and protected as trade marks abroad, an alteration of the definition clause was determined upon.² This was effected by the Patents, Designs, and Trade Marks Act, 1883,³ which came into operation on the 1st of January, 1884. It repealed the Act of 1875, with its amending Acts of 1876 and 1877, but re-enacted, in substance, their principal provisions. It directed that the Register of trade marks, of which the old Register was to be deemed to be a part,⁴ should be kept at the Patent Office established by the Act,⁵ and should be under the control of the Comptroller-General of Patents, Designs, and Trade Marks, acting under the superintendence and direction of the Board of Trade.⁶ It also introduced a number of new rules and provisions to regulate applications for oppositions to, and rectifications of registration, and effected important changes with regard to the Sheffield cutlery marks,⁷ which the older Act had, substantially, left untouched.

“Fancy words” allowed to be registered.

The most material alteration introduced by the Act of 1883 was the power it conferred to register a mark of which the essential particular should be a “fancy word or fancy words not in common use.” What was intended by “a fancy word not in common use” the Act did not define, and the omission was the cause of a great deal of litigation; but a fairly definite meaning was at length put upon the phrase by the Court of Appeal, in the *Melrose* hair restorer, and the *Electric* velveteen cases.⁸ To fall within the meaning, a word must, the Lord Justices held, be “obviously not intended to be descriptive,” and must “speak for itself and be a fancy word of its own inherent strength,” and be

¹ *Ex p. Stephens*, 3 C. D. 659 (1876), Jessel, M.R. (*Acilyton*).

² See the Comptroller's second report for 1884.

³ 46 & 47 Vict. c. 57.

⁴ Sec. 114 (2).

⁵ Sec. 78.

⁶ Sec. 82.

⁷ Sec. 81, see below, p. 112.

⁸ *Van Duzer's and Leaf's Tins.*, 34 C. D. 623; 4 R. P. C. 31 (1887). See, however, *Re Bovril Tm.*, [1896] 2 Ch. 600; 13 R. P. C. 382; and below, p. 145.

“so obviously and notoriously inappropriate as neither to be deceptive or descriptive, nor calculated to suggest deception or description.”

Soon after the decisions just referred to, a very distinguished Committee, presided over by Lord Herschell, were appointed by the Board of Trade to inquire into the duties, organisation, and arrangements of the Patent Office under the Act of 1883, as far as related to trade marks and designs, and the Committee presented in August, 1887, an interim, and in March, 1888, a final report, dealing not only with the matters specified, but with the general question of the registration of trade marks. These important reports are frequently referred to in subsequent pages of this book,¹ and it will be sufficient here to refer to a few only of the suggestions made by the Committee. They recommended that a new definition clause should be enacted, stating what symbols might be registered, and substituting for the fancy word phrase in the Act of 1883 the phrases “An invented word or invented words; or a word or words having no reference to the character or quality of the goods, and not being a geographical name,”² and that additions to registered trade marks (that is, matter, other than their essential particulars, registered with them) should be expressly disclaimed by the applicants for registration.³ The alterations and some minor changes were passed into law by the amending Act of 1888,³ which came into operation on the 1st of January, 1889.

Lord Herschell's Committee, 1887.

Invented word or words.

The Committee further reported, as principles which ought to govern the Comptroller in the acceptance for registration or the rejection of marks: that “inasmuch as the object of registration is to secure a distinctive mark, and the registration of a mark which may conflict with a mark already registered would not only be to the detriment of the owner of such prior mark, but of the applicant himself, we think that in cases where it is doubtful whether the mark ought to be accepted or not, the safer and more beneficial course would be to reject it”;⁴ and that, in their opinion, in comparing a new mark tendered for registration with a prior mark which it was alleged to resemble too closely, the question should be determined by considering what is the

Doubtful marks to be rejected.

¹ The reports may be referred to on the construction of the Act of 1888, to show the mischief which it was directed to remedy. *Eastman Photographic Material Co.'s Application*, [1898] A. C.

571; 15 R. P. C. 476.

² Act of 1888, s. 10.

³ 51 & 52 Vict. c. 50.

⁴ Interim Report, par. (2).

leading characteristic, or, as it is otherwise expressed, what is the idea, of each mark. The Acts, it has been held, vest in the Comptroller a discretion, to be exercised, of course, judicially and subject to appeal, whether to register or reject any mark first used since August 13th, 1875;¹ and this discretion, exercised in the light of the recommendations of the Committee, made the choice of a new trade mark, or the registration of an existing one, often a matter of considerable uncertainty and trouble.

For some time after the Act of 1888 was passed a construction was put upon the new clauses allowing the registration of "invented words" and "words having no reference to the character or quality of the goods" for which the mark was to be used, which made the amendment of the law almost wholly inoperative. It was held that no word was qualified to be the "essential particular" of a registered trade mark unless it satisfied both clauses simultaneously, and that even a remote suggestion of some real or assumed characteristic of the goods would make it objectionable. Thus the word *Somatose* was refused registration as a trade mark for a medical food.² In the year 1898, however, in *The Solio* case,³ this decision was overruled by the House of Lords, and it was decided that the clauses referred to are alternative and independent, so that any really new-coined word, whether it has some reference to, or contains some suggestion of, the character or quality of the goods or not, as well as any existing word which has no such reference, may be registered as a trade mark, or may be the essential particular of a trade mark, unless it is objectionable on other grounds. This decision greatly increased the usefulness of the Register, by enlarging the area from which new marks might be chosen as well as by admitting to registration large numbers of word marks already in use.

In the year 1905, practically the whole of the statutory civil law of trade marks⁴ was repealed by the Trade Marks Act, 1905,

The Trade
Marks Act,
1905.

¹ *Eno v. Dunn*, 15 App. Ca. 253; 7 R. P. C. 311 (*Fruit-Salt Baking Powder*) (1890).

² See Chap. VIII., pp. 158 and 167.

³ See Chap. VIII., p. 158.

⁴ The exceptions are secs. 103 and 104 of the Act of 1883 relating to International and Colonial arrangements, and sec. 106 relating to the unauthorised assumption of the Royal Arms. Secs.

103 and 104 are now repealed by the Patents and Designs Act, 1907, and are replaced by sec. 91 of that Act; whilst sec. 106 is also repealed and is replaced by sec. 90 of the same Act. Sec. 98 of the Act of 1907 contains a saving of conventions and Orders in Council having effect under the enactments repealed by that Act.

intituled "An Act to consolidate and amend the law relating to Trade Marks."¹ This Act came into force, except as regards one or two minor matters, on April 1st, 1906. With the exceptions mentioned in the note, the trade mark law is now separated from the law of patents and designs. Although different departments of the same office, namely, the Patent Office, administer all these subjects, the separation is an advantage, as the principles underlying trade mark law are entirely different from those on which the patent and design laws are founded.

The new Act, whilst re-enacting a considerable part of the previous law in a much improved form, also introduced many new provisions. For the first time in Registration Acts a definition of a trade mark is given.² Moreover the policy of the Act is to enable all marks which are in fact trade marks to be registered, and this is effected by retaining with some modifications the classes of trade marks which were registrable under the existing law, and adding as a fifth and general class "any other distinctive mark" and by providing that the extent to which user has in fact rendered a trade mark distinctive is to be considered.³

The Act adopts the policy, which had broken down under the old Acts owing to their wording, of making registration after a given period conclusive of validity, subject to certain stated exceptions, for instance, that of fraud, the period chosen being seven years from registration or from the passing of the Act, whichever shall last happen.⁴ It also contains an elastic provision for disclaimer of the exclusive user of matter included in a trade mark to which the proprietor has no exclusive right, and for any other disclaimer necessary for defining his rights.⁵

The important Manchester Branch for the registration of cotton marks now obtains statutory recognition, and the Act contains special provisions suited to the requirements of the cotton trade.⁶

Numerous minor changes are also effected in the law, among which those relating to associated trade marks, and standardisation marks, non-user of trade marks, and concurrent registration in certain cases of honest concurrent user, may be mentioned. All matters of mere procedure were left to be dealt with by rules made under the Act.⁷

¹ 5 Edw. VII. c. 15.

² See below, p. 24.

³ See Chap. VIII., p. 127.

⁴ Sec. 41. See Chap. XII., p. 322, Effect of Registration.

⁵ See Chap. IX., p. 212, Disclaimers.

⁶ Sec. 34, Chap. VII., p. 122.

⁷ Trade Mark Rules, 1906, which came into operation on April 1st, 1906. See below, p. 655.

Unregistered trade marks are still numerous.

Down to the end of the year 1907, 126,046 trade marks had been registered under the Acts, and some eight or nine thousand applications are annually made for registration;¹ but at the commencement of the Act of 1905 a large number of trade marks in actual use in the country still remained unregistered, either because they were not capable of registration for the reason that they did not fall within the definition clause of the former Act,² or because their proprietors did not think it worth while to seek to register them. A considerable number of such marks have been registered under the Act of 1905, but many are still unregistered. These unregistered trade marks, notwithstanding the prohibitory sections of the Acts³ already mentioned, which purport to make registration, in general, a condition precedent to litigation to restrain or to obtain damages for infringement, are in many cases protected by the Courts in the "passing-off" actions, next to be referred to. For it is well settled that if the use by the defendant upon his goods of an unregistered trade mark belonging to the plaintiff is calculated to pass off or cause to be passed off the defendant's goods as the goods of the plaintiff, an injunction may be granted to restrain such use,⁴ and this whether the use be deliberately fraudulent and intended by the defendant to be deceptive, or not.⁵

3. Passing-off and Trade Name Actions.

Trade names and "get-up."

By the judgments in *Millington v. Fox*⁶ and later cases in equity,⁷ and by the Acts referred to above and the decisions upon them, the conditions under which a right of property in a trade mark may be acquired, and the manner and degree in which it would be protected, have been fully established; but the symbol which a trader adopts as his trade mark is only one of the badges or *indicia* by which his trade and the goods he deals in are identified with him, and distinguished from the trade of his rivals in business and similar goods which are not his but theirs.

¹ Comptroller's Report for 1907; 4,731 marks were registered in 1906, and 6,255 in 1907.

² Act of 1888, s. 10.

³ Act of 1875, s. 1; Act of 1883, s. 77; Act of 1905, s. 42.

⁴ *Montgomery v. Thompson*, 41 C. D. 35; [1891] A. C. 217; 8 R. P. C. 361 (*Stone Ales*), where the plaintiff's mark was removed from the Register, but he

succeeded in the action. See also sec. 45 of the Trade Marks Act, 1905, below, p. 14.

⁵ *Reddaway & Co. v. Bentham Hemp Spinning Co.*, [1892] 2 Q. B. 639; 9 R. P. C. 503; C. A., see below, pp. 480 and 481.

⁶ 3 My. & Cr. 338 (1838), Cottenham, L.C.

⁷ See the next chapter.

These badges are generally numerous, and they comprise in particular the name under which he trades, that is, his trade name; the names or titles by which his goods are referred to, that is, the trade name of his goods; and the fashion or "get-up" in which the goods appear in the market, so far as these are distinctive of his trade and goods. The principles of the decisions cited above, from which the law of trade marks was specialised, apply also to these cases—of "trade name" and "passing-off" as they are comprehensively termed. The first reported judgment in which the two classes of cases were formally contrasted is that of Jessel, M.R., in *The Singer Manufacturing Co. v. Wilson*.¹ "The cases which have come before the Court," the late Master of the Rolls said, "may, I think, be conveniently divided into two classes; the first class, which is the more numerous one, consists of cases where the goods manufactured are distinguished by some description or device in some way or other affixed to the article sold. It may be, as I said before, description, that is, it may consist of a name or names, or a lengthy description consisting of names with superadded words, and that description may be either affixed to, or impressed upon, the goods themselves by means of a stamp or an adhesive label, or it may be made to accompany the goods by being impressed or made to adhere to an envelope or case containing the goods. Now, as to this class, it is quite immaterial that the maker of the goods to which—what I will call for the sake of shortness—the trade mark is affixed did not know that it was a trade mark, and had not the slightest intention of defrauding anybody.

Actions for infringement of trade marks and passing-off actions contrasted.

"The second class² of cases are of a totally different character: they are always cases of fraud. They are cases where the defendant, without putting any trade mark at all on his goods, or putting a trade mark which is admittedly different in substance from the trade mark, if any, of the plaintiff on the goods, has represented the goods as being goods manufactured by the plaintiff. . . . What the defendant has said or done must amount to a representation that the goods to be sold are the goods of the plaintiff, or that they are manufactured by the plaintiff. What amount of representation will be sufficient for that purpose must again depend, of course, on the facts of each particular case."

¹ 2 C. D. 434; 45 L. J. Ch. 490 (1874).

² 2 C. D. p. 443.

Proof of fraud unnecessary, if the defendant's conduct is calculated to deceive.

It will be seen that Sir George Jessel here limited the right to redress in the second class of cases to cases where the defendant had acted with fraudulent intention, and for the purpose of deceiving the customers, or intending customers, of the plaintiff, and in this his judgment was endorsed and approved by the Court of Appeal.¹ In the House of Lords, however, this distinction between the two classes of cases was not accepted. Lord Cairns said there was no such difference in point of principle,² and that since the decision in *Millington v. Fox*³ it was necessary neither to aver nor to prove fraud. "In the present case," he added, "the question must, as it seems to me, be: Are the advertisements of the defendant, having regard to the evidence in the case, calculated to mislead an unwary purchaser of the machines?" The question came up again in *Singer Manufacturing Co. v. Loog*,⁴ and although the case was decided on the ground that the evidence showed that the conduct of the defendant in question was not in fact calculated to deceive, several of the judgments delivered contain passages which are in accordance with Lord Cairns' opinion. James, L.J., summed up the law in the words quoted at the beginning of this chapter; and Lord Selborne used language to the same effect. "It was contended,"⁵ he said, "that the acts of the defendant enabled his wholesale customers to show these documents to their own retail customers for the purpose of passing off the goods bought from the defendant as the plaintiffs' manufacture. The answer is, that, unless the documents were fabricated with a view to such a fraudulent use of them, or unless they were in themselves of such a nature as to suggest, or readily and easily lend themselves to, such a fraud, . . . the supposed consequence is too remote, speculative, and improbable to be imputed to the defendant, or to be a ground for the interference of a court of justice with the course of the defendant's business."

Section 45 of the Trade Marks Act, 1905, expressly provides that nothing in the Act 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, and it is and

¹ There are statements to the same effect in the judgments in *Chearin v. Walker*, 5 C. D. 850 (1876), decided before the *Singer* case reached the House of Lords.

² 3 App. Ca. p. 389; 47 L. J. Ch.

p. 487 (1877).

³ Above, p. 4.

⁴ 18 C. D. 395 (1879); 8 App. Ca. 15 (1882); 52 L. J. Ch. 481.

⁵ 8 App. Ca. p. 21; 52 L. J. Ch.

p. 484.

has long been settled that,¹ even where there is no question of a registered trade mark, or of any mark at all attached to the goods, a trader will not be allowed to act in a manner which leads, or is calculated to lead, to deception, although the deception is entirely unintended by him, unless he has some special justification for his conduct, as, for instance, an independent right to use a name similar to the plaintiff's name.² He does, in fact, commit a fraud when he continues his conduct after discovering its dangerous character.³

"No man," said Cotton, L.J., in the case of *Turton v. Turton*,² "must pass off his goods as the goods of another. Of course, that may be done unintentionally; but where there is a manifest and natural meaning in the words used that the goods are the goods of somebody else, and the man who uses those terms uses not his name only, but somebody else's, he would be stopped from doing so as soon as he is aware of the facts which make the *prima facie* intention and result of what he is doing, passing off his goods as the goods of somebody else. It was formerly said that no action could be maintained unless a man had done so fraudulently and intentionally; but when he finds out that the natural construction of what he is doing, when the facts are known, is to represent his goods to be somebody else's, then he should be stopped, even though he had originally done that unintentionally and innocently." And in their final report, Lord Herschell's Committee said: "There can be no doubt that if a manufacturer or vendor has obtained for his goods a reputation amongst the public, he could, by process of law, quite apart from the Trade Marks Acts, prevent goods that were not his from being offered to the public on the representation that they were so."⁴

The protection of the trade names of individuals, firms, and companies from deceptive imitations is an important application of the principles just stated;⁵ and in connection with them, the chief practical exception to the rule, that the defendant will not be allowed to continue conduct which is calculated to lead to his goods or trade being taken to be the goods or trade of the plaintiff, is found in the rule that a man may honestly trade under his own name, and describe his goods by it, whatever the

Trade names.

Right to trade under one's own name.

¹ See Chap. XII., p. 338, and Chap. XVI., p. 480.

² See below, pp. 532 *et seq.*

³ See below, p. 402.

⁴ Report of 1888, p. xii.

⁵ See below, Chap. XVI., p. 492.

consequences may be.¹ But, possibly, even this exception must give way in extreme cases, where the use of the defendant's own name by itself and without qualification, is calculated to pass off his goods as those of the plaintiff. *Bass' Ale* and *Pears' Soap* have frequently been cited² as instances of names which could not be used without qualification and precautions against mistake by a Bass or a Pears entering into the trade in question and competing with the well-known firm of the same name.

4. The Criminal Law of False Marking.³

At the common law, as already stated, it was an offence to cheat by fraudulently selling the goods of A. under the pretence that they were the goods of B., or to sell goods under any material false pretence that they were different goods from what in fact they were, and such false pretences might have been effected by using spurious trade marks or other deceptive marks of origin or description upon the goods sold; but the mere imitation of a trade mark, unless it happened to be a Sheffield cutler's mark,⁴ or the mere impression or use of a false mark, was not criminally punishable. The Committee of 1862, whose report has been already referred to,⁵ were assured by the witnesses called before them that false marking had become extremely prevalent, to the serious detriment of honest trading. Not only were the trade marks of well-known English manufacturers frequently infringed at home and flagrantly copied abroad, so that the manufacturers both lost the custom of the buyers of the spuriously marked goods and suffered in reputation through the inferiority of the goods sold as theirs, but false marks of description, of length, quantity, material, make, and the like—what are now known as trade descriptions⁶—were applied to goods by unscrupulous traders with impunity. And the witnesses complained, with good reason, that the existing law was wholly inadequate to cope with these evils. Unfortunately, however, the Committee declined several drastic proposals for

¹ See below, pp. 532 *et seq.*

² See *Cash v. Cash*, cited below, p. 539, and the judgment of Vaughan Williams, L.J., in *Jamieson v. Jamieson*, 15 R. P. C. p. 192.

³ This part of the law of trade marks was fully treated in Book II. of the 2nd edition, which it is now proposed to

publish as a separate work. Although the present edition treats only of the civil law of trade marks, the general summary of the criminal law has been retained.

⁴ See below, p. 589.

⁵ Above, p. 5.

⁶ Merchandise Marks Act, 1887, s. 3.

amendment, which were afterwards adopted with conspicuous success in the Merchandise Marks Act of 1887, as they refused to recommend the establishment of a register of trade marks, and the Merchandise Marks Act of 1862, which was passed upon their report, was, it is believed, a dead letter from its first enactment. At any rate, when another Committee on merchandise marks were appointed, in 1887, complaints precisely similar to those made to the former Committee were urgently repeated to them.

As the Act of 1862 was repealed by that of 1887, it is unnecessary here to summarise its clauses. In substance the offences created by it were very nearly the same as those existing under the later statute; but it was vitiated by defects which have now been removed, for, while it enacted that the forgery of a trade mark with intent to defraud,¹ or the false application of a trade mark to goods,¹ or to the envelope of goods,² with the like intent, should be misdemeanours, it left the onus of proving the intent to defraud of the person charged upon the prosecutor, and it made no provision for the summary prosecution of these offences. The Act was also deficient in omitting to provide for the seizure of falsely marked goods upon importation from abroad,³ and it was, moreover, a monument of complicated and redundant drafting.

The Merchandise Marks Act of 1862.

In 1884 Great Britain acceded to the International Convention For The Protection Of Industrial Property, to which all important civilised States, except Austria and Russia, now belong,⁴ and thereby formally engaged to co-operate in the execution of the stipulations contained in the convention and protocol⁵ agreed upon between the original parties thereto, at Paris, in the previous year. And by Article IX. of the convention it is provided that all goods illegally bearing a trade mark or trade name may be seized on importation into those States of the Union where the mark or name has a right to legal protection, and that the seizure shall be effected at the request of either the proper public department or of the interested party, pursuant to the internal legislation of each country. It became necessary, accordingly, to amend the law, and out of several Bills introduced into Parliament for this purpose, the Committee of the

The International Convention.

¹ Sec. 2.

² Sec. 5.

³ The Customs Act of 1876, s. 42, forbade the importation of articles of foreign manufacture bearing the names,

T.M.

marks, or brands of manufacturers resident in the United Kingdom, &c.

⁴ See list, Appendix, p. 741.

⁵ See Appendix, p. 743.

House of Commons selected and amended the Merchandise Marks Law Consolidation and Amendment Bill, which subsequently became the Merchandise Marks Act of 1887.

The Merchandise Marks Act of 1887.

The last-mentioned Act¹ provides that any person shall be guilty of an offence, punishable on indictment or on summary conviction by fine or imprisonment, who either (1) forges a trade mark by making or imitating it without the consent of the proprietor, or by falsifying any genuine mark; or (2) falsely applies any trade mark to goods, by applying it, or an imitation of it, without the consent of the proprietor; or (3) applies to goods any false trade description, that is, a description or indication as to the number, quantity, measure, &c., or the place or country of origin of the goods, or the mode of manufacturing them, or their material, or as to their being the subject of an existing patent, privilege, or copyright, which is false in a material respect; or (4) sells or exposes, or has in his possession for sale, or any purpose of sale or manufacture, any goods to which a forged trade mark or false trade description is applied, or to which any trade mark, or imitation of a trade mark, is falsely applied.² A criminal intention on the part of the person charged is a necessary element of each of the above-mentioned offences;³ but the burden of proving that he has acted with the consent of the proprietor of the trade mark, or without intent to defraud, or otherwise innocently, as also the burden of establishing any of the special excuses allowed by the Act, is cast upon the person charged as soon as it is established that he has done any of the acts which, coupled with such criminal intention and in the absence of these excuses, bring his case within the definition of an offence under the statute. The Act, moreover, forbids⁴ the importation of goods by means of or in relation to which an offence against it has been committed, and also of all goods of foreign manufacture bearing any name or trade mark being or purporting to be that of a manufacturer or trader within the country, unless it be accompanied by a definite indication of the country where the goods were made or produced. It contains also some special provisions with regard to the marking of watch cases.

¹ Appendix XIX.

² Subsidiary offences, such as making dies for forging trade marks, are here passed over.

³ *Gridley v. Swinborne*, 52 J. P. 739,

791; 5 T. L. R. 71 (1888), Coleridge, L.C.J., and Grantham, J.; and see 2nd edition, p. 603.

⁴ Sec. 16, below, Appendix XIX.

It will be seen, therefore, that the Act is directed against false marking only. Deceptive marks or deceptive trade descriptions are forbidden by it to be placed upon goods, but it does not operate to make marking of any kind compulsory, and it does not extend to cases of verbal false descriptions.¹

The Act is directed only against false marking.

The Act appears to have attained a considerable success, but it did not fully satisfy the trading community, and three years after its passing another Committee of the House of Commons were appointed to consider its working. And by their report² the Committee stated that, while there was a consensus of opinion that the Act of 1887 had generally been most beneficial to the manufacturing interests of the country, and that the importation of fraudulently marked goods, or of goods bearing a false indication of origin, had materially diminished since the Act came into operation, yet complaint had been made that its operation in regard to goods in transit to foreign States had occasioned serious inconvenience and loss to the shipping industries. This complaint, however, the Committee believed to be ill-founded, and they refused to recommend the exemption from the Act of the goods referred to.

The Merchandise Marks Act Committee of 1890.

The Custom House authorities, however, by the Consolidated Instructions of 1900, gave directions under which goods in transit, in the absence of information calling for their examination, will generally be allowed to pass without scrutiny.

The Committee also refused to accept either a proposal to increase the stringency of the Act by providing that all foreign goods should be marked with an indication of origin, or a proposal to relax it by allowing the general mark "made abroad" where the Act now requires the particular country of origin to be signified. On the other hand, with a view to stopping the importation of adulterated articles, which, if they bore no trade description at all, did not come under the Act, they recommended that the "Customs Entry," in which both the description of goods imported and the port from which they come must be stated, should be made a "trade description" within the Act, and that, in cases affecting the general interest of the country, or of a section of the community, or of a trade, prosecutions under

The Merchandise Marks Act, 1891.

¹ *Coppen v. Moore* (No. 1), [1898] 2 Q. B. 300; 67 L. J. Q. B. 689, Wright and Darling, JJ.; *Longley v. Bombay Tea Co., Ltd.*, [1900] 2 Q. B. 460,

Grantham and Channell, JJ.; and see *Cameron v. Wiggins*, [1901] 1 Q. B. 1, Lawrence and Kennedy, JJ.

² M. M. A. Report, 1890.

the Act should be undertaken by the State. The Merchandise Marks Act of 1891 was passed to carry these proposals into effect. By the Merchandise Marks (Prosecutions) Act of 1894 the Board of Agriculture has been authorised to undertake prosecutions.

5. International and Colonial Arrangements.

A foreigner who is the owner of a trade mark, acquired as such in England by use and consequent reputed connection with its owner, has always had the same right to protection in our Courts as a subject of the United Kingdom¹ (unless he happened to be an alien enemy), and neither the Registration Act of 1875 nor the Merchandise Marks Acts of 1862 or 1887 conferred any special privilege or right of protection for their trade marks or trade names upon subjects of this, as contrasted with subjects of other, States. Many treaties existed, moreover, by which this country agreed to give to the subjects of other countries the same right of protection in respect of their trade marks as were enjoyed by its own subjects.² On the other hand, when registration of the trade mark concerned became, in general, a condition precedent to the bringing of an action of infringement, as such,³ it was required in the case of foreign as well as of other plaintiffs, and the acquisition of a trade mark abroad gave no title or right to priority of registration of a trade mark in the English Register.

When the Act of 1883 was passed the International Convention,⁴ already referred to, had just been drawn up, and in contemplation of the accession of this country thereto, which took place in the following year,⁵ sec. 103⁶ was inserted, with the view, apparently, of fulfilling the obligations entered into by the United Kingdom with the other contracting States. The section, however, met those obligations but very imperfectly⁷ and the bulk of its provisions were inapplicable to trade marks. Its only substantial operation in regard to them, indeed, was to confer upon an applicant for the protection of a trade mark, in one of

¹ *The Collins Co. v. Reeces*, 28 L. J. Ch. 56 (1858), Stuart, V.-C.

² See a paper presented to Parliament, 1872, C. 633.

³ Act of 1905, sec. 42, replacing sec. 77 of the Act of 1883, Chap. XII., p. 334.

⁴ See Appendix, p. 743.

⁵ 17 March, 1884.

⁶ See Chap. XX., p. 576.

⁷ See per Stirling, J., in *The Californian Fig Syrup Tm.*, 40 C. D. 620; 6 R. P. C. 126 (1888).

the other contracting States, a priority over other applicants for registration here during the space of four months, without conferring any title to registration based upon the success of the application in the foreign State, or any exemption from the conditions and formalities to be fulfilled and complied with by ordinary applicants for registration here.¹

Her Majesty was empowered by sec. 104 of the Act of 1883, by Order in Council,² to apply the provisions of the above-mentioned section, with such variations or additions as might seem fit, to any British possession.³

Secs. 103 and 104 of the Act of 1883 have been repealed and re-enacted with some changes of form by the Patents and Designs Act, 1907.⁴ It is expressly provided by sec. 98 of that Act that the repeal shall not affect any convention or Order in Council having effect under any enactment repealed by that section, but any such convention or Order in Council in force at the commencement of that Act shall continue in force, and may be repealed, altered or amended as if it had been made under that Act.

The protection of the Merchandise Marks Act, 1887, referred to in the preceding section of this chapter, extends to any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the above-mentioned section (sec. 103) are, under Order in Council, for the time being applicable.⁵

¹ See last case, and *Carter Medicine Co.'s Tm.*, [1892] 3 Ch. 472; 9 R. P. C. 401, North, J.

² See the list, Appendix, p. 741.

³ See the definition in sec. 117 of the

Act of 1883. And see now sec. 18 of the Interpretation Act, 1889, and sec. 93 of the Patents and Designs Act, 1907.

⁴ Secs. 91 and 98.

⁵ M. M. A., 1887, s. 3 (1).

CHAPTER II.

THE DEFINITION OF A TRADE MARK.

	PAGE
Definition of a common law trade mark	23
No statutory definition before 1905	23
The statutory definition of a trade mark	24
“Mark”	24
Combination trade marks	25
Actual user not necessary	25
Use in connection with the goods	25
A trade mark is indicative of origin	26
“Registrable trade mark”	26
“Registered trade mark”	26
Definitions in the M. M. A. 1862	26
,, ,, M. M. A. 1887	27
Judicial definitions	27
1. What symbols may be trade marks	28
2. Applied or attached to goods	29
the mark must go to market with the goods	29
and must sell the goods	30
trade mark rights are restricted to the class of goods for which the mark is used.	31
the use of the trade mark on other goods is not protected	32
anyone may use the mark on the right goods	33
3. Offered for sale in the market	33
long user of mark or proof of actual reputation is unnecessary	35
4. The mark must be distinctive	35
not necessary that public should know the name of the owner of the mark	36
what are distinctive marks	37
descriptive marks, and marks apparently descriptive, but having a secondary distinctive meaning	37
name of a new pattern. <i>Ford v. Foster</i>	38
test whether trade mark has become <i>publici juris</i>	38
the <i>Singer</i> cases	39
no monopoly can be maintained in the reputation of goods which anyone may make and sell	41
change of meaning of word	42
secondary meaning of words originally common	42
name of goods made under an expired patent	43
<i>The Linoleum Case</i>	44
article formerly made under secret process	47
whether the name given to a new article can be monopolised	47
article formerly made under registered design	48
“original”	49
name of place of origin	49
“Anatolia liquorice”	49

4. The mark must be distinctive—continued.	PAGE
<i>Seixo v. Provezende</i>	50
"Glenfield starch"	51
advertisement of goods not a trade mark	52
<i>Leather Cloth case</i>	52
<i>Chearin v. Walker</i>	53
5. Made, worked upon, imported, selected, certified, or sold	53
connection of the owner of the trade mark with the goods	53
trade mark of selector. <i>Hirsch v. Jonas</i>	54
designer for another person	55
6. Registered under the Acts as a trade mark	55

The following definition of a trade mark was given in the earlier editions of this work:—

Definition of a common law trade mark.

A trade mark is a symbol¹ which is applied or attached to goods² offered for sale in the market,³ so as to distinguish them from similar goods, and to identify them with a particular trader⁴ or with his successors as the owners of a particular business,⁵ as being made, worked upon, imported, selected, certified or sold⁶ by him or them, or which has been properly registered under the Acts as the trade mark of a particular trader.⁷

The definition might be stated in the following form: "A trade mark is a symbol which is publicly used as the trade mark of a particular trader, or is properly registered as such under the Acts," so as to lay stress upon the element of public user which creates the trade mark, and to which registration was by the Acts of 1875 and 1883 to be deemed equivalent, with the addition of a definition of public user to the effect suggested in the definition selected. It appears to be preferable, however, to cast the whole definition into one in order to avoid the inconvenience of importing into it a reference to the term defined.

The Registration Acts, prior to the Act of 1905, contained no definition of a trade mark, although they contained enumerations of the classes of symbols capable of registration under them as trade marks. Trade marks could prior to the Act of 1905, and can still, be acquired by user independently of registration,⁸ and,

No statutory definition before 1905.

¹ Below, p. 28.

² Page 29.

³ Page 33.

⁴ Page 35.

⁵ See Chap. XIII., Assignment and Devolution of Trade Marks, p. 345; and *Pinto v. Badman*, 8 R. P. C. 181 (1891),

per Fry, L. J.

⁶ Page 53.

⁷ Page 55; and see Chap. XII., Effect of Registration, p. 321. As to Cutlers' corporate marks, see Chap. VI., p. 112.

⁸ See below, p. 337.

although, with certain exceptions, the technical action for infringement cannot be maintained in respect of an unregistered trade mark,¹ yet protection can be secured for such marks by "passing off" actions;² moreover, preferential claims to registration or objections to registration of newer marks resembling them may arise from user of such marks.³ Furthermore, among the symbols admitted to registration are "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 August 13th, 1875," which has continued to be so used,⁴ and questions may still arise whether old marks registered or tendered for registration under this provision or the corresponding provisions of the earlier Acts were used as trade marks or not. Therefore, although the Act of 1905 defines a trade mark for the purpose of that Act, it is useful to consider also what constituted a symbol to be a trade mark apart from the Acts. The definition in the Act of 1905 will, however, first be considered.

The statutory definition of a trade mark.

By sec. 3 of the Act of 1905 "mark" in and for the purpose of that Act includes "a device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination thereof," and

"A trade mark shall mean a mark used or proposed to be used upon or in connection 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."

Mark.

The above definition of a "mark" enters not only into the definition of a trade mark quoted above, but also into the fifth class of essential particulars mentioned in sec. 9, namely, "any other distinctive mark." Practically all symbols of a permanent nature are covered by "mark" as defined in the Act.⁵ "Device," "brand," "heading," "label," and "ticket," if distinctive, all formed essential particulars under sec. 64 (1) (c) of the Act of 1883. Their meanings are considered in Chapter VIII., under paragraph (5) of sec. 9.⁶ Names,

¹ Sec. 42, sec. 77 of the Act of 1883.

² See sec. 45, and below, p. 481.

³ A trade mark so acquired may under some circumstances be properly described as such without necessarily implying that it is registered: *Sen-Sen Co. v. Britten*, [1899] 1 Ch. 692; 16 R. P. C. 137, Stirling, J.

⁴ Sec. 9, proviso; see also Act of 1888,

sec. 10; Act of 1883, sec. 64; and Act of 1875, sec. 10.

⁵ It is not a fatal objection to the registration of a mark that it is capable of registration as a design: *United States Playing Card Co.'s Application*, [1908] 1 Ch. 197, Swinfen Eady, J.

⁶ Page 173.

signatures, and words were only registrable as essential particulars under the Acts of 1883 and 1888, if they possessed certain qualifications. They are now, if distinctive, all admitted to registration, but unless they fall within one of the paragraphs (1), (2), (3) and (4) of sec. 9, an order of the Board of Trade or the Court is necessary.¹ Except in the case of old marks, letters and numerals did not form essential particulars under the earlier Acts, and it was held that neither a single letter nor a collection of English letters constituted a device.² The letters B. S. A., being the initial letters of Birmingham Small Arms, have been registered as a distinctive mark by the company of that name under the present Act.³

The words "or any combination thereof" are useful as enabling a mark composed of two or more of the enumerated elements to be registered, whether they are separately distinctive or not, provided that the combination is distinctive. It is customary in the Manchester trade to use marks in combination for piece goods.

Combination
trade marks.

Actual user is not necessary before registration; this was decided under the Act of 1875 in *Hudson's Trade Mark*.⁴ Apart from the Acts user was necessary to constitute a mark to be a trade mark. The definition of "trade mark" quoted above includes a mark "proposed to be used"; this is much simpler than the earlier and somewhat clumsy provision that registration, or, in the Act of 1888, application for registration, should be deemed equivalent to public use.⁵ Non-user of a trade mark may, after a certain time, render it liable to be removed from the Register.⁶

Actual user
not necessary.

The definition includes marks used in connection with goods as well as marks used upon them. As will be seen from the discussion of the earlier law in a later portion of this chapter, the decisions before the Act were to the effect that there must be some physical connection between the mark and the goods, or, as it has been expressed, the mark must sell the goods, otherwise there was no "use as a trade mark."⁷ The definition

Use in con-
nection with
the goods.

¹ Below, pp. 129, 172.

² *Ex p. Stephens*, 3 C. D. 659 (1876); *Mitchell's Tm.*, 7 C. D. 36 (1877).

³ See *Birmingham Small Arms Co.'s Application*, [1907] 2 Ch. 398; 24 R. P. C. 563.

⁴ 32 C. D. 311; 3 R. P. C. 155 (1886),

C. A.

⁵ Act of 1875, sec. 2; Act of 1883, sec. 75; Act of 1888, sec. 17.

⁶ Sec. 37, below, p. 293.

⁷ *Powell's Tm.*, [1893] 2 Ch. 388; [1894] A. C. 8; 10 R. P. C. 63, 195; 11 R. P. C. 4; and below, pp. 29 *et seq.*

contained in the Act will probably be construed to cover use in connection, but not in physical connection, with goods, and thus to enable the registration of trade names used for goods, or used in advertisements of the goods, as on placards or in circulars.¹

A trade mark is indicative of origin.

It has always been essential to the existence of a trade mark that it should indicate the origin of the goods,² and this idea is incorporated in the statutory definition by the words "for the purpose of indicating that they" (the goods) "are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale." The proprietor of a trade mark must, subject to an exception to be mentioned, have, or intend to have, a business concerned in the goods for which it is registered,³ or, putting it in other words, he must have a trade connection with the goods as manufacturer, merchant, or selector.⁴ The only exception is in the case of standardisation marks, that is to say, marks indicating examination and certification of the goods, registered under the special provisions of sec. 62; the word "certification" in the definition of a trade mark is specially appropriate to such marks.

"Registrable trade mark."

A "registrable trade mark" is defined as a trade mark which is capable of registration under the provisions of the Act;⁵ and a "registered trade mark" as one which is actually on the Register.⁶

"Registered trade mark."

It may be useful to refer to the definitions of "mark" and "trade mark" under the Merchandise Marks Acts.

Definitions in the Merchandise Marks Act of 1862.

The Merchandise Marks Act, 1862,⁶ enacts that for the purpose of that Act "The word 'mark' shall include any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket or other mark of any other description; and the expression 'trade mark' shall include any and every such name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket or other mark as aforesaid, lawfully used by any person to denote any chattel, or (in Scotland) any article of trade, manufacture or merchandise, to be an article or thing of the manufacture, workmanship, production or merchandise of such person, or to be an article or thing of any

¹ See below, pp. 328, 397.

² See below, p. 35.

³ Cf. sec. 22.

⁴ The vendors of vegetables on commission, who had the right of rejecting them, if not of good quality, were held to have, by virtue of "dealing with, or offering for sale," a property in the goods

in connection with which they used their trade mark sufficient for the purposes of the Act: *Major Bros. v. Franklin*, 25 R. P. C. 406 (1908), Jeff, J. In the same case it was held that there may be a good trade mark for a natural product.

⁵ Sec. 3.

⁶ 25 & 26 Vict. c. 88, s. 1.

peculiar or particular description made or sold by such person, and shall also include any name, signature, word, letter, number, figure, mark or sign which, in pursuance of any statute or statutes for the time being in force relating to registered designs, is to be put or placed upon or attached to any chattel or article during the existence or continuance of any copyright or other sole right acquired under the provisions of such statutes or any of them."

The Act of 1862 was repealed by the Merchandise Marks Act of 1887, which, without further defining "trade mark," enacted that, for the purposes of the Act, the expression "trade mark" should mean a trade mark registered in the Register of trade marks kept under the Patents, Designs, and Trade Marks Act, 1883, and should include any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the 103rd section of the Patents, &c. Act are, under Order in Council, for the time being applicable.¹ From the commencement of the Act of 1905 the definition must be read as referring to the Register kept under that Act.²

The Merchandise Marks Act, 1887.

Although the principles upon which the law of trade marks rests have been often dwelt upon and explained in the judgments in the leading cases on the subject, many of which have been referred to in the previous chapter, yet judges have but seldom attempted to state precisely what a trade mark is, and no formal definition is to be found in any reported judgment.

Judicial definitions.

In *The Leather Cloth Co. v. The American Leather Cloth Co.*,³ Lord Westbury said "the word 'trade mark' is the designation of these marks or symbols, as and when applied to a vendible commodity, and the exclusive right to make such user or application is rightly called property."

Lord Westbury.

And in *Ford v. Foster*,⁴ Bacon, V.-C., described a trade mark in the following terms: "The meaning and use of a trade mark is that the same person dealing in goods, no matter of what kind, whether of his own manufacture or not, having a certain defined shape, if he stamps upon them some indication that that particular article is his and his only, may thereby acquire so far an exclusive right to it that no man may imitate his mark, and the legal right goes no further than that."

Bacon, V.-C.

¹ Sec. 3 (1), below, Appendix XIX.

³ 4 De G. J. & S. p. 142 ; 33 L. J. Ch. 199 (1863).

² Act of 1905, sec. 6, and Interpretation Act, 1889, sec. 38.

⁴ L. R. 7 Ch. p. 616 (1872).

Kay, J., and
Esher, M.R.

“User as a trade mark,” Kay, J., said, in *Richards v. Butcher*,¹ “means, not what the person who uses has in his own mind about it, not what he has registered in a foreign country, but what the public would understand when the trade mark, or so-called trade mark, is impressed upon the goods, or upon some wrapper or case containing the goods, to be the trade mark. That is the trade mark proper; and user as a trade mark means, and must necessarily mean, the impressing of those words either upon the goods, or upon some wrapper or case containing the goods, in such a way that the public would necessarily understand those words to be, and alone to be, the trade mark of the person who uses them.” And in the same case, on appeal, Lord Esher said: “You use the thing as a trade mark if you use it in business, or, as is often said, in the market, as a mark to denote your goods, and to distinguish them from the goods of anyone else.”²

Rigby, L.J.

In *The Magnolia Metal Company's Trade Marks*,³ Rigby, L.J., dealing with the case of a name, said: “In order that the name of an article may in any case be the trade mark of the manufacturer, it is essential that the name should indicate, not the article only, but also that the article is manufactured by the person claiming it as a trade mark, as distinguished from other persons also manufacturing or entitled to manufacture it.”

Object of
trade marks
to protect
trade.

The protection afforded to trade marks has for its object the protection of trade only. In *Batt & Co. v. Dunnett*, Lord Halsbury, in the course of the argument, observed: “The Trade Mark Acts are not for copyright in marks; they are to protect trade marks. If you have no goods you are claiming copyright only, you are not claiming for the purpose of protecting your trade.”⁴

A Symbol.

What symbols
may be trade
marks.

Before the Trade Marks Registration Act, 1875,⁵ no restriction was placed upon the kind or class of symbols which, if adopted and used as a trade mark, would be protected against infringement or piracy, except that the Courts refused to interfere where the symbols contained misrepresentation,⁶ or were, or were so used as to be, calculated to deceive, and they would, no

¹ [1891] 2 Ch. p. 532; 8 R. P. C. 249 (*Monopole*).

² [1891] 2 Ch. p. 543.

³ [1897] 2 Ch. p. 390; 14 R. P. C. p. 626.

⁴ 16 R. P. C. p. 413 (1899).

⁵ Sec. 10, replaced by sec. 64 of the Act of 1883, by sec. 10 of the Act of 1888, and now by sec. 9 of the Act of 1905.

⁶ See below, pp. 426 *et seq.*

doubt, if any case had occurred, have refused to interfere also where the symbols themselves were scandalous or indecent. The only general limit, therefore, put upon the choice of a trade mark was that it should be capable of distinctive user in accordance with the terms of the definition.¹ Under the Act of 1905 "mark" includes device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof.² This appears to cover all symbols.

Applied or attached to Goods.³

The phrase in the Act of 1905 is "used upon or in connection with" goods.

It is immaterial whether the mark is attached to the goods or to the covering in which they are sold.⁴ It may be impressed, stamped, cut, drawn, painted or stained on the goods themselves, as the words *Sykes' Patent* were in *Sykes v. Sykes*,⁵ or on their envelope, as are labels on bottles and brands on corks, or in any other way attached to the goods—for instance, by being marked upon tallies⁶ tied on to them, or upon reels upon which the goods are wound, or on a card to which the goods are fastened.⁷ All that was necessary was that there should be some physical connection between the goods and the mark, so that the mark should go with the goods into market.⁸ Before the new Act a device was not "used as a trade mark" unless it was applied or attached to the goods in such manner, although it might be used by a trader in his advertisements, price lists, or trade circulars, so as to become commonly associated with him and his goods, as, for instance, lithographs of Millais' picture "Bubbles" are associated with Pears' Soap.

The mark must go to market with the goods

Thus, in *Thompson v. Montgomery*,⁹ the ale of the plaintiffs had been known for many years as *Stone Ale*, and there was evidence

¹ See below, p. 35.

² See above, p. 24.

³ See the *dicta* quoted above, pp. 27 and 28, and below, p. 203.

⁴ *Singer Manufacturing Co. v. Wilson*, 2 C. D. p. 441, Jessel, M.R., and pp. 451, 455, James and Mellish, L.JJ.; 45 L. J. Ch. pp. 491, 496, 497 (1876).

⁵ 3 B. & C. 541; 3 L. J. K. B. (O. S.) 46 (1824).

⁶ *Edelsten v. Edelsten*, 1 De G. J. & S. 185 (1863), Westbury, L.C.

⁷ Cf. *Chameleon Patents Manufactur-*

ing Co. v. Marshalls, Ltd., 17 R. P. C. 527 (1900), Kekewich, J., a passing-off case, where it was held that by such means a defendant might represent his goods to be those of the plaintiff.

⁸ See *Powell's Tm.*, [1893] 2 Ch. 388, [1894] A. C. 8; 10 R. P. C. 63, 195; 11 R. P. C. 4. (*Yorkshire Relish*.)

⁹ 11 C. D. 45; 6 R. P. C. 404 (1889). There was no appeal upon this point to the House of Lords. An injunction was granted notwithstanding the removal of the mark. See also *Verity's Tm.*, 19

that that name had been used in ordering goods from them, and in selling goods to their customers, as a description of the ale, or of a particular class of ale made by them. Beyond this there was no evidence of the use of the name as a trade mark, and the Court of Appeal accordingly held that the words had been wrongly claimed as a trade mark in use before 1875, and ordered them to be removed from the register. So in *Powell's case*¹ it was decided that the use of the words *Yorkshire Relish* upon the rough packing cases in which the bottles of sauce were placed for safe carriage was not, under the circumstances of the case, use of the words as a trade mark. "The function of a trade mark," Bowen, L.J., said,² "is to give an indication to the purchaser or possible purchaser as to the manufacture or quality of the goods—to give an indication to his eye of the trade source from which the goods come, or the trade hands through which they pass on their way to the market. Accordingly, it may either be marked on the goods themselves, or, if that is not possible or convenient, it may be marked on the vehicle of the goods, and may be, and sometimes, I dare say, is, marked upon a covering or exterior, such as a packing case. But when you are considering a mark upon the vehicle as distinct from a mark upon the goods, you must ask yourself carefully, Is this mark used as a trade mark?" And the test to be applied was otherwise stated in the same case to be the question, Does the alleged trade mark sell the goods?

and must sell
the goods.

Used in con-
nection with.

The statutory definition now extends to marks used or proposed to be used in connection with goods as well as to marks used upon them. Apparently this is intended to bring trade names of goods, such as are above referred to, under the category of trade marks and to admit them to the advantages of trade marks, although they may never have been attached or applied to the goods themselves. And the corresponding section dealing with the infringement of a trade mark is framed to correspond with this view.³ It was to some extent an open question before the Act whether there could be an infringement of a registered trade mark by the use of a mark which was not applied or attached to the defendant's goods, although used in connection with them

R. P. C. 58 (1902), Buckley, J., use in price list only.

¹ Note (8), p. 29; cf. *Richards v. Butcher*, [1891] 2 Ch. 522; 8 R. P. C. 249, Kay, J., and C. A., *Monopole* used on packing cases and wine corks, and *Day v. Riley*

and *Whittaker*, 17 R. P. C. 517, Buckley, J., *Day & Son Black Drink* stencilled on packing cases

² [1893] 1 R. P. C. 46.

³ Sec. 39, l. 1, w, p. 32.

and as a mark of origin. Probably if the matter had been argued out such a use would have been held to fall within sec. 76 of the Act of 1883 and to be an infringement.¹

The question whether stamping a mark on the corks of wine bottles at the sides or ends where it cannot be seen is user of it as a trade mark has been discussed² but not decided. It is submitted that it may be if, in fact, the known presence of the mark, or the expectation of finding it, induces the customer to buy the wine as that of the proprietor of the mark. In a case in which three labels were registered as one trade mark, two of them being used outside the packet of goods and the third inside, it was held that, notwithstanding this, the mark was properly registered, being a combination trade mark.³

The exclusive rights existing in respect of a trade mark are restricted to the class of goods to which it has been attached or applied.⁴ It is, therefore, no infringement to apply the same or a similar mark to other goods. This rule was clearly stated in a dictum of Lord Westbury, in *The Leather Cloth* case, which has often been cited. "Property in a trade mark," he said,

Use on corks.

Trade mark rights are restricted to the class of goods for which the mark is used.

¹ *Jay v. Luller*, 40 C. D. 649; 6 R. P. C. 136 (1889), Kekewich, J., a circular held to be an infringement. In *Bourne v. Swan & Edgar, Ltd.*, [1903] 1 Ch. 211; 20 R. P. C. 105, Farwell J., said in a case in which the plaintiff failed, that it was not necessary to show that the defendants were using the mark as a trade mark, but that this was an element to be considered in deciding whether there was a probability of deception. The question was discussed by the C. A. in *Price's Patent Candle Co., Ltd. v. Jeyes Sanitary Compound Co.*, 19 R. P. C. 17 (1901). See also *Montgomerie v. Young*, 20 R. P. C. 781; 21 R. P. C. 285 (1904), Scotch. In *Kulak, Ltd. v. London Stereoscopic Co., Ltd.*, 20 R. P. C. 337 (1903), Swinfen Eady, J., it was practically admitted by the defendants that the use of the plaintiff company's trade marks as the names of goods in invoices was an infringement, and an injunction was granted against infringement. It has, however, recently been held by Warrington, J., on an interlocutory application, that merely supplying goods in response to a written order in which the goods

were described by the trade mark would not be an infringement of trade mark: *Peters v. Domestic Inventions Co.*, 25 R. P. C. 387 (1908). Under the Merchandise Marks Act a description in an invoice sent with the goods has been held to be "applied" within sec. 5 (1) (d). *Budd v. Lucas*, [1891] 1 Q. B. 408. See below, "Infringement," p. 397.

² *Kinahan & Co.'s Application*, 10 R. P. C. 393 (1893), Chitty, J.; *Richards v. Butcher*, [1891] 2 Ch. 522; 8 R. P. C. 249, Kay, J., and C. A. Marks so used were protected in *Moët v. Clybourne*, Selb. Dig. p. 316 (1877), Jessel, M.R.; and *Moët v. Pickering*, 8 C. D. 372; 47 L. J. Ch. 527 (1878), C. A. See also *Findlater, Mackie, Todd & Co. v. Newman & Co.*, 19 R. P. C. 235 (1902), Kekewich, J. (*F. M. T. & Co.* on corks, a passing-off case).

³ *Crompton's Tm.*, [1902] 1 Ch. 758; 19 R. P. C. 265, Swinfen Eady, J.

⁴ *Somerville v. Schembri*, 12 App. Ca. 453; 4 R. P. C. 179 (1887), on appeal from Malta; and see *Coleman v. Brown*, 16 R. P. C. 619 (1890). As to registered trade marks, see below, pp. 326 and 392.

“is the right to the exclusive use of some mark, name, or symbol in connection with a particular manufacture or vendible commodity; consequently, the use of the same mark in connection with a different article is not an infringement of such right of property.”¹ Thus, a trade mark used for flour and bread may be adopted as a new trade mark for carriages.²

So no one can acquire an exclusive right to affix the trade mark to goods which do not fall within the class indicated by the mark, or, in other words, to goods which do not possess the attribute the mark is understood and intended to connote. Thus, in *Cotton v. Gillard*,³ the defendant had invented a sauce which was prepared from a secret recipe not known to the plaintiff, and was called the *Licensed Victuallers' Relish*. The plaintiff had purchased from the assignee in bankruptcy of the defendant's son all his interest in the sauce, and this, he contended, included the right to the trade mark used with the business. Jessel, M.R., however, held that this right could not exist or be transferred without the goods with which the mark was connected, and that the plaintiff could have no assistance from the Court to enable him to pass off under the mark, as the original sauce, an imitation of his own.⁴

Of course, the extent of the class of goods to which a trade mark is properly applicable will vary very much in different cases. If the mark means that the goods are made by its owner, then it will not rightly be applicable to goods which he has bought to resell, and on the principle of the case just cited it would seem that if, in such a case, the owner were to give up manufacturing he would lose his trade mark, although he commenced to deal as a merchant in the same goods.⁵ If, again, the mark means that the goods are selected, shipped, or sold by the owner, then, probably, it may be rightly applicable to many different kinds of goods, and to kinds which may vary, and perhaps very widely, from time to time.⁶ The principle is

¹ 4 De G. J. & S. 137; 33 L. J. Ch. p. 201 (1863).

² *Lake and Elliott's Application*, 20 R. P. C. 605 (1903), Kekewich, J., and see Jessel, M.R., in *Singer Manufacturing Co. v. Wilson*, 2 C. D. p. 443; 45 L. J. Ch. 494 (1876); and Chap. XV., on Infringement, below, p. 392. Cf. *The Australian Wine Importer's Trn.*, 41 C. D. 278; 6 R. P. C. 311 (1889), cited p. 227.

³ 44 L. J. Ch. 90 (1874). So a trade mark cannot be separated from the goodwill of the business to which it has been attached; see below, pp. 346 and 367.

⁴ Cf. *Birmingham Vinegar Brewery Co., Ltd. v. Powell*, [1897] A. C. 710; 14 R. P. C. 720; and Rule 16, p. 658.

⁵ See below, p. 53.

⁶ Below, p. 54; and see Chap. XII., p. 321, Effect of Registration.

The use of trade mark on other goods not protected.

illustrated by a recent case in which a name had long been used by a shipper in connection with port wine made from the grapes of a particular vineyard, and it was held that, after he had ceased to be supplied from the vineyard, he could not properly apply the name to wine made from other grapes.¹

It is clear, however, that the rights arising out of the possession of a trade mark, registered or unregistered, are not limited to the exact kinds of goods for which the mark has been used; actions for infringement of a registered trade mark are by virtue of sec. 42 limited to the goods for which the mark is registered, but, subject to that limitation, the extent of the class of goods to which the rights are limited is a question of fact in each case, depending to a great extent on the commercial connection between the kinds of goods in question, as, for instance, whether they are usually sold by the same class of persons.²

As the mark must not be applied to the wrong goods, so, on the other hand, it may be applied by anyone to the right goods. Thus, in *Farina v. Silverlock*,³ Lord Cranworth refused an injunction to restrain the defendant, a printer, from printing labels in imitation of the labels on the plaintiff's Eau de Cologne, on the ground that the labels might be intended to be placed upon scent which had actually come from the plaintiff.⁴ And the test of infringement laid down in all the cases is that the defendant's acts shall be calculated to pass off goods as the plaintiff's which are not his;⁵ and that is all that an ordinary form of the injunction granted in trade mark cases restrains.⁶

Anyone may apply the mark to the right goods.

Offered for Sale in the Market.

An allegation that the plaintiff's goods were sold with the trade mark attached, and that they enjoyed a great reputation, was regularly inserted in the declaration in the old common law

The mark must be applied to goods offered for sale.

¹ *Van Zeller v. Mason, Cattley & Co.*, 25 R. P. C. 37 (1908), Joyce, J.

² *Australian Wine Importers' Tm.*, 41 C. D. 278; 6 R. P. C. 311 (1889), C. A.; and *Eastman Photographic Materials Co., Ltd. v. John Griffiths Cycle Corporation, Ltd.*, 15 R. P. C. 105 (1898), Romer J.; and see below, Chap. X., p. 247.

³ 1 K. & J. 509; 6 De G. M. & G. 214; 24 L. J. Ch. 632; 26 L. J. Ch. 11 (1855).

⁴ The plaintiff was given liberty to try this question at law, and the bill was

retained for a year. He succeeded in his action at law, and was subsequently granted an injunction in equity, 4 K. & J. 650, Wood, V.-C.; 30 L. T. 242; 31 L. T. 99.

⁵ See below, p. 400.

⁶ See per Cotton, L.J., in *Thompson v. Montgomery*, 41 C. D. p. 48; 6 R. P. C. 213 (1889); and see the judgment of Lord Halsbury, L.C., in *Reddaway v. Banham*, [1896] A. C. p. 207; 13 R. P. C. p. 225.

action for infringement.¹ And in *Lawson v. The Bank of London*,² an action to restrain the defendants from usurping the name of the plaintiff's bank, a demurrer was allowed because the declaration did not allege that the plaintiff had carried on business as a banker, but only that he had expended money in advertisements. "No action could, I apprehend," said Willes, J., in that case, "be maintained for the sale of goods branded or stamped with another manufacturer's mark, which mark had never been put forward to the world by the party complaining of the misuser of it."

This dictum was cited with approval by Lord Cairns, in *Maxwell v. Hogg*.³ In that case the defendant registered at Stationers' Hall the word *Belgravia* as the name of an intended new magazine, in the year 1863. In 1866 the plaintiff began to advertise a different intended new magazine under the same name. The defendant thereupon hurriedly brought out a number of his magazine in September, 1866, and the plaintiff followed in October, and cross suits were then brought by each to restrain the other from using the name. Both suits failed. The plaintiff's was dismissed because his advertisements and expenditure gave him no title to the name before the defendant's first number appeared, and the defendant's because of his uncandid conduct in rushing forward his magazine, knowing of the plaintiff's undertaking, without giving him warning. That the trader's goods should have acquired any reputation for special excellence or quality in order that his mark should be protected was, however, Lord Cairns declared, unnecessary; but, he said,⁴ all the definitions of trade mark rights given in Equity, "seem to me to be opposed to the idea that protection can be given where there has been no sale or offering for sale of the articles to which the name is to be attached." According to the decisions, he added, no property in a name (or mark) could be acquired except through the process of sale or offering for sale in the market.

And the second of the "essential qualities for constituting property in a trade mark" enumerated by Lord Westbury in

¹ See *Sykes v. Sykes*, 3 B. & C. 541; 3 L. J. K. B. (O. S.) 46 (1824); above, p. 3.

² 18 C. B. 84; 25 L. J. C. P. 188 (1856).

³ L. R. 2 Ch. 307; 36 L. J. Ch. 433 (1867).

⁴ L. R. 2 Ch. p. 314; 36 L. J. Ch. p. 436.

*McAndrew v. Bassett*¹ was that the article marked with the mark in question was actually a vendible article in the market.²

It is not, however, necessary that the goods should be in the market with the mark affixed for any definite or any considerable time. Thus it was no objection to the defendant's counterclaim in *Maxwell v. Hogg*,³ that he had brought out but one number of his magazine, and that only a few days before the plaintiff's issue appeared; and in the same case, as already stated, Lord Cairns decided that reputation for quality was immaterial for the acquisition of the legal right.⁴ The statutory definition extends to new trade marks provided that they are proposed to be used upon or in connection with goods.

Long user of mark or proof of actual reputation unnecessary.

Nor is it essential that the significance of the mark should be proved to have become known to any ascertained person or persons. It is sufficient, subject now to the provisions of the Act in regard to registration, to entitle a trader to protection for his mark that he has offered goods for sale with the mark so attached that it will, when known, indicate his connection with the goods. It would be an insoluble inquiry, as Lord Romilly declared in *Hall v. Barrows*,⁵ to seek to discover when first a mark acquired a distinctive character in the market as denoting the goods of the trader who first used it.

So as to distinguish the Goods from similar Goods, and to identify them with a particular Trader.

That it is of the essence of a trade mark that it shall have this distinguishing character, is fully established by the statements of the principles upon which the law of trade marks rests, stated in the last chapter, and the *dicta* quoted in an earlier part of this chapter.⁶ The rule is further illustrated by the

Mark must be distinctive.

¹ 4 De G. J. & S. 380; 33 L. J. Ch. 561 (1864), (*Anatolia liquorice*).

² See also *Powell's Tm.*, [1893] 2 Ch. 388; 10 R. P. C. 63, 195, cited above, p. 30; and the observations of Halsbury, L.C., in *Batt & Co. v. Dunnell* (1899), 16 R. P. C. p. 413, cited above, p. 28.

³ L. R. 2 Ch. 307 (1867); 36 L. J. Ch. 433.

⁴ So it is unnecessary for the plaintiff in an infringement action to allege that

the defendant is selling inferior goods under his mark: *Blofield v. Payne*, 4 B. & Ad. 410; 2 L. J. K. B. 68 (1833); *Edelsten v. Edelsten*, 1 De G. J. & S. 185 (1863), Ld. Westbury, L.C.

⁵ 32 L. J. Ch. p. 551 (1863); and see per Wood, V.-C., in *McAndrew v. Bassett*, 33 L. J. Ch. 561 (1864).

⁶ Pages 1 to 4, see also the statutory definition, above, p. 24.

question, which has always been regarded as the test of infringement: Will the use of the trade mark by the defendant lead purchasers to mistake his goods for those of the plaintiff?¹

"The right which a manufacturer has in his trade mark," Lord Cranworth said, in *The Leather Cloth* case,² "is the exclusive right to use it for the purpose of indicating where, or by whom, or at what manufactory the article to which it is affixed was manufactured." And the same judge, in *Farina v. Silverlock*,³ after distinguishing copyright from the right to a trade mark, added, "anyone who has acquired a particular mode of designating his particular manufacture, has a right to say, not that other persons shall not sell exactly the same article, better or worse, or an article looking exactly like it, but that they may not so sell it as to steal the plaintiff's trade mark, and make purchasers believe it is the manufacture of somebody else." And in *Massam v. Thorley's Cattle Food Co.*,⁴ James, L.J., said, "That in truth is the meaning and object and result of a trade mark. It indicates this, that you may take this as a warranty that it has come from the particular manufacturer of the goods with which you have been hitherto pleased."⁵

The statutory definition requires that the mark shall be used or proposed to be used for the purpose of indicating that the goods are the goods of the proprietor of the trade mark, and the definition of "distinctive" in sec. 9 is "adapted to distinguish the goods of the proprietor of the trade mark from those of other persons."⁶

Not necessary that public should know the name of the owner of the mark.

But it is not necessary that the public should know the name of the proprietor of the trade mark. In *Powell v. The Birmingham Vinegar Brewery Co., Ltd.*, there was evidence that many purchasers of "Yorkshire Relish" knew nothing of the plaintiffs, but in reference to this Lord Herschell said, "in the present case, it seems to me that 'Yorkshire Relish' means the manufacture of a particular person. I do not mean that in the minds

¹ See per Ld. Westbury in *Hall v. Barrows*, 4 De G. J. & S. 150; 33 L. J. Ch. p. 208 (1863); and in *Leather Cloth Co. v. American Leather Cloth Co.*, 4 De G. J. & S. 137; 33 L. J. Ch. 199 (1863), and per Ld. Blackburn in *Orr-Ewing v. The Registrar of Trade Marks*, 4 App. Ca. p. 494; 48 L. J. Ch. 715 (1879).

² 11 H. L. C. 523; 35 L. J. Ch. p. 57 (1865).

³ 6 De G. M. & G. 214; 26 L. J. Ch. p. 12 (1855).

⁴ 14 C. D. 748; 42 L. T. (N. S.) 851 (1880).

⁵ See also the passage from the judgment of Rigby, L.J., in *Magnolia Metal Co.'s Tms.*, [1897] 2 Ch. p. 390; 14 R. P. C. p. 626, cited supra, p. 28.

⁶ See *Apollinaris Application*, [1907] 2 Ch. 178; 24 R. P. C. 436, Kekewich, J.

of the public the name of the manufacturer was identified, but that it meant a particular manufacture and that when a person sold 'Yorkshire Relish' as the appellants did, by selling it as 'Yorkshire Relish' and calling it 'Yorkshire Relish,' they represented to the public that it was that manufacture which was known as and by the name of 'Yorkshire Relish.'"¹

A provision in the Registration Acts allows any "special or distinctive² word or words, letter, numeral, or combination of letters or numerals, used as a trade mark" before the commencement of the Act of 1875, to be registered as a trade mark;³ and it was held that the qualification as it stood in the earlier Acts, namely, "special and distinctive," did no more than embody the requirements of the existing law in regard to what were or might be trade marks.⁴

A name or device, therefore, which is merely descriptive of the goods themselves or of some quality or attribute which they possess, or are supposed to possess, or which is common to the trade,⁵ cannot be a trade mark. And it follows that marks which were once distinctive may have fallen into one of these groups, and so ceased to be available as trade marks.

The element of distinctiveness is essential in any mark which is to be registered as a trade mark under the Acts, and its characteristics as established and illustrated by judicial decisions will be considered in a later chapter;⁶ but it will be convenient here to state in outline the leading cases in which this branch of trade mark law has been discussed, apart from the operation of the Acts, since these cases are still frequently referred to, and turn upon principles of general application.

The question whether a mark is merely descriptive can hardly arise except with regard to word marks.⁷ It may be stated in either of the following forms: Do the words which are claimed as a trade mark (or trade name of the goods, for the same principles apply to both) merely denote the goods, or have they a secondary meaning connoting a connection with the persons who

What are distinctive marks.

Descriptive marks, and marks apparently descriptive, but having a secondary distinctive meaning.

¹ [1897] A. C. p. 715; 14 R. P. C. p. 730.

² Act of 1905, sec. 9. In the earlier Acts "special and distinctive."

³ As to what marks come within the proviso, see Chap. VIII., p. 198, below.

⁴ *Hopkinson's Tm.*, [1892] 2 Ch. 116; 9 R. P. C. 102, Kekewich, J.

⁵ As to marks common to the trade, see below, pp. 177 and 214.

⁶ Chap. VIII., p. 127.

⁷ As to pictures of the goods, see *James' Tm.*, 33 C. D. 392; 3 R. P. C. 340 (1886), C. A. (*Dome Black Lead*), and below, p. 187.

claim them as a trade mark? or, Are the words the known description of all goods of the class by whomsoever they are made or sold, or only of the species within it which are made or sold by those particular manufacturers or traders?

The question arose as early as the case of *Millington v. Fox*.¹ There the plaintiffs sued the defendants for infringing their trade marks consisting of the words *Crowley Millington*, or one of them, and certain marks which they and their predecessors had used as brands on steel since the seventeenth century; the defendants alleged that both *Crowley* and *Millington* were technical terms understood in the market to mean steel shaped in a particular way, and this would have been a good defence had the evidence been sufficient to support it.

The name of a new pattern.
Ford v. Foster.

In *Ford v. Foster*² the plaintiff sought to restrain the defendants from placing the word *Eureka* upon shirts of the defendants' manufacture. The plaintiff had introduced into the market shirts of a certain shape, which he sold as *Ford's Eureka Shirts*, and the defendants alleged that the word in question was the known description of shirts of that particular shape. They were at liberty to make and sell the shirts, and consequently, they urged, to use the name also. Bacon, V.-C., was in favour of the defendants upon the evidence as to this, but he decided the case on the ground that the word *Eureka* was only part of the plaintiff's trade mark, and that he had no right to its exclusive use. The plaintiff appealed, and the decision was reversed, the Lords Justices finding that retail buyers would be led to believe by the use of the word that the goods were goods made by the plaintiff. The test whether a name has become *publici juris*, said³ Mellish, L.J., must be "whether the use of it by other persons may still have the effect of inducing the public to buy goods not made by the original owner of the trade mark as if they were his goods." If not, he added, "however hard, to some extent, it may appear on the trader, yet practically, as the right to a trade mark is simply a right to prevent the trader from being cheated by other persons' goods being sold as his goods through the fraudulent use of the trade mark, the right to the trade mark must be gone." An injunction was accordingly

Test whether a trade mark has become *publici juris*.

¹ 3 My. & Cr. 338 (1838), Cottenham, L.C.

² L. R. 7 Ch. 611 (1872); 41 L. J. Ch. 682.

³ At page 628. See also *Whitstable Oyster Fishery Co. v. Hayling Fisheries, Ltd.*, 17 R. P. C. 461; 18 R. P. C. 434; (1901), Buckley, J., and C. A.

granted to restrain the defendants from applying the mark *Eureka* to any shirts not manufactured by the plaintiff;¹ but the defendants were left at liberty to advertise the name between themselves and the trade, as the Court thought that in the trade the name had the meaning contended for by them, and that the use of it in the manner stated could not lead to deception.

The most important of the earlier cases on the subject are two cases in which the Singer Manufacturing Co. sought to maintain a monopoly in the use of the name *Singer* for sewing machines manufactured by them. The cases were, in fact, trade name not trade mark cases, but the principles upon which they proceeded, and the judgments delivered in them, are equally applicable to both marks and names. The plaintiffs were an American company carrying on a business, originally founded by one J. M. Singer, in sewing machines which they and their predecessors had extensively advertised under the name in question, and they alleged that their machines were not of any particular type which was known as the *Singer Machine*, but were of many varieties, some of which had specific names appropriated to them. They were accustomed to place a distinctive trade mark, comprising their name and a particular device, upon each of their machines, but it was not alleged in either case that the defendant had infringed this trade mark. The defendant in the first case² had issued advertisements and price lists in which he professed to sell *Singer* and *New Singer* machines, but in which he described them as manufactured by himself. He had not infringed the plaintiff's distinctive trade mark. For the defence it was alleged that the name *Singer* meant one of two particular types of machine, that it had come to be like *Hansom* and *Brougham*, the "name of the article, and not a mark or sign indicating the manufacturer."³ The case took a somewhat unusual course. It was dismissed by Jessel, M.R., without the defendant having been called upon, and this decision was upheld by the Court of Appeal, but reversed by the House of Lords, the House deciding that, upon the evidence of the plaintiffs,

The *Singer*
cases.

Singer v.
Wilson.

¹ For form of injunction, see L. R. 7 Ch. p. 634; Appendix, p. 731.

² *Singer Manufacturing Co. v. Wilson*, 2 C. D. 434; 45 L. J. Ch. 490 (1875); 3 App. Ca. 376; 47 L. J. Ch. 481 (1877). See also the Scotch case of *Singer Manu-*

facturing Co. v. Kimball, 11 Court of Sess. Cas. 3rd series, 267, where an injunction was granted. See below, p. 41, note 3.

³ Per Ld. Cairns, 3 App. Ca. p. 385; 47 L. J. Ch. p. 485.

an answer was called for, and that, therefore, the defendant ought to be required to prove the allegation on which he relied.¹

In non-suiting the plaintiffs, Jessel, M.R., proceeded on the ground that as the word *Singer* was not attached to the goods it was not a trade mark, and that the plaintiffs could, therefore, only succeed by making out a case of fraudulent representation.² The representations made in the defendant's price lists and advertisements were, he held, incapable of misleading anyone as to the origin of the machines. The Court of Appeal took the same view of the representations, and relied chiefly on that in upholding the decision. In the House of Lords, Lord Cairns said the question must be, "Are the advertisements of the defendant, having regard to the evidence in the case, calculated to mislead an unwary purchaser of the machines?" And this question might still be answered affirmatively, he thought, although when the advertisements came to be spelt out with care, there was no actual representation on them that the goods they referred to were made by the plaintiffs. And he rejected the distinction suggested by Jessel, M.R., between cases where a trade mark used on the goods was infringed, and cases where the name by which the goods were advertised and known was pirated. Fraud, or intent to deceive, need not, he said, be alleged or proved in either case.³ The other law lords agreed that the plaintiffs had made out a case to show that the defendant's advertisements might lead to his goods being bought as and for theirs, and that, therefore, the defendant ought to have been called upon to displace this case, or to establish by evidence his own contention as to the meaning of *Singer*. The case was sent down for a new trial, but there is no further report of it.

Singer v. Loog.

Many of the same questions were discussed again in the case of *The Singer Manufacturing Co. v. Loog*.⁴ There the defendant had placed upon the machines which he sold a plate marked *Singer machine*, but bearing also words referring to the foreign makers of the goods. This plate he offered to abandon, but he claimed the right to use the word *Singer* to describe his machines.

¹ The case does not appear to have been carried any further.

² See above, p. 13, where the judgment is quoted at length.

³ 3 App. Ca. p. 391; 47 L. J. Ch. p. 488; and see above, p. 14.

⁴ 18 C. D. 395 (1879); 8 App. Ca. 15; 52 L. J. Ch. 481 (1892).

He did not, in fact, call his machines *Singers*, but advertised them as *our Singer machines*, and as machines made on the *Singer system*. Both the Court of Appeal and the House of Lords, reversing the judgment of Bacon, V.-C., decided that the documents issued by the defendant were not calculated to deceive, and the action consequently failed. The question as to the secondary meaning of the word *Singer* did not, therefore, call for decision;¹ but it was agreed by all the judges, and was admitted by the plaintiffs themselves, that they could claim no exclusive use of the word if the defendant could show that the article in question was a specific article known by a specific name, and that, as in the case of the Wellington boots and Hansom cabs, he was unable to designate the article in any other way than by its known name.² Lord Selborne, however, found as a fact that the term *Singer* did signify a system of construction for sewing machines known to the trade.³

The obvious intention of the plaintiffs in both these cases was to monopolise, if possible, the reputation gained by the machines which they had been the first to introduce into the market by preventing other traders from using the name by which the machines were known, and this they were not allowed to do. "The reputation acquired by machines of a particular form or construction," said Lord Selborne,⁴ "is one thing; the reputation of the plaintiffs is another. If the defendant has no right under colour of the former to invade the latter, neither have the plaintiffs any right under colour of the latter to claim (in effect) a monopoly of the former. If the defendant has (and it is not denied that he has) a right to make and sell, in competition with the plaintiffs, articles similar in form and construction to those made and sold by the plaintiffs, he must also have a right to say that he does so, and to employ for that purpose the terminology common to the trade, provided always that he does this in a fair, distinct, and unequivocal way."

No monopoly can be maintained in the reputation of goods which anyone may make and sell.

¹ 18 C. D. p. 419.

² 18 C. D. p. 398.

³ The question of fact is now settled by *The Singer Manufacturing Co. v. Spence & Co.*, 10 R. P. C. 297 (1893), where it was admitted that to an inner ring of the trade *Singer* means a system of manufacture; but Romer, J., found it means the plaintiffs' manufacture, to a large part of the public. And in *The*

Singer Manufacturing Co. v. British Empire Manufacturing Co., 20 R. P. C. 313 (1903), Kekewich, J., found that to ordinary purchasers there was nothing known as a *Singer system*.

⁴ 8 App. Ca. p. 27; 52 L. J. Ch. p. 487; see also *Leonard and Ellis' Tm.*, 26 C. D. p. 297; 53 L. J. Ch. 603 (1884), C. A.

The Liebig's Extract case¹ affords a good example of a name which was held to be merely the name of the goods, common to all the world, and subject to no monopoly rights. There Baron Liebig, the inventor of the process by which the extract was prepared, had purported to confer upon the plaintiffs an exclusive right to use his name in connection with the goods, and they sought to restrain the defendant from using the words *Liebig's Extract*. The process of manufacture had, however, been long published and largely employed, and the goods were commonly known by the name in question. The injunction was accordingly refused.²

Change of meaning of word.

The meaning of a word may, of course, undergo changes from time to time, thus a name which in one case was held to indicate a system or type of motor, was in a later case held to have lost that meaning.³

Secondary meaning of words originally common.

On the other hand, a striking example of words, which in their primary meaning were purely descriptive, acquiring a secondary meaning—namely, that the goods described by them were the manufacture of a particular company—is afforded by the case of *Reddaway v. Banham*.⁴ The plaintiffs in that case had for many years made belting, consisting mainly of camel-hair, for machinery, and sold it under the name *Camel-hair Belting*. The defendants, who had sold similar belting under other names, commenced to sell it under the name *Camel-hair Belting*, and in most cases put that name only on the belting. The plaintiffs commenced an action for an injunction to restrain the defendants from using the word *camel* in such a manner as to pass off their goods as and for the plaintiffs' goods. The jury found (1) that *Camel-hair Belting* meant belting made by the plaintiffs as distinct from belting made by other manufacturers, and that it did not mean belting of a particular kind without reference to any particular manufacturer; they also found that the description was likely to mislead purchasers, and that the defen-

¹ *Liebig's Extract of Meat Co. v. Hanbury*, 17 L. T. (N. S.) 298 (1867), Wood, V. C.; *Id. v. Anderson*, 55 L. T. 206 (1884), Chitty, J.

² In *Liebig's Extract of Meat Co., Ltd. v. Chemists' Co-operative Society, Ltd.* (1896), 13 R. P. C. 635, 736, it was held, by Kekewich, J., to be proved that the plaintiffs' goods were known as

"Liebig Company's Extract of Meat" or "The Company's Extract of Meat."

³ *Daimler Motor Car Co., Ltd. v. British Motor Traction Co., Ltd.*, 18 R. P. C. 465 (1901), Buckley, J., and *Daimler Motor Co. (1904), Ltd. v. London Daimler Co., Ltd.*, 23 R. P. C. 718; 24 R. P. C. 379 (1907), C. A.

⁴ [1896] A. C. 199; 13 R. P. C. 218.

dants had endeavoured to pass off their goods as the plaintiffs' goods. In spite of these findings, it was held by the Court of Appeal that *Camel-hair Belting* was a true description of the defendants' goods, and that they could not be restrained from using it, and the Court dissolved the injunction granted by Collins, J.; the House of Lords, however, reversed the judgment of the Court of Appeal. In Lord Herschell's judgment the following passages occur: "The name of a person, or words forming part of the common stock of language, may become so far associated with the goods of a particular maker that it is capable of proof that the use of them by themselves, without explanation or qualification, by another manufacturer, would deceive a purchaser into the belief that he was getting the goods of A. when he was really getting the goods of B."¹ And, replying to the argument that the defendants had only used a true description of their goods, he said, "I think the fallacy lies in overlooking the fact that a word may acquire in a trade a secondary signification differing from its primary one, and that if it is used, to persons in the trade who will understand it, and be known and intended to understand it, in its secondary sense, it will none the less be a falsehood because in its primary sense it may be true."²

In *The Cellular Clothing Company v. Marton & Murray*,³ it was, however, pointed out that such a case as *The Camel-hair Belting* case was difficult to establish, and the House of Lords held that the plaintiffs in *The Cellular* case had failed to prove that the word *Cellular* had the secondary meaning of identifying goods so described with the plaintiffs'.⁴

Where an article has been introduced as new and has been first manufactured under a patent, the name by which it is known becomes common property so soon as the expiration of the patent right puts an end to the monopoly in the manufacture and sale of the article; and, although the name may have, down to that time, identified the goods with the maker of them, it is no longer available for him as a trade mark or trade name.

Name of goods made under an expired patent.

¹ [1896] A. C. p. 210; 13 R. P. C. 228.

² [1896] A. C. p. 212; 13 R. P. C. p. 229.

³ [1899] A. C. 326; 16 R. P. C. 327. See also *Parsons v. Gillespie*, [1898]

A. C. 239; 15 R. P. C. 57.

⁴ The decision in this case has been followed in several subsequent cases, see Chap. XVI., pp. 508 *et seq.* As to names obtaining a secondary meaning, see pp. 533 *et seq.*

On this subject, Lord Herschell's Committee said in their report¹: "It has been suggested that there is a necessity for some statutory definition of the trade mark rights which are acquired in connection with words used as the names of patented articles. Where a patent has been obtained for some article of commerce, and the patentee gives it a name which he registers as his trade mark, has he a right, at the end of the term of his patent, to prevent other people from selling it under that name? It is clear that he obtains the patent upon the condition that, at the expiration of the term of his monopoly, the public shall have the right to manufacture and use it; and if the only name by which it is known is that which the proprietor has registered as a trade mark, it would certainly seem inconsistent with the right thus intended to be conferred on the public, if everyone, except the original patentee, were prevented from calling it or selling it by that name which alone it bears. The authorities appear, however, to show that such a claim could not be maintained."

The cases of *The Wheeler and Wilson Manufacturing Co. v. Shakespear*² and *The Linoleum Manufacturing Co. v. Nairn*³ are the leading authorities on this head. In the former case, the plaintiffs were manufacturers of sewing machines made according to an expired patent, and in the manufacture, therefore, they had no monopoly. The defendant advertised himself as the "agent for the sale of the Wheeler-Wilson machine" in Birmingham, although he was not the plaintiffs' agent, and was not selling machines made by them. He alleged that his advertisement meant only that he sold the machines. The Court, while restraining him from advertising himself as agent, refused to restrain him from describing the machines he sold as *Wheeler and Wilson's*. It was not, said James, V.-C., the name of the makers but of the thing itself, and the monopoly under the expired patent could not be prolonged by granting a monopoly in the name.

The Linoleum case.

In *The Linoleum case*,⁴ the plaintiffs used a trade mark containing the word *Linoleum* for a floor-cloth which had

¹ Report of 1888, p. xiv.

² 39 L. J. Ch. 36 (1870), James, V.-C.

³ 7 C. D. 834: 47 L. J. Ch. 430 (1878); Fry, J.

⁴ *Linoleum Co. v. Nairn*, 7 C. D. 834; 47 L. J. Ch. 430 (1878); cf. *Poung v. Macrae*, 9 Jur. (N.S.) 332 (1862), Wood, V.-C., *paraffin* not a trade mark.

been first manufactured and sold by them under a patent, and they unsuccessfully endeavoured to restrain the defendants from selling similar cloth as *Linoleum Floor Cloth* after the patent had expired. Fry, J., found as a fact that the word *Linoleum*, which was taken by the defendants, was not an essential part of the plaintiffs' trade mark, but was descriptive only. It was, he said, the name of the thing, and the defendants were not bound to invent a new name for it if they made it. The name, he added,¹ "only secondarily means the manufacture of the plaintiffs, and has that meaning only so long as the plaintiffs are the sole manufacturers. In my opinion, it would be extremely difficult for a person who has been, by right of some monopoly, the sole manufacturer of a new article, and has given a new name to the new article, meaning that new article and nothing more, to claim that the name is to be attributed to his manufacture alone after his competitors are at liberty to make the same article. It is admitted that no such case has occurred, and I believe it could not occur."²

The principle thus laid down has been approved and adopted in more recent cases.³ Thus, Lord Herschell, in *Reddaway v. Banham*,⁴ says: "Where a patentee attaches a particular name to the production he patents, that name becomes common property as the name of the patented article. It possesses, indeed, no other name. That name would necessarily be applied to it by all persons desiring to purchase the article. It is not descriptive of the production of a particular manufacturer, but of the article itself, by whomsoever it is manufactured."

In *The Magnolia Metal Co.'s Trade Marks*,⁵ Rigby, L.J., delivering the judgment of the Court of Appeal, said:

¹ 7 C. D. p. 837; 47 L. J. Ch. p. 432.

² See below, p. 253.

³ Besides the cases noticed in the text, the following are recent cases in which the principle has been followed or recognised: *Formalin Hygienic Co., Ltd.'s Application*, 17 R. P. C. 486 (1900), Farwell, J.; *Kodak, Ltd. v. London Stereoscopic and Photographic Co., Ltd.*, 20 R. P. C. 337 (1903); *Chesbrough Co.'s Tm.*, [1902] 2 Ch. 1; 18 R. P. C. 191; 19 R. P. C. 342, in which, however,

the Court of Appeal held that vaseline was not the name of a patented article. See also the judgment of Lord Kyllachy in *Dunlop Pneumatic Tyre Co., Ltd. v. Dunlop Motor Co., Ltd.*, 23 R. P. C. 761, at p. 770; *Gestetner's Tm.*, [1907] 2 Ch. 478; [1908] 1 Ch. 513; 24 R. P. C. 545; 25 R. P. C. 156.

⁴ [1896] A. C. p. 214; and 13 R. P. C. p. 230.

⁵ [1897] 2 Ch. 371; and 14 R. P. C. 621.

“When the article is made under a secret process, or its manufacture is protected by a patent, no person who has not acquired the secret, or obtained a licence from the patentee, can manufacture it. Accordingly, it is established as a general rule, that when an article is made under a secret process, or where the manufacturer of it is protected by a patent, the manufacturer or patentee cannot by any means entitle himself to a monopoly in the use, after the secret process has been discovered or the term of the patent has expired, of the name by which the manufactured article is exclusively known whilst the secret is undiscovered or the term of the patent is unexpired. What exceptions this general rule may be subject to it is not necessary for the purposes of this case to inquire into.” In the case last quoted from, the manufacture of the metal had been carried on in America under a secret process; but subsequently patents were taken out in America and the United Kingdom, and these patents were unexpired at the date of the application, which was for the removal, from the Register, of marks, one of which consisted of, and another of which included, the word *Magnolia*. One ground of the application was that magnolia metal was the name of a particular alloy. As to two of the marks in question the application succeeded on this ground, it being held that, before the date of the patent or the registration of the marks, the name *Magnolia* had been treated as the name of the article manufactured by the secret process, and therefore, independently of the question arising on the patents, the registration of these marks was bad.

In a recent case¹ Neville, J., held that *Cyclostyle* was the name of a patented invention, and was not a fancy word registrable under the Act of 1883, nor an invented word registrable under the Act of 1905, and the decision was affirmed in the Court of Appeal.

The fact that the patent for the goods is bad is immaterial, for a practical monopoly may be obtained by a bad patent;² nor can a person who has given a name to an article which he has wrongly put forward as made under a patent be in a better

¹ *Gestetner's Tm.*, [1907] 2 Ch. 478; [1908] 1 Ch. 513; 24 R. P. C. 545; 25 R. P. C. 156.

² *Formalin Hygienic Co., Ltd.'s Application*, 17 R. P. C. 486 (1900), Farwell,

J.; see also *Magnolia Metal Co.'s Tms.*, supra, and *Winer & Co. v. Armstrong & Co.*, 16 R. P. C. 167 (1899), Byrne, J. The *Magnolia* patent was subsequently revoked: *Miller's Patent*, 15 R. P. C. 205.

position than if his statement were true.¹ During the maintenance of the monopoly, either by the continuance of the patent or the non-discovery of the secret process, no one, of course, can use the name of the article for a different article so as to pass it off as that of the person having the monopoly.² On the other hand, although the patent is unexpired, if it be for a process, and a method of making the article without infringing the patent be discovered, a name which indicates the article may be used notwithstanding the existence of the patent.³

Whether it is open to a patentee to show that, after the expiration of the patent, the word which was the name of the article when the patent expired has subsequently come to denote his manufacture only, is a question which has not arisen for decision. But, although it would no doubt be difficult to establish such a case, it would seem to be possible.

It may, perhaps, be doubted whether the rule in the case of an article manufactured under a secret process is as absolute as in the case of a patented article,⁴ and whether it is not open to the manufacturer of an article made by him under a process formerly secret but since discovered to show that the mere use of the name by another person would deceive purchasers into the belief that the goods were those of the original manufacturer, or, in other words, to show that the name indicates not merely the article but the article manufactured by him.⁵

The judgment of Fry, J., in *The Linoleum* case⁶ supports the proposition that the principle is not confined to an article

Article formerly made under secret process.

Whether the name given to a new article can be monopolised.

¹ *Meaby & Co., Ltd. v. Triticine, Ltd.*, 15 R. P. C. 1 (1898), North J.; and see below, p. 429, as to misrepresentation respecting patents.

² *Birmingham Vinegar Co., Ltd. v. Powell*, [1897] A. C. 710; 14 R. P. C. 720; the question of the rights of the parties if the defendants had been selling the same article as that known as "Yorkshire Relish" did not arise on the facts, as found.

³ *Young v. Macrae*, 9 Jur. (N. S.) 222. With respect to this case, the subsequent comments of Wood, V.-C., on his decision contained in *Braham v. Bustard*, 1 H. & M. 447 (1863), should be borne in mind: see Ld. Macnaghten's judgment in *Reddaway v. Banham*, [1896] A. C. at p. 220; 13 R. P. C. 234.

⁴ The means by which the monopoly is obtained is different, and in the case of a secret process the rule cannot be based upon an implied condition in the grant by the Crown.

⁵ The question was left open in the House of Lords in the *Yorkshire Relish* case; but the proposition as laid down by Lindley, L.J., in the Court of Appeal, [1896] 2 Ch. at p. 72; 13 R. P. C. at p. 252; and approved by Ld. Davey, [1897] A. C. at p. 717; 14 R. P. C. at p. 732, is not so absolute as in the case of a patented article. See also the judgment of Rigby, L.J., in the *Magnolia* case, quoted *supra*, p. 46, and Chap. XIX., p. 569.

⁶ Above, p. 45.

protected by patent, or by a secret or otherwise, but is wide enough to cover the case of a new name applied to a new article. And in *The Valvoline* case¹ the same Judge, when a Lord Justice, said, in considering whether *Valvoline* was a special and distinctive word: "When a new material is invented, and at the same time a new single word is invented which is applied to that material alone, I am by no means satisfied at present that that single word can be treated as a special and distinctive word within the meaning of the section.² It is difficult to suppose that one word can both describe the thing as made by anybody and the thing as made by a particular maker. I am inclined to think that the words 'special and distinctive' import the specialising of the make and manufacture of a particular maker from all other manufacturers, and distinguishing the manufacture of one person from the manufacture of all others." In the same case Cotton, L.J., said: "In my opinion when a man invents a new article, and invents a word as descriptive of that article, then, if all the world are at liberty to make that article, he stands in a very great difficulty as regards claiming to himself the exclusive use of that name which he has invented to describe the article." The question was discussed again in *The Vaseline* case,³ in which, however, the majority in the Court of Appeal held that the word *Vaseline* indicated not an article made by a particular process, but an article made by a particular manufacturer; and Stirling, L.J., in his judgment expressly reserved the question. Cozens-Hardy, L.J., dissenting on the facts from the other members of the Court, referred to *The Linoleum* case, and to the fact that linoleum had been a patented article, but said that he thought that the principle could not be limited to the case of a patented article, and he adopted the language of Fry, L.J., in *The Valvoline* case in the passage quoted above.⁴

Under regis-
tered design.

If a man registers a new design, and gives the article made in accordance with that design a name, that name describes the

¹ *Leonard and Ellis' Tm.*, 26 C. D. 288 at p. 304.

² Sec. 10 of the Act of 1875.

³ *Chesebrough Co.'s Tm.*, [1902] 2 Ch. 1; 18 R. P. C. 191; 19 R. P. C. 342, Buckley, J., and C. A.

In *Kodak, Ltd. v. London Stereoscopic and Photographic Co., Ltd.*, 20 R. P. C.

337 (1903), it was contended for the defendants that "Kodak" as applied to films was a new name for a new article, and meant a film for a Kodak camera; but Swinfen Eady, J., found that the word indicated the plaintiffs' goods only.

article, and it may, after the expiration of the protection, be used for that purpose by other persons.¹

The first introducer of goods which have come to be known by the name which he applied to them, so that that name has been lost to him as a distinctive mark, has in some cases been allowed to distinguish his goods by the name with the prefix *original*. Thus, in *The Reading Sauce* case,² Romilly, M.R., said: "Where there are a great number of persons who produce the same article, *original* means that the article so called is that made by the first inventor. That is the meaning of *original* which the Court of Chancery has always recognised."

The name of the place of origin of the goods would, on the principles discussed above, in general, be bad as a trade mark, for any importer from the same place would be at liberty to use it; but where a geographical name has acquired a secondary meaning, identifying the goods upon which it appears with a particular trader, the trader has frequently been protected against fraudulent imitators. In cases where this secondary meaning has been acquired, following the rule adopted in the analogous case of a trader using his own name,³ the Courts would not interfere to restrain altogether the use of the name in question by a second trader who is honestly using the name merely for the purpose of indicating the place of origin of his goods, although they might require him to use it in such a way as that his goods are clearly distinguished from those of the other trader.⁴

In *McAndrew v. Bassett*⁵ the word *Anatolia* stamped upon liquorice was held to be a good trade mark. The plaintiff made

¹ *Winer & Co. v. Armstrong & Co.*, 16 R. P. C. 167 (1899), Byrne, J. (*Winer interceptors*).

² *Cocks v. Chaudlers*, L. R. 11 Eq. p. 447; 40 L. J. Ch. p. 575 (1871); see also *Brown v. Freeman* (1), 12 W. R. 305 (1864), Wood, V.-C.; S. C. (2), W. N. (1873), 178 (*Chlorodyne*), L.J.J.; *Lazenby v. White*, 41 L. J. Ch. 354, n. (1870) (*Harvey's Sauce*).

³ See below, pp. 532 *et seq.*

⁴ There are *dicta* in the *Stone Ales* case, in the House of Lords, which suggest that a practical monopoly might be acquired of the use of the name of a

place where goods are manufactured: *Thompson v. Montgomery*, [1891] A. C. 217; 8 R. P. C. 365; above, p. 29. The case was one of deliberate fraud: but, in view of the *Valentine* case, cited below, p. 537, it would seem that the same result could have been reached without proof of fraud. See also p. 517. The case of *Cash v. Cash*, 18 R. P. C. 213; 19 R. P. C. 181 (1902), seems to show that the Court will not absolutely restrain a person from using his own name in trade. See below, p. 532.

⁵ 4 De G. J. & S. 380; 33 L. J. Ch. 561 (1864), Wood, V.-C., and Westbury, L.C.

his goods of a mixture of juices obtained partly from Spain and partly from the district of Andoli ; and he chose *Anatolia*, which was one form of the latter name, as his mark. The defendant, having seen the plaintiff's mark in the market, caused it to be applied to goods of his own made solely from Spanish juice. If the name had had a known meaning indicating the origin of the goods, it is clear that the plaintiff could not have monopolised it ; but as it had, when he assumed it, and at the time of the infringement, no such meaning, the Court decided that it was a good trade mark. " It is not," said Wood, V.-C., " like the case of there being some district from which a well-known wine, such as Burgundy, is imported, and the first importer calls it *Burgundy* ; although he may have stamped *Burgundy* on his corks for twenty years, he could not prevent anybody else from calling a wine produced in Burgundy by the name of the place from which it was imported."

*Seixo v.
Provezende.*

In *Seixo v. Provezende*,¹ part of the plaintiff's trade marks consisted of the word *Seixo*, which was his own name and was also the name of the estate from which the wine, in connection with which the mark was used, came. The defendants adopted the same word in their trade mark, and they alleged that their wine came from an estate adjoining the plaintiff's and also known as *Seixo*. It appeared that the produce of the defendants' estate was far less in quantity than that of the plaintiff, that the plaintiff's wine was well known by his trade mark, and that the district in which both estates were situate was known as " Sitio do Seixo," meaning " the stony country." Wood, V.-C., granted an injunction to restrain the defendants from using the word in question without clearly distinguishing the wines they sold under it from the wines of the plaintiff,² and, on appeal, Cranworth, L.C., upheld this decision. " Assuming the truth of what is contended for by the defendants," the Lord Chancellor said,³ " that is, that parts of their vineyards are known by the name *Seixo*, that does not justify them in adopting a device or brand the probable effect of which is to lead the public when purchasing their wine to suppose that they are purchasing wine produced from the vineyards, not of the defendants, but of the plaintiff."

¹ L. R. 1 Ch. 192 ; 14 L. T. (N. S.) 314 (1865).

² See form of injunction which was approved by the H.L. in *Montgomery*

v. Thompson (p. 51, note (3)), L. R. 1 Ch. p. 194 ; Appendix, p. 734.

³ L. R. 1 Ch. p. 198 ; 14 L. T. (N. S.) p. 316.

In *The Glenfield Starch* case,¹ the defendant was restrained from using the word *Glenfield* on the labels attached to starch made by him, and from calling such starch *Glenfield Starch*, although his starch was actually made, and that of the plaintiffs was not made, at the place of that name. The plaintiffs had formerly manufactured their goods at Glenfield, and had adopted the name *Glenfield Starch* and a label comprising the words to describe them; and the defendant, as the House of Lords found, set up a factory at Glenfield—an open place with a few cottages—for the express purpose of securing the name, and of profiting by the plaintiffs' reputation. He called his starch *Royal Palace Starch*, but placed the name *Glenfield* in large letters on his labels, and his agents sold his goods as *Glenfield Starch*.

*Glenfield
starch.*

"I take it to be clear from the evidence," Lord Westbury said,² "that, long antecedently to the operations of the respondent, the word *Glenfield* had acquired a secondary signification or meaning in connection with a particular manufacture—in short, it had become the trade denomination of the starch made by the appellants. It was wholly taken out of its ordinary meaning, and in connection with starch had acquired that peculiar secondary signification to which I have referred. The word *Glenfield*, therefore, as a denomination of starch, had become the property of the appellants."

This decision was followed and approved by the House of Lords in *The Stone Ales* case³ in the year 1891, which was a very similar case.⁴

But a name which originally begins in its use as a geographical term, and long continues to be used as such, cannot readily cease to be a geographical term and acquire the secondary meaning above referred to;⁵ and where the article is not a manufactured article but a product of the soil, *e.g.*, the water

¹ *Wotherspoon v. Currie*, L. R. 5 H. L. 508; 42 L. J. Ch. 130 (1872).

² L. R. 5 H. L. p. 521.

³ *Montgomery v. Thompson*, [1891] A. C. p. 217; 8 R. P. C. 361; above, p. 29; see also *Huntley and Palmer v. The Reading Biscuit Co.*, 10 R. P. C. 277 (1893), Chitty, J. (*Reading biscuits*); and *Worcester Royal Porcelain Co., Ltd. v. Locke & Co.*, 19 R. P. C. 479 (1902), Byrne, J. (*Worcester china*).

⁴ See also *Berlay & Co., Ltd. v. Hughes*, 15 R. P. C. 290 (1898), wher

North, J., on an interlocutory motion, restrained the use by the defendant of *Dindigul* in connection with cigars, without clearly distinguishing such cigars from the plaintiffs' cigars; but the injunction was not to prevent the defendant from describing any cigars sold by him, in fact made of *Dindigul* tobacco, as being so made.

⁵ Per Cozens-Hardy, J., in *Wolf v. Nopitsch*, 17 R. P. C. 321, at p. 330 (1900).

from a spring, and the name in question is the name of the locality and necessarily enters into the description of the article, persons cannot be prevented from fairly using it to describe the article.¹

Geographical names are expressly excepted from the list of essential particulars for registered trade marks contained in the present Act.²

Advertisement of the goods not a trade mark.

A mere advertisement or description of the goods concerned, or of some quality which they possess, is not a trade mark. And on this ground Lord Westbury based his judgment in the House of Lords in *The Leather Cloth* case.³

Leather Cloth case.

The trade mark of the plaintiffs in that case consisted of a circle formed by the words *Crocketts' International Leather Cloth Company, Newark, N.Y., U.S.A., West Ham, England*, inside of which in the upper half was an eagle, with the word *Excelsior* over it, and the words *Crocketts & Co., tanned leather cloth*, below it, and in the lower half the words *Patented, January 24, 56, I. R. and C. P. Crockett, Manufacturers, 12 yards*. The defendants had a trade mark containing features similar to some of these. Wood, V.-C., granted an injunction,⁴ but on appeal⁵ this was rescinded by Lord Westbury on the ground that the plaintiffs' trade mark contained material misrepresentations which disentitled them to relief. When the case came before him again, in the House of Lords, however, Lord Westbury said:⁶ "I am satisfied that I ought to have regarded this affix to the plaintiffs' goods, which is here denominated a trade mark, as something which, according to the anterior usage and application of the words trade mark, by no means resembles or comes within the description of anything that has hitherto been properly designated by that name." It was, he added, "in reality, an advertisement of the character and quality of their goods."

So the words *Nourishing Stout* were refused protection⁷ by

¹ *Grand Hotel Co. of Caledonian Springs, Ltd. v. Wilson (Caledonia water)*, [1904] A. C. 103 ; 21 R. P. C. 117.

² Act of 1908, s. 9 (4), below, p. 129 ; see also p. 170.

³ *The Leather Cloth Co. v. The American Leather Cloth Co.*, 11 H. L. C. 523 ; 35 L. J. Ch. 53 (1865).

⁴ 1 H. & M. 271 ; 32 L. J. Ch. 721.

⁵ 4 De G. J. & S. 137 ; 23 L. J. Ch. 199.

⁶ 35 L. J. Ch. p. 66.

⁷ *Ruggell v. Finllater*, L. R. 17 Eq. p. 29 ; 34 L. J. Ch. 64 (1873). This case and the others here cited must be taken subject to the law established by *Reddaway v. Banham* (supra, p. 42), that words *prima facie* of a descriptive meaning may acquire a secondary meaning if they lose their ordinary meaning and come to indicate the goods of a particular manufacturer.

Malins, V.-C., who distinguished the case before him from two earlier cases, in one of which¹ words meaning *exactly 12 yards*, printed in three foreign languages, and placed upon long cloth, and in the other² the words *Excelsior White Soap*, had been accepted as trade marks.

And in *Chearin v. Walker*,³ a tablet bearing the words *G. Chearin's Improved Patent Gold Medal Self-Cleaning Rapid Water Filter, Boston, England*, with the Royal Arms and the words *By Her Majesty's Royal Letters Patent*, was held by Jessel, M.R., in the Court of Appeal, not to be a trade mark. "What (the plaintiff) uses," he said,⁴ "is an inscription which he chooses to place or bake on his filters, and which tells its own story. The inscription is not in distinctive characters, but in ordinary type. There is nothing in it to show that it was made by any particular manufacturer. It is not possible to say that such an inscription is a trade mark." The action failed also on the ground that the tablet falsely represented that the goods were made under an existing patent, whereas, in fact, the patent had expired.

*Chearin v.
Walker.*

The essential quality of distinctiveness as a necessary element in a trade mark has been carefully preserved by the Acts, and by the decisions upon them. These are dealt with in a subsequent chapter.⁵

Made, worked upon, imported, selected, certified, or sold.

The words in the statutory definition are "manufacture, selection, certification, dealing with or offering for sale."

The office of the trade mark is to indicate some connection between the goods to which it is applied and a particular trader;⁶ but it is not necessary that the buyers should know the name of the trader, it is sufficient that the mark identifies a particular manufacture.⁷ What this connection is, is immaterial; but it should be a constant one. If a maker chooses to sell under a trade mark which is identified with goods of his manufacture

Connection of
the owner of
the trade
mark with
the goods.

¹ *Broadhurst v. Barlow* (1872), unreported; see L. R. 17 Eq. p. 38.

² *Braham v. Bustard*, 1 H. & M. 447; 9 L. T. (N. S.) 199 (1869), Wood, V.-C.

³ 5 C. D. 850; 46 L. J. Ch. 686 (1876), C. A.

⁴ 5 C. D. p. 862.

⁵ Chap. VIII., What may be Registered, p. 127.

⁶ See the *dicta* cited above, p. 27.

⁷ See *Birmingham Vinegar Brewery Co. v. Powell*, [1897] A. C. 710. and 14 R. P. C. 720; and *supra*, p. 36.

goods made by others, his conduct will tend to destroy the original significance of the mark, and eventually to confer upon it a new meaning; but, until the alteration is known, buyers may justly complain of deception.¹

The connection most commonly intended by a trade mark is that of origin or manufacture; but, as already said, many others may be connoted. This is succinctly expressed in the statement of Bowen, L.J., in *The Yorkshire Relish* case,² that the function of a trade mark is to give an indication of "the trade source from which the goods come, or the trade hands through which they pass on their way to the market."

Trade mark
of selector
of goods.

*Hirsch v.
Jonas.*

In some cases it is difficult to decide what the precise meaning of a trade mark is; for instance, where A. has selected and imported goods made by B. for many years, and has sold them under a particular trade mark. If A. has been the sole importer, does the reputation of the mark refer to his selection and importation, or to B.'s manufacture? Such a question arose in *Hirsch v. Jonas*.³ There the plaintiff bought cigars of a foreign maker, who, at his request, placed a label bearing the words *Gloria de Inghlaterra Harannah*, which had been designed and registered as his copyright by the plaintiff, upon the boxes. Subsequently, the maker began to supply to the defendants for sale in the market similar cigars, not purchased by the plaintiff, but bearing the same label, and this the plaintiff unsuccessfully sought to restrain. The name of the plaintiff did not appear on the boxes, but that of the maker did. "The trade mark of manufactured goods," said Jessel, M.R.,⁴ "means, I suppose, that the goods are manufactured by the person whose trade mark it purports to be. I can understand a man saying, 'I am not the actual manufacturer of goods, but the selector of goods, and my reputation for cleverness and selection is so great, that goods marked with a mark to show that they have been selected and approved of by me will fetch a higher price in the market.' If Hirsch had put on the box '*Gloria de Inghlaterra Harannah Cigars selected by Hirsch*,' he might have had a case to prevent

¹ The deception may constitute the offence of applying a false trade description. See *Storey v. Chilworth Gunpowder Co.*, 24 Q. B. D. 90; 59 L. J. M. C. 13 (1890), *Ld. Coleridge, L.C.J.*, and *Mathew, J.* See also *Johnson v. Raylton*, 7 Q. B. D. 438 (1881), a case of

implied contract; and the Merchandise Marks Act, 1887, Appendix, p. 806.

² *Powell's Tm.*, [1893] 2 Ch. p. 401; 10 R. P. C. 195.

³ 3 C. D. 584; 45 L. J. Ch. 364 (1876).

⁴ 3 C. D. p. 586; 45 L. J. Ch. p. 365.

other people imitating that. It would show that the cigars selected were approved of by him. If he got a great reputation in that way, I can understand he would have a right of protection for that which indicates to the public that the cigars were selected and approved of by him. That is not his case. There is nothing on the boxes to show anything about Hirsch at all. All he says is that the trade knows this mark as denoting cigars sold by him, which I dare say it does."¹

In *Robinson v. Finlay*² the marks in question were held to indicate a connection with three different persons—the manufacturer, the exporter, and the consignee, since they had always and only been used upon goods which had passed through the hands of all of these in their several capacities. The Court of Appeal, accordingly, decided that neither of the parties alone was entitled to the marks.

In a recent case the mark in question belonged to a salesman dealing on commission in Covent Garden, and its office was to indicate that the goods had been consigned to and sold by him.³

A servant who designs a mark which his employer adopts and uses has no claim in regard to it, and is not entitled after leaving his employment to use the mark on his own goods.⁴

Designer for
another
person.

Registered under the Acts as a Trade Mark.

Before the Registration Acts were passed, the only general way in which a trade mark could have been acquired was by public user, in the manner described in the earlier part of the definition given above,⁵ or in the case of a Cutlers' Corporate Mark, for use by a cutler resident in or within six miles of Hallamshire, by assignment from the Cutlers' Company.⁶ The repealed Acts contained provisions that registration, or the application for registration, should be deemed equivalent to the

¹ Cf. *Knott v. Marshall*, W. N. (1894) 214, where a person who bought from the manufacturer in bulk, and put the goods up in distinctive packets, was held by Chitty, J., to be entitled to restrain another purchaser from the manufacturer from imitating this get-up.

² 9 C. D. 487; 39 L. T. (N. S.) 398 (1877), Bacon, V.-C., and C. A.; *Jones' Tm.*, 53 L. T. (N. S.) 1 (1885), C. A.

Cf. *Van Zeller v. Mason, Cuttley & Co.*, 25 R. P. C. 37 (1908), Joyce, J.

³ *Major v. Franklin*, 25 R. P. C. 406 (1908), Jelf, J.

⁴ *Roger's Tm.*, 12 R. P. C. at p. 156 (1895), North, J.

⁵ *Hudson's Tm.*, 32 C. D. 311; 3 R. P. C. 155 (1886), C. A.

⁶ See Chap. VI., Sheffield Marks, below, p. 112.

public use of the registered trade mark,¹ and, although no such provision is contained in the Act of 1905, it expressly authorises the registration of a trade mark proposed to be used,² and, subject to certain provisions in the Act and to limitations and conditions entered on the Register, the registration of a person as proprietor of a trade mark is, if valid, to give to such person the exclusive right to the use of the trade mark upon, or in connection with the goods in respect of which it is registered.³

And registration is *prima facie* evidence of validity,⁴ and, subject to certain qualifications, the original registration is to be taken as valid in all respects after seven years from such registration, or from the passing of the Act, whichever should last happen.⁵ The construction and effect of the sections are discussed in a later chapter.⁶ It was decided that the corresponding sections of the Acts of 1875 and 1883⁷ created a new method of acquiring trade mark rights.⁸

¹ Act of 1888, s. 17, replacing sec. 75 of the Act of 1883, and sec. 2 of the Act of 1875; below, p. 323.

² See above, p. 24.

³ Sec. 39.

⁴ Sec. 40.

⁵ Sec. 41. See sec. 76 of the Act of 1883. The corresponding section of the Act of 1875 was sec. 3. The Act

was passed on August 11th, 1905.

⁶ Chap. VIII., What may be Registered, p. 127. Chap. XII., Effect of Registration, p. 321.

⁷ Secs. 75 and 76 of the Act of 1883; sec. 3 of the Act of 1875.

⁸ *Hudson's Tm.*, 32 C. D. 311; 3 R. P. C. 155 (1886), C. A., below, p. 323.

CHAPTER III.

THE REGISTER OF TRADE MARKS, AND THE TRADE MARKS BRANCH OF THE PATENT OFFICE.

	PAGE
The Register	57
The Manchester Branch Office and the Sheffield Register	58
The Comptroller or Registrar	58
Entries on the Register	59
No trusts to be entered	59
Title conferred by registration	60
Alterations of the Register	60
Falsification of the Register	60
Devolution of title	61
Period of registration	61
Removal of entries	61
Inspection of the Register	61
Searches	61
Indexes	61
Certified copies of the Register to be evidence	62
Registrar's certificate to be evidence	62
Purpose of certificate of registration to be stated	63
Patent Office seal	63
Notices and documents may be sent by post	63
Addresses	63
Excluded days in computing time	63
Agency	63
Exercise of discretionary power by Registrar	64

The Register of trade marks was established by the Act of 1875,¹ and it is now continued under sec. 4 of the Act of 1905,² which provides that there shall be kept at the Patent Office³ 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. And the books of the original Register and those

¹ Secs. 1 and 7.

² Replacing with amendments sec. 78 of the Patents, &c., Act, 1883. The words "disclaimers, conditions, limitations,"

are new. See below, pp. 76 and 264.

³ 25, Southampton Buildings, Chancery Lane, London, W.C.

under the Act of 1883 are treated as part of the present Register.¹

The Manchester Branch Office and the Sheffield Register.

There are also Registers at Manchester and Sheffield. The former, kept at the Manchester Branch Office, is a duplicate of the Register at the Patent Office, so far as it relates to goods in Classes 23, 24, and 25² (*i.e.*, cotton goods); the latter is a branch Register for trade marks for metal goods registered by residents in Hallamshire, or within six miles of it.³

By sec. 60 of the Act of 1905,⁴ the Board of Trade may from time to time make general rules, subject to the provisions of the Act, for regulating the practice under the Act, for classifying goods and for certain other purposes. The trade mark rules, forms, and classification at present in force under this section are those of 1906, which came into operation on April 1st, 1906.⁵

The Comptroller or Registrar.

The Register was formerly under the control of the Registrar appointed in pursuance of the Act of 1875, but it, as well as the whole of the Patent Office, of the business of which it forms part, has since the Act of 1883 been under the immediate control of the Comptroller-General of Patents, Designs, and Trade Marks, who is, however, in the Act of 1905 referred to as the Registrar.⁶ He is appointed by, and acts under the superintendence and direction of, the Board of Trade.⁷ He may in any case of doubt or difficulty arising in the administration of any of the provisions of the Act, apply to either of the law officers for directions in the matter.⁸ The Registrar's address is, The Registrar, Patent Office, Trade Marks Branch, 25, Southampton Buildings, London.

Any act or thing directed by the Acts to be done by or to the Comptroller may be done by or to any officer authorised by the Board of Trade.⁷ The business in relation to trade marks is, in

¹ Act of 1905, sec. 6, replacing sec. 114 of the Act of 1883.

² Below, pp. 121 and 699.

³ As to the Manchester Branch Office, see below, p. 122, and as to the Sheffield registry, p. 117.

⁴ Replacing sec. 101 of the Act of 1883.

⁵ See Appendix, p. 655. The Rules replaced the Rules of 1890, as amended by those of 1897 and 1898. The classification has, except in a minor point, in class 23, never been altered, although it is now very inadequate.

⁶ Sec. 4.

⁷ See sec. 74, and Patents and Designs Act, 1907, s. 62. Lord Herschell's committee recommended that the practice which had grown up of consulting the Board of Trade in particular instances, in regard to applications for registration, should cease, except so far as it might be necessary to bring such instances before them by way of illustration for the purpose of obtaining a direction on some point of general principle or practice: Report of 1888, p. vii.

⁸ Sec. 56: See below, p. 77.

practice, undertaken by the Registrar of Trade Marks on behalf of the Comptroller.

In addition to the matters directed by sec. 4, quoted above, to be entered upon the Register, there are under Rule 64 to be entered also the date of the application for registration, which is treated for the purposes of the Act as the date of registration,¹ a statement of the goods for which the mark is registered,² particulars of the trade, business, profession or occupation, if any, of the proprietor, and such other particulars as the Registrar may deem necessary. In conformity with some early decisions under the Registration Acts, notes were entered on the Register of undertakings by the proprietor to confine the use of his mark to goods forming part only of a class, or to restrict the manner of use of his mark,³ and in regard to other restrictions on the full rights ordinarily conferred by a simple registration.⁴ It was decided however in a later case⁵ that notes expressing a condition of registration that the mark should only be used, or should not be used, within a certain geographical area ought not to be entered on the Register. The Act of 1905 expressly authorises registration subject to conditions⁶ and limitations.⁷ In a case under that Act in which Kekewich, J., upon an undertaking being given by the applicants, declared the mark to be distinctive within sec. 9, he directed the undertaking to be given to the Court in the usual way.⁸ Disclaimers are authorised by sec. 15.⁹

Entries on
the Register.

No notice of any trust may be entered upon the Register or is receivable by the Registrar, whether the trust be express, implied, or constructive,¹⁰ but equities may be enforced.¹¹ The entry of a reference to an agreement limiting the rights of the proprietor of

No trusts to
be entered.

¹ Sec. 16.

² Sec. 8. See form of application, Form TM No. 2, Appendix, p. 678.

³ See below, pp. 229 and 298; and *Re Babone & Co.*, Seb. Dig. p. 395 (1879), Jessel, M.R.; *De Oladuy's Tm.* (1885), W. N. p. 177, Pearson, J.; *Mitchell & Co.'s Tm.* (2), 28 C. D. 666 (1885), Chitty, J.; *Keep's Tm.*, 26 C. D. 187 (1884), Pearson, J.

⁴ In the recent case of *Verschure and Zoon's Application*, 22 R. P. C. 568 (1905), Warrington, J., registration was allowed subject to a condition.

⁵ *Dechurst's Tm.*, [1896] 2 Ch. 137; 13 R. P. C. 288, C. A.; and see below, p. 230.

⁶ Secs. 12 (2) and (4), 13, 14 (4) and (6), 21, 23, 24. See below, p. 76.

⁷ Secs. 10 (colour), 21. See below, pp. 209 and 264.

⁸ *Apollinaris Application*, [1907] 2 Ch. 178; 24 R. P. C. 436.

⁹ See below, Chap. IX., p. 212.

¹⁰ Sec. 5. Cf. Companies Act, 1862, s. 30.

¹¹ Sec. 38, replacing a similar provision in sec. 87 of the Act of 1883.

the mark and not stating its terms, was under the former Acts held to be irregular.¹

Title conferred by registration.

There is no patent or other document issued by the Registrar conferring a title to a trade mark, but on the registration of a trade mark the proprietor, according to the Act of 1905, receives a certificate of registration.² Under the Act of 1883, as amended by that of 1888, it was expressly provided that the application, followed by the registration of the trade mark, should be equivalent to the public user,³ by which, and by which alone, title to a trade mark was acquired before the Acts.⁴ But this provision has now been dropped, being deemed unnecessary.⁵ Registration itself, if valid, confers the exclusive right to the use of the mark,⁶ and, except in the case of an old mark of which registration has been refused, it is a condition precedent to any proceedings for the infringement of the trade mark.⁷ The fact of registration is also *prima facie* evidence of validity, and after a certain period and subject to certain exceptions, a registration cannot be impugned.⁸ The person registered as proprietor has power to assign the trade mark.⁹

Alterations of the Register.

Provision is made for the rectification of the Register,¹⁰ and also for the correction of clerical errors, for the entry of a change of name or address, for cancellation of the mark or of some of the goods for which it is registered, and for the entry of a disclaimer or memorandum not extending the rights given by the registration. These last-mentioned matters may be done by the Registrar at the instance of the proprietor.¹¹

Alterations of the mark itself, not substantially affecting its identity, may also be made by the Registrar on the application of the proprietor.¹²

Falsification of the Register.

The falsification of entries in, or of writings purporting to be copies of entries in, the Register, and the tendering or production

¹ *De Otuluy's Tm.* and *Mitchell & Co.'s Tm.*, above, p. 59, note (3).

² Sec. 17, Rule 67, and Form O, No. 23, below, p. 683.

³ Act of 1888, s. 17.

⁴ See the last Chapter.

⁵ See Chap. XII., p. 324.

⁶ Sec. 39, replacing sec. 76 of the Act of 1883. See Chap. XII.; below, p. 321, Effect of Registration.

⁷ Sec. 42, replacing sec. 77 of the Act of 1883. See Chap. XII.; below, p. 334.

⁸ Secs. 40 and 41. See Chap. XII.; below, pp. 329 *et seq.*

⁹ Sec. 38, replacing sec. 87 of the Act of 1883. See Chap. XIII., p. 345.

¹⁰ Sec. 35, replacing sec. 90 of the Act of 1883. See Chap. XI.; below, p. 276, Rectification of the Register.

¹¹ Sec. 32. Cf. sec. 91 of the Act of 1883. See Chap. XI.; below, p. 313.

¹² Sec. 34. Cf. sec. 92 of the Act of 1883.

of any such entry or writing, knowing it to be false, is a misdemeanour.¹

Devolutions of title to a trade mark by assignment, transmission, or other operation of law, are directed to be entered on the Register by the Registrar at the request of the person becoming entitled, and upon proof to the satisfaction of the Registrar of the title of the applicant.²

Devolution of title.

Registration is for a period of fourteen years, but is renewable.³

Period of registration.

A trade mark may be removed from the Register on the ground that at the time of registration the applicant had no *bonâ fide* intention of using it, and that there has been no *bonâ fide* user in fact, or on the ground of non-user for five years before the application to remove it, subject to a qualification in the case of special circumstances,⁴ or it may be removed whenever the mark is on the Register without sufficient cause.⁵ A trade mark can also be removed for non-payment of a renewal fee.⁶ In all cases of removal a record of the removal and of the cause thereof is entered on the Register.⁷

Removal of entries.

The Register is open to the inspection of the public on payment of the prescribed fee (which is at present one shilling for every quarter of an hour spent in inspecting) on every weekday between the hours of ten and four, except on the usual holidays and days of which due notice is given at the Patent Office.⁸

Inspection of the Register

It is generally advisable before offering a trade mark for registration to cause a search to be made through the Register, to discover whether any of its essential features have been anticipated in such manner as to be a bar to the application,⁹ and it is often necessary for other purposes. Under the present rules an official search may be obtained as to the marks in any class on record (not merely registered marks) resembling a mark sent in to the Registrar.¹⁰ Searches are greatly facilitated by the indexes with which the Register is provided. There are three of

Searches.

Indexes.

¹ Sec. 66, replacing sec. 93 of the Act of 1883; below, p. 585.

² Sec. 33, replacing sec. 87 of the Act of 1883. See Chap. XIII.; below, p. 345, Assignment and Devolution of Trade Marks. Rules 76 to 81.

³ Secs. 28 and 29.

⁴ Sec. 37. As to the law under the previous Acts, see *Batt's Tm.*, [1898] 2 Ch. 432; 15 R. P. C. 262, 534, Romer, J., and C. A.; and in House of Lords,

sub nom. *Batt v. Dunnell*, [1899] A. C. 428; 16 R. P. C. 411; and Chap. XIV., below, p. 362.

⁵ Sec. 35.

⁶ Sec. 30; and below, p. 372.

⁷ Rule 74. Cf. Rule 47 of 1890.

⁸ Sec. 7. Rule 96.

⁹ Chap. X.; below, p. 221.

¹⁰ Rule 95. Form TM No. 28, below, p. 691.

these, and they include both actually registered and advertised trade marks. They are:—

- I. An index of marks arranged in each class in the order of advertisement;
- II. An index of devices arranged in each class under the following heads :
 - (1) Animals, including insects and reptiles.
 - (2) Birds.
 - (3) Buildings and landscapes.
 - (4) Crests, including crowns, coats of arms, and heraldic symbols.
 - (5) Fish.
 - (6) Geometrical forms, including suns, moons, stars, &c.
 - (7) Human figures.
 - (8) Miscellaneous.
 - (9) Monograms.
 - (10) Shipping, including anchors and flags.
 - (11) Trees, flowers, fruit, &c.

(and warning is given that, in using this index, it is often necessary to look under several heads in order to insure a complete search);
- III. An index of words forming the essential or material features of marks.

It is to be regretted that the recommendation of Lord Herschell's committee,¹ that a catalogue of words rejected should be kept, has not been followed.

Certified copies of the Register, sealed with the seal of the Patent Office, of any entry in the Register, are directed to be given to any person requiring the same on payment of the prescribed fee.² And printed or written copies of or extracts from the Register, purporting to be certified by the Registrar and sealed with the Patent Office seal, are receivable in evidence without proof or production of the originals.³ And a certificate, purporting to be under the hand of the Registrar, of any entry, matter, or thing, which he is authorised by the Act or Rules to make or do, is *prima facie* evidence of the entry and of its

Certified
copies of the
Register to be
evidence.

Registrar's
certificate to
be evidence.

¹ Report of 1888, p. ix. All applications to the Manchester Branch, whether resulting in registration or not, may be inspected: sec. 64 (11), below, p. 125.

² Sec. 7, replacing a similar provision

in sec. 88 of the Act of 1883. For fees, see Appendix, p. 673.

³ Sec. 50. Cf. sec. 89 of the Act of 1883.

contents, and of the matter or thing having been done or not done.¹ As already noticed,² a certificate of the fact of registration is now given on registration of a trade mark. This is given without fee.

Rule 102 requires that every certificate of registration, other than such as last mentioned, shall have specified on the face of it a statement whether it is intended to be used in legal proceedings, or for the purpose of obtaining registration abroad, or for other purposes; and the fees payable for the certificates vary according to the uses which they are to serve.³

The seal of the Patent Office and impressions thereof are to be judicially noticed and admitted in evidence.⁴

Any application, statement, notice, or other document, authorised or required to be left, made, or given at the Patent 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; and if so sent, is to 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 is sufficient to prove that the letter was properly addressed and put into the post.⁵ The Rules contain provisions as to the addresses of registered proprietors, and for addresses to be furnished to the Registrar,⁶ and as to addresses for service of applicants, opponents, agents and proprietors not residing or carrying on business in the United Kingdom.⁷

Where the last day fixed by the Act or Rules for leaving any document or paying any fee at the office falls on a public holiday, Saturday, or Sunday, such day is not counted.⁸

Section 55 of the Act of 1905 provides that where by the 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

Purpose of certificate of registration to be stated.

Patent Office seal.

Notices and documents may be sent by post.

Addresses.

Excluded days in computing time.

Agency.

¹ Sec. 51, replacing sec. 96 of the Act of 1883.

² *Supra*, p. 60.

³ For fees, see the Forms and the Table of Fees, Appendix, pp. 676 and 673; and for form of request for certificates, Forms TM Nos. 31 to 34; below, pp. 696 *et seq.*; and as to Cotton Marks, Form, Cotton, No. 4, below, p. 694. A special certificate of an application for registration of a cotton mark is provided for by sec. 64 (12). See Chap. VII.,

p. 125.

⁴ Sec. 64 of the Patents and Designs Act, 1907, replacing sec. 84 of the Act of 1883.

⁵ Rule 7. Cf. sec. 97 of the Act of 1883.

⁶ End of Rule 7 and Rule 8, below, p. 656.

⁷ Rule 9, below, p. 656.

⁸ Rule 100, below, p. 668. Formerly provided for by sec. 98 of the Act of 1883.

thereto, such act may, under and in accordance with rules made under the 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.¹

By Rule 10 of the Rules of 1906,² 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. The agent's authority is to be in Form TM No. 1,³ or in such other form as the Registrar may deem sufficient.⁴ Service upon the agent of any document relating to the trade mark is to be deemed to be service upon the person so appointing him, and all communications directed to be made to such person in respect of the trade mark may be addressed to the agent. The Registrar is not to 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, relating to the registration of patent agents,⁵ and not since restored.

Exercise of
discretionary
power by
Registrar.

When any discretionary or other power is given to the Registrar by the Act or Rules made thereunder he is not to 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.⁶

¹ The matter was previously one dealt with by the Rules. See Rule 2 of 1898.

² Below, p. 656, where the Rule is fully set out, and see Rule 2.

³ Below, p. 677.

⁴ As to the signature of the authority, where the principal is a firm, partnership or body corporate, see Official Instructions, below, p. 706.

⁵ Now replaced by secs. 84 and 85 of the Patents and Designs Act, 1907. See the Register of Patent Agents Rules, 1908.

⁶ Sec. 53. The prescribed time is one month from the date when the matter has arisen: Rules 83 to 86, Appendix, p. 666.

CHAPTER IV.

REGISTRATION OF TRADE MARKS.

	PAGE
Sec. 12	66
1. Who may apply to register	67
the proprietor	67
an importer	68
registration by licensee under patent	69
application through an agent	70
registration in the agent's name	70
2. The Registrar's discretion	70
reasons for refusal to register	71
nature of the discretion	72
to be judicially exercised	75
consents	76
acceptance subject to conditions	76
Registrar to hear applicant before refusing registration	76
Registrar may consult law officers	77
3. Procedure on application to register	77
ordinary applications to register	78
form of application	78
word in foreign language or characters	78
essential particulars and disclaimers	78
procedure on receipt of application	79
abandonment of application	80
advertisement	80
registration	81
death of applicant	81
certificate	81
special applications under sec. 9 (5)	82
standardisation marks under sec. 62	83
amendments	84
enlargement of prescribed times	84
4. Opposition to registration	85
sec. 14	85
Rules	86
who may oppose	88
statement of grounds of opposition	88
summary of procedure on an opposed application	89
amendments and enlargement of time	90
grounds of opposition	91
5. Appeal from the Registrar	92
the tribunal of appeal	92
appeal to the Board of Trade	92
appeal to the Court	94
reference of rival claims to the Court	95

	PAGE
5. Appeal from the Registrar—continued.	
address for service	96
evidence	96
modification of application at the hearing	97
disclaimers	98
what objections the Court can consider	98
6. Costs	99
costs before the Registrar	99
costs on appeal to the Court	99
costs on appeal to Court in an opposition	100
jurisdiction on appeal as to costs before Registrar	101
costs on appeal to the Board of Trade	101
costs on withdrawal of application	101
security for costs	102
7. Renewal of Registration	102

REGISTRATION of trade marks is now governed by secs. 8 to 21, 24, 25, 26, 62, 63 and 64 of the Act of 1905;¹ and, subject to the provisions of the Act, the practice of registration is regulated by the Trade Mark Rules, 1906. Of the sections mentioned, secs. 9, 10, and 62, relating to what may be registered;² sec. 11 and secs. 19 to 21, imposing certain restrictions on registration;³ sec. 15, providing for disclaimers;⁴ secs. 24 to 26, relating to associated trade marks;⁵ sec. 63, relating to Sheffield marks;⁶ and sec. 64, relating to cotton marks,⁷ are dealt with in other chapters of this book. The present chapter deals with the application for registration and the procedure consequent on it, contained in secs. 12 to 14 and 16 to 18 and in the Rules. In the drafting of the Act of 1905, many provisions contained in the Acts of 1883 and 1888 were omitted, as being mere matters of procedure to be dealt with in the Rules.

By sec. 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.

(3) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the

¹ For the secs. of the repealed Acts which regulated registration, see the comparative tables showing the corresponding sections, below, p. 592.

² Chap. VIII., p. 127.

³ Chap. X., p. 221.

⁴ Chap. IX., p. 212.

⁵ Chap. V., p. 107.

⁶ Chap. VI., p. 112.

⁷ Chap. VII., p. 121.

Sec. 12.

Application
for Registra-
tion.

grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Board of Trade or to the Court at the option of the applicant.

(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.

(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.

(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.

1. Who may apply to Register a Trade Mark.

The section says "any person claiming to be the proprietor," but if it is shown that the claim is a wrongful or an erroneous one the mark should be refused registration, and, if registered, it can be removed under sec. 35, unless protected by sec. 41.¹

Person includes any body of persons corporate or unincorporate,² and the Rules provide for the mode of execution of the application in the case of a firm or partnership, and in the case of a body corporate.³

Proprietor means the person who is entitled to a mark in which trade mark rights have been acquired by user under the law apart from the Acts, either by himself or by his predecessor in business, the trade mark having been assigned to, or having devolved upon, him with the goodwill of the business in

The proprietor.

¹ See Chap. XI., p. 276, Rectification of the Register. 1889.

³ Rule 17, and see Official Instructions, below, p. 706.

² Sec. 19 of the Interpretation Act,

connection with which it is used,¹ or else the person who has invented² or selected, or caused to be invented or selected,³ a mark which is new in respect of the class of goods for which registration is sought. The definition of a trade mark for the purpose of the Act of 1905 includes a mark proposed to be used, as well as a mark actually used.⁴

An importer.

An importer of goods produced abroad, whether by manufacture, or by a process of nature—as, for instance, mineral waters—is not the proprietor of the trade mark of the producer, even though he has an exclusive contract for importation of the goods into, or for dealing with them in, this country, and notwithstanding that the producer consents to his application to register.⁵ “The registration by the importer was wrong,” says Fry, L.J., who delivered the judgment of the Court of Appeal in the case in which this was decided. He added: “If the mark registered had been one which indicated the importer it might have been maintained;⁶ but an importer has no right to appropriate to himself a mark which, as in this case, both by user and express statement on its face, asserts itself to be a mark of the producer or of the owner of the place of origin, because at the time of the registration the mark was an old one, and of course could not be registered as a new one; it was an old one of Kreuzberg’s (the producer), and therefore could not be registered as an old one of the Apollinaris Company” (the importers).

It was argued on behalf of the company, in the case just referred to, that, being entitled by the terms of a contract with the producer to the whole produce of the spring from which the

¹ See Chap. II., p. 22. Where a person has become the absolute owner in equity of a business and a trade mark used in it, an application by him to register the trade mark will be entertained by the office, although he has not the legal title, but the application must be in the name of the real person applying, and not in the name of a predecessor no longer entitled to registration: *Heddlé & Co.’s Application*, 20 R. P. C. 599 (1903), Byrne, J.

² *Hudson’s Tm.*, 32 C. D. 311; 3 R. P. C. 155 (1886), C. A.; cf. *Munch’s Application*, 50 L. T. 12 (1884), Chitty, J.

³ *I.e.*, for himself. See *Roger’s Tm.*,

12 R. P. C., at p. 156 (1895), North, J.

⁴ Sec. 3.

⁵ *Apollinaris Co.’s Tm.*, 1891, 2 Ch. pp. 226—230; 8 R. P. C. 137, C. A.; and *European Blair Camera Co.’s Tm.*, 13 R. P. C. 600; 75 L. T. (N. S.) 63 (1896). Cf. *Defries & Sons, Ltd. v. Electric and Ordnance Accessories Co., Ltd.*, 23 R. P. C. 341 (1906), Joyce, J., where the vendor of goods made to his order abroad was held entitled to a name associated with the goods (*Stewart Arc Lamps*).

⁶ Cf. the judgment of Jessel, M.R., in *Hirsch v. Jonas*, 3 C. D. 584; 45 L. J. Ch. 364 (1876), cited p. 54.

producer obtained the goods to which the mark was attached, the company were entitled to register the mark as their own; but the Court refused to determine this question, since the contract relied on was, in fact, subsequent in date to the registration of the mark by the company.

In cases where a mark is used by a sole importer there may be a question whether it is his mark, signifying that the goods which bear it have been selected or imported by him, or the mark of the producer, signifying, as in the common course, that the goods are his manufacture, and this question must be decided according to the manner in which the mark and goods are put before the public.¹

Where the mark belongs to the importer.

So where a manufacturer abroad sold and sent goods bearing the words *Bull's-eye*, his trade-mark, to a person in England, the importation of such goods into this country, coupled with the circulation of certain pamphlets containing the words, was held to be such a use here of those words by the manufacturer as to prevent the importer setting up a claim to the exclusive use of them, although the words were only known to the public in connection with goods sold by the importer. And the registration of the words by the importer was ordered to be expunged.²

Where a person has sold goods under a licence from the owner of a patent giving to them a certain name, a question may arise whether the name is the name of the article or indicates the goods of the person dealing in them. Thus, in *Freeman v. Sharpe*:³ the patented article had been sold by the licensees under the name *Capstan*, and they had registered that word as a trade mark by arrangement with the plaintiffs. On the termination of the licence the licensees made and sold a somewhat different article under the name *Capstan No. 2*, and the plaintiffs,

Registration by licensee under patent.

¹ See *Hirsch v. Jones*, p. 68, note (6), and the *European Blair Camera Co.'s Tm.*, 13 R. P. C. 600 (1896), and *Defries & Sons, Ltd. v. Electric and Ordnance Accessories Co., Ltd.*, supra, p. 68, note (5); and Chap. II., p. 54. *Goodfellow v. Prince*, 35 C. D. 9; 56 L. J. Ch. 545 (1887), C. A.; *Robinson v. Finlay*, 9 C. D. 487; 39 L. T. (N. S.) 398 (1877), C. A.; and *Jones' Tm.*, 53 L. T. 1 (1885), C. A., were cases of joint ownership of trade marks. In *Sarlechner v. Apollinaris Co.*, [1897] 1 Ch. 893; 14 R. P. C. 645, Kekewich, J. (a passing-off case), the de-

fendants had had by contract for many years the exclusive sale in the United Kingdom of *Hunyadi Janos* water, and on the determination of the contract they were restrained from using the word *Hunyadi* on other water without clearly distinguishing the same from *Hunyadi Janos* water, but it was held that a red mark which they had used on *Hunyadi*, and also on other waters, was their own trade mark.

² *European Blair Camera Co.'s Tm.*, 13 R. P. C. 600 (1896), Stirling, J.

³ 16 R. P. C. 205 (1899), North, J. (*Capstan Closets*).

the owners of the patent, which was still unexpired, sought to restrain such use of the word *Capstan*, and to expunge the mark from the Register, on the ground that the word was the name of the article, and that the goodwill of the defendants in the article had determined. Both the action and the motion to rectify failed, the Court finding that the name indicated goods manufactured and sold by the defendants in the action.

Application
through
agent.

The application for registration may be made by or through an agent duly authorised to the satisfaction of the Registrar.¹ If the proprietor appoints an agent, he will be bound by his acts, so that where, under the Act of 1883, by the default of the agent, the registration was not completed within twelve months, it was deemed to have been abandoned.²

Registration
in the agent's
name.

If the mark is, as sometimes happens, by the agent's mistake or fraud, registered in the name of the agent instead of that of his principal, it may be removed and a new application made.³ In some cases, where there has been no wrongful intention on the part of the agent, an assignment to the principal,⁴ or to his successor in business,⁵ has been permitted, or a rectification of the Register effected;⁶ but the authorities are conflicting upon the question whether either of these courses ought to be allowed.⁷ Where an agent acting for two separate principals has, by mistake, registered the trade mark of one in the name of the other, removal and a fresh application are necessary.⁸

2. The Registrar's Discretion.

The Registrar has a discretion under the Act to register or to refuse any trade mark which falls within the class of things which may be registered under the Act, and which is not debarred from registration by some provision of the Act. The following

¹ See above, p. 63.

² *Jackson & Co. v. Nipper*, 35 C. D. 162; 4 R. P. C. 45 (1887), Stirling, J.; *Loftus' Tm.*, [1894] 1 Ch. 193; 11 R. P. C. 29, North, J. As to the practice under the present Act, see below, p. 80.

³ *Marler's Tm.*, 44 L. T. 98, n. (1878), Jessel, M.R.

⁴ *Farina's Tm.*, 44 L. T. 99, n. (1881), Jessel, M.R.

⁵ *Welcome's Tm.*, 32 C. D. 213; 3 R. P. C. 76 (1886), Chitty, J.; *Re*

Australian Wine Co., 61 L. T. 427, n. (1885), Chitty, J.; *Greenlees' Tm.*, 9 R. P. C. 93 (1892), Stirling, J.

⁶ *Rust's Tm.*, 44 L. T. 98, n. (1880), Jessel, M.R.

⁷ See *Rivière's Tm.*, 55 L. J. Ch. 545 (1886), C. A., and note (8); and cf. *Grocott's Design*, 17 R. P. C. 139 (1900). See also Chap. XI., p. 301.

⁸ *Kingsford & Son's Application*, 6 R. P. C. 413; 61 L. T. 426 (1889), Kay, J.

table shows the reasons for refusal which arise under the Act and Rules themselves:—

Reasons for refusal of the application.

- (1) The application is not made by or on behalf of any person (properly) claiming to be the proprietor of the mark.¹
- (2) It is not made in proper form.²
- (3) It is deemed to be abandoned.³
- (4) The mark tendered does not consist of or contain any of the essential particulars of a registrable trade mark.⁴
- (5) The application is successfully opposed.⁵ Besides any other ground for refusal, an opponent may show that the registration of the proposed mark would be unjust to him, *e.g.*, by giving to the applicant the exclusive right to use a mark which he is already lawfully using, though not as a trade mark,⁶ or he may show that it is a common mark.⁷
- (6) Where there are conflicting claims to registration, the Registrar may refuse to register upon any of them until the rights have been determined by the Court or have been settled by agreement in a manner approved by him or (on appeal) by the Board of Trade.⁸
- (7) The mark tendered is identical with, or has a resemblance which is calculated to deceive to, another mark already on the Register for the same goods or description of goods.⁹
- (8) It contains matter the use of which, by reason of its being calculated to deceive or otherwise, would be disentitled to protection in a Court of Justice.¹⁰
- (9) Its use would be contrary to law or morality.¹⁰
- (10) It comprises a scandalous design.¹⁰

¹ Sec. 12 (1); above, p. 66.

² See Procedure on Application to Register; below, p. 77. "Prescribed" means prescribed by the Act or the rules thereunder, sec. 3. See also *Wright, Crossley & Co.'s Application*, [1900] 2 Ch. 218; 17 R. P. C. 386.

³ Sec. 18, p. 80.

⁴ Sec. 9, Chap. VIII., p. 129.

⁵ Sec. 14, pp. 85, 86 *et seq.*

⁶ See per Cotton, L.J., in *Hudson's*

Tm., 32 C. D. p. 320; 3 R. P. C. 155 (1886); *Roger's Tm.*, 12 R. P. C. 149 (1895), North, J. And see Chap. X., p. 221.

⁷ Chap. VIII., p. 177. Of course a common mark is not distinctive, and therefore falls under the fourth objection.

⁸ Sec. 20, p. 223.

⁹ Sec. 19, p. 222.

¹⁰ Sec. 11, p. 266.

- (11) It contains the name or a description of goods other than those in respect of which the application is made.¹
- (12) It contains one or more of the things which, according to the rules, cannot be registered as marks or parts of new marks.²

Nature of the Registrar's discretion.

The discretion to refuse to register which is vested in the Registrar is a judicial discretion, and is subject to the appeal referred to below. It is submitted that, in the exercise of it, regard ought not to be had to considerations other than those just enumerated above, or such further objections, if there are any, as would have been bars to the acquisition of trade mark rights at common law, or as are sanctioned by the terms of the Act, or are founded on general principles of law.³ In some of the cases decided under the Act of 1875 or the Act of 1883 and cited in the next paragraphs, however, the Comptroller's discretion has been referred to in very general terms; but these references ought, probably, to be understood as directed to cases of suggested deceptive marks, such as those in which the several *dicta* were spoken.⁴

"The Comptroller," Kay, J., said, in *The Emollio* case,⁵ "when he is asked to register a trade mark, is bound to consider whether, looking to all the circumstances of the case, he can exercise his discretion by permitting the trade mark to be registered." And in *The Australian Wine Importers'* case,⁶ the same

¹ Rule 16, p. 658.

² These are (Rule 11) the words "patent," "patented," "by royal letters patent," "registered," "registered design," "copyright," "entered at Stationers' Hall," "to counterfeit this is forgery," or words to like effect; also representations of their Majesties, or of any member of the Royal Family. The Royal arms, the British Royal crowns, the British national flags, and certain other devices are by Rule 12 prohibited from registration. See Appendix, p. 657.

See also *Hubbuck v. Brown*, 17 R. P. C. 118 (1900), where Kekewich, J., whose decision was subsequently affirmed by the Court of Appeal (17 R. P. C. 638), said that the exclusive right to the royal arms could not be claimed by the plaintiffs.

³ In *Players' Application*, [1901] 1 Ch. 382; 18 R. P. C. 65. Cozens-Hardy,

J., upheld the Comptroller's objection that the mark applied for was substantially the same as a previously registered mark of the applicants'. See now associated marks, p. 108. The use of the word "registered" before registration may be a ground for refusal, if not explained as a *bonâ fide* mistake or if no other satisfactory explanation is given: *Altman's Application*, 21 R. P. C. 753 (1904), Kekewich, J.; *Lyle and Kinahan's Application*, 24 R. P. C. 37 and 249 (1907), C. A.

⁴ And for instance, *Dewhurst's Application*, [1896] 3 Ch. 137; 13 R. P. C. 288, C. A.

⁵ *Grossmith's Tm.*, 6 R. P. C. 150; 69 L. T. 612 (1889).

⁶ 41 C. D. 278; 6 R. P. C. 311 (1889). See also *Turner & Sons' Tm.*, 11 R. P. C. at p. 44 (1894), North, J.

learned judge said: "Does it follow because (the opponent) could not get an injunction, that (the applicant) is entitled to put the trade mark on the register? In my opinion, it does not follow at all, and I have said so many times. In my opinion the Comptroller ought to exercise his discretion in a wise¹ and comprehensive way."

The existence of a discretion to refuse registration was asserted in the most decisive manner by the majority of the Law Lords in the House of Lords in *The Fruit Salt* case.² There, Lord Herschell said: "The case was argued on behalf of the respondent as if he had an absolute right to have any trade mark registered which was not proved to fall within the terms of either the 72nd or 73rd section of the Act." Those sections prohibit the registration of a trade mark in certain specified cases, but there is no duty cast upon the Comptroller of registering every other trade mark that may be applied for. On the contrary, whilst he is in certain cases prohibited from registering, a discretion whether to register or not appears to me to be in all other cases plainly conferred. Of course, this discretion must be reasonably and not capriciously exercised; but it is, in my opinion, a reasonable exercise of it to refuse registration when it is not clear that deception might not result from it." And Lord Watson said that in cases where it is doubtful whether a trade mark tendered for registration is calculated to deceive or not, the application ought to be disallowed. Lord Halsbury, who dissented from the conclusion arrived at in the case, treated the Comptroller's discretion as more closely limited. "While I agree," he said, "that no absolute right to the registration of a trade mark is given to an applicant for registration, the meaning and intent of the statute itself is that, unless for some of the reasons contemplated by the statute, there is an objection to the registration, the trade mark ought to be registered. Unless we are of opinion that there is something in the proposed trade mark which the statute renders an objection to its registration, we ought to grant the application" (to register). And this opinion accords with that expressed by Lord Blackburn in *The Orr-Ewing* case, soon after the passing of the Act of

Eno v. Dunn.

The Orr-Ewing case.

¹ *Quere* vide.

² *Eno v. Dunn*, 15 App. Ca. 252; 7 R. P. C. 311 (1890), Lds. Watson, Herschell, and Maenaghten. Lds. Halsbury and Morris dissented from the

decision arrived at, which was that the mark in question was calculated to deceive.

³ For these sections see Appendix, p. 631.

1875.¹ “I cannot construe this section,”² his Lordship said, “as meaning anything else than that, when the Court of Chancery is satisfied that the applicant is a person who is, for the time being, entitled to the exclusive use of a trade mark in accordance with law, and that the trade mark is one within (the definition section of the Act), the Court is, *ex debito justitiæ*, to rectify the register,³ just as it would, before the Act of 1875, have been bound *ex debito justitiæ* on similar proof, to prevent anyone infringing the trade mark shown to be his property. The burden of proof lies upon the person making the application to amend the register: but if he does produce such proof as would, in the opinion of the Court, entitle him to an injunction, I do not think the words ‘if satisfied of the justice of the case’ can, or ought to be, construed as meaning to give the Court a discretion to consider whether the nature of the trade mark is such as to make it inconvenient that he should exercise the right of property which it is proved he actually has.”

The opinion last cited was delivered in a case where the marks concerned were old marks, and the apparent conflict between it and the opinions of the majority of the Law Lords in *The Fruit Salt* case may probably be reconciled by treating the doctrine of a right *ex debito justitiæ* to register as applicable only to marks used as trade marks before August 13th, 1875. The Act of 1875 excepted from the prohibition of actions for the infringement of unregistered trade marks the cases of such old marks as should be refused registration under it.⁴ The exception was, however, cited by Lord Blackburn in his opinion. He stated that it did not affect the conclusion he had arrived at.

In his dissenting judgment in *The Somatose* case,⁵ Lindley, L.J., said: “The sections (*i.e.*, secs. 70, 72 and 73) and the discretion given by sec. 62 (4) of the Act of 1883 . . . would clearly justify

¹ *Orr-Ewing v. The Registrar of Tms.*, 4 App. Ca. 479; 48 L. J. Ch. p. 717 (1879). *Id.* Cairns held the same opinion, for he speaks of the appellant’s right to be registered. *Id.* Gordon, the remaining judge, concurred in *Id.* Blackburn’s judgment.

² Sec. 5 of the Act of 1875, corresponding to sec. 35 of the present Act.

³ Upon the refusal of the Registrar to register a mark under the 1875 Act, the procedure by way of appeal was to move

to rectify.

⁴ Sec. 1. Sec. 42 of the Act of 1905 contains a similar exception, as did sec. 77 of the Act of 1883.

⁵ *Farbenfabriken Formals Fricl. Bayer & Co.’s Tm.*, 11 R. P. C. p. 88; [1894] 1 Ch. 645. Kay and Smith, L.JJ., did not discuss this point. In *Verschure and Zoon’s Application*, 22 R. P. C. 568 (1905), Warrington, J., referred to the passage quoted above.

the rejection of any trade mark, even if it contains one of the statutory requisites, if such mark be of an indecent or libellous character, or if it infringes the rights of some other person, or if it is identical with, or so similar to one already registered as to be calculated to deceive. But I can find no other restriction, and if a person seeks to register a mark which is open to none of these objections, and which does contain one of the essentials mentioned in sec. 10 of the Act of 1888, I am aware of no legal principle which would justify the Court in refusing to direct its registration."

In *The Solio* case, Kekewich, J.,¹ in upholding the refusal by the Comptroller to register the word *Solio*, gave considerable weight to the consideration that he would be overruling the discretion of the Comptroller, and reversing a practice of the office not to register in connection with photographic materials words indicating a connection with the sun; but in the Court of Appeal,² and also in the House of Lords,³ where the registration was allowed, the question was treated as being purely whether the word fell within one of the essential particulars defined in the Act.⁴

In a recent case,⁵ Fletcher Moulton, L.J., after referring to the rights of the registered proprietor of a trade mark to protect it against infringement and to object to the registration of conflicting marks, said: "There are two rights which, although they are not *ex debito justitiæ*, give to an applicant the rights which the Legislature means a trader to possess in defence of those things which he uses as marks of origin in a lawful trade."

In another case,⁶ Farwell, L.J. (then Farwell, J.), said: "The Comptroller undoubtedly has a discretion—a discretion, of course, to be exercised judicially, like all other judicial discretions. There is an appeal to this Court, but the Court ought not to overrule the judicial exercise of the Comptroller's discretion unless it is clearly of opinion that the discretion was wrongly exercised." Still more recently, in an application under the Act of 1905, Kekewich, J., said in effect that although the discretion

Discretion to be judicially exercised.

¹ *Eastman Photographic Materials Co.'s Application*, 13 R. P. C. at p. 709; 76 L. T. (N. S.) at p. 731 (1897).

² 14 R. P. C. 487; 76 L. T. (N. S.) 732.

³ [1898] A. C. 571; 15 R. P. C. 476.

⁴ And see *Linotype Co.'s Application*,

14 R. P. C. 900 (1897), Kekewich, J.

⁵ *Lyle and Kinahan's Application*, 24 R. P. C. 249 (1907), at p. 261.

⁶ *Booth Distillery Co.'s Applications*, 21 R. P. C. 18 (1904). See also *Verschure and Zoon's Application*, 22 R. P. C. 568 (1905).

was open to review, it was exercised in a judicial manner, and, subject to the provisions of the Act, ought not to be readily upset.¹

Consents.

Where the Registrar takes objection to a mark on the ground of its resemblance to a registered mark, the matter is not concluded by the consent of the owner of the latter mark to the registration. Such consent may be evidence as to the improbability of deception. It does not bind the Registrar.²

Acceptance subject to conditions.

It is now expressly enacted that the Registrar may accept a trade mark absolutely or subject to conditions, amendments, or modifications,³ and a like power is conferred on the Board of Trade or the Court on appeal from the Registrar.⁴ These provisions are new, but in a few cases under the old law registration was allowed subject to a condition which was noted on the Register.⁵ But notes as to geographical limits of use were disapproved by the Court of Appeal.² In cases of honest concurrent user they are, however, expressly authorised by sec. 21 of the Act of 1905. The words of sub-sec. (2) are probably wide enough to cover amendments or modifications in the trade mark itself, and not merely in the form of application, which matter is expressly provided for in sub-sec. (6). In one reference to the Court under the Act of 1905 the Court has, in making an order under paragraph 5 of sec. 9, required an undertaking to be given to it.⁶

Registrar to hear applicant before refusing the application.

The Registrar is directed, before exercising his discretion adversely to an applicant for registration, if so required within one month from the date of his objection, to give the applicant an opportunity of being heard personally or by his agent, by sending the applicant ten days' notice of a time when he may be so heard, and the applicant is directed, within five days from the date when such notice would be delivered in the ordinary course of the post, to notify to the Registrar whether he intends to be so heard or not.⁷

The decision of the Registrar against an applicant for the registration of a mark is subject to appeal to the Board of Trade

¹ *Birmingham Small Arms Co.'s Application*, [1907] 2 Ch. 396; 24 R. P. C. 563.

² *Dewhurst's Tm.*, [1896] 2 Ch. 137; 13 R. P. C. 288, C. A.

³ Sec. 12 (2), above, p. 66.

⁴ Sec. 12 (4), above, p. 67.

⁵ See above, p. 59. In *Verschure and Zoon's Application* (1905), 22 R. P. C.

568, registration of the word "Vezet" was allowed, subject to a condition that the applicants should not claim by virtue of the registration the right to restrain the use of the letters "V. Z."

⁶ *In re Apollinaris Application*, [1907] 2 Ch. 178; 24 R. P. C. 436, Kekewich, J.

⁷ Sec. 53, and Rules 83 to 86.

or to the Court.¹ If required by the applicant, the Registrar is to state in writing the grounds of his decision.² If an applicant contemplates appealing from the Registrar, he should be careful to bring all the materials on which he may wish to rely before the Registrar.³ An appeal is given against a conditional acceptance as well as against an absolute refusal.⁴ On an opposition, an appeal lies to the Court, or, with the consent of the parties, to the Board of Trade.⁵

The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of the Act, apply to either of the law officers for directions in the matter.⁶ It has been decided by the Court of Appeal in a patent case⁷ that in any such case the Comptroller may so apply, notwithstanding that the matter involves a question of construction of the Act, and the Court will not in its discretion grant a mandamus against the Comptroller where he has properly taken the direction of the law officer under the section.⁸ But, of course, the direction of the law officer would not interfere with any right of appeal expressly conferred by the Act.

The Registrar may consult the law officers, and he acts under the Board of Trade.

It was provided by sec. 82 (3) of the Act of 1883 that the Comptroller should act under the superintendence and direction of the Board of Trade, and this provision was continued by sec. 74 of the Act of 1905 with respect to registration of trade marks. It is now replaced by sec. 62 of the Patents and Designs Act, 1907.

3. Procedure on application to Register.

The procedure on an application to register varies according as the application is (1) an ordinary one, (2) a special application under paragraph 5 of sec. 9, or is for (3) a standardisation mark under sec. 62, or (4) a Sheffield mark under sec. 63, or (5) a cotton mark under sec. 64, or (6) a series of trade marks. Applications for Sheffield marks and cotton marks, and for series of marks so far as they differ from ordinary applications, are

¹ Sec. 12 (3), below, p. 92. *Re Australian Wine Importers, Ltd.*, 41 C. D. p. 285; 6 R. P. C. p. 314.

² Sec. 12 (3). Rule 33, Form TM No. 4.

³ See sec. 12 (5).

⁴ Sec. 12 (3). Rule 32.

⁵ Sec. 14 (5).

⁶ Sec. 56, replacing sec. 95 of the Act

of 1883. *Re Tm. Normal*, 35 C. D. p. 245; 4 R. P. C. 123, per Lindley, L.J.

⁷ *R. v. The Comptroller-General of Patents. Ex parte Tomlinson*, [1899] 1 Q. B. 909; 16 R. P. C. 233, Grantham and Kennedy, J.J., and C. A.

⁸ See also the judgment of Lindley, L.J., in *Re Tm. Normal*, 35 C. D. p. 245; 4 R. P. C. p. 123 (1887), C. A.

considered in the chapters specially dealing with those subjects; ¹ the other modes of application are here dealt with.

A. Ordinary applications to Register.

Ordinary applications.

The procedure is prescribed by Rules 17 to 34, 47 to 50, and 62 to 67; it is described in paragraphs 4 to 12 of the Official Instructions.²

Form of application.

A printed form of application, Form TM No. 2, must be obtained and filled up, and a representation of the proposed mark affixed to it, and four additional representations, each on Form TM No. 3, must also be sent in with it.³ The application must be filled up and signed ⁴ in accordance with the rules and the directions given in the notes to the form. If the application is for an old mark, that is, one used before August 13th, 1875, it must contain a statement as to the time during which and the persons by whom it has been used.⁵ If registration in more than one class is required, a separate application must be made for each class.⁶

Word in foreign language or characters.

When a trade mark contains a word or words in other than Roman characters a sufficient transliteration and translation to the satisfaction of the Registrar of each of such words must be given; and where a trade mark contains a word or words in a language other than English, the Registrar may require an exact translation thereof.⁷

Essential particulars and disclaimers.

The present rules and forms do not require the applicant to state in his application the essential particulars of the trade mark or to make any disclaimer; but the Registrar may call on

¹ Sheffield marks, Chap. VI., p. 112; Cotton marks, Chap. VII., p. 121. Series of marks, Chap. V., p. 110.

² Printed in the Appendix, p. 702.

³ The Forms are set out in the 2nd Schedule to the Rules, below, p. 678. Stamped forms must be used; they are obtainable at certain post offices and at the Inland Revenue Office, in the Patent Office, Room 32; see Instructions, below, p. 705.

⁴ Signature, Rule 17. As to applications by agents, see Rule 10, and above, p. 70.

⁵ Rule 20. It was held under Rule 11 of 1890 that where the user claimed has been by a firm, it is not necessary to state the names of the persons who were

from time to time members of the firm, nor to insert the words "and their predecessors in business for the time being": *Wright, Crossley & Co.'s Application*, [1900] 2 Ch. 218; 17 R. P. C. 386, Byrne, J. Stirling, J., had previously held (*Bryant & May's Tm.*, unreported, but cited 17 R. P. C. at p. 396) a statement of user by the applicants or their predecessors in title to be sufficient. An application by a limited company in the names of their predecessors, the late owners of the mark, was held not to be good: *Heddle & Co.'s Application*, 20 R. P. C. 599 (1903), Byrne, J.

⁶ Rule 24.

⁷ Rule 28.

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.¹

The Registrar or the Board of Trade or the Court may require, as a condition of registration, any such disclaimer as they shall consider needful for the purpose of defining the rights of the applicant under the registration.²

What may be essential particulars of registered trade marks is considered in Chapter VIII.,³ and additions and disclaimers are dealt with in Chapter IX.⁴

The address and description of the applicant must in every case be stated in full in the form,⁵ and 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 or the opposition thereto.⁶

Upon receipt of an application for registration the Registrar causes a search to be made amongst the registered trade 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.⁷ If the Registrar thinks there is no objection to the mark being registered, he may register it absolutely, or subject to conditions, amendments, or modifications,⁸ which acceptance is to be communicated to the applicant in writing. On the other hand, if he objects to the registration, a statement in writing of his objections is sent to the applicant, and unless the applicant within one month applies for a hearing,⁹ the application is deemed to be withdrawn.¹⁰ Similarly, if conditions are attached to the acceptance, and the applicant objects to them, he must apply for a hearing within one month, otherwise his application is deemed to be withdrawn. If he does not object to them, he must so notify the Registrar in

Procedure on receipt of application.

¹ Rule 34 ; cf. sect. 15.

² Sec. 15, Chap. IX., below, p. 212.

³ Page 127.

⁴ Page 212.

⁵ As to address, see Rule 8.

⁶ Rule 9.

⁷ Rule 29. Cf. sec. 19.

⁸ Rule 30. As to conditions, see above, p. 76.

⁹ As to hearings, see sec. 53 and Rules 83 to 86.

¹⁰ Rule 31.

writing.¹ After a hearing by the Registrar, he communicates his decision to the applicant in writing, and if the applicant objects to it, he may require the Registrar to state in writing the grounds of his decision, and the materials used by him in arriving at the same.² The date of the sending by the Registrar of such statement is the date of the decision for the purpose of appeal.³

Withdrawal
of acceptance.

An acceptance by the Registrar may, if given by error, or if the Board of Trade in special cases so directs, be withdrawn.⁴ But the applicant has thereupon the same rights of being heard and of appealing as if the mark had been originally refused.⁴ It may happen that in the course of an opposition new grounds for objection on the part of the Registrar may be disclosed, and in such cases the Board of Trade could, under its special power above referred to, direct that the mark should not be registered.

Abandonment
of the appli-
cation.

It is provided by sec. 18 that:—

“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,⁵ treat the application as abandoned, unless it is completed within the time specified in that behalf in such notice.”

Sec. 63 of the Act of 1883, to which sec. 18 corresponds, was held not to operate so as to prevent a fresh application being made in a case where the merits of the abandoned application had never been gone into or considered.⁶

Advertise-
ment.

The Registrar may accept the mark tendered, either absolutely or conditionally, or refuse it. When an application has been accepted, whether absolutely or subject to conditions, the Registrar is, as soon as may be after such acceptance, to cause it, as accepted, to be advertised in the official paper during such times and in such manner as he may direct.⁷ The advertisement sets forth all the conditions subject to which the application has been accepted,⁷ and comprises either a representation of the mark or a reference to the place where a specimen or representation is

¹ Rule 32.

Sec. 12, sub-sec. (3), and Rule 33.
Form TM No. 4.

² Rule 33.

³ Sec. 16 and Rule 63.

⁴ Rule 62, and Form O, No. 1. Four-
teen days is in general the length of

notice.

⁵ *Jackson v. Napper*, 35 C. D. 162; 4
R. P. C. 45 (1886); *Loftus' Tm.*, [1894]
1 Ch. 193; 11 R. P. C. 29; see also
Hayward's Tm., 54 L. J. Ch. 1003; 53
L. T. (N. S.) 487 (1885), Kay, J.

⁷ Sec. 13 and Rules 47 to 49.

deposited for exhibition.¹ The requisite blocks must be furnished by the applicant.² It is open for any one who objects to the registration, within one month after the advertisement, to send in notice of opposition.³ The Registrar may enlarge the time for notice of opposition.⁴ If a modification of the trade mark is allowed in the course of an opposition the trade mark is to be re-advertised.⁵

If there is no opposition, or if the opposition is disallowed, and the Registrar is satisfied that the applicant is entitled to registration, the registration proceeds. This is provided by sec. 16, which is as follows:—

“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.”⁶

Date of registration.

The applicant must, before registration, pay the prescribed fee.⁷ A special power to stop a registration is conferred on the Board of Trade by this section.⁸ The particulars to be entered on the Register have already been noticed.⁹

If the applicant have died before the registration, the Registrar may register the name of the person owning the goodwill of his business, after the death and ownership have been proved to the satisfaction of the Registrar.¹⁰

Death of the applicant before registration

Upon registration, the applicant becomes entitled to a certificate of registration without payment of a fee therefor.¹¹ Where the Registrar refuses an old mark, that is, a mark used as a trade mark before August 13th, 1875, he may, on request, grant a certificate that registration has been refused.¹²

Certificate of registration or of refusal to register an old mark.

¹ Sec. 13 and Rules 47 to 49.

² Rule 48.

³ Sec. 14. See below, p. 85.

⁴ Rule 99.

⁵ Sec. 14 (9).

⁶ As to date, see Chap. XII.; below, p. 321.

⁷ Rule 64, and Form TM No. 11, p. 683, and List of fees, p. 673.

⁸ See also Rule 63, and above, p. 80, Withdrawal of Acceptance.

⁹ Above, pp. 57 and 59.

¹⁰ Rule 66.

¹¹ Sec. 17 and Rule 67. Form of Certificate, Form O, No. 2, p. 683.

¹² Sec. 42. Form TM No. 32 Fee £1. See Table of Fees, p. 673

B. Special Applications under Sec. 9 (5).

If an application is made to register a distinctive name, signature, or word or words, other than such as fall within the descriptions in paragraphs (1), (2), (3), and (4) of sec. 9, an order of the Board of Trade or the Court must be obtained, that the mark is to be deemed a distinctive mark.¹ The four paragraphs referred to are as follows:—(1) The name of a company, individual, or firm represented in a special or particular manner; (2) the signature of the applicant for registration or some predecessor in his business; (3) an invented word or invented words; (4) a word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname. In reference to all other names, signatures, or words, the following procedure is prescribed by Rules 35 to 41, and the ordinary procedure is varied to the extent required by them.² The application must be made on the Special Form TM No. 5, which includes a statement that the applicant desires an order of the Board of Trade or the Court directing registration.³ Upon receipt of the application the Registrar causes 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,⁴ and he notifies to the applicant the result of such search.⁵ The applicant has one month from the receipt of such notification within which to send to the Registrar in writing a case in duplicate 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, and does not obtain any extension of time under Rule 99, his application is deemed to be withdrawn.⁶ If he desires to be heard by the Board of Trade, he must fill up and send with his case Form TM No. 10.⁷ Thereupon the Registrar sends the case and a copy of all

¹ Sec. 9 (5). See also Chap. VIII., p. 127.

² In the nine months of the year 1906, during which the Act of 1905 was in force, 290 applications of this special nature were made; of these 183 were reported to the Board of Trade, and one applicant elected to be heard by the Court: Comptroller-General's Report for 1906.

In the year 1907 there were 202 applications, of which 143 were so reported: Report for 1907.

³ Appendix, p. 680.

⁴ Rule 36.

⁵ Rule 37.

⁶ Rule 38.

⁷ Appendix, p. 682. The fee on such request is £1; see List of fees, p. 673.

communications between himself and the applicant to the Board of Trade.¹ If the applicant desires to be heard, the Board fixes a hearing, and the Registrar may attend and be heard, and the Board makes an order determining whether, and subject to what conditions, amendments, or modifications,² if any, the application is to be accepted, or they may require the applicant to apply to the Court, and limit a time for that purpose.³ If the applicant desires to obtain an order of the Court he must, within one month from sending to the Registrar his case as above stated, bring the matter before the Court by motion, and, if he does not do so, he is to be deemed to have withdrawn his application.⁴ If the application is accepted either by the Board of Trade or the Court, it is to be advertised, and proceedings thereafter are to be had in respect of it as if it had been accepted by the Registrar in the ordinary course.⁵ On an application under this paragraph for the registration of the word "Apollinaris," the Court, subject to an undertaking which it required of the applicants, made an order that that word was to be deemed a distinctive mark within the meaning of the section.⁶

C. Standardisation Marks under Sec. 62.

Section 62 is as follows:—

"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."

Standardisation, &c., trade marks.

¹ Rule 38.

² As to conditions, amendments and modifications. see p. 76.

³ Rule 39. The Act gives the Board of Trade power to refer any appeal under the Act to the Court, sec. 59, but this

hardly appears to be an appeal.

⁴ Rule 40.

⁵ See above, p. 78.

⁶ *Apollinaris Application*, [1907] 2 Ch. 178; 24 R. P. C. 436, Kekewich, J.

An application under this section must be made in duplicate on Form TM No. 6,¹ and be accompanied by six copies of the mark,² and the procedure is prescribed by Rules 42 to 46. The Registrar reports on the application, and sends copies of his report to the Board of Trade and the applicants, and the applicants must within one month from the receipt of such report send the Board in duplicate a case setting out the grounds upon which they rely in support of their application, and if they fail to do so, their application is to be deemed to be abandoned.³ The Board of Trade may call for such evidence as they think fit, and are, if necessary, to hear the applicants and the Registrar, and to make an order determining whether and subject to what conditions, amendments or modifications,⁴ if any, the application may be permitted to proceed. If it be permitted to proceed, it is treated in all respects as an ordinary application, and the mark is advertised.⁵

Sixty-three applications were made under sec. 62 in the year 1906, but fifty of these were made by one association; eleven such applications were made in the year 1907.⁶

Amendments.

Amendment
of applica-
tion.

The Registrar or the Board of Trade or the Court may, at any time, whether before or after acceptance, correct any clerical error in, or in connection with, an application for registration of a trade mark, and may permit an applicant for registration of a trade mark to amend his application upon such terms as they may think fit.⁷ And a more general power of amendment is provided by Rule 98, by which "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 the pre-
scribed times.

It is further provided that the time prescribed by the Rules for doing any act or taking any proceeding thereunder may be enlarged by the Registrar, if he shall think fit, and upon such notice to other parties, and proceedings thereon, and upon such

¹ Appendix, p. 681.

² Rules 42 and 43.

³ Rule 44.

⁴ As to these words, see above, p. 76.

⁵ Rule 45. For fees relating to such application, see List of fees, below, p. 673.

⁶ Comptroller-General's Reports for

1906 and 1907.

⁷ Sec. 12, sub-sec. (6). This is wider than sec. 91 (a) and (d) of the Act of 1883, which it replaces. Whilst an opposition is pending, the Registrar will not as a rule allow an amendment of an application.

terms as he may direct, and such enlargement may be granted though the time has expired for doing such act or taking such proceeding.¹

4. Opposition to Registration.

When the mark has been accepted and advertised, any person—not merely any person who would be aggrieved by the registration²—may oppose the registration by showing that the mark is, or would, if registered, be, an infringement of his rights, or that on any other ground it ought not to be registered.³

The procedure by which an opposition is to be conducted is regulated by sec. 14 of the Act of 1905, and by Rules 51 to 61.⁴

Opposition to registration.

Section 14 is as follows:—

(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.

(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, 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.

(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

¹ Rule 99, and as to opposition proceedings, see Rule 60. As to excluded days, see Rule 100.

² Cf. sec. 35. But see *R. v. The Comptroller-General of Patents, Ex parte*

Tomlinson, [1899] 1 Q. B. 909; 16 R. P. C. 233, C. A.

³ Below, pp. 88 and 91.

⁴ These are summarised in par. 17 of the Instructions, Appendix, p. 711.

and the Registrar, and shall make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(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.

(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.

(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.

(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.

(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.

Rules. The more important Rules as to the procedure on opposition are as follows :—

Opposition. 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.

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.

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-statements shall be accompanied by a duplicate in writing.

Counter-statement.

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 opposition.

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 support of application.

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.

Evidence in reply by opponent.

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.

Hearing.

61. Where a party giving notice of opposition neither resides nor carries on business in the United Kingdom, the Registrar may

Security for costs.

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.

There are also Rules empowering the Registrar to give leave to either party to file further evidence,¹ providing for the furnishing of copies of exhibits or for inspection of the exhibits,² and empowering the Registrar, where he has granted an extension of time to one party, to grant an extension to the other party for any subsequent step.³

Who may
oppose.

Any person, not merely any person who would be aggrieved by the registration,⁴ may oppose the registration, and an opponent is not confined to objections based on interference with his rights, but can set up any proper ground of opposition,⁵ *e.g.*, that the mark does not contain or consist of any of the essential particulars enumerated in sec. 9.

Statement of
grounds of
opposition.

The provision, confining an opponent to the grounds of opposition contained in his notice of opposition,⁶ is now contained in the Act itself instead of in rules, as was the case under the repealed Acts. The tribunal hearing an appeal can, however, give leave to an opponent to take a further objection.⁷ It is doubtful whether the Registrar can, whilst the opposition is before him, give such leave, under the general power of allowing amendment of documents, conferred by Rule 98, for the Rules are subject to the provisions of the Act,⁸ and it is not clear that sub-sec. (8) allows such an amendment of grounds of opposition. Under the Acts of 1883 and 1888, it was open to the Registrar, on an appeal in an opposition, to take a new objection to the registration of the mark,⁹ but under the Act of 1905 the leave of the Court is required.¹⁰ A special power is conferred on the Board of Trade by sec. 16 to stop registration notwithstanding that the mark has been accepted, and any opposition has failed.¹¹

¹ Rule 57.

² Rule 58.

³ Rule 60. Rule 99 is the general rule as to enlargement of time.

⁴ Cf. Rectification of the Register, sec. 35.

⁵ Cf. Grounds of Opposition, below, p. 91.

⁶ Sec. 14, sub-sec. (8).

⁷ Sec. 14, sub-sec. (8).

⁸ Sec. 60. It is not the general practice of the Registrar to allow an amendment of an application pending an opposition.

⁹ See below, Appeal, p. 92.

¹⁰ Sec. 14, sub-sec. (8).

¹¹ See above, p. 81, and Rule 63.

The order of procedure upon an opposed application for registration is summarised in the following table:—

Summary of procedure on an opposed application.

- (1) Application.¹
- [(2) Notice of objection of Registrar to entertain the application.²
- (3) Application by applicant to the Registrar for a hearing, within one month of (2).³
- (4) Hearing by Registrar.
- (5) Communication of Registrar's decision to applicant.⁴
- (6) Application by applicant to Registrar for statement of grounds of decision within one month of (5).⁵
- (7) Notice of appeal to Board of Trade or the Court, one month from decision of Registrar.⁶]
- (8) Advertisement of application.⁷
- (9) Notice of opposition, one month from advertisement. Notice to be in duplicate, with grounds of opposition, and address for service, and to be signed by opponent or his agent.⁸
- (10) Counter-statement (in support of the application), one month from receipt of (9) from Registrar. To be in duplicate with grounds of application and admission, if any, of facts.⁹
- (11) Opponent's evidence, one month from receipt of counter-statement. To be by statutory declaration delivered at the Patent Office. Copies of the declarations to applicant.
- (12) Applicant's evidence in answer, one month from receipt of (11). To be by statutory declarations and copies as (11).
- (13) Opponent's evidence in reply, fourteen days from receipt of (12). Statutory declarations and copies as (11).
- (14) Notice of appeal to the Court or, with the consent of the

¹ Page 77. Form TM No. 2, p. 678.

² Rule 31.

³ Pages 76 and 79. No fee appears to be payable, except in cases of opposition.

⁴ Rule 33.

⁵ Rule 33, p. 80. Form TM No. 4.

⁶ Page 92, Rules 121 and 122. The date of the sending by the Registrar of the statement of the grounds of his decision is the date of the decision for

the purpose of appeal, Rule 23. If the applicant appeals to the Court he proceeds by notice of motion. Adapt form in Appendix, p. 721, Rule 122; if to the Board of Trade, Form TM No. 29, p. 695, must be used, and it must be accompanied as prescribed by Rule 123.

⁷ Page 80.

⁸ Form TM No. 7, p. 681.

⁹ Form TM No. 8, p. 682.

parties, to the Board of Trade, one month from decision of Registrar.¹

Forms of the several notices and other documents referred to in the above table are set out in the Appendix, pp. 716 to 722.

New power to award costs.

Both the Registrar and, on appeal, the Board of Trade, have now full power to award costs to either party to an opposition.² Under the repealed Acts there was no power to give an applicant the costs of an unsuccessful opposition, and the power to give costs to an opponent was confined to the case of an abandonment of the application by the applicant.³

Amendments and enlargement of times by the Registrar.

The Registrar's powers under sec. 12 (6) and Rules 98 and 99 to amend clerical errors in connection with any application for registration, and to allow the amendment of any document, drawing, or representation of a trade mark, for the amendment of which no special provision is made by the Acts, and to enlarge the times prescribed by the Rules for doing any act or taking any proceeding thereunder, have already been stated.⁴

Under the old Rule 54, it would seem that a notice of opposition might have been amended, even though the amendment raised an entirely new case of fraud against the applicant. So, in *Moit's Trade Mark*,⁵ where the Registrar had refused to amend an opposition on the ground that he had no power, and notwithstanding that he had also expressed an opinion that, as it was directed to charge fraud against the applicant, it could not be made "without detriment to his interests," and that on the merits it ought not to be allowed, the Divisional Court directed a mandamus to the Comptroller to hear and determine the application to allow the amendment, and Mathew, J., said he thought it ought to be made. Under the Acts of 1883 and 1888 the time for giving notice of opposition was prescribed by the Acts themselves, and the Registrar (sitting for the Comptroller) held that he had no jurisdiction to allow an amendment of a notice of opposition after the expiration of three months from the date of the advertisement, being the extreme limit for opposition allowed under the Act of 1888, or after the case had been heard

¹ See above, p. 89, note (6).

² Sec. 14, sub-sec. (10).

³ Sec. 69 of the Act of 1883, as amended by the Act of 1888. See below, Costs, p. 99.

⁴ Page 84, above; cf. also Rule 97 (power to dispense with evidence), Appendix, p. 668.

⁵ 7 R. P. C. 226 (1890), Mathew and Grantham, JJ.

and disposed of before the Comptroller. In the case in question,¹ the opponent in the course of an appeal to the Court asked for leave to amend his notice, but this, Stirling, J., held, he had no jurisdiction to grant, and the opponent then made a similar application to the Registrar, with the result already stated. The Registrar can now, under his general power of enlarging time conferred by Rule 99, enlarge the time for giving notice of opposition, but it would appear that sub-secs. (2) and (8) of sec. 14 of the Act of 1905 confine an opponent to the grounds of opposition stated in his notice of opposition, and that such grounds cannot be added to, except on an appeal and by leave of the tribunal hearing the appeal.²

Grounds of Opposition.

The reasons for refusing to register a mark which is propounded for registration are dealt with in detail elsewhere.³ Those which are most commonly relied on by an opponent are the following :—

- (i.) That the mark propounded is identical with a trade mark already on the Register with respect to the goods or the description of goods for which the mark propounded is sought to be registered or so nearly resembles such a mark as to be calculated to deceive.⁴ In this case the register number of the mark already on the Register, and the number of the Journal in which it has been advertised, must be stated in the notice of opposition.⁵
- (ii.) That the registration or use of the mark would interfere with the use by the opponent of some mark in which he has rights, or which he is actually lawfully using, whether as an unregistered trade mark,⁶ or as an advertisement,⁷ or as a mark common in the trade,⁸ and that, consequently, the applicant's mark is not distinctive.
- (iii.) That the mark propounded is his mark, and not that

¹ *Robertson, Sanderson & Co.'s Tm.*, [1892] 2 Ch. 245 ; 9 R. P. C. 264.

² See above, p. 88.

³ See above, p. 71, and the Chapter on Rectification of the Register, p. 276; Forms, Appendix, pp. 716 *et seq.*

⁴ Sect. 19, p. 222.

⁵ Rule 52, above, p. 86.

⁶ Page 180.

⁷ Page 181.

⁸ Page 177.

of the applicant,¹ or that it has been acquired by the applicant in fraud of his rights.²

5. Appeal from the Registrar.

The tribunal
of appeal.

An appeal from the refusal of the Registrar *proprio motu* to register a trade mark is by sec. 12 (3) given to the applicant, who has the option of appealing either to the Board of Trade or to the Court.³ But in an opposition an appeal from the decision of the Registrar must be to the Court, unless both parties consent that it should be to the Board of Trade.⁴ The Board of Trade may, however, refer an appeal to the Court.⁵ It is apprehended, however, that it will not as a rule do so, except for special reasons,⁶ or unless some general question under the Act comes up for decision. It is open to the Registrar, after a successful appeal from his refusal to accept a mark, to refuse registration on notice of opposition.⁷

The practice on appeal to the Board of Trade is governed by Rules 122 to 127 inclusive, which are as follows:—

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 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. 29.⁸

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

¹ Sec. 20, p. 223, and see Proprietor, p. 67. The mark may be copyright. As to a copy of a foreign picture, see *Schauer v. Field*, [1893] 1 Ch. 35; 62 L. J. Ch. 72, C. A.

² *Heaton's Tm.*, 27 C. D. 570 (1884), *Kay, J. (Hoop L Iron)*; *Moët's Tm.*, 7 R. P. C. 226 (1890), *Mathew and Grantham, JJ.*

³ A similar right of appeal is given in

case of cotton marks, see sec. 64 (5). As to Sheffield marks, see sec. 63 (9).

⁴ Sec. 14 (5).

⁵ Sec. 59.

⁶ See, for instance, *In re Apollinaris Application*, [1907] 2 Ch. 178; 21 R. P. C. 436.

⁷ See *Orr-Ewing v. Registrar of Tms.*, 4 App. Ca. 479; 48 L. J. Ch. 707 (1879).

⁸ Appendix, p. 695.

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.

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. Grounds of appeal to be stated.

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. Transmission of notice.

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.¹ Directions by Board.

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.

The fee payable on appeal is £1.²

The form of notice of appeal, TM No. 29, must be filled up in accordance with the marginal notes.

The case on appeal is a summary statement, generally drafted in a somewhat argumentative form, of the questions raised and the facts upon which the appellant relies, and it may include the statement of the grounds of appeal, which must be sent with the notice. Notice of and case on appeal.

¹ The directions may include a direction to the applicant to serve a person materially interested, and also directions allowing fresh evidence to be adduced before the Court, if the latter think fit: sec. 14 (7) and *Application of Extract of*

Meat (Baron Liebig) Photograph Brand, Ltd., 17 R. P. C. 161 (1900), Cozens-Hardy, J., where, and also in the Appendix, at pp. 717 and 721. the general form of the directions will be found set out.

² List of fees, Appendix, p. 673.

Forms of notice and case on appeal are given in the Appendix.¹

The Registrar is, by sec. 12 (3) of the Act of 1905, if required, to state in writing the grounds of his decision not to accept a trade mark, and the materials used by him in arriving at his decision.² This provision applies where the mark has not yet been advertised. In cases of opposition also the Registrar states his reasons in writing, and the Rules seem to contemplate this, although it is not expressly so provided.

Appeal to the Court.

An appeal to the Court is by notice of motion, which must be given within one month of the decision appealed against or within such further time as the Registrar shall allow.³

The Court.

The Court is the High Court of Justice⁴ in England,⁵ but in practice all the appeals are heard in the Chancery Division.

No appeal except that given by the Act.

There is no appeal other than that given by the Act open to an unsuccessful applicant, for he cannot apply to the Court under sec. 35 as a person aggrieved by the omission of his name from the Register;⁶ but the authority referred to⁶ does not directly apply to the case of an unsuccessful opponent, although much of the reasoning of it does. It would, however, be anomalous that any other person aggrieved should be able to apply to remove a mark from the Register, but that one who had opposed the registration before the Registrar should be barred;⁷ and sec. 54 expressly provides that in dealing with any question of rectification the Court may review any decision of the Registrar relating to the entry in question or the correction sought to be made. No doubt, if the opposition had come before the Court

¹ Page 719.

² See also Rule 33, and above, p. 80.

³ Rule 121. "Prescribed," however, by sec. 3 means in relation to proceedings before the Court, prescribed by Rules of Court. No special Rules of Court have been made in reference to procedure under the Act. Formerly an appeal would be brought by summons or motion. See 2nd ed. of this work, p. 89.

⁴ Sec. 3. As to cotton marks, the Lancashire Palatine Court has a concurrent jurisdiction. See sec. 71, and below, p. 126. An order of the House of Lords allowing an appeal from the Registrar should be remitted to the High Court for execution: *Re Orr-Ewing & Co.*, 28

W. R. 412 (1880), Hall, V.-C. The order is made an order of the High Court on motion of course, which may be *ex parte*: Seton, 6th ed., 882, and *Badische Anilin und Soda Fabrik v. Levinstein*, 4 R. P. C. at p. 470 (1887), Chitty, J.

⁵ Sec. 3. The provisions for Scotland, Ireland, and the Isle of Man do not seem to authorise an appeal to any of their Courts.

⁶ *Normal Co.'s Tm.*, and cf. *Woolley v. Broad*, [1892] 1 Q. B. 808; 9 R. P. C. 208, Lawrence and Wright, JJ.

⁷ See, however, *Moit's Tm.*, 7 R. P. C. 226 (1890), Mathew and Grantham, JJ.

the matter would be *res judicata* between the registered owner and the opponent.¹

The Registrar may, under sec. 20, in any case where each of several persons claims to be registered as proprietor of the same trade mark, and no such agreement is arrived at as the section authorises, refuse to register any of them until their rights have been determined by the Court. Under the former practice, unless the Court otherwise directed, the question was raised by a special case, which might be settled by the Comptroller in case of difference.² No special procedure is prescribed by the present Act or Rules, but sec. 20 is expressed differently from the former sec. 71, and it would seem that under it the application to the Court would be a motion or motions by one or more of the applicants asking that the Registrar should proceed with the application or respective applications.³

Reference of rival claims to the same mark to the Court direct.

A motion by way of appeal should ask that the decision of the Registrar may be reversed and that he may be directed to proceed, or not to proceed, as the case may be, with the application in question.⁴

Notice of the motion must be served on the Registrar,⁵ so that he may appear if he thinks fit, and in an appeal in an opposition the opponent, or the applicant, as the case may be, should be made a respondent. And if there has been no opposition, but the Registrar has refused to register because of the presence of marks similar to the mark in question on the Register, the Court generally requires notice of the appeal to be sent to the owners of such marks;⁶ and where an appeal is referred by the Board of Trade to the Court, the directions given on such a reference generally direct service on or notice to such owners.⁷ The party in whose favour an order is made must

¹ In *Re Arbenz's Application*, 35 C. D. p. 257; 4 R. P. C. 143 (1887), the Court of Appeal required the opponent, who was appealing, as a condition for leave to appeal out of time, to undertake not to move to rectify the Register.

² Rules of 1890, 44, 45.

³ See, however, *In re Hudson's Application*, 24 R. P. C. 582 (1907), Joyce, J., and *Albert Baker & Co.'s Application*, 25 R. P. C. 513 (1908), Eve, J., oppositions.

⁴ Cf. Appendix, p. 721, and for the practice under the repealed Acts Daniell's Chancery Practice, p. 1251,

Chanc. Forms, p. 802, and see *Simpson, Davies & Sons' Tm.*, 15 C. D. 525 (1880).

⁵ Rule 129.

⁶ See *Kenrick and Jefferson's Tm.*, 7 R. P. C. 321 (1890), Clitty, J. The appeal may now be to the Court direct, but the practice is the same on this point.

⁷ See *Dewhurst's Application*, [1896] 2 Ch. 137; 13 R. P. C. 288; and *König and Ebhardt's Tm.*, [1896] 2 Ch. 238; 13 R. P. C. 449; *Pomril, Ltd.'s Application*, 18 R. P. C. 181 (1901). The Board

forthwith leave an office copy of the order at the Trade Marks Branch of the Patent Office, and the Register may, if necessary, thereupon be rectified or altered by the Registrar.¹

The Registrar may, if he thinks that an order should be made public, publish it in the Journal.²

Address for service where the applicant or opponent is abroad.

Scotch or Irish applicant or opponent.

Where the applicant or opponent does not reside or carry on business in the United Kingdom, he may be required to give an address for service;³ but this does not provide for the case of a Scotch or Irish applicant or opponent. Where, therefore, a person who would otherwise be named as a respondent to the appeal is in Scotland or Ireland, and so cannot be served with the notice of motion or summons, the practice of sending him notice in writing of the day fixed for the hearing, and of omitting his name as respondent, has been introduced,⁴ for this is all that "natural justice" requires.⁵ And if the person to whom such notice has been sent does not choose to appear at the hearing, he is bound by the decision of the Court.⁵

Evidence upon the appeal.

The evidence before the Registrar or the Board of Trade is given by statutory declarations in 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 *viva voce* in lieu of or in addition to evidence by declaration.⁶ In such case the Board of Trade or the Registrar are in respect of requiring the attendance of witnesses and taking evidence on oath in the same position as an Official Referee.⁷ The Registrar has in proceedings at the Office a wide power of dispensing with evidence.⁸ The declarations may be used upon an appeal to the Court with all the incidents and consequences of

of Trade may on a reference by them direct service on a person materially interested, although the refusal to register is not based on any similarity to a mark owned by him: *Application of Extract of Meat (Barm Liebig) Photograph Brand, Ltd.*, 17 R. P. C. 161 (1900), Cozens-Hardy, J.

¹ Rule 129, p. 672. If required, Form TM No. 30 must also be left at the office.

² Rule 130, p. 672.

³ Rule 9, p. 656.

⁴ *Bancroft & Co.'s Tm.*, 5 R. P. C. 209 (1887); *Stringer's Application*, 8

R. P. C. 445 (1891); *Robertson, Sutherland & Co.'s Tm.*, [1892] 2 Ch. 215; 9 R. P. C. 215; all Stirling, J.

⁵ *King & Co.'s Tm.*, [1892] 2 Ch. 462; 9 R. P. C. 350, Kekewich, J., and C. A.

⁶ Sec. 49. As to the manner of taking such declaration, see Rule 105.

⁷ Sec. 49. As to the powers of an Official Referee, see Order XXXVI., r. 49, and the Arbitration Act, 1889; as to the meaning of "oath" and "affidavit," see Interpretation Act, 1889, sec. 3.

⁸ Rule 97.

evidence by affidavit.¹ If the Board of Trade refer an appeal to the Court, they generally give the appellant liberty to adduce such further evidence as the Court may see fit to direct or permit;² and such evidence is usually given on affidavit.³ An appeal from the refusal of the Registrar before advertisement to accept the mark is required to be heard on the materials stated by the Registrar to have been used by him in arriving at his decision,⁴ and no new grounds of objection can be taken by the Registrar, except by leave of the appeal tribunal, and where further objections are admitted, the applicant may withdraw his application without payment of costs on giving the prescribed notice.⁵ On an appeal in an opposition, any party may in the manner prescribed or by special leave of the tribunal bring forward further material for the consideration of the tribunal.⁶ Except by Rule 125, empowering the Board of Trade to give directions as to evidence, the Rules do not appear to contain any directions as to the manner of adducing further evidence on appeal. Fresh grounds of opposition can only be taken by leave of the tribunal, and if any are allowed to be taken, the applicant has a like power of withdrawal as in the case of an appeal before advertisement.⁷

Formerly the Court had no jurisdiction to amend the application⁸ or notice of opposition on appeal.⁹ Now, however, as already stated, the Board of Trade or the Court, as well as the Registrar, have power to permit at any time an applicant to amend his application.¹⁰ And on an appeal from the Registrar before advertisement the Board of Trade or the Court may make

Modification of the application on the appeal.

¹ Sec. 49. Formerly the declarations had to be verified by affidavit: *Farrow's Tm.*, 7 R. P. C. 260; 63 L. T. 233 (1890), Stirling, J.; and *Kingsford's Application*, 15 R. P. C. 197 (1898).

² *Kingsford's Application*, supra, and *Application of Extract of Meat (Baron Liebig) Photograph Brand, Ltd.*, 17 R. P. C. 161 (1900), Cozens-Hardy, J.

³ In accordance with Order XXXVIII. r. 1 of the Supreme Court Rules. For an order made by the judge as to evidence, see *Roger's Tm.*, 12 R. P. C. at p. 153 (1895), North, J.

⁴ An applicant may require a statement in writing of the grounds of the Registrar's decision and the materials

used by the Registrar: above, p. 80.

⁵ Sec. 12 (5) and Rule 128. Seven days after leave given is the prescribed time.

⁶ Sec. 14 (7).

⁷ Sec. 14 (8).

⁸ *Players' Application*, [1901] 1 Ch. 382; 18 R. P. C. 65, Cozens-Hardy, J. See, however, *Swift Specific Co.'s Tm.*, 6 R. P. C. 352 (1889), Stirling, J.; *Kenrick and Jefferson's Tm.*, 7 R. P. C. 321 (1890), Chitty, J.; and *König and Ebhardt's Application*, [1896] 2 Ch. 236; 13 R. P. C. 449, Stirling, J.

⁹ *Robertson, Sanderson & Co.'s Tm.*, [1892] 2 Ch. 245; 9 R. P. C. 264, Stirling, J. See also above, note (7).

¹⁰ Sec. 12 (6), above, pp. 67 and 84.

an order in favour of the applicant subject to conditions,¹ amendments, or modifications.² The word amendment seems to be appropriate to alterations in the application, for instance, striking out certain of the goods in respect of which the application is made, while the word "modifications" seems to refer more especially to alterations in the proposed mark itself.³ On an appeal in an opposition the tribunal may impose conditions,⁴ and 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 the mark, but the mark as so modified must be re-advertised.⁵ Whether after an opposition has been entered the Registrar has power to permit a modification of the mark applied for seems to be at least doubtful.⁶

Disclaimers.

The present Rules and Forms do not require an applicant to state in his application the essential particulars of his mark, or to make any disclaimer. But the Registrar or the Board of Trade or the Court may require as a condition of entry on the Register a disclaimer of common or non-distinctive matter, or of parts not separately registered, or any other disclaimer needful for defining the rights of the applicant under the registration.⁷ The Court cannot, of course, impose conditions as to disclaimers or otherwise, or require amendments or modifications, except as a term on which the registration of the mark can proceed, but if an applicant refuses to comply with the condition or accede to the requirement, his application would fail.

What objections the Court can consider.

Under the Act of 1883 it was held that on appeal the Court had jurisdiction to enter into and determine all questions arising on the objections, including, of course, in a case where the Comptroller had already registered the mark, the question whether the mark had been rightly admitted to the Register.⁸

¹ See the undertaking required by the Court in *In re Apollinaris Application*, [1907] 2 Ch. 178; 24 R. P. C. 436, and the condition imposed in *Verschure and Zoon's Application*, 22 R. P. C. 568 (1905). And for other cases in which, under the repealed Acts, conditions were imposed, see above, p. 59, note (3).

² Sec. 12 (4), above, pp. 67 and 76.

³ Cf. sec. 14 (9). Under the Acts of 1883 and 1888 the Court could not direct registration of part of a mark: *Mecus' Application*, [1891] 1 Ch. 41; 8 R. P. C. 25, Chitty, J. (*Key Brand*,

Genera).

⁴ Sec. 14 (6).

⁵ Sec. 14 (9).

⁶ It is not his practice to allow such a modification.

⁷ Sec. 15 and Rule 34. The section and Rule are fully set out, and discussed below, Chap. IX., p. 212.

⁸ In *Re Arbenz' Application*, 35 C. D. 248; 4 R. P. C. 143 (1886), Kay, J., and C. A.; *Sanitas Co.'s Tm.*, 4 R. P. C. 533; 58 L. T. 166 (1887), Kay, J.; and cf. *Paine v. Daniell & Sons' Breweries, Ltd.*, [1893] 2 Ch. 567; 10 R. P. C. 217, C. A.;

Now, however, on an appeal in a registration case, whether an opposition or before advertisement, the Registrar, as well as an opponent, is limited to the objections taken when the matter was before the Registrar, except by leave of the appeal tribunal.¹

If an unsuccessful opponent appeals, and then, after the appeal is referred to the Court, is willing to withdraw his opposition, an order should be obtained dismissing the appeal and directing the registration to be proceeded with.²

6. Costs.

In an opposition the Registrar has now power to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid.³ He formerly had only a limited power to give costs, that is to say, he could only give them to an opponent, and that only when the applicant abandoned his application.⁴ In the absence of special circumstances, the costs generally follow the event.

Costs before
the Registrar.

The Court has no jurisdiction to make the Registrar pay costs,⁵ and the ordinary rule under the Acts of 1883 and 1888 was that even a successful appellant paid the costs of the Comptroller as well as his own. In *The Alpine* case⁶ Mr. Justice Chitty said that the Comptroller's costs were deemed to be costs incidental to registration.

Costs on
appeal to the
Court.

Subject as above stated, in all proceedings before the Court under the Act of 1905, the costs of the Registrar are in the discretion of the Court,⁷ and the costs of other parties are also in

and *Talbot's Tm.*, 11 R. P. C. 77 (1894), Stirling, J., rectification cases.

¹ Sec. 12 (5), and sec. 14 (8).

² *Crosfield & Son's Application*, 15 R. P. C. 754 (1898), North, J., required a consent brief to the dismissal to be produced.

³ Sec. 14 (10).

⁴ Sec. 69 (5) of the Act of 1883, as amended by the Act of 1888.

⁵ Sec. 48. This does not alter the previous rule of the Court: *Rotherham's Tm.*, 14 C. D. 585; 49 L. J. Ch. 511 (1880), C. A., unsuccessful appeal by Registrar; *Leaf's Tm.*, 33 C. D. 477; 3

R. P. C. 289 (1886), and *Van Duzer's Tm.*, 3 R. P. C. 243, both Bacon, V.-C.; *Colman's Tm.*, [1894] 2 Ch. 115; 11 R. P. C. 129, Stirling, J., all successful appeals by applicant from Comptroller; and *Eastman, &c. Co.'s Application*, [1898] A. C. p. 585; 15 R. P. C. p. 487, applicant successful in House of Lords. See below, Test Case.

⁶ 54 L. J. Ch. p. 730 (1885). The "Law Reports" do not contain this part of the judgment; see also *Farbenfabriken & Co.'s Tm.*, 11 R. P. C. p. 93; [1894] 1 Ch. 645, C. A.; cf. Chap. XI., p. 311.

⁷ Sec. 48.

Test case.
New objection at the hearing.

its discretion.¹ The provision as to the costs of the Registrar is new, but under the Acts of 1883 and 1888 in a few special cases, an applicant for registration who successfully appealed from the refusal of the Comptroller to register was not ordered to pay costs. Thus where the case was argued as a test case, no costs were given, although the application failed,² and in another case where the Comptroller took a new point in Court, after the objection upon which he had refused registration had been removed, and succeeded upon it, he did not press for costs.³ Where, on the hearing of an appeal from the Registrar, he by leave of the tribunal takes any new ground of objection, the applicant may withdraw his application without payment of costs on giving notice as prescribed.⁴

In a case in which applicants appealed from the Comptroller's refusal to register, and succeeded only in the House of Lords, the House made no order as to the costs of the appeal to them, but expressed an opinion that the costs in the Court of Appeal, which the appellants had been ordered to pay to the Comptroller, should be repaid to the applicants, but not the costs of the hearing before Kekewich, J.⁵

In the appeals from the Registrar, which have come before the Court under the Act of 1905, in which an applicant has successfully appealed against his refusal to register, the applicant has on appeal been ordered to pay the Registrar's costs.⁶

On a special application under paragraph 5 of sec. 9 to register a distinctive word, which was referred to the Court, the Registrar was held to be entitled to the costs.⁷

Costs on appeal to Court in an opposition.

If the opponent appeals, or appears as a respondent to the applicant's appeal, the costs of the application to the Court generally follow the event; but the Court has jurisdiction, which it frequently exercises, to refuse to make any order for

¹ Order 65, r. 1.

² *Van Duzer's Tm.*, 34 C. D. 623; 4 R. P. C. 31 (1887), C. A.; *Farbenfabriken Formals Friedl Bayer & Co.'s Tm.*, 11 R. P. C. p. 93; [1894] 1 Ch. 645, C. A. (*Somatose*).

³ *Thompson's Tm.*, 6 R. P. C. 213 (1888); but cf. *Sanitas Co.'s Tm.*, 4 R. P. C. 533; 58 L. T. 166 (1887), Kay, J.

⁴ Sec. 12 (5). The notice must be given within seven days after the leave

has been given: Rule 128, p. 672.

⁵ *Eastman, & Co.'s Application*, [1898] A. C. at p. 585; 15 R. P. C. p. 488.

⁶ *In re Birmingham Small Arms Co.'s Application*, [1907] 2 Ch. 396; 24 R. P. C. 563; *Shamrock & Co.'s Application*, 24 R. P. C. 569 (1907), Neville, J.

⁷ *Apollinaris Application*, [1907] 2 Ch. 178; 24 R. P. C. 436.

costs where it is dissatisfied with the conduct of the successful party. Thus, where the applicants based their case in part on an alleged exclusive right to the use of certain words in their label, and they had no such right;¹ and where the judge thought that both appellant and respondent had behaved improperly, no costs were given.² And where opponents appealed from the decision of the Comptroller allowing registration, and succeeded on one ground of objection but failed on other grounds which involved issues of fact, the appellants were ordered to pay the costs so far as they had been increased by these issues, the respondents paying the other costs, with the usual set-off.³

It was held under the Act of 1883 that no costs of the proceedings before the Comptroller, except so far as these might be allowed by the taxing master as costs of or occasioned by the proceedings in Court, could be given;⁴ and the same rule applied under the Act of 1875.⁵ The Act of 1905 confers no express power on the Court over such costs. It would seem, however, that, now that the Registrar has power to award costs, the Court on appeal could deal with the costs before the Registrar as well as the costs of the appeal.⁶

The Board of Trade, on appeal to it in proceedings under sec. 14, that is in an opposition, have power 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.⁷ As between applicant and opponent, the Board of Trade will no doubt follow the same general rule as the Court, and give costs to the successful party. It is submitted that, on appeal, the Board of Trade can vary the order of the Registrar as to costs, and deal with the costs before him as well as upon appeal.⁸

Where the tribunal hearing an appeal against a refusal to register, whether in an opposition or not, allows fresh grounds of objection to be taken, the applicant may on giving the

Jurisdiction on appeal as to costs before the Registrar.

Costs on appeal to the Board of Trade.

Costs on withdrawal of application.

¹ *Hudson's Tm.*, 32 C. D. 311; 3 R. P. C. 155 (1886) (*Carbolic Acid Soap Powder*), C. A.

² *Fuente's Tm.*, [1891] 2 Ch. 166; 8 R. P. C. 214, Romer, J.

³ *Wright, Crossley & Co.'s Application*, [1900] 2 Ch. 218; 17 R. P. C. 386, Byrne, J.

⁴ *Australian Wine Importers' Tm.*, 41

C. D. 278; 6 R. P. C. 311 (1889), C. A.

⁵ *Brandreth's Tm.*, 9 C. D. 618; 47 L. J. Ch. 816 (1878), Jessel, M.R.

⁶ See sec. 14 (5). See also sec. 14 (10), and below, as to the power of the Board of Trade over costs.

⁷ Sec. 14 (10).

⁸ Sec. 14 (5).

prescribed notice¹ withdraw his application without payment of costs, or in the case of an opposition without payment of costs of the opponent.²

Security for costs.

If a party giving notice of opposition, or of appeal in an opposition, 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.³

7. Renewal of Registration.

Registration is for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of the Act.⁴ The subject is dealt with in Chap. XIV., under the heading of "Removal of Mark from the Register."⁵

¹ Notice must be given within seven days after leave to take fresh objections has been given : Rule 128.

² Secs. 12 (5) and 14 (8).

³ Sec. 14 (11).

⁴ Sec. 28.

⁵ Page 372.

CHAPTER V.

CLASSIFICATION OF GOODS.

	PAGE
The classes	104
Registration and protection for part of a class	104
Trade mark should not be registered for goods in which there is no intention to deal	105
Non-user of trade mark	106
Associated trade marks	107
Resembling marks belonging to the same proprietor	108
Combined trade marks	109
Series of trade marks	110
Assignment of associated trade marks	110

It has already been shown that the use of the mark in connection with goods of the particular kind identified with it is of the essence of trade mark rights,¹ and this essential feature is retained by the Registration Acts. It is provided that—

“A trade mark must be registered in respect of particular goods or classes of goods ” ;²
and that—

“A trade mark, when registered, shall be assigned and transmitted only in connection with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.”³

And the express restrictions on the registration of identical marks and marks so nearly resembling registered trade marks as to be calculated to deceive, which are contained in sec. 19, apply only where the marks already registered are on the Register with respect to the same goods or description of goods as those for which the marks put forward for registration are sought to be registered.⁴

¹ Ante, p. 29 ; and see *Somerville v. Schembri*, 12 App. Ca. 453 ; 4 R. P. C. 179 (1887).

² Sec. 8 of the Act of 1905, replacing sec. 65 of the Act of 1883.

³ Sec. 22 of the Act of 1905, replacing

sec. 70 of the Act of 1883. This is subject to the proviso contained in sec. 22, and to the provisions of secs. 23 and 62. As to assignments, see Chap. XIII., p. 345.

⁴ See below, p. 228.

Classes.

Accordingly, goods have been divided by the Trade Mark Rules into forty-nine classes, and a miscellaneous and residuum class,¹ and Rule 5 provides that if any doubt arises as to what class any particular description of goods belongs to, the doubt shall be determined by the Registrar. For the convenience of applicants for registration an alphabetical guide to the classification of goods has also been drawn up and published,² and in case of uncertainty, upon application by letter to the Registrar, giving a full description of the goods and the purposes for which they are used, the Registrar will inform any intending applicant what class he should name in his application. Applications for the registration of the same mark in different classes are treated as separate and distinct applications.³

A trade mark may be registered for certain only of the goods comprised in a class, and it will then, of course, be protected as to those goods only.⁴ Many of the classes comprise a number of very different kinds of goods; for example, class 6, "Machinery of all kinds, and parts of machinery, except agricultural and horticultural machines included in class 7," comprises both engine-boilers and sewing machines. Registration in a class does not, however, confer on the registered proprietor any right to sue for infringement of the mark in regard to goods of kinds other than those for which he uses his mark. Thus, where the owner of a mark comprising the word *Neptune*, who had used it only for iron sheets, although class 5, for which it was registered, included also wire, brought an action against a person who had registered and used a mark comprising the same word for wire, the Court of Appeal refused to grant an injunction, and they ordered the Register to be rectified by restricting the registration of the plaintiff's mark to iron sheets only.⁵ In this case (*Edwards v. Dennis*⁶) the plaintiff claimed the mark as assignee of the goodwill of a business which dealt only in the iron sheets,

Registration and protection for part of a class.

¹ See Classification of Goods, below, p. 697. The classes are the same as under the Rules of 1890, except for a slight alteration in Class 23, as to which see below, p. 121.

² It can be procured at the Sales Department of the Patent Office.

³ Rule 24, p. 659.

⁴ *Jay v. Luller*, 40 C. D. 649; 6 R. P. C. 136 (1889), Kekewich, J.; *Hart v. Colley*, 44 C. D. 193; 7 R. P. C. 93

(1890), North, J.

⁵ *Edwards v. Dennis*, 30 C. D. 454; 55 L. J. Ch. 125, C. A. (1885). See also below, pp. 328, 385. For other cases in which orders have been made confining the goods to those in connection with which the registered trade mark has been used, or excluding particular goods for which it has not been used, see Chap. XI., Rectification of the Register, at p. 298.

and it was held that, as assignee, his trade mark rights under the Acts must, in any event, be restricted to the goods with which the business assigned to him was concerned;¹ but Cotton, L.J., stated that, in his opinion, it was not the intention of the Act (of 1875) that a man registering a trade mark for an entire class, and using it only for one article in that class, should be able to claim for himself the exclusive right to use the mark for every article in the class, and with this opinion the other Lords Justices agreed. This opinion was endorsed and followed by Chitty, J., when the question arose in an action brought by the original proprietors of a trade mark,² who endeavoured, but unsuccessfully, to secure exclusive rights for cigars in a trade mark which they had registered in the tobacco class, but which, as it comprised the word "mixture," was appropriate, and had at first been used, only for cut tobacco.³

The question arose under the Act of 1883 whether registration could be properly made in respect of goods in which the applicant did not deal or intend to deal. In *Batt & Co.'s Trade Marks*⁴ the respondent, who was a general exporter and dealer, had registered two trade marks in 1882 and 1889 respectively for all the goods comprised in class 42, and in 1897 an application was made to remove the marks from the Register on the ground that the respondent had never used them in connection with any goods in class 42, and had never had any *bonâ fide* intention of so using them. Romer, J., found these facts against the respondent and ordered the removal of the marks so far as regards class 42, and his decision was upheld in the Court of Appeal and the House of Lords. Lindley, M.R., delivering the judgment of the Court of Appeal, which was approved and affirmed in the House of Lords, held that the decision in *Edwards v. Dennis*⁵ fairly governed the case in principle and stated the question of law as follows:—"Can a man properly register a trade mark for goods in which he does not deal or intend to deal—meaning by intending to deal, having at the time of registration some definite and present intention to deal in certain goods or descriptions of goods, and not a mere general

Trade mark should not be registered for goods in which there is no intention to deal.

¹ Act of 1875, s. 2; Act of 1883, s. 70; Act of 1905, s. 22.

² *Hargreaves v. Freeman*, [1891] 3 Ch. 39; 8 R. P. C. 237.

³ Cf. the present Rule 16, post, p. 658.

⁴ [1898] 2 Ch. 432; 15 R. P. C. 262 and 534, Romer, J., and C. A.; [1899] A. C. 428; 16 R. P. C. 411 (*sub nom. Batt v. Dunnell*).

⁵ See note (5), above, p. 104.

intention of extending his business at some future time to anything which he may think desirable? This question we answer in the negative." This case has been followed in several others, in which marks registered without any intention to use them, or without any intention to use them on some goods for which they were registered, have been removed from the Register as to the whole or part of the goods for which they were registered.¹

Non-user of
trade mark.

The matter is one now expressly provided for by sec. 37 of the Act of 1907, which enacts as follows:—

"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 section treats of a particular ground for rectification of the Register, and the procedure is under sec. 35, which deals generally with that matter.

The subject is dealt with in Chap. XI., but it may here be noticed that the application to take a trade mark off the Register, wholly or partially, under sec. 37 must be by a person aggrieved,² and that a discretion is given to the Court as to removal. The registered proprietor of a trade mark may himself apply under sec. 32 to the Registrar to have particular goods or classes of goods struck out from those for which the trade mark is registered, and this course may in some cases save a proprietor the costs of an application by another person to rectify the Register. It is provided by sec. 27 that where, under the provisions of the Act, user of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as

¹ See below, Chap. XI., Rectification, at p. 299; and cf. also *Hedley's Tms.*, 17 R. P. C. 719 (1900), where a mark, on which an applicant for rectification based his application, had been registered but

not used, and any intention to use it had been given up, Cozens-Hardy, J., said it could probably be removed from the Register.

² See below, p. 293.

it shall think right, accept user of an associated registered trade mark,¹ or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user; and, where parts of a registered trade mark are separately registered by the same proprietor under sec. 25 as combined trade marks,² user of the whole trade mark is for the purposes of the Act to be deemed to be a user of such registered trade marks belonging to the same proprietor as it contains.

In practice, leave to register a mark is frequently given, and oppositions to registration are frequently withdrawn, or overruled, on the terms that the registration be restricted to part of a register class.³ The restriction has in some cases been effected by the entry of a note of the agreement upon the Register, and in a case where, without any formal opposition, it had been agreed between the applicant and an objector, that the registration should be restricted to certain goods in the class for which it was effected, Pearson, J., on an *ex parte* application, directed the Comptroller to enter a note of the restriction on the Register.⁴

Associated Trade Marks.

Provision was made in the Act of 1883 for the registration of a series of trade marks resembling each other in material particulars but differing in certain respects, as, for instance, statements of quality. Series of trade marks may be registered under the Act of 1905, but they are made part of new species of trade mark introduced by the Act, which are called associated trade marks; these are divided into combined trade marks, series of trade marks and associated trade marks not falling within either of these descriptions. An associated trade mark must be a registrable trade mark under the Act,⁵ and it only differs from an ordinary trade mark in its association with other registered

Associated trade marks.

¹ Associated Trade Marks, see below.

² Below, p. 109.

³ See, for instance, *Jelley's Application*, 51 L. J. Ch. 639, n. (1878), Jessel, M.R.; *Brady & Co.'s Applications*, 21 C. D. 222; 51 L. J. Ch. 637 (1882), North, J.; *Kearick and Jefferson's Tm.*, 7 R. P. C. 321 (1890), Chitty, J.; and *König and Ebbardt's Tm.*, 13 R. P. C. 449 (1896), Stirling, J.

⁴ *Keop's Tm.*, 26 C. D. 187; 51 L. J. Ch. 637 (1884); but, as to the particular restriction in this case, see *Dewhurst's Application*, [1896] 2 Ch. p. 143; 13 R. P. C. p. 97, C. A., where the Court distinguished between a condition of registration and a note of an agreement; see also Chap. XI, at p. 299, and Chap. X., at p. 229.

⁵ See also sec. 27, below, p. 110.

trade marks of the same proprietor, and in the consequence of such association, namely, that it can only be assigned with such other trade marks.

Resembling
marks belong-
ing to the
same pro-
priator.

It is enacted by sec. 24 of the Act of 1905 that "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."

The wording of this section should be compared with that of sec. 19,¹ which relates to identical or similar marks belonging to different proprietors. It had been held in a case under the Acts of 1883 and 1888, in which an applicant asked for registration of a trade mark only slightly differing from a trade mark of his own registered for the same goods, that the registration ought to be refused, as to accede to the application would uselessly encumber the Register.² The decision was an inconvenient one from the commercial aspect, because it is necessary for an English trader in some foreign countries in order to attain registration to show that the mark is registered in this country. Moreover, a trader may desire to vary his trade mark in some slight respect, and the policy of the trade mark legislation should be that in general marks actually used should be on the Register. Sec. 24 therefore appears to effect an improvement in the law. It has been construed in the *Birmingham Small Arms Co.'s Application*,³ in which the applicants having already on the Register in one class the trade mark "B. S. A." applied to register it in another class for goods of quite a different description, and the Registrar, as a condition of registration, required the marks to be associated. The applicants appealed, and it was held on appeal, that the Registrar's discretion was not an absolute one, but one to be exercised subject to the provisions of the Act, including sec. 24, and that the goods were of different descriptions, and that sec. 24 had nothing to do with the registration of identical trade marks, but applied only to cases where registration was sought for a mark "so closely resembling a

¹ Below, p. 222.

² *Player & Sons' Application*, [1901] 1 Ch. 382; 18 R. P. C. 65, Cozens-

Hardy, J.

³ [1907] 2 Ch. 396; 24 R. P. C. 503, Kekewich, J.

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"; and the Registrar was directed to proceed with the registration without the condition as to association.

Section 24 does not deal with the case of concurrent applications by the same proprietor for marks slightly differing, that being a matter falling under sec. 26.

The next kind of associated trade marks is that in which a whole mark is registered and also separate parts of it. These are called in the marginal note to sec. 25 combined trade marks. That section is as follows:—

Combined
trade marks.

"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. 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 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."

Parts of a trade mark which are separately registered are, on an application to register the whole mark, excepted from the provisions of the Act as to disclaimer which are contained in sec. 15.¹ Sec. 25 applies to the converse case of the proprietor of a registered trade mark seeking to register part of it, and probably also to concurrent applications for registration of the whole and the parts. It would seem also that where a proprietor is seeking to register a mark which includes parts already registered, the Registrar could under his general discretion require the marks to be associated. The provision at the end of the section that user of the whole trade mark is to be deemed to be user also of the included marks was no doubt inserted in view of sec. 37,² under which a trade mark may be removed from the Register by reason of non-user. Sec. 27 contains a more general provision, but gives the Court a discretion.

¹ Disclaimers, Chap. IX. ; below, p. 212.

² Above, p. 106.

Series of
trade marks.

By sec. 26 it is provided that—

“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 ; or
- (d) colour ;

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 replaces sec. 66 of the Act of 1883, but with the addition of (c) and (d), and of the last sentence making a series of trade marks a particular case of associated marks. The addition of (d), colour, is due to the fact that colour may now enter into the consideration of the distinctiveness of a trade mark.¹ Paragraph (c) of this section should be compared with sec. 24, which appears to cover a case in which there are slight differences in distinctive matter. Sec. 24 does not, however, apply to concurrent applications, but probably these could be dealt with under the general discretion of the Registrar by his requiring the marks to be associated.

Application for a series of trade marks must be made in conformity with Rule 27.²

Section 27 provides as follows :—

Assignment
of associated
trade marks.

“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. 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 trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.”

¹ Sec. 10, below, p. 209.

² Below, p. 659. And see Rule 49 as

to advertisement. Fees for registration,
List of fees, 5a, p. 673.

The proviso seems to have special reference to the provisions of sec. 37¹ as to non-user, and possibly also to the rule that a trade mark can only be assigned with a goodwill in the goods for which it has been registered.²

Where a mark is registered as associated with any other mark or marks cross references are inserted by means of notes in the Register to the marks with which it is associated.³

¹ Above, p. 106.

² Sec. 22.

³ Rule 65, p. 664. Fee one shilling

for each note that a mark is associated with a newly registered mark ; see List of fees, p. 674.

CHAPTER VI.

SHEFFIELD MARKS.

	PAGE
The Cutlers' Company	112
Old corporate marks	114
Recent legislation and the company	114
The Act of 1875	114
The Acts of 1883 and 1888	116
The Act of 1905	117

Sheffield Marks and the Cutlers' Company.

THE care of the Register and the registration of marks to be used on metal goods registered under the present Act by a person carrying on business in Hallamshire, or within six miles thereof, is committed, by sec. 63 of the Act of 1905, as it was also by sec. 81¹ of the Act of 1883, to the Cutlers' Company.

The Cutlers' Company.

This company was incorporated by the Act 21 Jac. I. c. 31, and its members and proceedings are regulated by several Cutlers' Company Acts, referred to below. But long before the seventeenth century Hallamshire had been noted for its cutlery manufactures, and from time to time a jury of cutlers was empannelled with the other juries of the local Court Leet to assign marks to the different manufacturers, wherewith to distinguish their respective wares; and in the Court Rolls of the Manor of Sheffield of the 7th of Elizabeth, and, again, in the Rolls of 1590, presentments of the regulations governing persons engaged in the knife-making and certain other cutlery trades are recorded.² The seventh of these regulations provided that no person should strike any mark upon his wares but that which was assigned him in the Lord's Court under a penalty of ten shillings. The cutlers had also a charter granted by the lords of the manor.³

The incorporating Act, the Cutlers' Company Act, 1623,⁴ laid down certain regulations for the control of persons engaged in

¹ See below, p. 117.

² Hunter's History of Sheffield, London, 1819, p. 118.

³ M. M. A. Report, 1862. Evidence of Mr. Jackson, Q. 104.

⁴ 21 Jac. I. c. 31, local.

the businesses of manufacturing knives, shears, scissors, or other cutlery wares, within the specified district, and incorporated the persons then so engaged, and it fixed the limits of the district concerned, as they have ever since remained, to be those of the lordship of Hallamshire and within six miles compass from it. The Act, in particular, provided that persons engaged in the businesses mentioned, in the said district, should strike such marks, and such marks only, as should be assigned to them by the company. These regulations were repealed by the Cutlers' Company Act of 1791,¹ and fresh regulations, chiefly relating to the admission of new freemen and to the taking of apprentices, were enacted. By sec. 17 of the Act last mentioned, members of the company, who alone were then permitted to manufacture the goods referred to,² were forbidden, under a penalty, to strike, engrave, or use any mark like, or counterfeiting, a mark assigned to any other person. The Cutlers' Company Act of 1801³ empowered any freeman of the company to bequeath his mark, as his other personalty, by his will, his widow not to be thereby prevented from carrying on the trade, or selling the right to the mark, for her lifetime, to any other person entitled to carry on the trade. The Cutlers' Company Act of 1814⁴ threw open the specified trades to all persons, and removed the existing restrictions as to taking apprentices. It provided, further (sec. 3), that all manufacturers, whether freemen or not, on application, should have marks assigned to them by the company, the marks not to be marks previously assigned, and at the time continuing to be the property of any persons other than the applicants, and not to consist of surnames; (sec. 4) that marks in common use should not be assigned; and (sec. 6) that an assigned mark might be bequeathed by will, and if it were not bequeathed, it should go to the widow and family of the proprietor on his death, but not so as to give power to more than one person in the family to use it at the same time. The last Cutlers' Company Act, that of 1860,⁵ extended the provisions of the Acts to all persons within the district using or exercising the trades of manufacturers of steel, makers of saws and edged tools, and other articles of steel, or steel and iron combined, having a cutting edge, and it

¹ 31 Geo. III. c. 58, local.

³ 41 Geo. III. c. 97, local.

² Knives, sickles, shears, scissors, razors, files, and forks, or any of them, sec. 3.

⁴ 54 Geo. III. c. 119, local.

⁵ 23 Viet. c. xliii.

enabled persons carrying on any of the trades within the Acts, and not being freemen of the company, to become freemen on payment of the proper fees, and to have marks assigned to them.

Corporate marks were assignable in gross.

It will be seen that, under these Acts, the old corporate marks were assignable personal property of the grantee; this was, at all events, the case where the marks were owned by non-freemen, and where they did not comprise any personal elements calculated to make their use by others than the original grantees misleading.¹ In this respect they differed from ordinary trade marks, which are, and always have been, assignable or capable of transmission only in connection with the business in which they are used.

Grant of a corporate mark.

The right to the mark originated in the grant by the company, and lasted for the lives of the grantee and his widow. The grant was made upon the application of the grantee after a search, carried out by the searchers of the company, to ascertain whether the mark applied for was the subject of a then existing grant. Marks, as they lapsed, were re-granted over and over again.²

Recent legislation and the Cutlers' Company.

The rights and privileges of the Cutlers' Company were expressly saved by sec. 25 of the Merchandise Marks Act, 1862. There is no similar provision in the Merchandise Marks Act of 1887, but, except in so far as that Act restricts the use of particular marks as being forged trade marks, or false trade descriptions, it does not in any way affect the rights or privileges of the company. The Act of 1875³ empowered the owner of a Sheffield corporate mark to have it registered under that Act in the same manner and on the same terms as if it were not a Sheffield corporate mark. Under the Act of 1883 the old Register of corporate marks was closed on December 31st, 1888.⁴

Closing of the Register.

The Act of 1875.

The Act of 1875 left the Register of the Cutlers' Company, and the power of the Company to assign marks, untouched, except that it restricted the latter power in regard to marks identical with, or so nearly as to be calculated to deceive, resembling

¹ *Bury v. Bedford*, 32 L. J. Ch. 741; 33 L. J. Ch. 465; 4 De G. J. & S. 352 (1863), M.R. and L.JJ.

² See the evidence of Mr. Jackson,

Qq. 113, 117, 142, and Mr. Hunter, Q. 1899; M. M. A. 1862.

³ Sec. 9 (6), set out below.

⁴ Sec. 81 (9).

marks registered under the Act in the manner mentioned below.¹ And it provided generally that:—

“(7.) *Nothing in this Act shall prejudice or affect the rights and privileges of the Cutlers' Company, nor, save as is otherwise in this Act expressly provided, shall any of the provisions of this Act apply to or in the case of any Sheffield corporate mark.*”

The Act provided² further, (1) for copies of all the Sheffield corporate marks in force being delivered to the Registrar; (2) for notices of new applications to the company for the assignment of corporate marks, and copies of the marks applied for, being delivered to the Registrar, and for notices of applications to the Registrar for registration under the Act of marks belonging to any goods or class of goods within the Cutlers' Company Acts,³ and copies of the marks referred to, being delivered to the company;⁴ and (3) for notices of assignment and registration.

Sub-sections (4), (5), and (6) of sec. 9 of the Act of 1875 were in the terms following:—

“(4.) *The Registrar, under this Act without the special leave of the Court, to be given only in cases where the applicant proves his right, shall not in respect of any goods or classes of goods with respect to which a Sheffield corporate mark shall have been assigned and actually used, and of which mark a copy, or description, or notice of the assigning whereof shall have been delivered or given to the Registrar as aforesaid, register a trade mark identical with such Sheffield corporate mark, or so nearly resembling the same as to be calculated to deceive.*⁵

Mark resembling a corporate mark not to be registered.

“(5.) *The masters, wardens, searchers, and assistants of the Cutlers' Company shall not assign to any person a mark or device identical with any trade mark registered under this Act, and notice of the registration whereof shall have been given to the Cutlers' Company as aforesaid, or so nearly resembling the same as to be calculated to deceive.*⁵

Corporate mark resembling registered mark not to be assigned.

“(6.) *Any person to whom a Sheffield corporate mark legally*

Corporate mark might be registered.

¹ Sec. 9 (5).

² Sec. 9. Appendix, p. 648.

³ See list below; p. 116.

⁴ The company sometimes opposed the registration of marks which they deemed to resemble too closely corporate marks

in use. See *Re Rosing*, 54 L. J. Ch. 975, n. (1878).

⁵ Cf. s. 6 of the Act of 1875, sec. 72 of the Act of 1883, and sec. 19 of the Act of 1905.

belongs shall be entitled to have the same mark registered also as a trade mark under this Act, in respect of any particular goods or classes of goods, in the same manner and upon the same terms and conditions in and upon which he might have registered the same if it were not a Sheffield corporate mark."

The Act of
1883.

The Act of 1883, on the other hand, provided for the closing, within five years from the commencement of the Act,¹ of the Register of corporate marks, and for the commencement of a new Register of trade marks to be kept at Sheffield by the Cutlers' Company, to which the corporate marks might be transferred; and it directed that all corporate marks entered on the Register of corporate marks and not entered on the new Register before the closing of the former, should be deemed to have been abandoned.²

The Act of
1888.

Section 81, the part of the Act of 1883 relating to the Sheffield marks and containing the provisions just referred to, was amended by sec. 20 of the Act of 1888, the principal alteration being occasioned by the substitution of, and the extension thereby of the section to, "metal goods," meaning "all metals, whether wrought, unwrought, or partly wrought, and all goods composed wholly or partly of any metal," in place of "cutlery, edge tools, raw steel, goods made of steel, or of steel and iron combined, whether with or without a cutting edge." The last-mentioned class of goods had been inserted in the original section in the place of the list taken by the Act of 1875 from the Cutlers' Company Act of 1860, namely, knives, sickles, shears, scissors, razors, files, forks, saws, edge tools, or other articles of steel, or of steel and iron combined, having a cutting edge.

The effect of
sec. 81.

The section, as amended by sec. 20 of the Act of 1888, is set out in the Appendix.³ The general effect of the section was to make the Sheffield Register a branch of the principal Register for trade marks used on metal goods and registered by persons carrying on business in Hallamshire or within six miles thereof, and to place the local Register under the charge of the Cutlers' Company. The duties of the company were, however, ministerial only as regards the registration of old corporate marks:⁴ as

Duties of
the Cutlers'
Company
with regard
to registra-
tions.

¹ January 1st, 1884, sec. 3.

² Sec. 81 (9).

³ Page 634.

⁴ *Lambert's Tm.*, 5 R. P. C. 542; 6 R. P. C. 344 (1889), C. A.

regards the registration of other marks, the Company were substituted for the Comptroller, subject to his veto upon any particular registration,¹ unless such veto was overruled on appeal by the Court, and subject, in cases where the Comptroller's veto was not exercised, to appeal from the Company to him and to a further appeal to the Court.²

Section 81 of the Act of 1883 is now replaced by sec. 63 of the Act of 1905, which, however, differs only in a few respects from the repealed section. The differences consist mainly in the omission of some transitory³ and obsolete provisions, or provisions which are now unnecessary having regard to the general provisions of the new Act.⁴ The principal alteration is the substitution of an appeal from the company direct to the Court for an appeal to the Comptroller, and from him to the Court.⁵ The Sheffield Register is continued and, save as otherwise provided, forms part of the Register.

The Act of 1905.

The former proviso saving the life interest of a widow of a holder of a corporate mark⁶ is omitted as being presumably obsolete. Certain provisions relating to penalties under the Cutlers' Company's Acts⁷ are also omitted, sufficient protection being now given by the Merchandise Marks Act, 1887.

Section 63 of the Act of 1905 is as follows:—

“With respect to the master, waraens, 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:—

Sheffield marks.

- (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,⁸ and, save as otherwise provided by this Act, such Register shall for all purposes form part of the Register:

¹ Sub-sec. (5).

² Sub-sec. (12).

³ For instance, the transfer to the Sheffield Register of marks previously registered, part of sub-sec. (2), as amended by the Act of 1888, sec. 20, and sub-sec. (9) referred to on p. 116, closing the register of corporate marks.

⁴ Sub-secs. (10) and (11) of sec. 81.

⁵ Sub-sec. (9). Cf. with sub-sec. (12) of sec. 81 of the Act of 1883.

⁶ Sub-sec. (7) of sec. 81 of the Act of 1883, as amended by the Act of 1888.

⁷ Sub-sec. (13) of sec. 81 of the Act of 1883.

⁸ April 1st, 1906.

- (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,¹ 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,² but which have not been entered in such Register before the passing of this Act :³
- (3) An application for registration of a trade mark used on metal goods¹ 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
- (4) Every application so made to the Cutlers' Company shall be notified to the Registrar in the prescribed manner,⁵ and, unless the Registrar within the prescribed time⁶ 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 :⁷
- (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 :⁸
- (6) Upon the registration of a trade mark in the Sheffield

¹ Metal goods are defined by sub-sec. (10), below.

² Commencement of the Act of 1883.

³ As regards the registration of old corporate marks, the duties of the company are ministerial only: *Lambert's Tm.*, 5 R. P. C. 542; 6 R. P. C. 344 (1889), C. A. The prescribed form is Sheffield No. 1, below, p. 691. Fee £5.

⁴ The effect of this sub-section and sub-sec. (7) is to constitute the Sheffield Register a branch register for metal goods. The application must be on Form TM No. 2, Appendix, p. 678, and addressed to the Law Clerk to the Cutlers' Company, The Cutlers' Hall, Sheffield; see Rules 107 to 112, p. 669; and Instructions (18), p. 711.

⁵ A copy of the application is to be sent within seven days, with two representations of the mark for each class :

Rule 108.

⁶ The time is one month from receipt of notice : Rule 109.

⁷ *I.e.*, as an ordinary application is proceeded with by the Registrar, sub-sec. (7), Rule 112. 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 : Rule 110.

⁸ The Court is defined by sec. 3. See also sub-sec. (9) and sec. 64, sub-sec. (5), which in the case of a cotton mark gives an appeal, alternatively to the Court or the Board of Trade at the option of the applicant.

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: ¹

- (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,² he shall in the prescribed manner³ notify the application and proceedings thereon to the Cutlers' Company:
- (9) Any person aggrieved⁴ by a decision of the Cutlers' Company in respect of anything done or omitted under this Act may, in the prescribed manner,⁵ appeal to the Court:
- (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.⁶

¹ Cf. sec. 16.

² See sub-sec. (10).

³ *I.e.*, by sending a copy of the official paper, the Trade Marks Journal, containing the application with a note distinguishing such application: Rule 111.

⁴ Cf. sec. 35, p. 278.

⁵ By motion, notice of motion to be given within one month from the date of the decision or within such further time as shall be allowed, Rule 121; see also sub-sec. (7).

⁶ For the list of goods to which the Cutlers' Company's Acts and the Act of

(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.¹

A complete collection of representations of pending applications in classes 5, 6, 7, 11, 12, 13, 14 and 22 is now kept for public inspection at the Cutlers' Hall, Sheffield. On an application in any of those classes being made at the Patent Office, a copy of the Journal containing the application is forwarded by the Registrar to the Cutlers' Company.² The rules relating to Sheffield marks are Nos. 107 to 112.³ A request to enter a corporate mark of the Sheffield Register must be made on Form Sheffield No. 1.⁴

1875 applied, see p. 116 ; and for the list to which the unamended Act of 1883 applied, see the repealed sub-sec. (2), p. 634.

¹ The certificate is evidence : sec. 51 ;

Rules 102 to 104, above, p. 62.

² Rule 111.

³ Below, p. 669.

⁴ Rule 107.

CHAPTER VII.

COTTON MARKS AND THE MANCHESTER BRANCH OFFICE

	PAGE
The first Cotton Marks Rules	121
The Cotton Marks Committee	122
The Manchester Branch office	122
Special points of practice	122
Effect of Act of 1905	122
Sec. 64	123
Jurisdiction of the Palatine Court of Chancery	126

By the Rules issued under the Act of 1875,¹ marks for cotton goods in Classes 23, 24 and 25² were specially treated. An office was set up at Manchester for the exhibition of all devices, marks, &c., used in the cotton trade, and in the Rules called *cotton marks*, and every person using any cotton mark was required to send to the office three representations of it. A committee of persons versed in the usages of the cotton trade was appointed to consider the cotton marks, of which representations were sent in to the Manchester office, and to divide them into two classes: (a) those which were, in the opinion of the committee, trade marks within the meaning of the Act; and (b) those which were not; and power was given to the Commissioners of Patents to add any cotton marks to either class.³ It was provided that any proprietor of a cotton mark not specified in class (b) might apply to be registered as proprietor of the mark in the manner and subject to the conditions in and under which he might have applied to be registered in respect of any other trade mark, but that it should not be lawful to register any person as proprietor of any cotton mark in class (b) except in pursuance of an order of the Court.

The first
Cotton Marks
Rules.

¹ Now repealed: see Chitty's Statutes, Rules 57—63a.

² Class (23), cotton yarn and thread (under the present Rules this is replaced by (a) cotton yarn, and (b) sewing cotton); (24) cotton piece goods of all kinds; (25) cotton goods not included in

Classes 23, 24, or 38. Class 38, articles of clothing. Under the Rules of 1890, Class 23 was divided as follows:—(a) cotton yarn and sewing cotton not on spools or reels, (b) sewing cotton on spools or reels.

³ Rule 58 (a) of March, 1883.

The Cotton
Marks Com-
mittee.

The committee so appointed was held not to be a judicial tribunal, but merely a body appointed to consider and give an opinion on technical matters peculiarly within the knowledge of its members, and it was decided that its decisions could be reconsidered or disregarded by the Court, or by the Registrar by direction of the Court, notwithstanding that it had acted fairly and properly, and had not proceeded on any wrong principle in arriving at them.¹ And in a number of cases applications to the Court in respect of marks placed by the committee in class (b) were successful, and the marks were registered as trade marks.²

The Man-
chester
Branch Office,
under Act of
1883.

The special rules were repealed and the committee of experts dissolved;³ but the Manchester Office was maintained and constituted a branch office of the Registry, and applications for the registration of marks in Classes 23, 24, and 25 were, under the Rules of 1890, addressed and sent to it.⁴

Special points
of practice.

The system of deposit of cotton marks not registrable as trade marks, was also continued. This had the double advantage of acting as a warning to other traders of the marks being in use, and of enabling persons wishing to design new marks to see what marks were in actual use. Another practice, special to the Manchester Branch, was that of consulting the Trade and Merchandise Marks Committee appointed by the Manchester Chamber of Commerce in questions of difficulty arising in applications to register.

Effect of the
Act of 1905.

The Act of 1905 gives statutory recognition to the Manchester Branch office, the chief officer of it being the Keeper of Cotton Marks, who acts under the direction of the Registrar.⁵ All applications for cotton marks, that is, for trade marks for

¹ *Orr-Ewing v. The Registrar of Tms.*, 4 App. Ca. 479; 48 L. J. Ch. 707 (1879); H. L. reversing the judgment of the C. A., 8 C. D. 794; 47 L. J. Ch. 807 (1877).

² *Exp. Eld & Co.*, 28 W. R. 436 (1878), Jessel, M.R.; *Re Duplate*, 49 L. J. Ch. 303; 28 W. R. 436 (1880), Hall, V.-C.; *Re Ward, Sturt and Sharp*, 50 L. J. Ch. 317; 44 L. T. (N. S.) 97 (1881), Hall, V.-C.; *Re Spikes*, 43 L. T. 626; 29 W. R. 235 (1880), Hall, V.-C.

³ Lord Herschell's Committee refused to adopt a recommendation that honor-

ary trade assessors be appointed to pass or reject cotton trade marks, on the grounds that their appointment would diminish the sense of responsibility of the office, and that it did not feel sure that the creation of such a tribunal, reserving power to override its decisions, would give general satisfaction. Report of 1888, p. x.

⁴ Rule 8 of 1890.

⁵ Sec. 64 (1). The address of the Keeper of Cotton Marks is, Manchester Branch of the Trade Marks Registry, 48, Royal Exchange, Manchester.

goods in Classes 23, 24 and 25,¹ except such as may be prescribed,² must be made to the Manchester Branch; and the Register for trade marks for all such goods is called the Manchester Register, and a duplicate is kept at the Manchester Branch.³ When an application is made to the Manchester Branch, it is notified to the Registrar, and the Keeper of Cotton Marks reports to the Registrar on the application; and the Registrar may object to the application proceeding, subject to an appeal to the Court or the Board of Trade at the option of the applicant.⁴ If the Registrar makes no objection, the application is advertised and proceeded with. Subject to the special Rules 113 to 117, the procedure is the same *mutatis mutandis* as that on an ordinary application.⁵ Where a trade mark applied for is already in use, the length of time of user must be stated in the application.⁶ The practices of deposit of marks and of consulting a committee of the Manchester Chamber of Commerce are sanctioned and continued by the Act.⁷ The Act enacts that certain features that might, under sec. 9, be registrable or distinctive in respect of other goods shall not be registered or deemed distinctive in respect of certain goods within the cotton classes,⁸ and this provision of the Act came into force immediately on the passing of the Act.⁹ In particular no exclusive use of a word can be obtained by registration of a cotton mark, and no word or words can be registered alone for cotton piece goods or cotton yarn; and line headings, that is, the coloured strips at the end of a piece, cannot be registered alone and are not to be deemed distinctive.

Section 64 of the Act of 1905 is as follows:—

“(1) The Manchester Branch of the Trade Marks Registry of the Patent Office (hereinafter 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

Manchester
Branch.

¹ Sec. 64 (2). See note (2), p. 121, as to the goods comprised in these classes.

² No goods have been prescribed as exceptions under the Rules of 1906.

³ Sec. 64 (2) and (3).

⁴ Sec. 64 (4) and (5), and Rules 113 to 116. The application must be on form Cotton No. 1, below, p. 692, and four additional representations must be sent

on form Cotton No. 2.

⁵ Rule 118.

⁶ Sec. 64 (9).

⁷ Sec. 64 (11) and (14).

⁸ See sec. 10, which is set out fully below.

⁹ August 11th, 1905. The Act generally came into operation on April 1st, 1906.

the direction of the Registrar. The present keeper of the Manchester Branch shall be the first Keeper of Cotton Marks.

Manchester Register.

“(2) As regards cotton goods¹ 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, shall be called ‘the Manchester Register,’ and a duplicate thereof shall be kept at the Manchester Branch.

Applications for cotton marks.

“(3) All applications for registration of trade marks for such cotton goods in the said classes (hereinafter referred to as ‘cotton marks’) shall be made to the Manchester Branch.²

“(4) Every application so made to the Manchester Branch shall be notified to the Registrar in the prescribed manner³ 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 time⁴ 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

“(5) If the Registrar gives notice of objection as aforesaid the application shall not be proceeded with, but any person aggrieved⁶ may in the prescribed manner⁷ appeal to the Court or the Board of Trade, at the option of the applicant.

Registration.

“(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.⁸

Rectification of the Register.

“(7) When any mark is removed from or any cancellation or correction made in the Manchester Register⁹ notice thereof shall

¹ As to the goods included in Classes 23, 24, and 25, see note (2), p. 121.

² Form Cotton No. 1, Appendix, p. 692. The application is to be in duplicate, Rule 113.

³ See Rule 115, p. 670. The search made by the Keeper of Cotton Marks includes the B list, see above, p. 121.

⁴ One month after the hearing, Rule

116, p. 670.

⁵ Rule 118, p. 670, and Chap. IV., Registration.

⁶ Cf. sec. 35, below, p. 278.

⁷ Rules 121 to 127, “The Court,” see below, p. 126.

⁸ Cf. sec. 16.

⁹ See Chap. XI., Rectification of the Register, p. 276.

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.¹ Certificate.

“(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. Length of user.

“(10) As from the passing of this Act²—

(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 words³ shall be deemed to be distinctive in respect of such goods: Words, line headings, &c.

(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:

(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.

“(11) The right of inspection of the Manchester Register⁴ 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.⁵ Inspection.

“(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,⁶ 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.⁷ Certificate of mark on deposit.

¹ Sec. 51, Rules 102, 103, and 104, and Form MB No. 2, p. 695.

² August 11th, 1905. The Act generally came into operation on April 1st, 1906.

³ As to word marks generally, see p. 142.

⁴ Inspection of the Register, sec. 7.

⁵ See above, p. 121.

⁶ 5s.

⁷ This is a certificate of an application having been made, Form MB No. 1, p. 698. As to certificates, see sub-sec. (8) and sec. 51.

Rules.

“(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.”¹

Existing practice preserved.

“(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.”²

The Rules, Nos. 113 to 118, relating to cotton marks, have already been noticed in the text or the notes. They will be found fully set out in the Appendix.³

The Palatine Court of Chancery.

“The Court” is in England the High Court of Justice,⁴ but a co-ordinate jurisdiction with that of the High Court of Justice is vested in the Court of Chancery of the County Palatine of Lancashire in respect of any action or other proceeding in relation to trade marks, the registration whereof is applied for in the Manchester Office, subject to the ordinary right of appeal from decisions of that Court.⁵

The registration of oriental words as part of a mark, a matter which greatly concerns the cotton trade, will be dealt with later.⁶

¹ As to the power of the Board of Trade to make Rules, see sec. 60, and above, p. 58.

² See above, p. 122.

³ Page 670.

⁴ Sec. 3.

⁵ Sec. 71.

⁶ Rule 28 deals with marks con-

taining words in characters other than Roman, or in a language other than English; see p. 659. The Office formerly refused to register words in oriental character, except “Chop” and “Hong” marks, *i.e.*, firm names in Chinese; see *Dechurst's Application*, [1896] 2 Ch. p. 141; 13 R. P. C. p. 292.

CHAPTER VIII.

WHAT MARKS MAY BE REGISTERED AS TRADE MARKS.

	PAGE
Sec. 9	129
Sec. 10 of the Act of 1875	130
Sec. 64 of the Act of 1883 as amended by the Act of 1888	130
New marks may be registered	131
applicant must intend to use the mark	132
Sec. 36	132
What Act applied to pending registrations	133
Sec. 9 is purely restrictive	134
Essential particulars	134
The five divisions are separate and independent	136
Additions now abolished	136
(1) NAME MARKS	136
name of imaginary person	137
mere name in nominative case	139
special or particular manner	140
(2) SIGNATURES	140
signature of applicant	141
requirements for a good trade mark	141
WORD MARKS	142
Words as trade marks	142
Report of Lord Herschell's Committee	143
geographical names, translated words, phonetic equivalents	143
FANCY WORD OR WORDS NOT IN COMMON USE	144
1. Fancy word	145
<i>Van Duzer's case</i>	145
the word must be obviously meaningless	146
<i>Boeril case</i>	148
<i>Tabloid case</i>	149
<i>Cyclostyle case</i>	149
descriptive words	150
words in a foreign language	150
name of goods in a foreign language	151
names of common marks	152
secondary distinctive meaning does not constitute a word a fancy word	152
geographical words	152
name of a person	154
2. Not in common use	155
in the trade or popularly	155
"the" prefixed to word	156
Examples from decided cases	156
(3) INVENTED WORDS	158
<i>Solio case</i>	158
not qualified by (4)	159

	PAGE
(3) INVENTED WORDS— <i>continued</i> .	
quantum of invention	160
variations of ordinary words	162
whether applicant must be the inventor or first user	163
date of invention	163
examples from decided cases	164
(4) WORDS HAVING NO REFERENCE TO GOODS	165
Act of 1888	166
alteration made by Act of 1905	166
test to be applied under Act of 1888	166
examples from cases decided under Act of 1888	168
and not being geographical name	170
<i>Magnolia</i> case	170
geographical name not equivalent to name of any place	170
examples from cases decided under Act of 1888	172
not being a surname	172
(5) DISTINCTIVE MARKS	173
the word "distinctive"	174
meaning of distinctive	177
1. What marks are to be distinguished	177
common marks	180
other trade marks, registered or not	181
abandoned trade marks	181
marks used as advertisements	181
2. What degree of distinctiveness is required	183
secondary distinctive meaning	183
descriptive marks	183
DEVICE	184
Devices as trade marks	184
word or letter not a device	184
portrait of inventor	185
part of mark common to trade	186
combination devices	186
descriptive devices	187
device comprising picture of goods	188
device representing the name of the goods	188
BRAND	189
HEADING	191
line headings for cotton goods	191
LABEL	192
phrases and proverbs	193
ordinary arrangement of common parts	193
additions under the Acts of 1883 and 1888	194
additions abolished by Act of 1905	195
disclaimer in regard to labels under previous Acts	195
similar common words in contrasted labels	196
blanks in labels	197
colour	197
TICKET	197
LETTER	198
NUMERAL	198
Old marks	198
1. Special and distinctive	198
deceptive mark not distinctive	200

Old marks—continued.

	PAGE
1. Special and distinctive— <i>continued.</i>	
descriptive words	200
words with a secondary distinctive meaning	201
Examples of old word marks	203
2. Used as a trade mark	203
use on bottles or boxes only	204
where the applicant has another trade mark	205
the old mark must have been used as registered, and alone	205
use must continue until application to register	205
slight variations permitted	206
use for the same goods	206
use in the United Kingdom	206
fraudulent user.	207
effect of infringements	207
slight evidence of user sufficient	207
Standardisation trade marks	208
Colour	208
Sec. 10, registration in colours	209
Colour as an element of similarity	210

THE marks which may be registered as trade marks were determined, from the commencement of the Register until the end of 1883, by sec. 10 of the Act of 1875; from the last-mentioned date until the end of 1888, by sec. 64 of the Act of 1883, from the beginning of 1889 to April 1st, 1906,¹ by the amended sec. 64, enacted by sec. 10 of the Act of 1888, and since the last-mentioned date by sec. 9 of the Act of 1905.² Section 9 is as follows:—

“A registrable trade mark must contain or consist of at least one of the following essential particulars:—

Registrable trade marks.

- (1) The name of a company, individual, or firm represented in a special or particular manner;
- (2) The signature of the applicant for registration or some predecessor in his business;
- (3) An invented word or invented words;
- (4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;
- (5) Any other distinctive mark, 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:

¹ Except that certain changes of the law as to cotton marks took effect from August 11th, 1905.

² As to cotton marks, see also sec. 64 (10), above, p. 123.

“ 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.

“ 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.

“ 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.”

Sec. 10 of
Act of 1875.

Sec. 10 of the Act of 1875 (now repealed) was as follows :—

“ For the purposes of this Act :

A trade mark consists of one or more of the following essentials ; that is to say,

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

A written signature or copy of a written signature of an individual or firm ; or

A distinctive device, mark, heading, label, or ticket.

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

Any special and distinctive word or words or combination of figures or letters used as a trade mark before the passing of this Act¹ may be registered as such under this Act.”

Sec. 64.

Sec. 64 of the Act of 1883, as amended by the Act of 1888, was, so far as relates to what might be registered, as follows :—

“ 64. (1.) *For the purposes of this Act, a trade mark must consist of or contain at least one of the following essential particulars •*

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

(b) *A written signature or copy of a written signature of the*

¹ August 13th, 1875.

individual or firm applying for registration thereof as a trade mark; or

(c) *A distinctive device, mark, brand, heading, label, ticket;*¹
or

(d) *An invented word or invented words; or*

(e) *A word or words having no reference to the character or quality of the goods, and not being a geographical name. . . .*

(3.) *Provided as follows: . . .*

(ii.) *Any special and distinctive word or words, letter, figure, or combination of letters or figures or of letters and figures used as a trade mark before the 13th day of August, 1875, may be registered as a trade mark under this part of this Act."*

Comparing sec. 9 in a general way with the sections of the earlier Acts, it will be seen that names and signatures have been registrable under all the Acts; that, except as to old marks, words were not essential particulars under the Act of 1875, and that paragraphs (3) and (4) owe their inception to an alteration made by the Act of 1888, and that devices, labels and tickets, if distinctive, have been registrable under all the Acts, for "mark" in the Act of 1905 includes these by virtue of the definition clause, sec. 3.

Before the Registration Acts it was necessary for the plaintiff in a trade mark action to plead that the mark in question had acquired a reputation and become known as his by user in connection with his goods; but the Court did not require him to prove that the user had extended over any long or defined period, and it was therefore practically open to a trader to obtain protection against infringers of a newly-devised mark which had hardly been used at all.² The Acts have provided an additional mode of acquiring trade mark rights, for it has been held that marks which have never been used may be registered as trade marks, and a right of property thereby acquired in them.³ "In my opinion," Cotton, L.J., said, in *Hudson's case*, "the language (of the Act of 1875), though not appropriate, means this, that a man who designs one of those special things pointed out in sec. 10, is, as

New marks
may be regis-
tered.

¹ In the Act of 1883, there followed here, "or fancy word or words not in common use;" (d) and (e) were introduced by the Act of 1888.

² See above, Chap. II., p. 35.

³ *Hudson's Tm.*, 32 C. D. 311: 3 R. P. C. 155 (1886), C. A.; *Great Tower Street Tea Co. v. Smith*, 6 R. P. C. 165; 5 T. L. R. 232 (1889), North, J.

designer, to be considered as the proprietor of it, and if there is no one else who has used it, or who can be interfered with by the registration and subsequent assertion of title to the mark, then he is to be considered as entitled within the meaning of the Act to the exclusive use of that which in fact he has never in any way used, but which has only been designed by him, and which he can be treated as the person entitled to register, if no one else had so used it as that his user would be interfered with by the registration." The Act of 1905 expressly includes in the definition of a trade mark contained in sec. 3 a mark "proposed to be used."

Applicant
must intend
to use the
mark.

But the applicant for the registration of a new and unused mark must intend to use it as a trade mark, for it is not permitted to place marks on the Register merely to prevent other traders using and appropriating them.

This principle was laid down by the Courts in decisions before the Act of 1905, and is now embodied in sec. 37. It is more fully discussed in a subsequent chapter.¹

Section 9 of the Act of 1905.

This section governs all applications for registration, and all registrations made or taken to be made since the commencement of the Act, April 1st, 1906; but, as the question whether a mark on the Register was, when registered, properly qualified for registration or ought to be expunged under sec. 35, must, subject to sec. 36, be considered with reference to the law in force at the date when the registration complained of was made, or is taken to have been made,² it is necessary to consider the terms of the corresponding sections in the earlier Acts and to compare them with those of this section.

Sec. 36.

It is, however, provided by sec. 36 that no trade mark which was upon the Register at the commencement of the Act and which under the 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 registrable trade mark is defined as a trade mark which is capable of registration under the provisions of the Act.³ It has been decided by Neville, J., that the proper construction to be put on this section is, not that a trade mark registered under a

¹ Chap. XI., below, at p. 293.

² See *Ward, Sturt and Sharp's Tms.*, 50 L. J. Ch. 347; 44 L. T. 97 (1881), Hall, V.-C.; and *Re Borril Tm.* 13

R. P. C. 388 (1896); 2 Ch. 604, per Lindley, L.J.; also sec. 6; and cf. Chap. XI., below, p. 276.

³ Sec. 3, above, p. 24.

former Act must be judged of as if the Act of 1905 had been in force at the date of such registration, but that it must be ascertained whether, under the facts existing when the decision is given, the mark is capable of registration under the Act of 1905, and he held that a word which was at the date of the decision the name of an article was not saved from removal by the section.¹ On appeal, Buckley, L.J., said that he thought one could read the section thus: "Take the facts of to-day and the law of to-day, and inquire 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." It did not mean, "Take the facts of 1884" (the date of registration of the mark in question), "assume the law of 1905 to have been the law in 1884, and see whether upon that assumption the registration could validly have been made in 1884."¹ Kennedy, L.J., agreed with this judgment. Lord Alverstone, L.C.J., thought that there was a good deal of difficulty as to the meaning of sec. 36, and found that, whichever construction was given to it, the appeal failed. Section 36 concludes with a proviso that nothing contained in it shall subject any person to any liability in respect of any act or thing done before the commencement of the Act to which he would not have been subject under the Acts then in force. There is no saving as regards acts of infringement done after the commencement of the Act and before the decision that the trade mark is a registrable trade mark under the Act.

Both the Act of 1883² and the Act of 1888 contained saving clauses,³ and where an application was made two days before the Act of 1883 came into operation, and the registration was opposed, and the matter came before the Court for decision, the Court of Appeal thought it "undoubtedly the better course" to treat the question as governed by the old Act of 1875.⁴ The Act of 1905 contains no saving clause, but by the Interpretation Act, 1889, s. 38, where an Act repeals any other enactment, then,

What Act applied to pending registrations.

¹ *Gestelner's Tm.*, [1907] 2 Ch. 478; 24 R. P. C. 545; and on appeal, [1908] 1 Ch. 513; 25 R. P. C. 156. See also p. 164, note (3).

² Sec. 113: "this repeal of enactments shall not affect the past operation of any of those enactments, or any . . . right to use a trade mark granted or acquired, or application pending, . . . or right . . . acquired, . . . or any-

thing duly done . . . under . . . any of those enactments before or at the commencement of this Act."

³ Sec. 27: "nothing in this Act shall affect the validity of any act done, right acquired, or liability incurred before the commencement of this Act."

⁴ *Hudson's Tm.*, 32 C. D. p. 317, Cotton, L.J.; 3 R. P. C. 115 (1886). In the particular case it made no

unless the contrary appears, the appeal shall not (b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed, or (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed.

Sec. 9 is purely restrictive.

Section 9 is purely restrictive, as were also the corresponding sections of the earlier Acts, which it has replaced. They were intended to limit and curtail the numerous forms of words and other things which, before the Acts, were appropriated as trade marks.¹ The intention of the Legislature was in the Act of 1905 to enlarge the classes of registrable marks.²

No mark can be put upon the Register unless it complies with the terms of sec. 9, but the presence in it of one or more of the specified particulars does not make the mark a good trade mark,³ or, of necessity, entitle it to registration. Some restrictions on registration are imposed by the Act itself,³ and the Registrar has, as is shown elsewhere,⁴ discretion to allow or refuse registration where all the conditions of the Acts are complied with.⁴ In the case of cotton marks some of the essential particulars enumerated in sec. 9, *e.g.* words, are excluded.⁵

Essential Particulars.

A registered trade mark must contain one or more of the essential particulars, or be an old mark.

No trade mark can be properly registered unless it contains one or more of the essential particulars enumerated in the Act under which the registration is made,⁶ or unless it is within the proviso relating to old marks. This is clear from the Acts, but it is also supported by judicial authority. Thus, in *The Orr-Ewing* case, Lord Cairns said⁷: "I cannot think that the Vice-Chancellor Hall sufficiently appreciated the object and provisions of the Act of Parliament when he said that he considered that, in each case, a device or label, registration of which is applied for, must be looked at as a whole, and that, if it appears to be such as in the ordinary course of business would be distinguished from other devices or labels, it should be registered. To some extent,

difference. See also *Burgoyne's case*, 6 R. P. C. 227; 61 L. T. 39 (1889), and the *Apollinaris* case, [1891] 2 Ch. p. 291; 8 R. P. C. 137.

¹ Per Cotton, L.J., in *Van Duzer's Tm.*, 34 C. D. p. 634; 4 R. P. C. 31 (1887).

² See *Apollinaris Application*, [1907] 2 Ch. 178; 24 R. P. C. 436, Kekewich, J.

³ Above, p. 22; also secs. 11, 19 and

20. See Chap. X., below, p. 221.

⁴ Chap. IV., p. 70; *Euo v. Dunn*, 15 App. Ca. 252; 7 R. P. C. 311 (1890); and see per Lindley, L.J., above, p. 74.

⁵ Sec. 64 (10), and above, p. 123.

⁶ Above, p. 133.

⁷ *Orr-Ewing v. The Registrar of Tms.*, 4 App. Ca. p. 484; 48 L. J. Ch. 710 (1879).

no doubt, this is true ; but I apprehend the first duty cast upon the Court is to ascertain whether some one, or more than one, of the essential particulars of a trade mark, as defined by the Act, is found to exist, so that the mark may be described with the one, or more than one, essential particular or particulars which distinguish it." And in a later case, under the Act of 1883, Chitty, J., said¹: "The argument is that, though neither of the particulars is within the 64th section, the mark must be looked at as a whole; and being looked at as a whole, it is brought within the sub-sec. (c) (as a device or label) because as a whole it is distinctive. This point was raised before Mr. Justice Pearson, in *Price's Patent Candle Co.'s case*,² and without success. It is quite true that the mark must be looked at as a whole, but we must find in the whole, one at least of the essential particulars; and not one of the essential particulars, in my opinion, can be found in this mark." So, in *The Birmingham Vinegar Brewery Co.'s Application*,³ Kekewich, J., in considering a label, set aside the argument that, although there were none of the essential particulars in detail, yet the combination of many particulars which were not essential might make the whole label into an essential particular. In *Wright, Crossley & Co.'s Application*,⁴ in which the applicants sought to register a label alleged to be distinctive, Byrne, J., after referring to the cases already quoted, and holding that the mark did contain an essential particular or particulars, inasmuch as it contained certain devices, said: "These devices, as and when used as part of the trade mark, with the rest of the label appear to me to make the whole label distinctive."⁵

These cases, so far as they decide that a trade mark must contain an essential particular, are still authorities applicable to the present Act. It should be borne in mind, however, that that Act contains no reference, as the Act of 1888 did, to additions or "added matter,"⁶ and it seems to be the intention of the Act,

¹ *Bradley's Tm.*, 9 R. P. C. p. 207 (1892). The mark in question consisted of the words *Worth's Corsets* printed in ordinary type, between two co-axial ovals.

² 27 C. D. 681; 54 L. J. Ch. 210 (1884). A conventional label with the words *National Sperm* printed on it. As to labels, see further, pp. 192 to 197.

³ 11 R. P. C. 195; 70 L. T. 646 (1894).

⁴ [1900] 2 Ch. 218; 17 R. P. C. 386.

⁵ But, although in *Clement et Cie.'s*

Tm., [1900] 1 Ch. 114; 16 R. P. C. 611, the Court of Appeal were considering a different question, namely, whether a word was part of a mark or an addition to it, they appear to have assumed that the label must be considered as a whole. See also *The Smokeless Powder Co.'s Tm.*, [1892] 1 Ch. 590; 9 R. P. C. 109. See also below, "Label."

⁶ Sec. 64 (2) and sec. 74 (2) of the Act of 1883, as amended.

that provided an essential particular is found in the mark, it should be registered as a whole, with such disclaimer only as may be necessary under sec. 15.

The sub-sections are alternative.

The five divisions into which essential particulars were by sec. 10 of the Act of 1888 divided, were held to be separate and distinct.¹ In the case of (d) and (e) a different conclusion was arrived at by the Court of Appeal in *The Somatose* case,² where it was held that a word could not be registered as an "invented word" unless it also was a word "having no reference to the character or quality of the goods," but this construction of the Act was disapproved of by the House of Lords in *The Eastman Photographic Materials Co., Ltd.'s Application*,³ and the decision of the Court of Appeal was reversed. The divisions are likewise distinct under the Act of 1905. Therefore, although in construing one division the scope of another division may be material,⁴ the fact that a thing is not an essential particular under one heading will not prevent its being a proper essential particular under another heading. It follows, too, from this construction that qualification under more than one heading is possible—for instance, a word might be an invented word within (3), and also be a word having no direct reference to the character or quality of the goods within (4).

Additions now abolished.

The former enactments requiring an applicant for registration to state in his application the essential particulars of the trade mark, and also to disclaim any right to the exclusive use of added matter and of any addition are omitted in the Act of 1905,⁵ no mention of "added matter" or of "additions" being contained in the present Act. A wide power to require disclaimer is, however, conferred by sec. 15, where necessary, to define the rights of the proprietor of the trade mark.⁶

Name marks.

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

Names are highly valued as trade marks, or as essential particulars of trade marks, and they were often adopted and

¹ See *Ld. Herschell's judgment in Eastman & Co., Ltd.'s Application*, [1892] A. C. 571; 16 R. P. C. 476.

² *Farbenfabriken Vormals F. Bayer & Co.'s Tm.*, [1894] 1 Ch. 645; 11 R. P. C. 84.

³ See note (1).

⁴ See, for instance, *Hol's Tm.*, [1896] 1 Ch. 711, 717; 13 R. P. C. 16 and 118 (1896), North, J., and C. A.; and *Pirie v. Goodall*, [1892] 1 Ch. 35; 9 R. P. C. 17, Vaughan Williams, J.

⁵ See above, p. 135.

⁶ See Chap. IX., p. 212.