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THE

Law and Practice

OF

THE COPYRIGHT, REGISTRATION

AND

PROVISIONAL REGISTRATION

OF

DESIGNS;

AND

THE COPYRIGHT AND REGISTRATION

OF

SCULPTURE;

WITH PRACTICAL DIRECTIONS:

THE

Remedies, Pleadings & Evidence in Cases of Piracy:

WITH

AN APPENDIX

OF

TABLES OF FEES, STATUTES AND THE RULES OF THE BOARD OF TRADE.

BY

JOHN PAXTON NORMAN, M.A.,

OF THE INNER TEMPLE, SPECIAL PLEADER.

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INTRODUCTION.

THE most careless observer cannot fail to have remarked how greatly the Acts for extending the benefits of Copyright in Design have stimulated the taste and ingenuity of artists and manufacturers; but few persons are aware of the extent and value of the property which they have called into existence. Of the increasing magnitude of the interests thus created an idea may be formed when it is stated, that in ten years, that is, from the 31st of August, 1842, the time when the Act now in force for the Copyright of Designs for Ornamental Purposes, came into operation to the present time, 78,597 ornamental designs have been registered. In three years before the passing of that Act, under the Act of 1839, from August 12th, 1839, to August 31st, 1842, only 1,424 designs were registered. Under the Act for the Registration of Designs for Purposes of Utility, between the

1st September, 1843, and the present time, 2,915 useful designs have been registered. Under the Act for the Provisional Registration of Designs, between January 2nd, 1351, and the present time, 127 designs for ornamental purposes, and 270 designs for purposes of utility, have been provisionally registered. Very few registrations appear to have taken place under the Act for the Registration of Sculpture.

Infringements of copyright have been comparatively rare. The simplicity and cheapness of the remedies has enabled the owners of property in designs to restrain piracies, without incurring the ruinous expense of which the owners of patents have complained so bitterly.

The Act for the Registration of Ornamental Designs is universally allowed to have worked admirably.

With regard to the Act for the Registration of Useful Designs, the Society of Arts, in their first Report on the Rights of Inventors, say—"The thousand registrations effected under the Utility Designs Act have not encouraged litigation. Inventors oppressed by the Patent Laws have

taken refuge under this Act, and have registered many inventions as being 'forms or configurations;' whereas it is notorious that the objects of the claims is the protection of a new mechanical action or contrivance; and besides the number of rights thus admitted, there has been the further incentive to litigation from the doubts which notoriously hang over such registrations. Still irreconcilable as the Registration Act is perfectly well known to be with the Common Law of Patents, and questionable as are many of the rights claimed under it, it has not been the source of increased litigation, but a much improved tone of morals has been generated among inventors by its existence, who respect the registration notwithstanding its illegality. It is quite notorious that very little litigation has arisen out of the Utility Registration Act."

A cheap system of Patents will probably put an end, in a great measure, to the registration under this Act of designs or inventions which are more properly the subjects of patents. But the simple and summary remedies provided by the Act will probably, in many cases, induce persons to register designs, which are registrable

as well as patentable, where the designs are such that a three years' protection would be sufficient to remunerate the proprietor of them.

The evidence of Mr. Duncan and Sir David Brewster, at pp. 134 and 324 of the Report of the Committee of the House of Lords on the Patent Law Amendment Bill, strongly illustrates the importance of a cheap and summary remedy against piracy, such as is provided by the Designs Acts.

The Society of Arts, impressed by the efficient working of the Designs Acts, sought to extend registration to inventions generally, and for that purpose to adapt and imitate the machinery of the office for the registration of designs. The Protection of Inventions Act, 1851, appeared to be a step taken by the legislature in the same direction.

Since these sheets have been in the press, the question as to the right of a foreigner to copyright in a book, discussed at page 12, has been decided by the Court of Exchequer Chamber, in the case of Boosey *v.* Jeffreys, reported in the 15th Jurist, page 540, in favour of the right

of the foreigner, in accordance with the previous decision in the Court of Common Pleas. It is understood that the case will be carried to the highest tribunal.

Extensions of the period of protection have been granted by the Board of Trade for figured quilts in Class 12, and printed shawls in Class 7. See page 129.

I have to acknowledge my obligations to George Sweet, Esq., the Editor of Jarman and Bythewood's Conveyancing, for the form of Specification under the Useful Designs Acts, at page 102.

J. P. N.

10, KING'S BENCH WALK, TEMPLE,
August 8th, 1851.

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THE DESIGNS ACTS.

THE Designs Acts secure to the inventors and designers of new and original designs for ornamental purposes, and of new and original designs for the shape and configuration of articles of utility, a protection for the several periods mentioned in the Acts with respect to such designs, provided that such designs have not been previously published.

WHAT IS A PRIOR PUBLICATION.

The rule as to what amounts to a publication by prior designers or manufacturers, so as to destroy the right of a designer to protection under this act, will probably be held to be similar to that which obtains with regard to patents. The publication of a design, before the date of the copyright, in any book or print, or by the sale, or public exhibition, or use of an article to which the design has been applied, will be such a publication as to avoid the effect of a registration under the acts (*a*). But

(*a*) See an article, 6 Jurist, 342; Cornish *v.* Keene, Webst. Pat. Ca. 508; see Anon. 1 Chitt. 24; Lewis *v.* Marling, 10 Bing. 22; Carpenter *v.* Smith, 9 M. & W. 300; S. C. Webst.

the confidential exhibition of such a design to particular persons, with the object of testing its applicability to the purposes for which it is intended to be applied, will not amount to a publication of the design (*b*). Nor will the private communication of the design, by exhibition before any registration, to any persons under such circumstances that the publication of the design by such persons would be a breach of trust, be such a publication as to prevent the original designer from obtaining the protection of the act by registration (*c*). Any person to whom such design has been so communicated, attempting to avail himself in any manner of the design, would be restrained by the Court of Chancery from doing so. But if the person, to whom the design was so entrusted, were, though in breach of the trust reposed in him, to publish or apply the design, such publication or application might be held to defeat the right of the original designer to protection (*d*).

The effect of the exhibition of a design before registration, and before any application to the purpose for which it was intended, was discussed in

Pat. Ca. 536; Jonca *v.* Berger, Webst. Pat. Ca. 550; The Household Company *v.* Neilson, Webst. Pat. Ca. 718, n.; Stead *v.* Williams, 7 M. & G. 818.

(*b*) See cases with regard to patents; The Household Company *v.* Neilson, 9 Cl. & F. 788; Webst. Pat. Ca. 713; S. C. Bentley *v.* Fleming, 1 Car. & K. 587; Morgan *v.* Seaward, 2 M. & W. 544.

(*c*) See Prince Albert *v.* Strange, 1 Hall & Twells, 1; 1 M'N. & Gor. 25, 43.

(*d*) See Godson on Patents, 41.

the case of Dalgleish *v.* Jarvie (*e*). The design, for ornamenting calico, had been constantly exhibited on paper, at the place of business of the plaintiffs, to their customers, for the purpose of obtaining orders for the article when it should be printed, and the plaintiffs had thereby obtained very large and numerous orders for the same. The Vice-Chancellor of England dissolved the injunction obtained by the plaintiffs, upon the ground that they had not disclosed these facts. Rolt and Daniel for the plaintiffs, in support of a motion to discharge the order of the Vice-Chancellor, argued that there was no publication of the design till it had been actually applied. It was urged on the other hand, by Palmer, that the designer may have protection, though he never prints; that if the argument of the plaintiffs was correct, the word application would be used in the fourth section of 5 & 6 Vict. c. 100, under which the question arose, instead of publication. The Lords Commissioners of the Great Seal, Lord Langdale and Baron Rolfe, without deciding the question whether the facts did amount to a publication, and disentitle the plaintiffs to an injunction, dismissed the appeal with costs, upon the ground that these circumstances did not appear upon the bill, and were contrary to the allegation in the bill, that there had been no publication. Lord Langdale said, it was insisted

(*e*) Dalgleish *v.* Jarvie, 14 Jurist, 945; 2 M'N. & Gor. 231, S. C.

that the parties considered that these facts could not amount to a publication; but the facts create the question, and a person coming for an ex parte injunction is bound to ascertain what are the facts which are important to be brought forward. Without considering the question on the act of parliament, the order of the Vice-Chancellor must be affirmed.

Statute 13 & 14 Vict. c. 104, passed for the protection of the property in designs not actually applied or merely applied for the purposes of exhibition, provided, that designs registrable under the Designs' Acts of 1842 and 1843 may, on payment of a fee, which has been fixed at one shilling for ornamental and ten shillings for useful designs, be provisionally registered by the proprietors. This registration is to continue in force for one year, the Board of Trade having power to extend the protection for an additional period of six months. During the continuance of such provisional registration, the proprietor is to have the sole right and property in such design; and the penalties and provisions of the Designs Act, 1842, for preventing the piracy of designs, are to extend to the application of any provisionally registered design, or any fraudulent imitation of it,—to any article of manufacture, or any substance, and to the publication, sale or exposure for sale, of any article to which the provisionally registered design shall have been applied.

A designer may therefore register his design under this act, and by that means his property in his design will be protected till he has sold his design, or is ready to bring his goods into the market.

The third section of the last-mentioned act provides, that, during the continuance of provisional registration, neither such registration, nor the exhibition or exposure of any design provisionally registered, or of any article to which any such design may have been or be intended to be applied, in any place, whether public or private, in which articles *are not sold*, or *exposed or exhibited for sale*, and to which the public are not admitted gratuitously, or in any place which shall have been previously certified by the Board of Trade to be a place of public exhibition within the meaning of this act; nor the publication of any account or description of any provisionally registered design exhibited or exposed, or intended to be exhibited or exposed, in any such place of exhibition, or exposure in any catalogue, paper, newspaper, periodical, or otherwise, shall prevent the proprietor thereof from registering any such design under the said Designs Acts at any time during the continuance of the provisional registration, in the same manner, and as fully and effectually, as if no such registration, exhibition, exposure or publication had been made: provided that every article to which any such design shall be applied, and which shall be exhibited or exposed by or with

the license or consent of the proprietor of such design, shall have thereon, or attached thereto, the words "provisionally registered," with the date of registration.

The fourth section enacts, that if, during the continuance of such provisional registration, the proprietor of any design provisionally registered shall sell, expose or offer for sale, any article, substance or thing to which any such design has been applied, such provisional registration shall be deemed to have been null and void, immediately before any such sale, offer or exposure shall have been first made; but nothing herein contained shall be construed to hinder or prevent such proprietor from selling or transferring the right and property in any such design.

It seems that the proprietor of a design exhibiting privately to his customers a provisionally registered design, before any application of it, and soliciting orders for the manufacture to which it is intended to be applied, is not deprived of his copyright by the fourth section, which avoids the effect of provisional registration on the sale, exposure or offer for sale, of articles to which the design has been applied. Strictly speaking this is an offer to sell articles to be manufactured, that is, to which the design is to be applied at a future period. It is not an offer for sale, but an offer to make and sell. Section 3 would not protect him if he exhibited his design, or any article to which it

might be applied, in a public and open shop, or advertised it publicly in any newspaper. Any such publication of a provisionally registered design, though merely for the purpose of enabling the designer to find a purchaser for his design, may prevent the acquisition of any copyright under the Designs Acts. In the following case the effect of a private negotiation for the sale of a patent was discussed.

Brett *v.* Electric Telegraph Company, reported in the Times of May 24, 1847, was a motion to restrain the defendants, their servants and agents, from constructing, altering, making or using galvanic batteries constructed or altered according to a design registered by Charles Massi, on the principle of the plaintiffs' invention. The plaintiffs obtained a patent, dated the 11th of February, for their invention. On the 25th of January the defendant Massi entered into an agreement with the Electric Telegraph Company, reciting that he had deposited a voltaic battery with the company, which was, in fact, as nearly as possible identical with the plaintiffs' invention, and in consideration of the battery then deposited, and the explanation given by Massi to them, the company agreed to pay him 5*l.*, the company being at liberty to make trial of the same for thirty days after the date of the agreement; and, if they determined to adopt it, the company were to pay for the space of ten years, if they should continue to use the battery, 20*l.* for the first

year, in addition to the 5*l.* already paid, and 25*l.* for each succeeding year. But in case, at the expiration of the thirty days, the company should decline to adopt the invention, they should keep the same secret from all persons whatever. The company were to keep possession of the battery and not demand the return of the 5*l.* On the 16th of February, being five days later than the date of the plaintiffs' patent, the defendant Massi obtained a registration of his design, upon which the plaintiffs asked for an injunction. The Vice-Chancellor said that the true construction of the agreement was, that the company were bound not to divulge the improvements. There had been no publication, and the injunction must be granted.

No copyright can be gained in any design previously published in a foreign country; but designs exhibited in the Exhibition of the Works of Industry of all Nations, in 1851, though published and applied elsewhere than in the United Kingdom, may be protected under the Designs Acts, if neither they, nor any articles to which they have been applied, have been publicly sold, or exposed for sale, previous to such Exhibition.

By the 8th section of the "Act to extend the Provisions of the Designs Act, 1850, and to give protection from Piracy to persons exhibiting new Inventions in the Exhibition of the Works of Industry of all Nations in One thousand eight hundred and

fifty-one," it is enacted, that, notwithstanding anything contained in the Designs Act, 1850, and the two Acts therein referred to, and called the Designs Act, 1842, and the Designs Act, 1843, the protection intended to be by those Acts extended to the proprietors of new and original designs shall be so extended to the proprietors of all new and original designs which shall be provisionally registered and exhibited in the Exhibition of the Works of Industry of all Nations in 1851, notwithstanding that such designs may have been previously published, or applied, elsewhere than in the united kingdom of Great Britain and Ireland: provided that such design, or any article to which the same has been applied, have not been publicly sold or exposed for sale previously to such exhibition thereof as aforesaid.

The Bill of 1851, for the extension of the Designs Act, as it originally stood, contained a clause, sect. 7, providing that rights might be acquired under the Designs Act, 1842, notwithstanding the previous publication of the design abroad, and that the Act should be read as if the words "or elsewhere" had not been inserted therein.

This clause was struck out, and the above clause inserted as an amendment by the House of Commons in committee.

Publication on the same day in a foreign country, though at an earlier period of the day would not

be such a prior publication as to vitiate a copyright here under the acts. (*g*)

RIGHTS OF FOREIGNERS AND THEIR ASSIGNEES UNDER THE ACTS.

The next question which naturally occurs, is, how far foreign designers are protected under the Designs Acts. The words of the Act of 1842 are, "that the proprietor of *every* design not previously published, either within the united kingdom of Great Britain and Ireland or elsewhere, shall have the sole right to apply the same to any articles of manufacture or to any such substances as aforesaid: provided the same be done within the united kingdom of Great Britain and Ireland."

The proviso is probably to be construed as if, instead of the word "done" the word "applied" existed in it. If the word "same" be construed to refer to the word "design" in the previous paragraph, the effect will be that no English manufacturer could avail himself of the protection of the acts in respect of any designs which he might purchase, unless they were invented and drawn in England. The words in question do not occur in the Designs Act, 1843, as to designs having reference to purposes of utility, nor in the Sculpture Acts. But it would undoubtedly be held, that the acts were passed for the purposes of protecting the

(*g*) See Boosey *v.* Purday, 4 Exch. 145.

industry of subjects of the realm only, and consequently that no persons can be entitled to the protection under the acts unless in respect of works which shall be manufactured or executed, or to which the designs registered shall be applied, within the united kingdom or the dominions of her Majesty, notwithstanding any registration of such useful design or sculpture here (*h*).

The Act of 1842, by sect. 11, enacts, "that unless a design applied to ornamenting any article of manufacture, or any substance, as in the act mentioned, registered under the Act, shall have been applied to the ornamenting such article or substance within the united kingdom of Great Britain and Ireland, it shall be unlawful to put on any such article or substance, in the manner therein required, with respect to articles or substances whereto shall be applied a registered design, the marks therein required to be applied, or any marks corresponding therewith or similar thereto; and if any person shall so unlawfully apply any such marks, or shall publish, sell or expose for sale any article of manufacture or any substance with any such marks so unlawfully applied, knowing that such marks have been unlawfully applied, he shall forfeit for every such offence a sum not exceeding five pounds, to be recovered by any person proceeding for the same."

(*h*) See Page *v.* Townsend, 5 Simons, 395; Guichard *v.* Mori, 18 L. J. (O. S.) Chanc. 227; Boosey *v.* Purday, 4 Exch. 145.

These words do not occur in the Act of 1843, 6 & 7 Vict. c. 65; and therefore it would appear that designs of an ornamental character, registered here and applied by British subjects within the dominions of the crown, as in the Isle of Man, the Channel Islands, or the colonies, would not be protected by registration under the Act of 1842; but that designs for purposes of utility, not of an ornamental character, would, under similar circumstances, be protected.

It seems unfortunate that the legislature has not, by an express declaration, set at rest the questions which have arisen with respect to the right of foreigners to obtain a copyright here. There is at present a conflict between the courts respecting the right of foreigners to gain copyright under the acts giving copyright in books. The courts of Common Pleas and Queen's Bench hold that a foreigner, the subject of a state in amity with this country, being the author of a work of which he is also the first publisher in England, and which has not been made public property by a previous publication abroad, has a copyright in that work, whether it be composed in this country or not (*i*). The Court of Exchequer has held that a foreign author, residing and composing his works abroad, sending them to this country, and first publishing them

(*i*) Cocks *v.* Purday, 5 Com. Bench, 860; Boosey v. Davidson, 13 Jur. 678; 18 L. J. (Q. B.) 174, S. C.

here, does not by such publication acquire a copyright here (*k*).

This decision has been disapproved of by Vice-Chancellor Knight Bruce, in Ollendorff *v.* Black (*l*). The plaintiff, a foreign author, present in England at the time of the first publication of his book here, sought to restrain the sale of copies of it published at Frankfort on the Maine, imported into England, and sold here by a London bookseller. An injunction to restrain the sale was granted on motion, the plaintiff undertaking to bring an action if the defendant desired it. The Vice-Chancellor said if he were compelled to elect between the cases of Cocks *v.* Purday and Boosey *v.* Purday, he should be disposed to say that Cocks *v.* Purday was consistent with an enlarged view of the subject, and with the true interpretation of the act of parliament (*m*). The case of Boosey *v.* Purday was rested mainly on the ground that the legislature must be considered primâ facie to legislate for its own subjects, or those who owe obedience to its laws; and consequently that the acts for copyright in books apply primâ facie to British subjects only in some sense of the term, which would include subjects by birth or residence, being authors. Some

(*k*) Boosey v. Purday, 4 Exch. 145. A writ of error is now pending in a similar case, Jeffries *v.* Williams.

(*l*) Ollendorff *v.* Black, 14 Jur. 1081. See Murray *v.* Bohn, Q. B., May 9, 1851.

(*m*) See on this subject D'Almaine *v.* Boosey, 1 Y. & C. 288; Bach *v.* Longman, Cowp. 623; Bentley *v.* Foster, 10 Sim. 329; Chappell *v.* Purday, 14 M. & W. 303; 4 Y. & C. 485; Clementi *v.* Walker, 2 B. & C. 861; Delondre *v.* Shaw, 2 Sim. 237.

stress was laid in the case on the position, that the object of the legislature was not to encourage the importation of foreign books, and their first publication in England, as a benefit to this country, but to promote the cultivation of the intellect of its subjects; and, as the act of Anne says, "to encourage learned men to compose and write useful books, by giving them as reward the monoply of their works for a certain period, dating from their first publication." The Vice-Chancellor said, in answer to this, that literature is of no country. The object of the act of parliament must have been to promote learning generally. The decision is an unfortunate for one literature in this country, for is it not a benefit that the learned men of other countries should publish their works here? And, in fact, it should be observed, that the encouragement is given for the benefit of the public rather than the author, and that trade is benefited by the printing and publishing of a work by British printers. It is not clear therefore, whether, under the acts for the copyright of designs, a foreigner, whether resident in this country or not at the time of the making or publication of his design, can acquire a copyright by registration under the acts.

It should be observed, that an inventor of new manufactures may have a patent though he be a foreigner himself, if the crown chooses to grant him a patent. The Court of Exchequer put this upon the ground that the common law authorizes the

grant of a monopoly in this case, it being for the public benefit to introduce new inventions from abroad (*n*).

Section 8 of the act of 1851 impliedly secures to foreign exhibitors at the Exhibition of the Works of Industry of all Nations the copyright of their designs, provisionally registered in pursuance of the terms of the Designs Act of 1850, during such provisional registration. And as every person acquiring, for a good or valuable consideration, a new and original design, is to be considered the proprietor, there can be no question, under these acts, as to the power of a British subject, purchasing a design from a foreigner, to acquire a copyright by registration of the design with his own name annexed as proprietor.

Provision has been made for a future international copyright of sculptures, by the stat. 7 Vict. c. 12; which, after reciting that the previous International Copyright Act did not empower her Majesty to extend the privilege of copyright to sculpture first published abroad, and that it was expedient to vest increased powers in her Majesty in that respect, enacted, that her Majesty might, by any order in council, direct that, as respects articles of sculpture, and other works of art to be defined in such order, which shall, after a future time to be specified in such order, be first published in any foreign country, to be named in such order, the inventors, designers

(*n*) Edgeberry v. Stephens, 2 Salk 447; Chappell v. Purday, 14 M. & W. 319; Beard v. Egerton, 3 C. B. 97, 128.

and makers thereof respectively, and their respective executors, administrators and assigns, shall have the privilege of copyright during such period as shall be defined in the order, not exceeding the term of copyright which inventors, designers and makers of the like works, first published in the United Kingdom, may be then entitled to under the Sculpture Acts therein recited, or any other acts which might be thereafter passed for their protection.

Ornamental Designs Copyright.

The Designs Act, 1842, stat. 5 & 6 Vict. c. 100, "An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture," which came into operation on the 1st of September, 1842, repealed certain existing acts, enumerated in Schedule A. (*o*), for

(*o*) Schedule (A.)

Date of Acts.	Title.
27 Geo. 3, c. 38. (1787.)	An Act for the Encouragement of the Arts of Designing and Printing Linens, Cottons, Calicoes and Muslins, by vesting the Properties thereof in the Designers, Printers and Proprietors for a limited Time.
29 Geo. 3, c. 19. (1789.)	An Act for continuing an Act for the Encouragement of the Arts of Designing and Printing Linens, Cottons, Calicoes and Muslins, by vesting the Properties thereof in the Designers, Printers and Proprietors for a limited Time.
34 Geo. 3, c. 23. (1794.)	An Act for amending and making perpetual an Act for the Encouragement of the Arts of Designing and Printing Linens, Cottons, Calicoes and Muslins, by vesting the Properties thereof in the

granting a copyright of new and original patterns for printing woven fabrics, and the 2 & 3 Vict. c. 17, by which the sole right of using any new and original design had been granted in respect of all articles except lace, and except the articles within the acts relating to the copyright of designs in woven fabrics. By the second section provision was made for the protection of copyrights existing at the time o the passing of the act. The preamble recited, t at the protection of the said acts, in respect of the application of des. s to certain articles of manufacture, was insufficient, and that it was expedient to extend the same, but upon the conditions expressed in the act. The third section proceeded to enact, that with regard to any new and original design, except for sculpture and other things within the provisions of the several acts mentioned in the Schedule (C.) to that act annexed (*p*), whether such design be applicable to the ornamenting of any article of manufacture, or of any substance, artificial or natural, or partly artificial and partly natural, and that, whether such design be so applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of

Designers, Printers and Proprietors for a limited Time.

2 Vict. c. 13.—An Act for extending the Copyright of Designs for Calico Printing to Designs for printing other woven Fabrics. (1839.)

(*p*) Models, copies and casts from the human figure, or of the bust or any part of any human figure clothed in drapery or otherwise, or of any animal or part of any animal, or of any subject being matter of invention in sculpture, or any

such purposes, and by whatever means such design may be so applicable, whether by printing, or by painting, or by embroidery, or by weaving, or by sewing, or by modelling, or by casting, or by embossing, or by engraving, or by staining, or by any other means whatsoever, manual, mechanical, or chemical, separate or combined: be it enacted, that the proprietor of every such design, not previously published, either within the United Kingdom of Great Britain and Ireland, or elsewhere, shall have the sole right to apply the same to any articles of manufacture, or to any such substances as aforesaid, provided the same be done within the United Kingdom of Great Britain and Ireland, for the respective terms hereinafter mentioned, such respective terms to be computed from the time of such design being registered according to this act (that is to say);

In respect to the application of any such Design to ornamenting any article of manufacture alto or basso-relievo representing any of these subjects, or of any subject containing or representing any of these matters, whether separate or combined. See 13 & 14 Vict. c. 104, ss. 6, 7, post, p. 35.

SCHEDULE (C.) is as follows:—

Date of Acts.	Title.
38 Geo. 3, c. 71. (1798.)	An Act for encouraging the Art of making New Models and Casts of Busts and other Things therein mentioned.
54 Geo. 3, c. 56. (1814.)	An Act to amend and render more effectual an Act for encouraging the Art of making New Models and Casts of Busts and other things therein mentioned, and for giving further Encouragement to such Arts.

contained in the First, Second, Third, Fourth, Fifth, Sixth, Eighth or Eleventh of the Classes following, for the term of three years.

In respect of the application of any such Design to ornamenting any article of manufacture contained in the Seventh, Ninth or Tenth of the Classes following, for the term of nine calendar months.

In respect of the application of any such Design to ornamenting any article of manufacture or substance contained in the Twelfth or Thirteenth of the Classes following, for the term of twelve calendar months.

Class 1.—Articles of manufacture composed wholly or chiefly of any metal or mixed metals.

Class 2.—Articles of manufacture composed wholly or chiefly of wood.

Class 3.—Articles of manufacture composed wholly or chiefly of glass.

Class 4. (*q*).—Articles of manufacture composed wholly or chiefly of earthenware.

Class 5.—Paper hangings.

Class 6. (*r*)—Carpets.

Class 7.—Shawls, if the Design be applied solely by printing, or by any other process by which

(*q*) Ivory, bone, papier maché, and solid substances not in Classes 1, 2 or 3, stat. 13 & 14 Vict. c. 104, s. 8, post, p. 22.

(*r*) Floor cloths and oil cloths, stat. 6 & 7 Vict. c. 65, s. 5, post, p. 22.

colours are or may hereafter be produced upon tissue or textile fabrics.

Class 8.—Shawls not comprised in Class 7.

Class 9.—Yarn, thread or warp, if the Design be applied by printing, or by any other process by which colours are or may hereafter be produced.

Class 10.(*s*)—Woven fabrics, composed of linen, cotton, wool, silk or hair, or of any two or more of such materials, if the Design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textible fabrics, excepting the articles included in Class 11.

Class 11.—Woven fabrics, composed of linen, cotton, wool, silk or hair, or of any two or more of such materials, if the Design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textible fabrics, such woven fabrics being or coming within the description *technically* called *furnitures*, and the repeat of the Design whereof shall be more than twelve inches by eight inches.

Class 12 (*t*).—Woven fabrics, not comprised in any preceding Class.

(*s*) See Lowndes *v.* Browne, 12 Irish Law Reports, 293, post, p. 23.

(*t*) As to damasks in Class 12, see next page.

Class 13.—Lace, and any article of manufacture or substance not comprised in any preceding Class.

Statute 13 & 14 Vict. c. 104, s. 9, enacts, that the Board of Trade may from time to time order that the copyright of any class of designs, or of any particular design registered, or which may be registered under the Designs Act, 1842, may be extended for such term, not exceeding the additional term of three years, as the said board may think fit; and the said board shall have power to revoke or alter any such order as may from time to time appear necessary; and whenever any order shall be made by the said board under this provision, the same shall be registered in the office for the registration of designs; and during the extended term, the protection and benefits conferred by the said Designs Acts shall continue as fully as if the original term had not expired.

On the petition of a body of manufacturers, stating that the protection afforded by the act was insufficient, the Board of Trade has ordered that the copyright of designs for damasks, in Class 12, shall be extended for the period of two years, in addition to the term of one year given by the act. And accordingly the registrar states, that damasks, in Class 12, may be registered at once for three years, or at any time during the existence of the original copyright of one year for an additional term of two years. This extension applies only to designs registered after Nov. 5, 1850.

Statute 13 & 14 Vict. c. 104, s. 8, provides, that designs for the ornamenting of ivory, bone, papier maché, and other solid substances, not already comprised in the classes numbered 1, 2 or 3, in the Designs Act, 1842, shall be deemed and taken to be comprised within the class numbered 4 in that act, and such designs shall be so registered accordingly.

Statute 6 & 7 Vict. c. 65, s. 5, enacts, that all such articles of manufacture as are commonly known by the name of floor cloths or oil cloths, shall be considered as included in Class 6, and be registered accordingly (*t*).

(*t*) These provisions are thus summed up in a tabular form by the Registrar.

By complete registration under the Designs Act, 1842 (5 & 6 Vict. c. 100), a copyright or property is given to the author or proprietor of any new or original design for ornamenting any article of manufacture or substance for the various terms specified in the following classes:—

Class.	*Article.*	*Copyright.*	*Regist. Fees.* £ s.
1.	Articles composed wholly or chiefly of Metal....	3 years ..	3 0
2.	Articles do. do. do. Wood.....	3 „ ..	1 0
3.	Articles do. do. do. Glass	3 „ ..	1 0
4.	Articles do. do. do. Earthenware, Bone, Papier Maché, or other solid substances not comprised in Classes 1, 2 and 3 ..	3 „ ..	1 0
5.	Paper Hangings	3 „ ..	0 10
6.	Carpets, Floor Cloths and Oil Cloths	3 „ ..	1 0
7.	Shawls (patterns printed)	9 months ..	0 1
8.	Shawls (patterns not printed).....	3 years ..	1 0
9.	Yarn, Thread or Warp (printed).....	9 months ..	0 1
10.	Woven Fabrics (patterns printed, except those included in Class 11).....	9 „ ..	0 1
11.	Woven Fabrics, Furnitures, (patterns printed, the repeat exceeding 12 inches by 8 inches....	3 years ..	0 5
12.	Woven Fabrics (patterns not printed)	12 months ..	0 5
	Do. Damasks, copyright extended to...	3 years ..	1 0
13.	Lace, and all other articles	12 months ..	0 5

A design may be registered in respect of one or more of the above Classes, according as it is intended to be employed in

If the word done in 5 & 6 Vict. c. 100, s. 3, is to be read as if it were written "applied," which seems the most reasonable construction, it would appear necessary, in order to entitle the proprietor of a registered design to copyright under this act, that the design should actually be applied by him within the united kingdom, and therefore that a declaratiod or bill in Chancery, not stating that the design had been so applied, might perhaps be demurrable, and on the trial of any action, or on any proceedings before justices in cases of piracy of ornamental designs, it would be proper for the plaintiff to be prepared with some slight proof that the design has been so applied by him within the united kingdom. The certificate is merely evidence of the provisions of the act under which the certificate is made having been complied with, and consequently no evidence for this purpose.

The following case with regard to the class under which a design may be registered, occurred in the Court of Queen's Bench in Ireland (*u*):—

A design for sewed muslin collars and capes was transferred by lithographic ink to muslin, and when so stamped with the pattern the muslin was given out to be worked. This was called printing in the trade. The worker followed the pattern, and on the completion of the needlework the worked muslin one or more species of manufacture, but a separate fee must be paid on account of each separate Class, and all such registrations must be made at the same time.

(*u*) Lowndes *v.* Browne, 12 Irish Law Reports, 293.

was bleached. The articles when finished were what are called ladies sewed muslin collars, not printed goods, but bleached articles composed of thread. They were registered in Class 10. The judge, Torrens, at the trial held the registration under Class 10 to be correct. On a rule to set aside the verdict on the ground of misdirection, Moore, J., said, "It would be a strange construction to put on the statute to say, that if a designer registered wrongly the pirate would have a right to use his design." It was urged that a registration under Class 10 did not prevent a stranger from working the pattern with the needle. The actual piracy had taken place by means of a printing of the design on muslin similar to that by which the pattern was impressed on the muslin by the proprietor of the design. It was also objected that the act did not protect an intermediate process for ornamenting manufactures. Blackburn, C. J., said that Class 10 was comprehensive enough to include patterns either of needlework or embroidery. "The design," said Crampton, J., "was to be applied by printing, which certainly is an intermediate process; but the section says, 'if the design be applied by printing or any other process.' My impression certainly is, that the design was intended to be applied by a process which might produce colours on the fabric." The plaintiff retained his verdict.

It should be observed, that the number of the

class in respect of which registration is made, is fixed by the person registering and not by the registrar, see 5 & 6 Vict. c. 100, s. 15. The 9th section of the act of 1843 merely empowers the registrar to decide under which act the design should be registered.

Ornamental Designs—Conditions of Copyright.

As to the conditions of copyright, stat. 5 & 6 Vict. c. 100, s. 4, enacts, That no person shall be entitled to the benefit of this act, with regard to any design in respect of the application thereof to ornamenting any article of manufacture, or any such substance, unless such design have before publication thereof been registered according to this act, and unless at the time of such registration such design have been registered in respect of the application thereof to some or one of the articles of manufacture, or substances comprised in the above mentioned classes, by specifying the number of the class in respect of which such registration is made; and unless the name of such person shall be registered according to this act as a proprietor of such design, and unless after publication of such design every such article of manufacture, or such substance to which the same shall be so applied, published by him, hath thereon, if the article of manufacture be a woven fabric for printing, at one end thereof, or, if of any other kind or such substance

as aforesaid, at the end or edge thereof, or other convenient place thereon, the letters "Rd," together with such number or letter, or number and letter, and in such form as shall correspond with the date of the registration of such design according to the registry of designs in that behalf; and such marks may be put on any such article of manufacture or such substance, either by making the same in or on the material itself of which such article or such substance shall consist, or by attaching thereto a label containing such marks.

Useful Designs, Copyright in.

The Designs Act, 1843, stat. 6 & 7 Vict. c. 65, An Act to amend the Laws relating to the Copyright of Designs, which came into operation or the 1st of September, 1843, recites, that by 5 & 6 Vict. c. 100, there was granted to the proprietor of any new and original design, with the exceptions therein mentioned, the sole right to apply the same to the ornamenting of any article of manufacture, or any such substance as therein described, during the respective periods therein mentioned; and that it is expedient to extend the protection afforded by the said act to such designs hereinafter mentioned, not being of an ornamental character, as are not included in the said act. The second section enacts, that with regard to any new and original design for any article of manufacture, having reference to some purpose of utility, so far as such design shall

be for the shape or configuration of such article, and that whether it be for the whole of such shape or configuration, or only for a part thereof; that the proprietor of such design, not previously published within the United Kingdom of Great Britain and Ireland or elsewhere, shall have the sole right to apply such design to any article, or make or sell any article according to such design, for the term of three years, to be computed from the time of such design being registered according to this act; provided always, that this enactment shall not extend to such designs as are within the provisions of the said act, or of two other acts passed respectively in the 38th and 54th years of the reign of his late majesty King George the Third, and entitled respectively "An Act for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned," and "An Act to amend and render more effectual an Act for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned."

With regard to the designs registrable under this act, the directions issued from the office of the registrar of designs are—"The Designs Acts, 1843 (6 & 7 Vict. c. 65), and 1850 (13 & 14 Vict. c. 104), give protection only to the shape or configuration of articles of utility, and not to any mechanical action, principle, contrivance, application or adaptation (except so far as these may be dependent

upon and inseparable from the shape or configuration), or to the material of which the article may be composed. No design will be registered, the description of or statement respecting which shall contain any wording suggestive of the registration being for any such mechanical action, principle, contrivance, application or adaptation, or for the material of which the article may be composed. With this exception, and those mentioned in the act of 1843, clause 9, all designs, the drawings and descriptions of which are properly prepared and made out, will, on payment of the proper fee, be registered without reference to the nature or extent of the copyright sought to be thereby acquired, as proprietors of designs must use their own discretion in judging whether or not the design proposed for registration be for the shape or configuration of an article of utility coming within the meaning and scope of the acts above mentioned."

This act will probably prove to be of great value in affording a cheap protection for improvements in machinery, where the improvements consist wholly in modifications of the shape or configuration of some part or parts of the machinery, and where the effect of such improvement depends wholly on the configuration of such parts, and not on the material of which the parts are to be made. By a proper specification, the designer may secure to himself a right to considerable variations in the details of the form, if the design admits of modi-

fication without destruction of its essential form. If the paving block, in Mac Namara *v.* Hulse, had been registered, it would have been unnecessary to have stated the precise angle of the bevil (*x*). Actual utility does not appear to be a condition of copyright in a design for the configuration of an article of manufacture having reference to some purpose of utility; and therefore the proprietor of the copyright in such a design might not lose his copyright, though the specification, being too large in its terms, should include variations of form, which, if adopted, would not effect the purpose of utility in respect of which the design is registered.

The following cases, which have occurred with respect to designs registered under this act, illustrate the nature and class of designs protected by it.

In Millingen *v.* Picken (*y*), the plaintiff had obtained a certificate of registration under the statute for what he called a new and original design for the shape and configuration of a parasol, his alleged invention consisting of a mechanical contrivance within the metal tube or stem of the parasol, to enable a person carrying it to open or close the parasol with one hand only, by the mere pressure of the thumb on a small ivory knob inserted in the handle. The Court appeared to think that this could hardly be said to be a mere design for the

(*x*) See Macnamara *v.* Hulse, 1 Car. & Mar. 471; and see a form of specification for a useful design of the above description, post.

(*y*) Millingen *v.* Picken, 1 Com. Bench Rep. 799.

shape or configuration of a parasol; Tindal, C. J., observing, that if the mode of construing the act contended for by the plaintiff be correct, few inventions need be the subject of patents, provided the inventors are satisfied with a three years' monopoly. No decision on the point was given, the Court holding that a plea that the plaintiff was not the inventor or proprietor of such a design did not raise the question.

A design for a window ventilator consisted of a hinged pane, opened and regulated by means of a screw and spring. The prosecutor had registered as not new all the parts of the design, taken per se and apart from the purposes thereof, and claimed as new not any particular shape, but the general configuration and combination of the parts. The Court held that the combination was not the shape or configuration, and that the design did not come within the act (*y*).

In Margetson *v.* Wright (*z*), a design for a protector label consisted in making in the label an eyelet hole, and lining it with a ring of a metallic substance, through which a string, attaching the label to packages, passed. Vice-Chancellor Knight Bruce, not doubting that the design was meritorious and useful, said he doubted "too much whether the words, so far as such design shall be for the shape or configuration of such article, did not exclude the

(*y*) Reg. *v.* Bessell, Q. B., April 25, 1851.

(*z*) Margetson *v.* Wright, 2 De Gex & Smale, 420.

invention from the protection of the act, to be able to grant an injunction." The novelty sought to be protected was rather the material with which the eyelet hole was lined than the shape or configuration of the label.

In Rogers *v.* Driver (*a*), a newly invented brick, the utility of which consisted in its being so shaped that when several bricks were laid together in the building a series of apertures was left in the interior of the wall, in consequence of which the air was more freely admitted through the wall, and a saving was effected in the number of bricks required, was held to be a design capable of being registered under this act, whether the subject of a patent or not.

Useful Designs—Conditions of Copyright.

As to the conditions of copyright in useful designs, stat. 6 & 7 Vict. c. 65, s. 3, enacts, that no person shall be entitled to the benefit of this act unless such design have before publication thereof been registered according to this act, and unless the name of such person shall be registered according to this act as a proprietor of such design, and unless after publication of such design every article of manufacture made by him according to such design, or on which such design is used, hath thereon the word "Regis' ed," with the date of registration.

(*a*) Rogers *v.* Driver, 20 L. J. (N.S.) Q. B. 31.

SCULPTURE—COPYRIGHT IN.

The Sculpture Copyright Acts are, 38 Geo. 3, c. 71, and 54 Geo. 3, c. 56.

By stat. 38 Geo. 3, c. 71, it was enacted, that "every person who shall make or cause to be made any new model, or copy or cast made from such new model, of any bust, or any part of the human figure, or any statue of the human figure, or the head of any animal, or any part of any animal, or the statue of any animal, or shall make or cause to be made any new model, copy or cast from such new model, in alto or basso relievo, or any work in which the representation of any human figure or figures, or the representation of any animal or animals, shall be introduced, or shall make or cause to be made any new cast from nature of any part or parts of the human figure, or of any part or parts of any animal, shall have the sole right and property in every such new model, copy or cast, and also in every such new model, copy or cast in alto or basso relievo, or any work as aforesaid, and also in every such new cast from nature as aforesaid, for and during the term of fourteen years from the time of first publishing the same: provided always, that every person who shall make or cause to be made any such new model, copy or cast, or any such new model, copy or cast, in alto or basso relievo, or any work as aforesaid, or any new cast from nature as aforesaid, shall cause his

or her name to be put thereon, with the date of the publication, before the same shall be published and exposed to sale."

In order to remedy the defects and imperfections of this act, stat. 54 Geo. 3, c. 56, enacted, that "from and after the passing of this act, every person or persons who shall make or cause to be made any new and original sculpture or model, or copy or cast, of the human figure or human figures, or of any bust or busts, or of any part or parts, of the human figure clothed in drapery or otherwise, or of any animal or animals, or of any part or parts of any animal, combined with the human figure or otherwise, or of any subject being matter of invention in sculpture, or of any alto or basso relievo representing any of the matters or things hereinbefore mentioned, or any cast from nature of the human figure or of any part or parts of the human figure, or of any cast from nature of any animal or of any part or parts of any animal, or of any such subject containing or representing any of the matters and things hereinbefore mentioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture, model, copy and cast of the human figure or human figures, and of all and in every such bust or busts, and of all and in every such part or parts of the human figure clothed in drapery or otherwise, and of all and in every such new and original sculpture, model, copy and cast representing any animal or

animals, and of all and in every such work representing any part or parts of any animal combined with the human figure or otherwise, and of all and in every such new and original sculpture, model, copy and cast of any subject, being matter of invention in sculpture, and of all and in every such new and original sculpture, model, copy and cast in alto or basso relievo representing any of the matters or things hereinbefore mentioned, and of every such cast from nature, for the term of fourteen years from first putting forth or publishing the same; provided, in all and in every case, the proprietor or proprietors do cause his, her, or their name or names, with the date, to be put on all and every such new and original sculpture, model, copy or cast, and on every such cast from nature, before the same shall be put forth or published.

The second section enacted, that the sole right and property in all works which had been put forth and published under the protection of the first act, should be extended, continued to and vested in the respective proprietors thereof for the term of fourteen years, to commence from the date when such works were put forth or published. And, for the benefit of the maker of the original sculpture, if he should survive the period of fourteen years for which the copyright was vested in him by the former clauses, the sixth section enacted, "that from and immediately after the expiration of the term of fourteen years, the sole right of making and disposing of such new and original sculpture, or model,

or copy, or cast of any of the matters or things hereinbefore mentioned, shall return to the person or persons who originally made or caused to be made the same, if he or they shall be then living, for the further term of fourteen years, excepting in the case or cases where such person or persons shall by sale or otherwise have divested himself, herself or themselves, of such right of making or disposing of any new and original sculpture, or model, or copy, or cast of any of the matters or things hereinbefore mentioned, previous to the passing of this act." This contingent term of fourteen years is apparently assignable, and may be conveyed to a purchaser of copyright in sculpture (*b*).

SCULPTURE COPYRIGHT—REGISTRATION OF SCULPTURE.

By the Designs Act of 1850, a protection similar to that granted to designs for ornamenting articles of manufacture is extended to sculpture. Stat. 13 & 14 Vict. c. 104, "An Act to extend and amend the Acts relating to the Copyright of Designs," which came into operation on the 14th of August, 1850, by the sixth section enacts, "that the registrar of designs, upon application by or on behalf of the proprietor of any sculpture, model, copy or cast, within the protection of the Sculpture Copyright Acts, and upon being furnished with such copy, drawing, print or description, in writing or in print, as in the judgment of

(*b*) See Fearne's Contingent Remainders by Butler, 349; Grantham *v.* Hawley, Hob. 178, cited Lunn *v.* Thornton, 1 C. B. 379; Vin. Ab. Grants, M.

the said registrar shall be sufficient to identify the particular sculpture, model, copy or cast, in respect of which registration is desired, and the name of the person claiming to be proprietor, together with his place of abode or business, or other place of address, or the name, style or title of the firm under which he may be trading, shall register such sculpture, model, copy or cast, in such manner and form as shall from time to time be prescribed or approved by the Board of Trade, for the whole or any part of the term during which copyright in such sculpture, model, copy or cast may or shall exist under the Sculpture Copyright Acts; and whenever any such registration shall be made, the said registrar shall certify under his hand and seal of office, in such form as the said Board shall direct or approve, the fact of such registration, and the date of the same, and the name of the registered proprietor, or the style or title of the firm under which such proprietor may be trading, together with his place of abode or business, or other place of address."

The seventh section provides, "that the proprietor of any sculpture, model, copy or cast, which shall be registered under this act, shall not be entitled to the benefit of that act unless every copy or cast of such sculpture, model, copy or cast, which shall be published by him after such registration, shall be marked with the word 'registered' and with the date of registration."

CONDITIONS OF COPYRIGHT.

With regard to the conditions of copyright under the several acts, it is to be observed, that in all registrations under either of the above enactments, the name in the register should be the true name of the proprietor; the object of these enactments being similar to that in the Engraving Act, 8 Geo. 2, c. 13, which declares that the day of first publishing shall be truly engraved, with the name of the proprietor, on each plate, and printed on every such print or prints (*c*). The publication of the proprietor's name is for the purpose of indicating the person to be applied to for leave to copy the article protected; coupled with the date, or mark indicating the date, it shows how long the designer has had the monopoly. The courts have been strict in requiring the name and date to appear in cases under the Engravings Acts, for the purpose of carrying out these objects effectually (*d*).

It would seem, however, that the name need not necessarily be the baptismal and surname of the proprietor, but such as he or his coproprietors are commonly known by or trade under; sections 15 of the act of 1842, and 8 of the act of 1843, directing that the registrar shall be furnished with the name

(*c*) Newton *v.* Cowie, 4 Bing. 240; Thompson *v.* Symonds, 5 T. R. 45.

(*d*) Sayer qui tam *v.* Dicey, 3 Wils. 60; Bonner *v.* Field, cited 5 T. R. 41; Brooks *v.* Cock, 3 A. & E. 138; Harrison *v.* Hogg, 2 Ves. jun. 322.

of any person who shall claim to be proprietor, or with the style or title of the firm under which such proprietor may be trading, seem to indicate what name would be sufficient.

Under the 34 Geo. 3, c. 23, s. 4, in an action for pirating a design for printing calico it was held necessary to aver in the declaration, that the name of the proprietor and the day of first publishing the pattern were printed at each end of every piece of calico, the copyright under that act commencing "from the day of first publishing thereof, which should be truly printed with the name of the printers or proprietors upon every such piece of linen, cotton, &c."(*e*). But as in the present acts relating to ornamental and useful designs registered and provisionally registered, the conditions of copyright come by way of proviso or defeasance, in a subsequent section, this seems no longer necessary: and the defendant, if he would avail himself of any breach of such conditions, must do so by a plea(*f*). The decision would still apply to actions or proceedings for pirating sculpture, the copyright in which is, by the Sculpture Acts, given on condition that the name is put on the sculpture; see post. See a plea that every article manufactured by the plaintiff had not the marks required by the statute in De la Branchardière *v.* Elvery (*g*).

(*e*) Mackmurdo *v.* Smith, 7 T. R. 518.
(*f*) 1 Chitty on Pleading, 246, Greening's edition; Russell *v.* Ledsam, 14 M. & W. 574, 584.
(*g*) De La Branchardière *v.* Elvery, 4 Exch. 380.

The publication of the design in books containing drawings of the design, which was for ornamenting ladies crochet collars, with directions for the application of the design in making such crochet collars, does not require to have the mark of registration affixed to it (*h*).

Proprietorship and Transfer.

The fifth section of the 5 & 6 Vict. c. 100, (which is incorporated in the subsequent acts, 6 & 7 Vict. c. 65, s. 6; 13 & 14 Vict. c. 104, s. 16,) enacts, "that the author of any new and original design shall be considered the proprietor thereof, unless he have executed the work on behalf of another person for a good or a valuable consideration, in which case such person shall be considered the proprietor, and shall be entitled to be registered in the place of the author; and every person acquiring for a good or a valuable consideration a new and original design, or the right to apply the same to ornamenting any one or more articles of manufacture, or any one or more such substances as aforesaid, either exclusively of any other person or otherwise, and also every person upon whom the property in such design, or such right to the application thereof, shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise."

But in order to perfect the legal title of a trans-

(*h*) De La Branchardière *v.* Elvery, 4 Exch. 380.

feree of copyright of designs under the acts of 1842 and 1843, it seems necessary that his name should be registered as a proprietor under the provisions of the acts; the fourth section of 5 & 6 Vict. c. 100, providing, that no person shall be entitled to the benefit of the act in respect of any design registered under the act, unless the name of such person shall be registered according to the act as a proprietor of the design. The third section of stat. 6 & 7 Vict. c. 65, is similarly worded.

In case of the bankruptcy of the registered proprietor of a design registered under these acts, after the execution of a transfer of his design, and before the registration of the transfer, the copyright of the design would probably be considered in the order and disposition of the bankrupt, with the consent of the true owner, and would therefore pass to his assignees(*h*).

The act of 1850, stat. 13 & 14 Vict. c. 104, does not seem to render registration necessary in order to perfect the title of the proprietor of copyright in designs provisionally registered, or sculpture registered under that act. Registration having once taken place the assignee of the registered proprietor may apparently sue in his own name, without registration of the transfer to himself. Registration of the name of the proprietor not being made a condition of copyright, as under the acts of 1842 and 1843, seems merely a means of facilitating the

(*h*) See Longman *v.* Tripp, 2 New Rep. 67; Hesse *v.* Stevenson, 3 Bos. & Pull. 565; Re Dilworth, 1 Dea. & Chitt. 411.

proof of title. The proprietor, which term is construed according to the interpretation of the word in the act of 1842, is to have the sole right and property in the design provisionally registered during the continuance of such registration; see stat. 13 & 14 Vict. c. 104, ss. 2, 7, 16. Neither the sixth, eighth or ninth sections of stat. 5 & 6 Vict. c. 100, which are incorporated with these acts, appear to render the registration of a transfer indispensable.

The purchaser of a provisionally registered design, taking it by a transfer in writing from the registered owner, may probably at once completely register the design so purchased without first registering the transfer of the provisionally registered design to himself; and by so doing would gain a good title against all the world. It appears, however, to be the practice of the office to demand the fee for the registration of the transfer.

It may be doubtful whether, independently of the statutes, copyright is assignable at all (*i*); and it has been suggested by high authority, that at any rate a deed is necessary to the transfer (*k*). If either position be correct, the enactment of the next section, that any writing purporting to be a transfer of such design, and signed by the proprietor thereof,

(*i*) Per Coltman, Leader *v.* Purday, 7 C. B. 11.
(*k*) De Pinna *v.* Polhill, 8 C. & P. 78, per Tindal; Leader *v.* Purday, 7 C. B. 14, Coltman. In Cumberland *v.* Planché, 1 A. & E. 580, the transfer was by deed. See also stat. 5 & 6 Vict. c. 45, s. 13. Per Jervis, Godson and Crompton, arguendo Chappell *v.* Purday, 14 M. & W. 314.

shall operate as an effectual transfer, has an enabling operation. But though this clause, being permissive in its terms, would not render writing essential to a transfer if it was not so before; the seventh section of 5 & 6 Vict. c. 100, the provisions of which are extended to the subsequent acts by stat. 5 & 6 Vict. c. 65, s. 6, and 13 & 14 Vict. c. 104, ss. 2, 15, seems to have that effect (*l*).

It has been held, that, in an action for a copyright bargained and sold, in order to raise the defence that there was no assignment in writing, such defence must be specially pleaded, and cannot be given in evidence on the general issue (*m*).

It would appear that a contract for the sale of a copyright need not be in writing; but if reduced into writing, it would require a stamp if the consideration is more than 20*l*. (*n*). The amount of the stamp on agreements and transfers is fixed by stat. 13 & 14 Vict. c. 97.

Copyright is personalty, and goes to the executors on the death of the author or proprietor (*o*). Statute 5 & 6 Vict. c. 45, s. 25, as to copyright in books, seems merely declaratory of the common law in this respect.

(*l*) Power *v.* Walker, 3 M. & S. 7; Lender *v.* Purday, 7 C. B. 14; Davidson *v.* Bohn, 6 C. B. 456; Clementi *v.* Walker, 2 B. & C. 861.

(*m*) Barnett *v.* Glossop, 1 Bing. N. C. 633, sed. qu.?

(*n*) See Colnaghi *v.* Ward, 12 L. J. (N. S.) Q. B. 1; compare Humble *v.* Mitchell, 11 A. & E. 205; Longman *v.* Tripp, 2 New Rep. 67.

(*o*) Duke of Queensberry *v.* Shebbeare, 2 Eden, 329; Thomson *v.* Stanhope, Amb. 737; 2 Stephen's Commentaries, 96.

TRANSFER OF COPYRIGHT AND REGISTER THEREOF—ORNAMENTAL DESIGNS.

The enactments with respect to the transfer of copyright in designs, and the registration of such transfer in the several acts, are as follows:—

With regard to designs registered under that act, statute 5 & 6 Vict. c. 100, s. 5, enacts that every person purchasing or otherwise acquiring the right to the entire or partial use of any such design *may enter his title* in the register hereby provided, and any writing purporting to be a transfer of such design, and signed by the proprietor thereof, shall operate as an effectual transfer; and the registrar shall, on request and the production of such writing, or in the case of acquiring such right by any other mode than that of purchase, on the production of any evidence to the satisfaction of the registrar, insert the name of the new proprietor in the register; and the following may be the form of such transfer, and of such request to the registrar:—

Form of Transfer and Authority to register.

"I, A. B., author [*or* 'proprictor'] of design No. ——, having transferred my right thereto [*or if such transfer be partial*], so far as regards the ornamenting of [*describe the articles of manufacture or substances, or the locality with respect to which the right is transferred*], to B. C., of ——, do hereby authorize you to insert his name on the Register of Designs accordingly."

Form of Request to register.

"I, B. C., the person mentioned in the above transfer, do request you to register my name and property in the said design as entitled [*if to the entire use*] to the entire use of such design [*or if to the partial use*], to the partial use of such design, so far as regards the application thereof [*describe the articles of manufacture, or the locality in relation to which the right is transferred*]."

But if such request to register be made by any person to whom any such design shall devolve otherwise than by transfer, such request may be in the following form:—

"I, C. B., in whom is vested by [*state bankruptcy or otherwise*] the design No. —— [*or if such devolution be of a partial right, so far as regards the application thereof*] to [*describe the articles of manufacture or substance, or the locality in relation to which the right has devolved*]."

The directions of the registrar with respect to the registration of designs registered under this act are as follows:—"In case of the transfer of a design registered, whether provisionally or completely, a copy or the certified copy thereof must be transmitted to the registrar, together with the forms of application (which may be procured at the office), properly filled up, signed and dated; the transfer will then be registered, and the certified copy returned."

TRANSFER OF COPYRIGHT AND REGISTRATION THEREOF—USEFUL DESIGNS.

The sixth section of the 6 & 7 Vict. c. 65, enacts that all the clauses and provisions of the 5 & 6 Vict. c. 100, so far as they are not repugnant to the provisions contained in the later act relating to the explanation of the term proprietor, and to the transfer of designs, shall be applied and extended to the later act as fully and effectually, and to all intents and purposes, as if the several clauses and provisoes had been particularly repealed and re-enacted in the body of that act.

The directions of the registrar as to the transfer of designs under this act are as follows:—"In case of the transfer of a completely registered design, a copy thereof or the certified copy, provided there is space sufficient thereon for the certificate made on one sheet of paper, with a blank space left for the certificate, must be transmitted to the registrar, together with the forms of application (which may be procured at the office), properly filled up, signed and dated; the transfer will then be registered, and the copy returned."

For the transfer of a design provisionally registered, the new copy will not be required; but the certified copy must be transmitted to the registrar with the above-mentioned forms.

TRANSFER OF COPYRIGHT—SCULPTURE.

With respect to Sculpture, &c. not registered in pursuance of the Designs Act, 1850.

By the Sculpture Copyright Acts, every person who shall first make or cause to be made the new sculptures, models, copies or casts, and other things therein mentioned, is declared to have the sole right and property in such new sculptures, models, copies, casts, &c. The first act, 38 Geo. 3, c. 71, by the second section, gave a right of action to the proprietors in case of a piracy of the copyright; and by the third section persons who should thereafter purchase the right in any model, copy or cast, were declared not liable to any action for vending or selling any cast or copy from the same.

Nothing is said as to the form of the conveyance of this right. This section would be probably held to protect a purchaser of the copyright in any new sculpture publishing copies or casts from the same, though no licence or conveyance by deed or in writing had been executed.

The third section of statute 54 Geo. 3, c. 56, gives to the proprietor or proprietors, or their assignee or assignees, a right of action on the case against persons putting forth pirated copies or casts of any sculpture, copy, model, copy or cast, &c. to the detriment, damage or loss of the original or respective proprietor or proprietors of any such works so pirated.

The fourth section provides, that no person, who may thereafter purchase the right or property of any new and original sculpture or model, or copy or cast, or of any cast from nature, or of any of the matters and things published under or protected by virtue of that act, of the proprietor or proprietors, expressed in a deed in writing signed by him, her or them respectively, with his, her or their own hand or hands in the presence of and attested by two or more credible witnesses, shall be subject to any action for the copying or casting, or vending the same, anything contained in this act to the contrary notwithstanding.

This section is somewhat obscure in its terms; but it does not appear to render a deed necessary to the transfer of the copyright in sculpture. But it is probably so at common law.

As to the transfer of the copyright of sculptures, models, copies, casts, &c. registered under the provisions of the Designs Act, 1850, the fifteenth section enacts, that the several provisions contained in the Designs Acts (so far as they are not repugnant to the provisions of that act relating to the transfer of designs) shall apply to the transfer of designs, sculptures, models, copies and casts entitled to protection under that act, as fully and effectually as if those provisions had been re-enacted in that act with regard to designs, sculptures, models, copies and casts registered and provisionally registered under that act; and the forms contained in the

Designs Act, 1842, may for the purposes of that act be varied so as to meet the circumstances of the case.

Since the passing of the above act it is clear that any transfer in writing is sufficient to pass the copyright in registered sculpture.

Piracy of Designs—Ornamental and Useful Designs.

The seventh section of the act of 1842, for preventing the piracy of registered designs, enacts that, during the existence of any such right to the entire or partial use of any such design, no person shall either do or cause to be done any of the following acts with regard to any articles of manufacture or substances, in respect of which the copyright of such design shall be in force, *without the licence or consent in writing of the registered proprietor* thereof; (that is to say)—

No person shall apply any such design, or any fraudulent imitation thereof, for the purpose of sale, to the ornamenting of any article of manufacture or any substance, artificial or natural, or partly artificial and partly natural;

No person shall publish, sell or expose for sale any article of manufacture or any substance, to which such design, or any fraudulent imitation thereof, shall have been so applied, after having received, either verbally or in writing, or otherwise from any source other than the

proprietor of such design, knowledge that his consent has not been given to such application, or after having been served with or had left at his premises a written notice signed by such proprietor or his agent to the same effect.

This provision is extended to designs for articles of utility by 6 & 7 Vict. c. 65, s. 6.

In order to establish a case of piracy under these provisions, the plaintiff must prove that the alleged piracy is an application of his registered design, or a fraudulent imitation of it. Probably according to the proper construction of the seventh section of the act of 1842, it is piracy to apply a design registered under one class to ornamenting articles falling under another class, where the design is applied to substances in such other class, without alteration of the means producing the effect, though the effects be produced by a different process or by the use of different materials (*p*). For instance, it is piracy to imitate a design in wood carving by stamped leather, plaster of Paris coloured to imitate wood, or gutta percha. No fraudulent imitation of the design can be applied to any article of manufacture or any substance.

The application of a design registered in respect of one class to articles of manufacture belonging to another class seems not to be a piracy if such application involves a new arrangement or material

(*p*) See Lowndes *v.* Browne, 12 Irish Law Reports, 293.

modification of the parts producing the effect, and the article to which the new design is applied cannot by any possibility come into competition in the market with the articles to which the originally registered design is intended to be applied (*q*). Such an application would neither be an application of the original design, nor such an imitation of it as to defraud the original owner of the copyright in the design. Under the acts relating to the copyright of engravings, a copy of a print made on canvass on a large scale with dioramic effects, and exhibited as a diorama, has been held not to be a piracy of a print. Probably if in the new application the effect is produced by means wholly different from those employed in the design originally registered, a copyright might be acquired in the new application, as it would be in an engraving the copy of a picture (*r*).

In cases where the design alleged to be a piracy is not identical with the design registered by the plaintiff, it is necessary to show that the imitation is fraudulent. Mere resemblance will not amount to a piracy, unless it is fraudulent.

The articles alleged to be piracies should be pro-

(*q*) See as to the principle Newton *v.* Cowie, 4 Bing. 244; Martin *v.* Wright, 6 Simons, 297; Turner on Copyright in Design, p. 38, citing an opinion of Sir F. Thesiger, that a candlestick modelled from an engraving is not a copy under the Engraving Acts; and a French case, on which an umbrella handle carved after a print was held not a copy.

(*r*) Newton *v.* Cowie, 4 Bing. 245; De Berenger *v.* Wheble, 2 Starkie, 548.

duced to the court, in order that they may be compared with the registered design, and the articles to which it has been applied by the proprietor (*s*). But where the alleged piracies were proved to have been stolen out of the possession of the plaintiff, the testimony of a witness as to their nature uncontradicted has been held sufficient (*t*).

The court, or a jury if the case comes before one of the superior courts of common law, will then be able to pronounce on comparison whether the registered design has been applied or not. But if what is complained of is a fraudulent imitation, and not an application of the exact design, it will be convenient, if possible, to show by direct evidence that the defendant's design has been imitated from the plaintiff's (*u*). If this cannot be done, the question whether the resemblance is the result of a fraudulent imitation must be determined by comparison of the two designs, and the consideration of any circumstances rendering it probable that one design has been copied from the other. In Roworth *v.* Wilkes, which was a case of piracy of prints in a work on fencing, Lord Kenyon asked the jury whether the similarity could be supposed to have arisen from the nature of the subject, or from the artist having sketched designs merely from the letter-press of the plaintiff's work. He

(*s*) Sheriff *v.* Coates, 1 Russ. & Myl. 159.
(*t*) Fradella *v.* Weller, 2 Russ. & Myl. 241.
(*u*) Lowndes *v.* Browne, 12 Irish Law Reports, 293; Sheriff *v.* Coates, 1 Russ. & Myl. 159.

also remarked on the fact that the defendant had given no evidence to explain the similarity (*x*).

In designs for articles for purposes of utility, a departure from the design registered for the purpose of evasion would be a fraudulent imitation. The question to be determined is probably the same as in cases of patents, whether the defendant's design is or is not substantially different.

In an action for infringing a patent for blocks for pavement tried before Lord Abinger at nisi prius, the plaintiff claimed as his invention that his block was bevilled both inwards and outwards on the same side of the block, and it was alleged that the defendant's blocks were an imitation of the plaintiff's, as two of the defendants' blocks were equivalent to one of the plaintiff's; it was held that it was for the jury to say whether the defendant's blocks were in effect the same as the plaintiff's, though no single block of the defendants' was bevilled both inwards and outwards at the same time; but the defendants fastened their blocks together by pins, so that two of the defendants' blocks fastened together by pins, as they were intended to be, were exactly the same as one of the blocks of the plaintiff (*y*). This case is cited here, as the invention would appear to be registrable

(*x*) Roworth *v.* Wilkes, 1 Camp. 94; and see Moore *v.* Clarke, 9 M. & W. 692; Trusler *v.* Murray, 1 East, 363, *n.*; Sayre *v.* Moore, 1 East, 361, *n.*; West *v.* Francis, 5 B. & Ald. 737; Blackwell *v.* Harper, 2 Atk. 95.

(*y*) Macnamara *v.* Hulse, 1 Car. & Mar. 471; Hill *v.* Thompson, 8 Taunt. 391.

under 6 & 7 Vict. c. 65, as a design for the shape of an article having reference to a purpose of utility.

If the application of the design or of a fraudulent imitation by the defendant is complained of, in proceedings for penalties it should also be shown that the application was for the purpose of sale; but it is piracy to apply the design within the period of copyright, though no sale is contemplated until after its expiration (*z*).

If the sale is complained of, the plaintiff must prove either the knowledge of the defendant that the consent of the registered proprietor had not been given to the application of the design to the articles sold, or the service of the notice spoken of in the seventh section.

Each application of the registered design to an article of manufacture, and each sale of an article to which the design has been applied, seems to be a distinct offence under the seventh and eighth sections of the act; and therefore several penalties may be incurred in the same day by the manufacture or sale of articles to which the registered design has been applied(*a*).

A plea of leave and licence under the seventh section should allege the licence to have been in writing, or it will be bad.

The following case has occurred with respect to what amounts to a licence or consent in writing to apply a design (*b*):—

(*z*) M'Rae *v.* Holdsworth, 2 De Gex & S. 496.
(*a*) See Brooke *v.* Milliken, 3 T. R. 509.
(*b*) De La Branchardière *v.* Elvery, 4 Exch. 380.

A design for the ornamenting of ladies' crochet collars was registered in respect of the application thereof to the articles comprised in class 13 mentioned in the act. Shortly after the registration a book containing copies of the designs was published. Many copies of the book had been sold, and the designs being much admired were pirated and sold at a lower price than that at which the plaintiff sold similar collars made by her. The plaintiff, in the course of her instructions given to ladies, had taught some ladies the mode of making collars according to the designs; but no lady so taught had made any collars for sale, or otherwise than for her own amusement. The book contained the following words:—"Ladies are informed that these articles cannot be purchased without the registered mark being affixed, and parties wishing to manufacture them for the purpose of sale must have the authoress's permission." The court doubted whether, without these words, the publication of the book would amount to a licence. It was compared to the specification of a patent. It was held to be nothing more than a licence to copy the designs for a person's own use, and not to manufacture the articles for sale.

PIRACY, REMEDIES IN CASE OF, IN EQUITY.

The Court of Chancery affords by injunction effectual protection to the proprietors of designs against persons improperly seeking to avail themselves of such designs. On a proper case being

made, the pirate will immediately be restrained from any further application of the design during the continuance of the protection granted by the certificate of registration; he will be restrained from selling, both before and after the term, articles piratically manufactured while the copyright conferred by registration is in force, and will be ordered to account for all profits made by him of the sale of any such articles (*c*). The articles manufactured, and things used in the manufacture, may be ordered to be given up and destroyed. The principle upon which the court interferes is thus stated by Lord Eldon:—"The legal right cannot be made effectual by any action for damages, as it is impossible to lay before a jury the whole evidence as to all the pirated publications which go before the world to the plaintiff's prejudice. A court of equity, therefore, acts with a view to make the legal right effectual, and accordingly in the exercise of its jurisdiction, where a fair doubt appears as to the plaintiff's legal right, the court always directs it to be tried, making some provision in the interim, the best that can be for the benefit of the parties (*d*)."

Where there is a doubt as to the originality of a pattern, the injunction may be dissolved, and the parties will be directed to keep an account of the profits of their sales, lest the property should be

(*c*) Crossley *v.* Beverley, 1 Russ. & Mylne, 166; Crossley *v.* Derby Gas Company, 3 M. & Cr. 420; Mac Rae *v.* Holdsworth, 2 De Gex & Smale, 496.

(*d*) Wilkins *v.* Aikin, 17 Vesey, 425.

destroyed by continuing the injunction till the trial. Lord Cottenham, in Bacon *v.* Jones(*e*), said, "When the application is for an interlocutory injunction, several courses are open; the court may at once grant the injunction simpliciter, without more, a course which, though perfectly competent to the court, is not very likely to be taken where the defendant raises a question as to the validity of the plaintiff's title; or it may follow the more usual practice in such a case, of either granting an injunction, and at the same time directing the plaintiff to proceed to establish his legal title, or of requiring him first to establish his title at law, and suspending the grant of the injunction till the result of the legal investigation has been ascertained, the defendant in the mean time keeping an account. Which of these several courses ought to be taken must depend entirely upon the discretion of the court, according to the case made. It must be seen in what way the rights of all parties may be best protected, and the least loss to any party may be caused." Upon that principle, in a case where it was said that in the event of the injunction being continued, an injury would have been done to the defendants which could not be repaired, the injunction was dissolved, the defendants undertaking to pay such sum as should be assessed for damages, in the case of the plaintiff succeeding at law (*f*).

(*e*) Bacon *v.* Jones, 4 Mylne & Craig, 433.
(*f*) Rigby *v.* Great Western Railway Company, 10 Jurist,

For similar reasons Lord Cottenham dissolved an injunction to restrain the sale of an almanac, saying that when irreparable injury would result from granting the injunction, unless the case is so clear that there can be no reasonable doubt with regard to the legal title, it is better that the court should not exercise its jurisdiction till the legal right is ascertained (*g*). So in a case where the evidence as to the piracy was very conflicting, the court has refused to interfere (*h*).

So in Sheriff *v.* Coates, where there was a doubt as to the originality of a pattern for calico, the copyright in which, under stat. 34 Geo. 3, c. 23, was only of three months duration, the injunction was dissolved, lest the property should be destroyed by continuing the injunction till the trial, the defendant being directed to keep an account of the profits of his sales (*i*).

But the mere existence of a doubt, as to the validity of the legal title, though a consideration to which great weight will be given, is not a matter which renders it incumbent on the court to refuse the injunction. The court will be guided by a discretion exercised according to the exigencies and nature of each particular case (*k*).

531; Shrewsbury and Birmingham Railway *v.* London and North-Western Railway, 14 Jur. 1125; S. C. 3 M'N. & Gor. 70.

(*g*) Spottiswoode *v.* Clark, 10 Jurist, 1043; S. C. 2 Phill. 154.

(*h*) The Electric Telegraph Company *v.* Nott, 11 Jur. 157; 2 Coop. 41, S. C.

(*i*) Sheriff *v.* Coates, 1 Russ. & Mylne, 157.

(*k*) Ollendorff *v.* Black, 14 Jurist, 1081.

If the plaintiff delays coming to the court for protection, an application for an injunction will be refused (*l*).

The facts on applying for an injunction should be stated with the utmost accuracy. Lord Commissioner Rolfe, in Dalgleish *v.* Jarvie, said that applications for ex parte injunctions are governed very much by the same principles as insurances, in which cases the party applying to insure is bound to state not only all the facts that he believes to be of importance, but all the facts that might influence the party about to insure, the absence of which bona fides will vitiate the policy (*m*).

When the answer is put in, the plaintiff may move to make the injunction perpetual, if one has previously been obtained; or, on the other hand, the defendant may move to have it dissolved. If when the bill was filed an injunction was denied, it may be now moved for.

The fact that the copyright is for a very limited time will not induce courts of equity to refuse to interfere for the protection of the proprietor (*n*).

If the defendant cannot deny the piracy, he should at once submit. When the injunction is obtained, the proper course for him to take is, to offer to pay the costs of the suit up to that time,

(*l*) Bridson *v.* Benecke, 12 Beav. 1.

(*m*) Dalgleish *v.* Jarvie, 2 M'Naght. & G. 231; 14 Jur. 495, S. C.

(*n*) Sheriff *v.* Coates, 1 Russ. & Mylne, 159; Dalgleish *v.* Jarvie, 2 M'Naght. & G. 231; 14 Jur. 945, S. C.

submitting to the injunction. In a case where this was not done, Vice-Chancellor Knight Bruce, considering that the plaintiffs were entitled to the protection of an injunction, gave them the costs of the suit to the hearing, against tradesmen who were selling pirated goods, though the defendants had promised to commit no further infringement, and had offered to pay the costs of preparing the bill (*o*).

A Court of Equity will not grant an account of the profits of the sale of a pirated work, unless it grants an injunction (*p*). The remedy, after the expiration of the copyright, must be therefore by action.

Mr. Hindmarch in his work on Patents says, that, in the absence of all authority on the subject, it is impossible to say whether a Court of Chancery would compel a defendant to pay any loss sustained by a plaintiff by reason of the defendant's piracy, or in fact anything more than the profits actually made by a defendant by the piracy of a design. It would appear not.

A plaintiff is not entitled to a discovery whether his design has been pirated, as the defendant would subject himself to penalties if he confessed it (*q*).

Neither the intention to pirate a design for the

(*o*) Geary *v.* Norton, 1 De Gex & Smale, 9; Fradella *v.* Weller, 2 Russ. & Mylne, 247.

(*p*) Bailey *v.* Taylor, 1 Russ. & Myl. 73.

(*q*) Jeffreys *v.* Baldwin, Ambl. 162.

purpose of sale seems necessary to be proved in order to obtain the protection of a court of law or equity, if the property conferred by registration on a proprietor is interfered with (*r*).

Piracy—Penalties—Remedies in case of—Recovery of Penalties.

Statute 5 & 6 Vict. c. 100, s. 8, the provisions of which are extended to the subsequent acts by stat. 6 & 7 Vict. c. 65, s. 6. Stat. 13 & 14 Vict. c. 104, s. 15, enacts, that if any person commit any such act as is by the statute declared to be piracy, he shall for every offence forfeit a sum not less than five pounds, and not exceeding thirty pounds, to the proprietor of the design in respect of whose right such offence has been committed; and such proprietor may recover such penalty as follows:—

In England either by an action of debt or on the case against the party offending, or by summary proceeding before two justices having jurisdiction where the party offending resides; and if such proprictor proceed by such summary proceeding, any justice of the peace acting for the county, riding, division, city or borough where the party offending resides, and not being concerned either in the sale or manufacture of the article of manufacture, or in the design to which such summary proceeding relates, may issue a summons requir-

(*r*) See M'Rae *v.* Holdsworth, 2 De Gex & S. 496; Roworth *v.* Wilkes, 1 Camp. 98; Beckford *v.* Hood, 7 T. R. 627.

ing such party to appear on a day and at a time and place to be named in such summons, such time not being less than eight days from the date thereof; and every such summons shall be served on the party offending either in person or at his usual place of abode; and either upon the appearance or upon the default to appear of the party offending, any two or more of such justices may proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party offending, or upon the oath or affirmation of one or more credible witnesses, which such justices are hereby authorized to administer, may convict the offender in a penalty of not less than five pounds, or more than thirty pounds as aforesaid, for each offence, as to such justices doth seem fit; but the aggregate amount of penalties for offences in respect of any one design committed by any one person, up to the time at which any of the proceedings herein mentioned shall be instituted, shall not exceed the sum of one hundred pounds; and if the amount of such penalty or of such penalties, and the costs attending the conviction, so assessed by such justices, be not forthwith paid, the amount of the penalty or of the penalties, and of the costs, together with the costs of the distress and sale, shall be levied by distress and sale of the goods and chattels

of the offender, wherever the same happen to be in England; and the justices before whom the party has been convicted, or, on proof of the conviction, any two justices acting for any county, riding, division, city or borough in England, where goods and chattels of the person offending happen to be, may grant a warrant for such distress and sale; and the overplus, if any, shall be returned to the owner of the goods and chattels on demand; and every information and conviction, which shall be respectively laid or made in such summary proceeding before two justices under this act, may be drawn or made out in the following forms respectively, or to the effect thereof, mutatis mutandis, as the case may require:—

Form of Information.

"Be it remembered, that on the ——, at ——, in the county of ——, A. B., of ——, in the county of —— [*or* 'C. D., of ——, in the county of ——, at the instance and on the behalf of A. B., of ——, in the county of ——'], cometh before us ——, and ——, two of her majesty's justices of the peace in and for the county of ——, and giveth us to understand that the said A. B., before and at the time when the offences hereinafter mentioned was committed, was the proprietor of a new and original design for [*here describe the design*], and that within twelve calendar months last past, to wit, on

the ——, at ——, in the county of ——, E. F., of ——, in the county of ——, did [*here describe the offence*], contrary to the form of the act passed in the —— year of the reign of her present majesty, intituled 'An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture.'"

Form of Conviction.

"Be it remembered, that on the —— day of ——, in the year of our Lord ——, at ——, in the county of ——, E. F., of ——, in the county aforesaid, is convicted before us, —— and ——, two of her majesty's justices of the peace for the said county, for that he, the said E. F., on the —— day of ——, in the year ——, at ——, in the county of ——, did [*here describe the offence*], contrary to the form of the statute in that case made and provided; and we, the said justices, do adjudge that the said E. F. for his offence aforesaid hath forfeited the sum of —— to the said A. B."

In Scotland, by action before the Court of Session in ordinary form, or by summary action before the sheriff of the county where the offence may be committed or the offender resides, who, upon proof of the offence or offences, either by confession of the party offending, or by the oath or affirmation of one or more credible witnesses, shall convict the offender and find him liable in the penalty or penalties aforesaid, as also in expenses; and it shall be lawful for the sheriff, in pronouncing such judg-

ment for the penalty or penalties and costs, to insert in such judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by poinding: provided always, that it shall be lawful to the sheriff, in the event of his dismissing the action and assoilzieing the defender, to find the complainer liable in expenses; and any judgment so to be pronounced by the sheriff in such summary application shall be final and conclusive, and not subject to review by advocation, suspension, reduction or otherwise.

In Ireland, either by action in a superior court of law at Dublin, or by civil bill in the civil bill court of the county or place where the offence was committed.

Costs.

And with regard to the costs of defendants, who may succeed in any proceeding taken before justices against them; by the thirteenth section, the justices are authorized to award payment of costs to the party prevailing, and to grant a warrant for enforcing payment thereof against the summoning party, if unsuccessful, in the like manner as is provided for recovering any penalty with costs against any offender under this act.

A magistrate sitting at a police court within the metropolitan police district, and every stipendiary magistrate appointed or to be appointed for any other city, town, liberty, borough or place, or the

lord mayor or any alderman of London sitting at the Mansion House or Guildhall Justice Rooms, have power, when sitting alone, to exercise the jurisdiction given by this act to two justices (*s*).

After the case has been heard and determined the warrant of distress and sale may be issued by any one justice of the peace.

If the information be under 6 & 7 Vict. c. 65, it will be necessary to add to the form given in the act the words, "and also an act made and passed in a session of parliament holden in the sixth and seventh years of the reign of her majesty Queen Victoria, and intituled 'An Act to amend the Laws relating to the Copyright of Designs.'"

If under stat. 13 & 14 Vict. c. 104, reference must be made in like manner to that act.

If under stat. 14 Vict. c. 8, both that statute and stat. 13 & 14 Vict. c. 104, should be referred to.

Forms of counts in debt for penalties under this section will be found in the case of Lowndes *v.* Browne(*t*). See a form of conviction for the piracy of a design for an article of utility, Reg. *v.* Bessell (*u*).

The proceedings for penalties will be found to be convenient in cases where there is a difficulty in the proof that the plaintiff has actually suffered substantial injury by the piracy of a registered design.

(*s*) Stat. 2 & 3 Vict. c. 71, s. 14; stat. 12 & 13 Vict. c. 43, ss. 29, 33, 34.

(*t*) Lowndes v. Browne, 12 Irish Law Rep. 293; Appendix.

(*u*) Reg. v. Bessell, Q. B. April 25, 1851; Appendix.

Piracy—Remedies in Case of—Actions for Damages.

By the 9th section of 5 & 6 Vict. c. 100, it is provided, "that, notwithstanding the remedies hereby given for the recovery of any such penalty as aforesaid, it shall be lawful for the proprietor in respect of whose right such penalty shall have been incurred (if he shall elect to do so) to bring such action as he may be entitled to for the recovery of any damages which he shall have sustained, either by the application of any such design, or of a fraudulent imitation thereof for the purpose of sale, to any articles of manufacture or substances, or by the publication, sale or exposure to sale, as aforesaid, by any person, of any article or substance to which such design or any fraudulent imitation thereof shall have been so applied, such person knowing that the proprietor of such design had not given his consent to such application."

By the 12th section, "no action or other proceeding for any offence or injury under this act shall be brought after the expiration of twelve calendar months from the commission of the offence."

Full costs are given by the same section to the successful party.

The provisions of stat. 5 & 6 Vict. c. 100, as to the piracy of designs—as to the mode of recovering penalties—as to actions for damages—as to the limitation of actions—and as to the awarding of costs, are by stat. 6 & 7 Vict. c. 65, s. 6, applied

and extended to that act in the same manner as if the several clauses and provisions had been repeated and re-enacted in that act. See also 13 & 14 Vict. c. 104, s. 15.

Piracy, Remedies in case of—Parties to Actions and Proceedings.

No person should be made a plaintiff who was not a registered proprietor at the time of the commission of the act complained of (*y*).

The proprietor of a right to a partial use of a registered design may take proceedings in his own name, in respect of any injury to his partial right (*z*); or he may join with the other proprietors in any action, suit or proceeding for penalties (*a*). The certificate is evidence that the person or persons named in it are the proper plaintiffs. If, however, the registration is in the name of a firm, the partners suing may have to prove that they constituted the firm at the time of registration. In such cases no new partner, not a partner at the time of registration, should be joined as a plaintiff.

If the interests of several manufacturers or traders would be affected by the plaintiff's establishment of his title to his design, they may lawfully unite and

(*y*) 5 & 6 Vict. c. 100, s. 4; 6 & 7 Vict. c. 65, s. 3.

(*z*) Stat. 5 & 6 Vict. ss. 5, 6, 7, 8, 9. George *v.* Wackerback, Godson on Patents, 226.

(*a*) Hindmarch on Patents, 252, referring to Boulton and Watt *v.* Bull, 2 H. Blackst. 463; Weller *v.* Baker, 2 Wils. 423; Coryton *v.* Lithebye, 2 Saund. 115, 116 a.

make a common purse to defend actions in proceedings brought against one or more of them (*b*)

Piracy, Remedies in Case of—Evidence in Actions and Proceedings.

The mere production of the certificate of registry, without proof of the handwriting of the signature thereto, or of the seal of office of the registrar, will, in the absence of evidence to the contrary, prove the registry of the design, the commencement of the period of copyright, the title of the plaintiff as proprietor (*c*), the originality of the design, and compliance with the provisions of the act, and of the rules under which the certificate is made. A plaintiff *must prove that the application complained of* is a piracy within the meaning of section 7, in the manner before suggested (*d*). In cases under the 5 & 6 Vict. c. 100, some evidence should be given that the design was done within the kingdom (*e*). Where the name of the plaintiff has not been registered as proprietor, as in proceedings by a non-registered proprietor of copyright in sculpture, or of a provisionally registered design, his title, if put in issue by the pleas, must be proved by production of the transfer to him from the registered proprietor.

(*b*) Findon *v.* Parker, 11 M. & W. 675; Stone *v.* Yea, *Jacob*, 426.
(*c*) Ante, p. 67.
(*d*) Ante, pp. 49—53.
(*e*) Ante, p. 23.

PIRACY, REMEDIES IN CASE OF—ACTIONS—PLEADING.

The form of a declaration, in case for pirating a pattern for printed calico, contrary to the provisions of the repealed act 34 Geo. 3, c. 23, may be found, Mackmurdo *v.* Smith (*c*). This, with some alterations to adapt it to the peculiar terms of stat. 5 & 6 Vict. c. 100, c. 3, or stat. 6 & 7 Vict. c. 65, s. 2, would serve as a precedent for a declaration in an action on the case under these statutes respectively. The following pleas may be found convenient. That the design was not an original design (*d*). That the plaintiff's design was a fraudulent imitation of an invention previously patented. That the plaintiff was not the proprietor of the design (*e*). That every article to which the design was applied had not the registration mark (*f*). And see the same case as to the requisites of a plea of leave and licence. To raise the question whether a design for the shape and configuration of an article was a design registrable as such within stat. 6 & 7 Vict. c. 65, see a form of plea suggested by Lord Chief Justice Tindal in Millingen *v.* Picken, 1 C. B. 813.

(*c*) Macmurdo *v.* Smith, 7 T. R. 518.
(*d*) Rogers *v.* Driver, 20 L. J. (N. S.) Q. B. 31,, S. C. Jurist.
(*e*) Millingen *v.* Picken, 1 C. B. 805, S. C.
(*f*) De La Branchardière *v.* Elvery, 4 Exch. 381.

PIRACY OF SCULPTURE—REMEDIES IN CASE OF—ACTION.

With regard to the piracy of sculptures, models, and casts of busts and other things, a copyright in which is conferred by the Sculpture Copyright Acts, and the remedies of the parties grieved by actions or summary proceedings, stat. 38 Geo. 3, c. 71, s. 2, enacted, "that if any person shall, within the term of fourteen years, being the period for which a copyright is granted by the act, make, or cause to be made, any copy or cast of any such new model, copy or cast, or any such model, copy or cast in alto or basso relievo, or any such work as aforesaid, or any such new cast from nature as aforesaid, either by adding to or diminishing from any such new model, copy or cast, or adding to or diminishing from any such new model, copy or cast in alto or basso relievo, or any such work as aforesaid, or by adding to or diminishing from any such new cast from nature, or shall cause or procure the same to be done, or shall import any copy or cast of such new model, copy or cast, or copy or cast of such new model, copy or cast in alto or basso-relievo, or any such work as aforesaid, or any copy or cast of any such new cast from nature aforesaid, for sale, or shall sell or otherwise dispose of, or cause or procure to be sold or exposed to sale or otherwise disposed of, any copy or cast of any such new model, copy or

cast, or any copy or cast of such new model, copy or cast in alto or basso-relievo, or any such work a foresaid, or any copy or cast of any such new cast from nature as aforesaid, without the express consent of the proprietor or proprietors thereof first had and obtained, in writing signed by him, her or them respectively, with his, her or their hand or hands, in the presence of and attested by two or more credible witnesses, then and in all or any of the cases aforesaid every proprietor or proprietors of any such original model, copy or cast, and every proprietor or proprietors of any such original model, or copy or cast in alto or basso relievo, or any such work as aforesaid, or the proprietor or proprietors of any such new cast from nature as aforesaid respectively, shall and may, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with full costs of suit."

Sect. 3. Provided nevertheless, that no person who shall hereafter purchase the right, either in any such model, copy or cast, or in any such model, copy or cast in alto or basso relievo, or any such work as aforesaid, or any such new cast from nature, of the original proprietor or proprietors thereof, shall be subject to any action for vending or selling any cast or copy from the same; anything

contained in this act to the contrary hereof notwithstanding.

This act was found to be defective, the provision for the punishment of piracies being said to be so absurdly framed, that to make a perfect copy or cast was no offence, and it was no offence to expose to sale or sell a copy or cast of the model, if there was any addition to or diminution from it. Accordingly an action having been brought against a person who had exposed for sale a bust of Mr. Fox, the head of which had evidently been cast in a mould taken from the plaintiff's bust, though the figure was altered by the addition of drapery and a dissimilar position of the shoulders; the plaintiff was nonsuited. The court said, that it would be too much to presume that the defendant, not being a statuary or modeller, had made the bust simply because it was exposed for sale in his shop (*g*).

It was therefore by 54 Geo. 3, c. 56, ss. 3, 4, enacted, "that if any person or persons shall, within such term of fourteen years, make or import, or cause to be made or imported, or exposed to sale, or otherwise disposed of, any pirated copy or pirated cast of any such new and original sculpture, or model or copy, or cast of the human figure or human figures, or of any bust or busts, or of any part or parts of the human figure clothed in drapery or otherwise,

(*g*) Gahagan *v.* Cooper, 3 Camp. 111. It was observed by Holroyd, J., in West *v.* Francis, 5 B. & Ald. 743, that Lord Ellenborough's judgment proceeded upon the particular mode in which the counts were framed.

or of any such work of any animal or animals, or of any such part or parts of any animal or animals combined with the human figure or otherwise, or of any such subject being matter of invention in sculpture, or of any such alto or basso relievo representing any of the matters or things hereinbefore mentioned, or of any such cast from nature as aforesaid, whether such pirated copy or pirated cast be produced by moulding or copying from, or imitating in any way any of the matters or things put forth or published under the protection of this act, or of any works which have been put forth or published under the protection of the said recited act, the right and property whereof is and are secured, extended and protected by this act, in any of the cases as aforesaid, to the detriment, damage or loss of the original or respective proprietor or proprietors of any such works so pirated, then and in all such cases the said proprietor or proprietors, or their assignee or assignees, shall and may, by and in a special action upon the case to be brought against the person or persons so offending, receive such damages as a jury on a trial of such action shall give or assess, together with double costs of suit."

4. "Provided nevertheless, that no person or persons who shall or may hereafter purchase the right or property of any new and original sculpture or model, or copy or cast, or of any cast from nature, or of any of the matters and things published under

or protected by virtue of this act, of the proprietor or proprietors, expressed in a deed in writing signed by him, her or them respectively, with his, her or their own hand or hands, in the presence of and attested by two or more credible witnesses, shall be subject to any action for copying or casting, or vending the same; any thing contained in this act to the contrary notwithstanding."

Piracy of Sculpture—Remedies in case of—Penalties.

The 13th & 14th Vict. c. 104, s. 7, enacts, "that if any person shall during the continuance of the copyright in any sculpture, model, copy or cast, which shall have been so registered as aforesaid, make, import, or cause to be made, imported, exposed for sale, or otherwise disposed of, any pirated copy or pirated cast of any such sculpture, model, copy or cast, in such manner and under such circumstances as would entitle the proprietor to a special action on the case under the Sculpture Copyright Acts, the person so offending shall forfeit for every such offence a sum not less than five pounds, and not exceeding thirty pounds, to the proprietor of the sculpture, model, copy or cast whereof the copyright shall have been infringed; and for the recovery of any such penalty the proprietor of the sculpture, model, copy or cast, which shall have been so pirated, shall have and be entitled to the same remedies as are provided for the recovery of penalties incurred under the Designs Act, 1842:

provided always, that the proprietor of any sculpture, model, copy or cast, which shall be registered under this act, shall not be entitled to the benefit of this act, unless every copy or cast of such sculpture, model, copy or cast, which shall be published by him, after such registration, shall be marked with the word 'registered,' and with the date of registration." The 15th section of the same act enacts, that the provisions in the Designs Acts of 1842 and 1843, so far as they are not repugnant to the provisions of that act, as to the mode of recovering penalties, to the awarding and recovery of costs, to actions for damages, and to the limitation of actions, shall apply to the sculptures, models, copies and casts entitled to protection under this act, and to matters under this act, as fully and effectually as if those provisions had been re-enacted in this act with respect to sculptures, models, copies and casts registered under that act; and the forms contained in the Designs Act, 1842, may for the purposes of this act be varied so as to meet the circumstances of the case.

PIRACY OF SCULPTURE—PLEADING.

A form of declaration, under stat. 38 Geo. 3, c. 71, s. 2, may be found in Gahagan *v.* Cooper, which may be useful as a model in framing declarations in actions for the piracy of sculpture under either of the acts(*h*). It should be observed

(*h*) Gahagan v. Cooper, 3 Camp. 111. See West v. Francis, 5 B. & Ald. 743.

that, under the Sculpture Acts, the copyright is given on condition that the name of the proprietor and date of publication be put on new and original sculpture, &c. before the same is published. In proceedings against persons pirating sculpture, an averment should be inserted, that the name of the proprietor and the date of publication were put on the original sculpture before the same was published (*i*). But in proceedings under the 7th sect. of stat. 13 & 14 Vict. c. 104, it will not be necessary to introduce an additional averment, that the copies of such original sculpture published after registration were marked with the word "registered;" this being a condition subsequent, the breach of which must be set up by the defendant if he would rely on it. In other respects the proceedings in case of piracy of sculpture will be similar to those in case of piracy of registered designs.

WRONGFUL REGISTRATION—REMEDY IN CASE OF—CANCELLING AND AMENDING REGISTRATION.

Stat. 5 & 6 Vict. c. 100, s. 10, the provisions of which are extended to the subsequent acts, stat. 6 & 7 Vict. c. 65, s. 6, stat. 13 & 14 Vict. c. 104, s. 15, enacts, "that in any suit in equity which may be instituted by the proprietor of any design, or the person lawfully entitled thereto, relative to such design, if it shall appear to the satisfaction of the

(*i*) Macmurdo *v.* Smith, 7 T. R. 518. See Galsagan *v.* Cooper, 3 Camp. 111.

judge having cognizance of such suit, that the design has been registered in the name of a person not being the proprietor or lawfully entitled thereto, it shall be competent for such judge, in his discretion, by a decree or order in such suit, to direct either that such registration be cancelled (in which case the same shall thenceforth be wholly void), or that the name of the proprietor of such design, or other person lawfully entitled thereto, be substituted in the register for the name of such wrongful proprietor or claimant, in like manner as is hereinbefore directed, in case of the transfer of a design, and to make such order respecting the costs of such cancellation or substitution, and of all proceedings to procure and effect the same, as he shall think fit; and the registrar is hereby authorized and required, upon being served with an official copy of such decree or order, and upon payment of the proper fee, to comply with the tenor of such decree or order, and either cancel such registration or substitute such new name, as the case may be."

In case of a contest as to the title to the proprietorship of a registered design, where one party has already caused his name to be entered on the register as proprietor, it seems doubtful whether the registrar, under the provisions of the sixth section, on being satisfied by the production of evidence that the person whose name has been entered on the register has no title, as, for instance, that the conveyance to the person registered was made by

one who became bankrupt before the registration of the transfer, can enter on the register the title of the real proprietor, who in the case put would be the assignee of the bankrupt. Probably he may. Should he refuse to do so, the remedy is provided by this section.

Any defendant in proceedings taken against him by the registered proprietor, may show that the registered proprietor has no title, and consequently in case of a wrongful registration, though the real proprietor is not debarred from using his design, yet he cannot in any manner avail himself of the privilege of copyright given by the act, or restrain piracies of his design by strangers, until he has caused his own name to be inserted in the register. He may, however, obtain an injunction and a decree for an account of profits made, as well as a decree for the substitution of his name in the register, against the proprietor wrongfully registered (*k*).

Wrongfully using Marks denoting a registered Design — Penalties — Ornamental Designs.

With regard to wrongfully using marks denoting that a design is registered when it is not so, or after the privilege conferred by registration has expired, it is enacted, by the 11th section of 5 & 6 Vict. c. 100, that "unless a design applied to ornamenting

(*k*) See Colburn *v.* Duncombe, 9 Simons, 156; Chappell *v.* Purday, 4 Y. & C. 493.

any article of manufacture, or any such substance as aforesaid, be so registered as aforesaid, and unless such design so registered shall have been applied to the ornamenting such article or substance within the united kingdom of Great Britain and Ireland, and also after the copyright of such design in relation to such article or substance, shall have expired, it shall be unlawful to put on any such article or such substance, in the manner hereinbefore required with respect to articles or substances whereto shall be applied a registered design, the marks hereinbefore required to be so applied, or any marks corresponding therewith or similar thereto; and if any person shall so unlawfully apply any such marks, or shall publish, sell or expose for sale any article of manufacture, or any substance with any such marks so unlawfully applied, knowing that any such marks have been unlawfully applied, he shall forfeit for every such offence a sum not exceeding five pounds, which may be recovered by any person proceeding for the same, by any of the ways hereinbefore directed with respect to penalties for pirating any such designs."

Useful Designs.

The 4th section of 6 & 7 Vict. c. 65, enacts, that "unless a design applied to any article of manufacture be registered, either under that act or according to the provisions of the Designs Act, 1842, and also after the copyright of such design shall have expired, it shall be unlawful to put on any

such article the word 'registered,' or to advertise the same for sale as a registered article, and if any person shall so unlawfully publish, sell or expose, or advertise for sale, any such article of manufacture, he shall forfeit for every such offence a sum not exceeding five pounds nor less than one pound, which may be recovered by any person proceeding for the same, by any of the remedies hereby given for the recovery of penalties for pirating any such designs."

It will be observed, that with regard to designs for ornamenting any article of manufacture, registrable under the provisions of 5 & 6 Vict. c. 100, that, unless such design has been applied to the ornamenting the article or substance so marked within the united kingdom of Great Britain and Ireland, it is penal to use the mark of registration, even though the design has been duly registered by a person having a good right to have his name as proprietor on the register. But this provision is not repeated in the section of the latter act, relating to the improper use of the word "registered," upon designs for the shape or configuration of articles having reference to some purpose of utility, not being of an ornamental character.

SCULPTURE AND DESIGNS PROVISIONALLY REGISTERED.

The 15th section of the Designs Act, 1850, enacts, that the provisions of the Designs Acts of 1842 and 1843, so far as they are not repugnant to

the provisions of that act, relating to the penalties for wrongfully using marks, shall apply to designs, sculptures, models, copies and casts, entitled to protection under that act, and to matters under that act, as fully and effectually as if those provisions had been re-enacted in that act, with respect to designs, sculptures, models, copies and casts registered and provisionally registered under that act.

WRONGFULLY USING MARKS DENOTING A REGISTERED DESIGN — REMEDY FOR PARTY GRIEVED.

It will be observed that the penalties imposed by these sections are given to any person proceeding for the same, and not to the party aggrieved by the improper use of marks of registration. But if any injury should be done to the proprietor of a registered design, or of a design of which the copyright has expired, by the improper use of the mark of registration, in addition to the penalties imposed by these sections, a stranger fraudulently applying the registered mark, or an imitation of such registered mark, to his own goods, to induce a belief that his goods are the goods of the original manufacturer, would be held liable to an action, at the suit of the proprietors of the design, or would be restrained by the Court of Chancery from an improper use of the mark of registration (*l*).

(*l*) As to trade marks in general, see Crawshay *v.* Thompson, 4 M. & G. 357; Sykes *v.* Sykes, 3 B. & C. 541; Rodgers

False Representations as to Registration.

Actions may in some cases be maintained against persons making false representations as to the registry of a design, knowingly and with a fraudulent purpose.

A declaration in an action on the case stated that the plaintiff, a dealer in printed goods, had sent to the defendant, his customer, several lots of such goods, the last of which contained handkerchiefs which had been printed with an ornamental pattern, and was about to print others in the same manner for profit; which was known to the defendant. That the defendant, intending to defraud the plaintiff, and induce him to desist from printing the same, and to deprive him of the profits, and to acquire the same for his own use and benefit, and to put him to great and unnecessary expense, falsely and fraudulently represented that in the last lot was contained a registered pattern, and that the parties intended to proceed against the plaintiff in the most expensive manner, by injunction and order of the Court of Chancery, whereas in fact no such pattern had been registered, and no parties did so intend to proceed against the plaintiff, as the defendant well knew; that in consequence of his belief of the defendant's false statement, the plaintiff

v. Nowill, 5 C. B. 110; Blofeld *v.* Payne, 4 B. & Ad. 410; Morison *v.* Salmon, 2 M. & G. 385; Anon. cited in Southern *v.* How, Popham, 143, 144; Nicoll *v.* Woolf, V. C. 2nd Aug. 1847; Scott *v.* Morgan, 2 Keen, 212; Rodgers *v.* Nowill, 6 Hare, 325; Franks *v.* Weaver, 10 Beav. 297.

was induced to take a journey from Glasgow to London, for the purpose of inquiring into these matters, and was hindered in his trade, and prevented from making goods according to orders. The court said, "if any untrue statement, which produces damage to another, would found an action at law, a man might sue his neighbour for any mode of communicating erroneous information, such as keeping a conspicuous clock too slow. A doctrine creating legal responsibility in cases so numerous and so free from blame must be restrained within some limit. But an averment that the falsehood of his representation was known to the defendant, and that he knowingly and wilfully uttered it, seems to carry the matter somewhat further. If the defendant were under any legal obligation to state the truth correctly to the plaintiff, there would be a grievance in misleading him, for which an action on the case would lie; still more if he made the false representation with a view to some unfair advantage to himself. It sufficiently appears that the defendant knowingly uttered a deliberate falsehood on this subject, with a view to his own lucre. It is averred that he did so with the design to deprive the plaintiff of the benefit of his last lot of goods, and to acquire it for his own sole use; and it is very plain that this object might have been effected in the manner alleged, by deterring plaintiff from bringing his goods into the market. The defendant has no right to say that

the plaintiff was wrong in giving him credit for the truth of what he said, and there is no doubt that the special damage naturally flowed from the plaintiff's confidence in the defendant's false assertion (*n*)."

LIMITATION OF ACTIONS—COSTS.

With regard to the limitation of the time for bringing suits and actions, and taking proceedings for penalties in respect of offences against the *Designs Act*, 1842, the 12th section of that act enacts, that "no action or other proceeding, for any offence or injury under this act, shall be brought after the expiration of twelve calendar months from the commission of the offence; and in every such action or other proceeding, the party who shall prevail shall recover his full costs of suit or of such other proceeding." These provisions are extended to proceedings under 6 & 7 Vict. c. 65, by the 6th section of that act, and by 13 & 14 Vict. c. 104, s. 15, to matters under that act.

The period of limitation in actions under the Sculpture Acts is six months from the time of the discovery of the offence; see stat. 38 Geo. 3, c. 71, s. 4; stat. 54 Geo. 3, c. 56, s. 5.

This limitation only applies to actions on the case under the Sculpture Copyright Acts, and not to actions or proceedings for the recovery of penalties, under stat. 13 & 14 Vict. c. 104, s. 7, for the piracy

(*n*) Barley *v.* Walford, 9 Q. B. 197.

of registered sculpture, which may be brought or taken at any time within twelve months from the commission of the offence.

Costs in Cases of Summary Proceeding.

Stat. 5 & 6 Vict. c. 100, s. 13, with respect to the payment of costs to the party succeeding in any proceeding before justices, under the act, enacts, "that in the case of any summary proceeding before any two justices in England, such justices are hereby authorized to award payment of costs to the party prevailing, and to grant a warrant for enforcing payment thereof, against the summoning party; if unsuccessful, in the like manner, as is hereinbefore provided for recovering any penalty with costs against any offender under this act."

This section is re-enacted by 6 & 7 Vict. c. 65, s. 6, and 13 & 14 Vict. c. 104, s. 15, with respect to the matters to which those acts relate.

Registrar, Appointment of.

The 14th section of 5 & 6 Vict. c. 100, made provision for the appointment of a registrar and deputy registrar of designs under that act; but by the 6 & 7 Vict. c. 65, s. 7, it was enacted, "that so much of the 5 & 6 Vict. c. 100, as related to the appointment of a registrar of designs for ornamenting articles of manufacture, and other officers, as well as to the fixing of the salaries for the payment of the same, shall be and the same is hereby

repealed; and for the purpose of carrying into effect the provisions as well of this act as of the first-mentioned act, the Lords of the Committee of the Privy Council for the consideration of all matters of trade and plantations may appoint a person to be registrar of designs for articles of manufacture, and, if the Lords of the said Committee see fit, an assistant registrar and other necessary officers and servants; and such registrar, assistant registrar, officers and servants shall hold their offices during the pleasure of the Lords of the said Committee; and such registrar shall have a seal of office, and the Commissioners of her Majesty's Treasury may from time to time fix the salary or other remuneration of such registrar, assistant registrar and other officers and servants; and all the provisions contained in the said first-mentioned act, and not hereby repealed, relating to the registrar, deputy registrar, clerks and other officers and servants thereby appointed and therein named, shall be construed and held to apply respectively to the registrar, assistant registrar and other officers and servants to be appointed under this act."

Registrar—Regulation of the Duties of Office.

By the 5 & 6 Vict. c. 100, s. 14, the Lords of the Committee of Privy Council for the consideration of all matters of trade and plantations may,

subject to the provisions of that act, make rules for regulating the execution of the duties of the office of the registrar.

Registrar—Discretion as to Registration of certain Designs.

Statute 6 & 7 Vict. c. 65, s. 9, enables the registrar to decide under which act designs shall be registered, and in certain cases to refuse altogether to register designs sent to him for that purpose. It provides, "that if any design be brought to the registrar to be registered under the act of 1842, and it shall appear to him that the same ought to be registered under this present act, it shall be lawful for the said registrar to refuse to register such design otherwise than under the present act, and in the manner hereby provided; and if it shall appear to the said registrar that the design brought to be registered under the act of 1842, or this act, is not intended to be applied to any article of manufacture, but only to some label, wrapper or other covering in which such article might be exposed for sale, or that such design is contrary to public morality or order, it shall be lawful for the said registrar in his discretion wholly to refuse to register such design: provided always, that the Lords of the said Committee of Privy Council may, on the representation made to them by the proprietor of any design so wholly refused to be registered as aforesaid, if they shall

see fit, direct the said registrar to register such design; whereupon and in such case the said registrar shall be and is hereby required to register the same accordingly."

No copyright can exist in a design having a tendency contrary to public morality or order, as if it were indecent or libellous(*o*). If, however, such a design should be registered, and an action brought for the infringement of the copyright in it conferred by registration, the facts showing that the copyright is void on such grounds should be specially pleaded. See Millingen *v.* Picken, 1 C. B. 814.

Regulations as to Mode of Registration may be made by Board of Trade.

Statute 13 & 14 Vict. c. 104, s. 10, enacts, "that the Board of Trade may from time to time make, alter and revoke rules and regulations with respect to the mode of registration, and the documents or other matters and particulars to be furnished by persons effecting registration and provisional registration under the Designs Acts of 1842 and 1843, and this act; provided always, that all such rules and regulations shall be published in the London Gazette, and shall forthwith, upon the issuing

(*o*) Stockdale *v.* Onwhyn, 5 B. & C. 173; Hime *v.* Dale, 2 Campb. 28; Lawrence *v.* Smith, Jacob, 471; Southey *v.* Sherwood, 2 Mer. 435; Walcot *v.* Walter, 7 Ves. jun. 1; Fores *v.* Johns, 4 Esp. 97; Du Bost *v.* Beresford, 2 Campb. 511.

thereof, be laid before parliament, if parliament be sitting; and if parliament be not sitting, then within fourteen days after the commencement of the then next session; and such rules and regulations, or any of them, shall be published or notified by the registrar of designs in such other manner as the Board of Trade shall think fit to direct."

Mode of Registration—Registrar may dispense with Drawings.

Statute 13 & 14 Vict. c. 104, s. 11, empowers the registrar in certain cases to dispense with copies, drawings and prints required by that and the earlier acts, and to allow in lieu thereof a specification or description. It is as follows:—"If in any case in which the registration of a design is required to be made under either of the said Designs Acts, it shall appear to the registrar that copies, drawings or prints as required by those acts cannot be furnished, or that it is unreasonable or unnecessary to require the same, the said registrar may dispense with such copies, drawings or prints, and may allow in lieu thereof such specification or description in writing or in print as may be sufficient to identify and render intelligible the design in respect of which registration is desired; and whenever registration shall be so made in the absence of such copies, drawings or prints, the registration shall be as valid and effectual to all intents and purposes as if such copies, drawings or prints had been furnished."

REGISTRAR'S DUTIES—MODE OF REGISTRATION —ORNAMENTAL DESIGNS.

The mode of registering designs for ornamenting articles of manufactures or other substances within the Designs Act of 1842 is pointed out by the 15th section of statute 5 & 6 Vict. c. 100, which enacts, "that the registrar shall not register any design in respect of any application thereof to ornamenting any articles of manufacture or substances, unless he be furnished, in respect of each such application, with two copies, drawings or prints of such design, accompanied with the name of every person who shall claim to be the proprietor, or of the style or title of the firm under which such proprietor may be trading, with his place of abode or place of carrying on his business, or other place of address, and the number of the class in respect of which such registration is made: and the registrar shall register all such copies, drawings or prints, from time to time successively, as they are received by him for that purpose; and on every such copy, drawing or print, he shall affix a number corresponding to such succession; and he shall retain one copy, drawing or print, which he shall file in his office, and the other he shall return to the person by whom the same has been forwarded to him; and in order to give ready access to the copies of designs so registered, he shall class such

copies of designs, and keep a proper index to each class."

We have already seen that the registrar may refuse to register a design brought to him to be registered as an ornamental design under this act otherwise than as a design having reference to some purpose of utility under the act of 1843.

MODE OF REGISTRATION—DIRECTIONS FOR REGISTERING ORNAMENTAL DESIGNS AND SCULPTURES.

The directions published by the registrar of designs for the use of persons desiring to register ornamental designs completely or provisionally are as follows:—

"Persons proposing to register a design for ornamenting an article of manufacture must bring or send to the Designs Office—

1. Two exactly similar copies, drawings or tracings, or prints thereof, with the proper fees.
2. The name and address of the proprietor or proprietors, or the title of the firm under which he or they may be trading, together with their place of abode or place of carrying on business, distinctly written or printed.
3. The number of the class in respect of which such registration is intended to be made, except it be for sculpture.

The aforesaid copies may consist of portions of

the manufactured articles (except carpets, oilcloths and woollen shawls), when such can conveniently be done (as in the case of paper hangings, calico prints, &c.), which, as well as the drawings or tracings (not in pencil), or prints of the design to be furnished, when the article is of such a nature as not to admit of being pasted in a book, must, whether coloured or not, be fac-similes of each other."

"Should paper hangings or furnitures exceed forty-two inches in length by twenty-three inches in breadth, drawings will be required; but they must not exceed these dimensions.

"NOTE.—These copies, drawings (or tracings) or prints must consist of the entire design, without any addition or variation whatever; and no description will be admitted (*p*)."

"Applications for registering may be in the following form:—

Application to register Ornamental Designs.

"C. D. Works, Nov. 10th, 1850.

"You are hereby requested to register provisionally (*q*) the accompanying designs (*r*) in Class

(*p*) It should be observed, however, that if a description be sent with the design, the registrar has not the power to reject it, but must register it with the design; nor has he any discretion as to rejecting drawings sent, on the ground of insufficiency or otherwise. (Ed.)

(*q*) If not provisionally, strike out this word.

(*r*) Here insert for sculpture, if for sculpture, and the class or classes.

1 (2, 3, 4, &c.) [*or* 'for sculpture'] in the name of A. B. (*s*), of ——; of ——, [*or* 'A. B., of ——, and C. D., of ——, trading under the style and firm of B. D. and Company, of ——, of ——, of ——'], who claim to be the proprietors thereof, and to return the same [*if sent by post*] directed to ——; [*if brought by hand*] to the bearer of the official acknowledgment for the same."

(Signed) "B. D. and Co. by
"J. F."

"To the Registrar of Designs,
Designs Office, London."

"The person bringing a design must take an acknowledgment for it, which will be delivered to him on payment of the proper fees. This acknowledgment must be produced on application for the certified copy, which will be returned in exchange for the same."

"Blank forms may be obtained at the office.

"A design may be registered in one or more classes, according as it is intended to be employed in one or more species of manufacture; but a separate fee must be paid on account of each separate class; and all such registrations must be made at the same time."

"If such design is intended for exhibition in any place duly certified by the Board of Trade to be a

(*s*) Insert the name and address of the proprietor in the form in which it is to be entered on the certificate.

place of public exhibition within the meaning of the Designs Act, 1850(*t*), then a third such copy, drawing, or tracing or print, must also be furnished."

"After the design has been registered, one of the two copies, drawings (or tracings) or prints will be filed at the office, and the other returned to the proprietor, with a certificate annexed, on which will appear the mark to be placed on each article of manufacture, to which the design shall have been applied."

"When three have been furnished, the remaining copy or drawing, &c. will be deposited in the place of public exhibition certified as aforesaid."

Extension of Copyright.

"In case of extension of copyright the certified copy will have to be transmitted to the registrar."

"Persons bringing designs to be registered on delivering them must compare such designs together, count them and see that the name and address and number of class is correctly given, and examine their certificates previous to leaving the office, to see that the name, &c. is correctly entered, as no error can afterwards be rectified."

"An acknowledgment of its receipt will be delivered, on payment of the fees, to the person bringing a design; and no certified copy of a design

(*t*) The Exhibition of the Works of Industry of all Nations, 1851.

will be returned except to the bearer of this acknowledgment, which must be produced on application at the office for the certified copy, and given in exchange for the same."

"All communications for the registration of designs may be made either through the General Post Office, directed to 'The Registrar of Designs, Designs Office, London,' or by any other mode of conveyance; and provided the carriage be paid, and the proper fees or a post office order for the amount payable at the Post Office at No. 180, Strand, to James Hill Bowen, Esq. be enclosed, the designs will be duly registered, and the certified copies returned to the proprietors free of expense. Postage stamps, orders upon bankers or other persons, country and Scotch bank notes and light gold cannot be received in payment of fees."

"The Designs Office, No. 4, Somerset Place, Somerset House, is open every day between the hours of ten in the morning and four in the afternoon, during which time inquiries and searches may be made. Designs and transfers are registered from eleven until three, after which hour no money can be received for the same."

Mode of Registration—Useful Designs.

"With regard to the registration of designs not being of an ornamental character, stat. 6 & 7 Vict. c. 65, s. 8, enacts, "that the registrar shall not re-

gister any design for the shape or configuration of any article of manufacture as aforesaid, unless he be furnished with two exactly similar drawings or prints of such design, with such description in writing as may be necessary to render the same intelligible, according to the judgment of the said registrar, together with the title of the said design, and the name of every person who shall claim to be proprietor, or of the style or title of the firm under which such proprietor may be trading, with his place of abode or place of carrying on business, or other place of address; and every such drawing or print, together with the title and description of such design, and the name and address of the proprietor aforesaid, shall be on one sheet of paper or parchment, and on the same side thereof; and the size of the said sheet shall not exceed twenty-four inches by fifteen inches, and there shall be left on one of the said sheets a blank space on the same side on which are the said drawings, title, description, name and address, of the size of six inches by four inches, for the certificate herein mentioned; and the said drawings or prints shall be made on a proper geometric scale; and the said description shall set forth such part or parts of the said design (if any) as shall not be new or original, and the said registrar shall register all such drawings or prints from time to time as they are received by him for that purpose; and on every such drawing or print he shall affix a number corresponding to

the order of succession in the register, and he shall retain one drawing or print, which he shall file at his office, and the other he shall return to the person by whom the same has been forwarded to him; and in order to give a ready access to the designs so registered, he shall keep a proper index of the titles thereof."

An index of the names and addresses of proprietors is also kept at the office.

Directions for registering Useful Designs.

The directions of the registrar as to the mode of registering and provisionally registering useful designs are as follows:—

Registering.

"Persons proposing to register a design for purposes of utility must bring or send to the Designs Office the following particulars:—

Particulars.

"1st. The title of the design.

"2nd. Two exactly similar drawings or prints thereof, made on a proper geometric scale, marked with letters, figures or colours to be referred to as hereinafter mentioned.

"3rd. The name and address of the proprietor or proprietors, or the title of the firm under which he or they may be trading, together with their place

of abode or place of carrying on business, distinctly written or printed.

"4th. A statement of the purpose of utility to which the shape or configuration of the new parts of such design has reference.

"5th. A description to render the same intelligible, distinguishing the several parts of the design by reference to the letters, figures or colours aforesaid.

"NOTE.—No description of the parts of the drawings which are old will be admitted, except such as may be absolutely necessary to render the purpose of utility of the shape of the new parts intelligible."

"6th. A short and distinct statement of such part or parts, if any, as shall not be new or original, which may be in one of the forms following:—

"1. The parts of this design, which are not new or original, as regards the shape or configuration thereof, are all the parts except those marked (A, B, C, &c.) or coloured (blue, green, &c.)

"2. The parts of this design, which are not new or original, as regards the shape or configuration thereof, are all the parts taken separately; but the parts (A and B) or coloured (blue, &c.), as here combined, form a new design (*t*)."

(*t*) The shape or configuration of a design, consisting of parts which are not new, seems to be registrable. Such a design will be protected, if the purpose be attained by the shape or configuration of the article, though the new shape is produced by the combination of parts not new. The registrar has recently erased the second form of statement in his instructions, on the ground that Reg. *v.* Bessell renders it doubtful if such a combination can be protected by the act.

"Note.—The above particulars must be given in the aforesaid order under their several heads, and in distinct and separate paragraphs, which must be strictly confined to what is here required to be contained in each."

"Each drawing or print, with the whole of the particulars, must be drawn, written or printed upon a separate sheet of paper or parchment, only one side of which must be drawn, written or printed upon. Such sheet must not exceed in size twenty-four inches by fifteen inches, and on the same side as these particulars there must be left a blank space of the size of six inches by four inches, upon which the certificate of registration will be placed (*u*)."

"If the design is for provisional registration, an additional similar space may be left for the certificate of complete registration".

"Should this be omitted, one fresh copy, drawing or print will be required for complete registration."

"If such design be intended for exhibition in any place, duly certified by the Board of Trade to be a place of public exhibition, within the meaning of the Designs Act, 1850, then a third copy of the drawing or print, together with the whole of the aforesaid particulars, must also be furnished."

"Designs which are not in compliance with the above rules will not be received at the office."

(*u*) The forms sold by Chapman and Hall contain two blank spaces. The second space is convenient, as it renders fresh drawings unnecessary in case of transfer.

"After the designs have been registered, one of the drawings will be filed at the office, and the other returned to the proprietor, duly stamped and certified.

"*When three have been furnished, the remaining* copy will be deposited in the place of public exhibition certified as aforesaid.

"Parties bringing designs to the office before twelve o'clock will be informed, after three o'clock the same day, whether they are approved of, and if so, they will be registered the following day; and *provided the fee has been paid before half-past one* o'clock on such day, the certified copies will be ready for delivery after three o'clock on that subsequent."

"An acknowledgment of its receipt will be delivered on payment of the fees to the person bringing a design, and no certified copy of a design will be returned *except to the bearer of this acknowledgment, which must be produced on application* at the office for the certified copy, and given in exchange for the same."

"Persons bringing designs to be registered, on delivering their designs, and on examining their certificates previous to leaving the office, must see *that the titles, names, &c. are correct, as no error can afterwards be rectified.*"

The registrar gives the following notice:—

"Parties are strongly recommended to read the act before determining to register their designs, in

order that they may be satisfied as to the nature, extent and comprehensiveness of the protection afforded by it; and further, that they come within the meaning and scope of the acts, *of which facts the registration will not constitute any guarantee.*"

The following specification of a design for an article of utility to be registered will serve to illustrate the method of obtaining protection under the Designs Act of 1843, for minor improvements in complicated machinery, where the improvement consists solely in the shape or configuration of some part or parts of the machinery. The subject of the specification is a stop for coal trams, while being tipped or emptied into the holds of colliers. The ordinary method is to bring the trams upon a hinged platform, carrying two upright posts, and a cross piece of timber, against which stop the buffers of the tram rest, while the end of the platform is lowered upon its hinges, so as to shoot the coal out of the tram. The inconvenience attending this method of tipping was, that the principal weight of the load was violently thrown upon the fore-springs of the tram, thereby straining and often breaking them. The improvement, sought to be protected by registration, consisted simply in receiving the buffers of the tram upon a curved incline, firmly bolted to the platform, which at once stopped and supported them, so as to relieve the springs from the pressure of the load. The method of attaching the inclined surfaces to the

platform was susceptible of considerable variation without impairing the useful effect; and therefore, in order to avoid colourable variation, no method of attachment was described, but the claim was confined to the curved surfaces alone.

"Design for a rest for the forward ends of loaded waggons or carriages while being tipped."

"The forms or configuration of the parts composing this design are represented at *h h* in figures 1 and 2, whereof figure 1 is an end view, and figure 2 is a side view, of a moveable platform bearing a waggon to be tipped.

"A, in figure 2, is a platform suspended, so as to cause the tipping of the waggon *b*, when brought upon it in a loaded state; *c c* are brake wheels, by which the tipping is governed through the medium of the toothed segments *d d*, and the pinions *e e*, on the shaft of the brake wheels. The inclination of the platform is determined by the stop *f*, and the platform is returned after the discharge of the load by the weight of the iron segment *g*, but the form of the platform, and the mode in which it acts and is governed, form no part of the design, and are not material to the useful effect of the part now to be described. The rest, to which this design is to be applied, is represented in both figures by the letters *h h*, and consists of two sloped or curved surfaces of timber or other material opposite to and intended to receive and support the buffers *b b*, or other forward ends of the framing of the

waggon or carriage, so as to relieve the front springs from the additional pressure at the time of tipping them. These surfaces are firmly secured to the moveable platform.

"The waggon and the platform and machinery *for tipping* and returning the waggon are not new or original. The sloped or curved surfaces or rests *h h* are new and original."

Mode of Registration—Sculpture, &c.

By 13 & 14 Vict. c. 104, s. 6, "The registrar of designs, upon application by or on behalf of the proprietor of any sculpture, model, copy or cast, within the protection of the Sculpture Copyright Acts, and upon being furnished with such copy, drawing, print or description in writing or in print, as in the judgment of the said registrar shall be sufficient to identify the particular sculpture, model, copy or cast, in respect of which registration is desired, and the name of the person claiming to be proprietor, together with his place of abode or business, or other place of address, or the name, style or title of the firm under which he may be trading, shall register such sculpture, model, copy or cast, in such manner and form as shall from time to time be prescribed or approved by the Board of Trade, for the whole or any part of the term during which such copyright in such sculpture may or shall exist, under the Sculpture Copyright Acts."

For directions for registering of sculpture, see ante, 91.

Certificate of Registration.

Ornamental and useful Designs and Designs provisionally registered.

For the purpose of facilitating the evidence of the title of the proprietor of a registered design, the registrar is to issue certificates of registration, which, in the absence of evidence to the contrary, are to be sufficient proof of the design and name of the proprietor therein mentioned having been registered, of the commencement of the period of registry, of the person therein named as proprietor being the proprietor, of the originality of the design, and of the provisions of the act, and of any rule under which the certificate appears to be made having been complied with.

The certificate is no more than primâ facie evidence of the originality and proper registration of the design; and accordingly, in a case in which an answer in Chancery admitted the certificate, but denied its legality, the court held that they could only refer to the admission, in connexion with the denial of its legality (*x*).

Stat. 5 & 6 Vict. c. 100, s. 16, is as follows: "Be it enacted, that upon every copy, drawing or print of an original design so returned to the person registering as aforesaid, or attached thereto, and upon every copy, drawing or print thereof received for the purpose of such registration, or of the

(*x*) Nield *v.* Coates, 13 Law Jour. N. S. Chancery, 378.

transfer of such design being certified thereon or attached thereto, the registrar shall certify under his hand that the design has been so registered, the date of such registration, and the name of the registered proprietor, or the style or title of the firm under which such proprietor may be trading, with his place of abode, or place of carrying on his business, or other place of address, and also the number of such design, together with such number or letter, or number and letter, and in such form as shall be employed by him to denote or correspond with the date of such registration; and such certificate made in every such original design, or on such copy thereof, and purporting to be signed by the registrar or deputy registrar, and purporting to have the seal of office of such registrar affixed thereto, shall, in the absence of evidence to the contrary, be sufficient proof, as follows:

Of the design, and of the name of the proprietor therein mentioned, having been duly registered; and

Of the commencement of the period of registry; and

Of the person named therein as proprietor being the proprietor; and

Of the originality of the design; and

Of the provisions of this act, and of any rule under which the certificate appears to be made, having been complied with.

"And any such writing purporting to be such cer-

tificate shall, in the absence of evidence to the contrary, be received as evidence without proof of the handwriting of the signature thereto, or of the seal of office affixed thereto, or of the person signing the same being the registrar or deputy registrar (*y*)."

We have seen that under the Ornamental Act the certificate is probably not evidence that the design has been applied within the united kingdom, and the remark would apply with even greater force to cases in which the certificate is annexed to a drawing of the design, and not to a portion of the manufactured goods to which the design has been applied at the time of the certificate.

Useful Designs.

Stat. 6 & 7 Vict. c. 65, s. 6, enacts, "that the provisions of the above-mentioned section with respect to the certificate of registration, so far as they are not repugnant to the provisions contained in that act, shall be applied and extended to that act, as fully and effectually, and to all intents and purposes, as if the several clauses had been repeated and re-enacted in the body of that act."

By the 8th section of the same act the registrar is to affix on the certified copy a number corresponding to the order of succession in the register.

Certificates of the registration of useful designs are subject to a stamp duty.

Stat. 6 & 7 Vict. c. 72, s. 3, after reciting that it

(*y*) Now assistant registrar, 6 & 7 Vict. c. 65, s. 7.

is expedient to impose a stamp duty on every certificate which may be issued of the registration of a design, under the authority of an act passed in the present session of parliament, intituled An Act to amend the Laws relating to the Copyright of Designs, enacts, "that there shall be charged and payable upon and for and in respect of any certificate to be issued of the registration of a design, under the authority of the last-mentioned act, a stamp duty of five pounds, to be denoted by a stamp to be specially appropriated for expressing and denoting the said duty, and to be impressed upon every such certificate."

Designs provisionally registered.

The provisions of the acts of 1842 and 1843, relating to the certificate of registration, are extended to designs provisionally registered under the act of 1850, by the 15th section of that act.

Certificate of Registration—Sculpture.

For sculpture the registrar is to certify under his hand and seal of office, in such form as the Board of Trade shall direct or approve, the fact of registration, the date of the same, and the name of the registered proprietor, or the style or title of the firm under which such proprietor may be trading, together with his place of abode or business, or other place of address, and the 15th section of the 13 & 14 Vict. enacts, that the provisions of 5 & 6

Vict. c. 100, so far as they are not repugnant to the provisions of that act, with regard to the certificate of registration, shall apply to the registration and transfer of designs under that act, and to matters under that act, as fully and effectually as if those provisions had been re-enacted in that act with respect to sculptures, models, copies and casts, registered under that act.

The certificate of the registration of sculpture, issued in pursuance of this provision, is apparently not evidence that the copyright in the sculpture is still in force. No inquiry is instituted at the time of registration, whether the copyright of the sculpture is in force or not. It is not even necessary to produce to the registrar the original sculpture with the name and date of first publication upon it. His certificate, therefore, would seem to have no effect in proving the date of the first publication, or that the condition of copyright in the sculpture acts, that the name and date should be put on the original sculpture before it is put forth or published, have been complied with. It does not profess to certify either of these particulars.

The 7th section of stat. 13 & 14 Vict. c. 104, imposes a penalty on persons making, importing, or exposing for sale, pirated copies of sculpture, not during the continuance of the period for which the sculpture is registered, but *during the continuance of the copyright* in the sculpture which is registered. Proof that the period for which the sculpture was

registered is unexpired is not proof that the copyright in the sculpture is in force. Whatever is necessary to show that the copyright was in force at the time of the piracy must, in proceedings for the piracy of sculpture, be proved by independent evidence. Notwithstanding the certificate, evidence must be given of the period of first publication, and that the name and date of the proprietor were put on the original sculpture at the time of first publication.

INSPECTION OF REGISTERED DESIGNS—ORNAMENTAL DESIGNS.

Statute 5 & 6 Vict. c. 100, s. 17, enacts, "that every person shall be at liberty to inspect any design whereof the copyright shall have expired, paying only such fee as shall be appointed by virtue of this act in that behalf; but with regard to designs whereof the copyright shall not have expired, no such design shall be open to inspection, except by a proprietor of such design or by any person authorized by him in writing, or by any person specially authorized by the registrar, and then only in the presence of such registrar, or in the presence of some person holding an appointment under this act, and not so as take a copy of any such design or of any part thereof, nor without paying for every such inspection such fee as aforesaid: provided always, that it shall be lawful for the said registrar to give to any person applying to him, and pro-

ducing a particular design, together with the registration mark thereof, or producing such registration mark only, a certificate stating whether of such design there be any copyright existing, and if there be, in respect to what particular article of manufacture or substance such copyright exists, and the term of such copyright, and the date of registration, and also the name and address of the registered proprietor thereof."

The registrar's instructions as to searches under the Ornamental Designs Act are as follows:—

"All designs, of which the copyright has expired, may be inspected at the Designs Office on the payment of the proper fee; but no design, the copyright of which is existing, is in general open to inspection. Any person, however, may, by application at the office, and on production of the registration mark of any particular design, be furnished with a certificate of search, stating whether the copyright be in existence, and in respect of what particular article of manufacture it exists; also the term of such copyright, and the date of registration, and the name and address of the registered proprietor thereof."

"Any party may also, on production of a piece of the manufactured article with the pattern thereon, together with the registration mark, be informed whether such pattern, supposed to be registered, is really so or not."

"As this mark is not applied to a provisionally

registered design, certificates of search for such designs will be given on production of the design or a copy or drawing thereof, or other necessary information, with the date of registration."

Inspection of registered Designs—Useful Designs.

Provision is made for the inspection of designs, and the index of designs, not being of an ornamental character, registered under the statute 6 & 7 Vict. c. 65, by the 10th section, which enacts, "that every person shall be at liberty to inspect the index of the titles of the designs, not being ornamental designs, registered under this act, and to take copies from the same, paying only such fees as shall be appointed by virtue of this act in that behalf, and every person shall be at liberty to inspect any such design, and to take copies thereof, paying such fee as aforesaid; but no design whereof the copyright shall not have expired shall be open to inspection, except in the presence of such registrar, or in the presence of some person holding an appointment under this act, and not so as to take a copy of such design, nor without paying such fee as aforesaid."

An order for a copy may, however, now be made by a judge of the superior courts of law under the 13th section of 13 & 14 Vict. c. 104 (*z*).

The registrar's instructions with respect to the

(*z*) See next page.

inspection of this index and these designs are as follows:—

"An index of the titles and names of the proprietors of all the registered designs for articles of utility is kept at the Designs Office, and may be inspected by any person, and extracts made from it.

"Designs, the copyright of which is expired, may be inspected and copied at the office.

"Designs, the copyright of which is unexpired, may also be inspected, but not copied, except according to a judge's order."

Evidence—Production of Books and Documents.

Statute 13 & 14 Vict. c. 104, s. 12, enacts, "that in order to prevent the frequent and unnecessary removal of the public books and documents in the office for the registration of designs, no book or document in the said office shall be removed for the purpose of being produced in any court or before any justice of the peace, without a special order of a judge of the Court of Chancery, or of one of her majesty's superior courts of law, first had and obtained by the party who shall desire the production of the same."

Judge may order Registrar to deliver Copies of Documents.

By the thirteenth section of the same statute, "If application shall be made to a judge of any of her

majesty's courts of law at Westminster by any person desiring to obtain a copy of any registration, entry, drawing, print or document, of which such person is not entitled as of right to have a copy, for the purpose of being used in evidence in any cause, or otherwise howsoever, and if such judge shall be satisfied that such copy is bonâ fide intended for such purpose as aforesaid, such judge shall order the registrar of designs to deliver such copy to the party applying, and the registrar of designs shall, upon payment for the same of such fee or fees as may be fixed according to the provisions of the said Designs Act in this behalf, deliver such copy accordingly."

The fee on taking copies of designs of which the copyright is unexpired, according to a judge's order made under this section, is two shillings for each hour or part of an hour for each design. Office copies of a design are charged for according to the nature of the design.

Though no express provision is made for the issue of a second certificate of registration to the proprietor of a registered design in case of the loss or destruction of the original, a new certificate might be obtained under this section.

Copies to be Evidence.

And, with regard to the mode in which such copy is to be admissible in evidence, by section 14, "Every copy of any registration, entry, drawing,

print or document delivered by the registrar of designs to any person requiring the same, shall be signed by the said registrar, and sealed with his seal of office; and every document sealed with the said seal, purporting to be a copy of any registration, entry, drawing, print or document, shall be deemed to be a true copy of such registration, entry, drawing, print or document, and shall, without further proof, be received in evidence before all courts, in like manner and to the same extent and effect as the original book, registration, entry, drawing, print or document would or might be received if *tendered in evidence*, as well for the purpose of proving the contents, purport and effect of such book, registration, entry, drawing, print or document, as also proving the same to be a book, registration, entry, drawing, print or document of or belonging to the said office, and in the custody of the registrar of designs."

It seems necessary to prove the seal of office affixed to a copy of any document offered in evidence under the provisions of this section, though the seal affixed to an *original* certificate of registration proves itself by stat. 5 & 6 Vict. c. 100, s. 16.

Application of Fees of Registration.

Stat. 5 & 6 Vict. c. 100, s. 18, enacts, "that the Commissioners of the Treasury shall from time to time fix fees to be paid for the services to be performed by the registrar, as they shall deem requi-

site, to defray the expenses of the said office, and the salaries or other remuneration of the said registrar, and of any other persons employed under him, with the sanction of the Commissioners of the Treasury, in the execution of this act; and the balance, if any, shall be carried to the Consolidated Fund of the United Kingdom, and be paid accordingly into the receipt of her majesty's Exchequer at Westminster; and the Commissioners of the Treasury may regulate the manner in which such fees are to be received, and in which they are to be kept, and in which they are to be accounted for, and they may also remit or dispense with the payment of such fees in any cases where they think it expedient so to do: provided always, that the fee for registering a design to be applied to any woven fabric, mentioned or comprised in classes 7, 9, or 10, shall not exceed the sum of one shilling; that the fee for registering a design to be applied to a paper-hanging shall not exceed the sum of ten shillings; and that the fee to be received by the registrar for giving a certificate relative to the existence or expiration of any copyright in any design printed on any woven fabric, yarn, thread, or warp, or printed, embossed, or worked on any paper-hanging, to any person exhibiting a piece end of a registered pattern, with the registration mark thereon, shall not exceed the sum of two shillings and sixpence."

PENALTY FOR EXTORTION.

Sect. 19. "And be it enacted, that if either the registrar or any person employed under him either demand or receive any gratuity or reward, whether in money or otherwise, except the salary or remuneration authorized by the Commissioners of the Treasury, he shall forfeit for every such offence fifty pounds to any person suing for the same by action of debt in the Court of Exchequer at Westminster; and he shall also be liable to be either suspended or dismissed from his office, and rendered incapable of holding any situation in the said office, as the Commissioners of the Treasury see fit."

Stat. 6 & 7 Vict. c. 65, s. 6, and stat. 13 & 14 Vict. c. 104, s. 15, enact, "that the provisions of the above act as to the fixing and application of fees for registration and to the penalty for extortion shall apply to the registration and provisional registration, and to the matters and things under those acts, as fully as if the several provisions had been re-enacted in those acts."

PROVISIONAL REGISTRATION OF DESIGNS.

For the protection of the property in designs not yet applied to the purposes for which they are intended or merely applied for the purpose of exhibition, stat. 13 & 14 Vict. c. 104, "An Act to amend and extend the Acts relating to the Copyright of Designs," which came into operation on the 14th of August, 1850, reciting that it is expedient to extend the laws relating to the copyright of designs, enacts—sect. 1. "That the registrar of Designs, upon application by or on behalf of the proprictor of any design not previously published within the united kingdom of Great Britain and Ireland, or elsewhere, and which may be registered under the Designs Act, 1842, or under the Designs Act, 1843, for the provisional registration of such design under this act; and upon being furnished with such copy, drawing, print, or description in writing or in print, as in the judgment of the said registrar shall be sufficient to identify the particular design in respect of which such registration is desired, and the name of the person claiming to be proprietor, together with his place of abode or

business or other place of address, or the style and title of the firm under which he may be trading, shall register such design in such manner and form as shall from time to time be prescribed or approved by the Board of Trade, and any design so registered shall be deemed provisionally registered; and the registration thereof shall continue in force for the term of one year from the time of the same being registered as aforesaid; and the said registrar shall certify under his hand and seal of office, in such form as the said board shall direct or approve, that the design has been provisionally registered, the date of such registration, and the name of the registered proprietor, together with his place of abode or business or other place of address."

By stat. 14 Vict. c. 8, s. 8, "Notwithstanding anything contained in the Designs Act, 1850, and the two acts therein referred to and called the Designs Act, 1842, and the Designs Act, 1843, the protection intended to be by those acts extended to the proprietors of new and original designs shall be so extended to the proprietors of all new and original designs which shall be provisionally registered and exhibited in the Exhibition of the Works of Industry of all Nations, 1851, notwithstanding that such designs may have been previously published or applied elsewhere than in the united kingdom of Great Britain and Ireland: provided that such design or any article to which the same has been applied have not been publicly sold or exposed for

sale previously to such exhibition thereof as aforesaid."

REGISTRAR'S INSTRUCTIONS.

Ornamental Designs.

The directions of the registrar as to the provisional registration of ornamental designs are the same as for the complete registration of similar designs, except as follows:—

"If the design is intended for exhibition in any place duly certified by the Board of Trade to be a place of public exhibition within the meaning of the Designs Act, 1850, then three copies, drawings or tracings or prints must be furnished. Where three have been furnished, the third copy or drawing, &c. will be deposited in the place of public exhibition certified as aforesaid."

"If the design is for provisional registration no mark is required to be placed thereon after registration, but merely the words 'provisionally registered,' and the date of registration."

Useful Designs.

As to the provisional registration of useful designs, the directions of the registrar are the same as those for the complete registration of similar designs, except as follows:—

"If the design is for provisional registration, an additional blank space of six inches by four inches may be left upon each sheet of paper or parchment

containing the drawing and other matters necessary to be registered, for the certificate of complete registration."

"Should this be omitted, one fresh drawing, copy, or print will be required for complete registration. If such design be intended to be exhibited in any place duly certified by the Board of Trade to be a place of public exhibition within the Designs Act, 1850, then a third copy of the drawing or print, together with the whole of the aforesaid particulars, must also be furnished."

"When three copies have been furnished, the remaining copy will be deposited in the place of public exhibition certified as aforesaid. Designs are registered provisionally, on payment of a fee of one shilling for ornamental designs registered in all classes, and ten shillings in respect of designs for articles of utility. When the designs so registered have been certified as having been deposited in the building of the exhibition, such fees will be returned."

PROPRIETOR, PROTECTION OF.

By section 2, the proprietor of any design which shall have been provisionally registered shall, during the continuation of such registration, have the sole right and property in such design; and the penalties and provisions of the said Designs Act, 1842, for preventing the piracy of designs, shall extend to the acts, matters and things next hereinafter enu-

merated, as fully as if those penalties and provisions had been re-enacted in this act, and expressly extended to such acts, matters and things respectively; that is to say,

1. To the application of any provisionally registered design, or any fraudulent imitation thereof, to any article of manufacture, or to any substance;
2. To the publication, sale, or exposure for sale, of any article of manufacture, or any substance to which any provisionally registered design shall have been applied.

The term "proprietor" in this section is, by the 16th section, to be construed according to the interpretation of that word in the Designs Act, 1842.

The provision as to piracy differs from that contained in stat. 5 & 6 Vict. c. 100, s. 7, in not confining piracy under this act to the application of the provisionally registered design, or of a fraudulent imitation thereof, to applications for the purpose of sale; and in subjecting to penalties the publication, sale, or exposure for sale, of any article of manufacture, or any substance to which any provisionally registered design shall have been applied, even though such piracy be committed without notice of the right infringed, or that the consent of the proprietor of the design to the application had not been obtained (*y*). In other respects the proceedings and evidence will be similar to those under the stat. 5 & 6 Vict. c. 100.

(*y*) See West *v.* Francis, 5 B. & Ald. 737.

EXHIBITION IN CERTAIN PLACES NOT TO DEFEAT COPYRIGHT.

Sect. 3. That during the continuance of such provisional registration, neither such registration, nor the exhibition or exposure of any design provisionally registered, or of any article to which any such design may have been or be intended to be applied, in any place, whether public or private, in which articles are not sold, or exposed or exhibited for sale, and to which the public are not admitted gratuitously, or in any place which shall have been previously certified by the Board of Trade to be a place of public exhibition within the meaning of this act, nor the publication of any account or description of any provisionally registered design exhibited or exposed, or intended to be exhibited or exposed, in any such place of exhibition or exposure, in any catalogue, paper, newspaper, periodical, or otherwise, shall prevent the proprietor thereof from registering any such design under the said Designs Acts at any time during the continuance of the provisional registration, in the same manner and as fully and effectually as if no such registration, exhibition, exposure or publication had been made: provided that every article to which any such design shall be applied, and which shall be exhibited or exposed by or with the licence or consent of the proprietor of such design, shall have thereon or attached thereto the words "provisionally registered," with the date of registration.

SALE OF ARTICLES TO WHICH DESIGNS APPLIED TO DEFEAT COPYRIGHT.

Sect. 4. "That if, during the continuance of such provisional registration, the proprietor of any design provisionally registered shall sell, expose, or offer for sale any article, substance, or thing to which any such design has been applied, such provisional registration shall be deemed to have been null and void immediately before any such sale, offer or exposure shall have been first made; but nothing herein contained shall be construed to hinder or prevent such proprietor from selling or transferring the right and property in any such design."

EXTENSION OF COPYRIGHT.

By the fifth section "the Board of Trade may, by order in writing, with respect to any particular class of designs or any particular design extend the period for which such design may be provisionally registered under this act for such term not exceeding the additional term of six months as to the said board may seem fit; and whenever any such order shall be made the same shall be registered in the office for the registration of designs, and during the extended term the protection and benefits conferred by this act in case of provisional registration shall continue as fully as if the original term of one year had not expired."

CERTAIN PROVISIONS OF DESIGNS ACTS, 1842 and 1843, EXTENDED TO THIS ACT.

The 15th section enacts, "that the several provisions contained in the Designs Acts" of 1842 and 1843, "so far as they are not repugnant to the provisions of this act as to the transfer of designs, to cancelling and amending registration, to the refusal of registration in certain cases, to the mode of recovering penalties, to the awarding and recovery of costs, to actions for damages, to the limitation of actions, to the certificate of registration, to penalties for wrongfully using marks, to the fixing and application of fees for registration, and to the penalty for extortion, shall apply to the provisional registration and transfer of designs, and to the designs entitled to protection under this act, and to matters under this act, as fully and effectually as if those provisions had been re-enacted in this act with respect to designs provisionally registered under this act; and the forms contained in the Designs Act, 1842, may for the purposes of this act be varied so as to meet the circumstances of the case." The law and practice relating to each of the several subjects mentioned in this section will be found under the respective headings in the part of this work which relates to Complete Registration.

INTERPRETATION OF TERMS.

The interpretation clauses of the several acts are:—

5 & 6 Vict. c. 100, s. 20: "That the following terms and expressions, so far as they are not repugnant to the context of that act, shall be construed as follows (that is to say), the expression "commissioners of the treasury" shall mean the lord high treasurer for the time being, or the commissioners of her Majesty's treasury for the time being, or any three or more of them; and the singular number shall include the plural as well as the singular number; and the masculine gender shall include the feminine gender as well as the masculine gender."

6 & 7 Vict. c. 65, s. 11: "For the interpretation of this act be it enacted, that the following terms and expressions, so far as they are not repugnant to the context of this act, shall be construed as follows (that is to say), the expression "commissioners of the treasury" shall mean the lord high treasurer for the time being, or the commissioners of her Majesty's treasury of the united kingdom of Great Britain and Ireland for the time being, or any

three or more of them; and the singular number shall include the plural as well as the singular number; and the masculine gender shall include the feminine gender as well as the masculine gender."

13 & 14 Vict. c. 104, s. 16: "That in the interpretation of this act the following terms and expressions shall have the meanings hereinafter assigned to them, unless such meanings shall be repugnant to or inconsistent with the context or subject-matter, that is to say;

The expression 'Designs Act, 1842,' shall mean an act passed in the 6th year of the reign of her present Majesty, intituled 'An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture.'

The expression 'Designs Act, 1843,' shall mean an act passed in the 7th year of her present Majesty, intituled 'An Act to amend the Laws relating to the Copyright of Designs.'

The expression 'Sculpture Copyright Acts' shall mean two acts passed respectively in the 38th and 54th years of the reign of King George the Third, and intituled respectively 'An Act for encouraging the Art of making New Models and Casts of Busts and other Things herein mentioned,' and 'An Act to amend and render more effectual an Act for encouraging the Art of making New Models

and Casts of Busts and other Things therein mentioned.'

The expression 'The Board of Trade' shall mean the lords of the committee of the privy council for the consideration of all matters of trade and plantations.

The expression 'registrar of designs' shall mean the registrar or assistant registrar of designs for articles of manufacture.

The expression 'proprietor' shall be construed according to the interpretation of that word in the said Designs Act, 1842.

And words in the singular number shall include the plural, and words applicable to males shall include females."

APPENDIX.

TABLES OF FEES.

ORNAMENTAL DESIGNS.

PROVISIONAL REGISTRATION.

		Each Design. £	s.	d.
Registration, in all Classes . .	*one year*	0	1	0
Transfer		0	5	0
Certifying former Registration (to Proprietor of Design)		0	1	0
Cancellation or substitution (according to Decree or Order in Chancery)		0	5	0

COMPLETE REGISTRATION.

Registering Designs.	Copyright.		Fee. £	s.	d.
Class 1 . .	3 years,	. each design	3	0	0
2 . .	ditto	. .	1	0	0
3 . .	ditto	. .	1	0	0
4 . .	ditto	. .	1	0	0
5 . .	ditto	. .	0	10	0
6 . .	ditto	. .	1	0	0
7 . .	9 months	. .	0	1	0
Extended term of 9 months for Designs registered after May 10, 1851 .		.	0	6	0
Or for the whole term of 18 months		.	0	7	0
8 . .	3 years	. .	1	0	0
9 . .	9 months	. .	0	1	0
10 . .	ditto	. .	0	1	0
11 . .	3 years	. .	0	5	0
12 . .	12 months	. .	0	5	0

Registering Designs.	Copyright.	Fee. £	s.	d.
Damasks and figured quilts, 3 years	. .	1	0	0
Class 13 . .	12 months . .	0	5	0
In all the 13 Classes		7	0	0
In Classes 1, 2, 3, and 4 inclusive . . .		5	0	0
In Classes 5 to 13 inclusive		3	0	0

REGISTRATION OF SCULPTURE.

Each Design		5	0	0

COMPLETE REGISTRATION AND REGISTRATION OF SCULPTURE.

Transfer	Same as Registration Fee, but for Class 1, and Sculpture, each Design	1	0	0
Certifying former Registration (to Proprietor)				
Cancellation or substitution (according to Decree or Order in Chancery)				

INSPECTIONS, ETC., OF PROVISIONAL AND COMPLETE REGISTRATION AND SCULPTURE.

Search		0	2	0
Inspection of all the Designs of which the Copyright *has expired*, *each* quarter or part of quarter of an hour, each class . . .		0	1	0
Taking copies of expired Designs, each hour or part of an hour, each copy		0	1	0
Taking copies of unexpired Designs (according to judge's order), for each hour or part of an hour, each copy		0	2	0

Damasks and figured quilts may be registered in Class 12 at once for three years, or, at any time during the existence of the original Copyright of one year, for an additional term of two years. This extension is prospective, and

applies only to Designs for damasks registered after the date of the Order of the Board of Trade, 5th November, 1850, and figured quilts after the 22nd of May, 1851.

	£	s.	d.
Fee for the whole term of three years . .	1	0	0
„ extended term of two years . .	0	16	0

Office copies of a Design will be charged for according to the nature of the Design.

USEFUL OR NON-ORNAMENTAL.

PROVISIONAL REGISTRATION.

	Fee.		
Registering Design	0	10	0
Certifying former Registration (to Proprietor of Design)	0	5	0
Registering and certifying Transfer . . .	0	10	0
Cancellation or substitution (according to Decree or Order in Chancery)	0	5	0

COMPLETE REGISTRATION.

	Stamp. £	Fee. £	Total. £
Registering Design	5	5	10
Certifying former Registration (to Proprietor of Design)	5	1	6
Registering and certifying Transfer .	5	1	6
Cancellation or substitution (according to Decree or Order in Chancery) . .	—	1	1

INSPECTIONS, ETC., OF PROVISIONAL AND COMPLETE REGISTRATIONS.

	£	s.	d.
Inspecting Register, Index of Titles, and Names, for each quarter or part of quarter of an hour .	0	1	0
Inspecting Designs, unexpired Copyright, each Design, ditto ditto ditto	0	2	0
Inspecting Designs, expired Copyright, each volume ditto ditto ditto	0	1	0
Taking copies of Designs, unexpired Copyright, (according to judge's order,) for each hour or part of an hour, each copy	0	2	0
Taking copies of Designs, expired Copyright, for each hour or part of an hour, each copy .	0	1	0

Office copies of a Design will be charged for according to the nature of the Design.

FORMS.

Forms of Counts in Debt for Penalties for Piracy of Ornamental Designs.

The form of declaration for penalties, upon the statute 5 & 6 Vict. c. 100, Lowndes v. Browne, 12 Irish Law Reports, 293. Some amendments are suggested in the notes.

For that whereas the plaintiffs before and at the time of the committing of the grievances by the said defendants as hereinafter mentioned, and after the passing of a certain act of parliament made and passed in a session of parliament holden in the fifth and sixth years of the reign of her present Majesty, intituled "An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture," and after the first day of September, in the year of our Lord 1842, and before and at the time of the registration of the design hereinafter mentioned, were and thence continually have been, within the meaning and protection of the said act, the proprietors of a new and original design for ornamenting articles of manufacture, that is to say, of a new and original design for ornamenting woven fabrics composed of cotton, and not a design for sculpture, or for all or any of the several things within the provisions of the said acts, or any of them, in the said schedule to the last mentioned act annexed; and which new and original design had not before, or at the time of the registration thereof, been previously published within the United Kingdom of Great Britain and Ireland, or elsewhere,

to wit, at Belfast, in the county of Antrim. And the said plaintiffs, so being such proprietors as aforesaid, afterwards and before the publication of such design, to wit, on the 6th day of November, in the year of our Lord 1847, duly registered the same (*a*), and the names of the said plaintiffs as proprietors thereof, according to the provisions of the said last-mentioned act, whereby the plaintiffs then and there became and were the proprietors of and entitled to the copyright of and in the said design so registered as aforesaid (*b*) (*c*), yet the said defendants, well knowing the premises, afterwards, and within nine calendar months from the date of the said registration, and within twelve calendar months before the commencement of this suit, to wit, on the first day of September, in the year of our Lord 1847, and on divers other days and times between that day and the day of the commencement of this suit, and within that part of the United Kingdom of Great Britain and Ireland called Ireland, to wit, at Belfast aforesaid, in the county aforesaid, unlawfully and unjustly, and without the licence or consent in writing of the plaintiffs, or any of them, and against the form of the last-mentioned act, *applied a fraudulent imitation of the said design so registered as aforesaid, for the purpose of sale*, to the ornamenting of certain articles of manufacture, to wit, certain woven fabrics composed of cotton, and then and there being one of the class of articles of manufacture in respect of which the copy-

(*a*) In respect of the application thereof to the articles of manufacture and substances comprised in class ——, by specifying the number of the class in respect of which such registration was made at the time of such registration.

(*b*) And became and were entitled to the sole right to apply the said design within the United Kingdom for and during the term of ——, to be computed from the time of the said registration.

(*c*) And the plaintiffs have always from the said time when, and until, &c., in exercise of the said sole right, applied the said —— design to the ornamenting of articles of manufacture comprised in the said class, within the United Kingdom of Great Britain and Ireland, to wit, at ——, in the county of ——.

right of the said design, by reason of the registration as aforesaid, was then and there in force, according to the provisions of the said last-mentioned act, which said fraudulent imitation was then and there intended to imitate and resemble, and did imitate and resemble, the said design of the said plaintiffs, in breach of the copyright of the said plaintiffs, and against the privilege so granted to them as aforesaid by the said registration, and contrary to the form of the said statute, to wit, at Belfast aforesaid, in the county aforesaid, whereby, and by force of the said statute, an action hath accrued to the said plaintiffs to demand and have of and from the said defendants the said sum of 30*l.*, parcel, &c.

The second count alleged that the defendants, *without the consent of the plaintiffs*, or any of them, and against the form of the statute in such case made and provided, *and having knowledge that such consent was not given*, then and there *published* articles of manufacture, to wit, woven fabrics, being one of the articles of manufacture in respect of which the said copyright of the plaintiffs was then and there in force as aforesaid, to which said articles of manufacture a fraudulent imitation of the said design of the plaintiffs was theretofore and then and there applied by the defendants.

The third count alleged that the defendants unlawfully and unjustly, without the consent of the said plaintiffs, or any of them, and against the form of the statute in such case made and provided, and having knowledge that such consent was not obtained, then and there *sold* certain articles of manufacture, to wit, woven fabrics composed of cotton, being one of the articles of manufacture in respect of which the said copyright of the plaintiffs was then and there in force as aforesaid, to which said articles of manufacture a fraudulent imitation of the said design of the plaintiffs was theretofore and then and there applied by the defendants, in breach of the said copyright of the plaintiffs, &c.

Form of Conviction for Piracy of a Design for an Article of Utility.

The form of conviction in the Queen against Bessell was as follows:—

London, } Be it remembered, that on the first day of
to wit. } October, in the year of our Lord one thousand eight hundred and fifty, at the Guildhall Justice Room in the city of London, John Bessell, now and at the time of committing the offence hereinafter mentioned residing in the said city of London, is convicted before me Samuel Wilson, Esquire, one of the aldermen of the city of London, and one of her Majesty's justices of the peace in and for the said city of London and liberties thereof, sitting at the Guildhall Justice Room in the said city, for that he the said John Bessell, on the first day of August in the year of our Lord one thousand eight hundred and fifty, within twelve calendar months last past, and during the existence of the right of William Dixon hereinafter named to the new and original design hereinafter mentioned, and without the licence, consent or agreement in writing of the said William Dixon, then being such proprietor as hereinafter mentioned, at Farringdon Street in the city of London, did, for the purpose of sale, unlawfully make a certain article of manufacture, to wit, a Window Ventilator, having reference to a purpose of utility, to wit, the ventilation of apartments in dwellinghouses, according to a certain new and original design for(*a*) an article of manufacture, to wit, a Window Ventilator, having reference to a certain purpose of utility, to wit, the ventilation of apartments in dwellinghouses, so far as the said design was for the configuration of the said article of manufacture, and did apply the said new and original design for the purpose of sale to the making of the said article of manufacture, to wit, the said Window Venti-

(*a*) The shape and configuration of.

lator, by him the said John Bc ell so made as aforesaid; and which said new and original design was and is numbered one thousand seven hundred and fifty, and was(a) registered on behalf of William Dixon, of Williamson Square, Liverpool, in the county of Lancaster, dealer in glass, on the twenty-sixth day of January, in the year of our Lord one thousand eight hundred and forty-nine, in pursuance of the said act; and of which said new and original design the said William Dixon was, at the time of the committing of the said offence, to wit, on the said fifteenth day of August, in the year of our Lord one thousand eight hundred and fifty, and still is, the registered proprietor, contrary to the form of the statute in that case made and provided: And I the said alderman and justice do adjudge that the said John Bessell for his said offence hath forfeited the sum of thirty pounds to the said William Dixon, and I the said alderman and justice do award and order that the said John Bessell shall pay to the said William Dixon the sum of five pounds for the reasonable costs and charges of the said William Dixon attending this conviction, assessed by me the said alderman and justice. Given under my hand and seal the day and year and at the place first above written.

(L. S.)

(a) Before any publication thereof duly.

STATUTES.

38 GEO. III. c. 71.

An Act for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned.

[21st June, 1798.]

'WHEREAS divers persons have, by their own genius, industry, pains and expense, improved and brought the art of making new models and casts of busts, and of statues of human figures, and of animals, to great perfection, in hopes to have reaped the sole benefit of their labours; but that divers persons have (without the consent of the proprietors thereof) copied and made moulds from the said models and casts, and sold base copies and casts of such new models and casts, to the great prejudice and detriment of the original proprietors, and to the discouragement of the art of making such new models and casts as aforesaid:' for remedy whereof, and for preventing such practices for the future, may it please your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same,

The sole right and property of making models or casts shall be vested in the original proprietor for fourteen years.

That, from and after the passing of this act, every person who shall make or cause to be made any new model, or copy or cast made from such new model, of any bust, or any part of the human figure, or any statue of the human figure, or the head of any animal, or any part of any animal, or the statue of any animal; or shall make or cause to be made any new model, copy, or cast from such new model, in alto or basso relievo, or any work in which

the representation of any human figure or figures, or the representation of any animal or animals shall be introduced, or shall make or cause to be made any new cast from nature of any part or parts of the human figure, or of any part or parts of any animal, shall have the sole right and property in every such new model, copy or cast, and also in every such new model, copy or cast in alto or basso relievo, or any work as aforesaid, and also in every such new cast from nature as aforesaid, for and during the term of *fourteen* years from the time of first publishing the same: provided always, that every person who shall make or cause to be made any such new model, copy, or cast, or any such new model, copy, or cast in alto or basso relievo, or any work as aforesaid, or any new cast from nature as aforesaid, shall cause his or her name to be put thereon, with the date of the publication, before the same shall be published and exposed to sale.

Persons making copies of any model or cast without the written consent of the proprietor may be prosecuted for damages, by a special action on the case.

2. And be it further enacted, that if any person shall, within the said term of fourteen years, make or cause to be made any copy or cast of any such new model, copy, or cast, or any such model, copy or cast in alto or basso relievo, or any such work as aforesaid, or any such new cast from nature as aforesaid, either by adding to or diminishing from any such new model, copy or cast, or adding to or diminishing from any such new model, copy or cast in alto or basso relievo, or any such work as aforesaid, or adding to or diminishing from any such new cast from nature, or shall cause or procure the same to be done, or shall import any copy or cast of such new model, copy or cast, or copy or cast of such new model, copy or cast in alto or basso relievo, or any such work as aforesaid, or any copy or cast of any such new cast from nature as aforesaid, *for* sale, or shall sell or otherwise dispose of, or cause or procure to be sold or exposed to sale, or otherwise disposed of, any copy or cast of any such new model, copy or cast, or any copy or cast of such new model, copy or cast in alto or basso relievo, or any such work as aforesaid, or any copy or cast of any such new cast from nature as aforesaid, without the express consent of the proprietor or proprietors thereof first had and obtained, in writing signed by him, her, or them respectively, with his, her, or their hand or hands, in the presence of and attested by two or more credible witnesses, then and in all or any of the cases aforesaid, every proprietor or proprietors of any such original

model, copy, or cast, and every proprietor or proprietors of any such original model, or copy or cast in alto or basso relievo, or any such work as aforesaid, or the proprietor or proprietors of any such new cast from nature as aforesaid respectively, shall and may, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with full costs of suit.

Except such persons who shall purchase the same of the original proprietor.

3. Provided nevertheless, that no person who shall hereafter purchase the right, either in any such model, copy, or cast, or in any such model, copy or cast in alto or basso relievo, or any such work as aforesaid, or any such new cast from nature, of the original proprietor or proprietors thereof, shall be subject to any action for vending or selling any cast or copy from the same; any thing contained in this act to the contrary hereof notwithstanding.

Limitation of actions.

4. Provided also, that all actions to be brought as aforesaid, against any person or persons for any offence committed against this act, shall be commenced within six calendar months next after the discovery of every such offence, and not afterwards.

54 GEO. III. c. 56.

An Act to amend and render more effectual an Act of his present Majesty, for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned: and for giving further Encouragement to such Arts. [18th May, 1814.]

38 Geo. 3, c. 71, s. 1.

WHEREAS by an act passed in the thirty-eighth year of the reign of his present majesty, intituled "An Act for encouraging the art of making new Models and Casts of Busts, and other Things therein mentioned;" the sole right and property thereof were vested in the original proprietors, for a time therein specified: and whereas the provisions of the said act having been found ineffectual for the purposes thereby intended, it is expedient to amend the same, and to make other provisions and regulations for the encouragement of artists, and to secure to them the profits of and in

their works, and for the advancement of the said arts: May it therefore please your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That, from and after the passing of this act, every person or persons who shall make or cause to be made any new and original sculpture, or model, or copy, or cast of the human figure or human figures, or of any bust or busts, or of any part or parts of the human figure, clothed in drapery or otherwise, or of any animal or animals, or of any part or parts of any animal combined with the human figure or otherwise, or of any subject being matter of invention in sculpture, or of any alto or basso-relievo representing any of the matters or things hereinbefore mentioned, or any cast from nature of the human figure, or of any part or parts of the human figure, or of any cast from nature of any animal, or of any part or parts of any animal, or of any such subject containing or representing any of the matters and things hereinbefore mentioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture, model, copy and cast of the human figure or human figures, and of all and in every such bust or busts, and of all and in every such part or parts of the human figure, clothed in drapery or otherwise, and of all and in every such new and original sculpture, model, copy and cast representing any animal or animals, and of all and in every such work representing any part or parts of any animal combined with the human figure or otherwise, and of all and in every such new and original sculpture, model, copy and cast of any subject being matter of invention in sculpture, and of all and in every such new and original sculpture, model, copy and cast in alto or basso-relievo representing any of the matters or things hereinbefore mentioned, and of every such cast from nature, for the term of fourteen years from first putting forth or publishing the same: provided, in all and in every case, the proprietor or proprietors do cause his, her or their name or names, with the date, to be put on all and every such new and original sculpture, model, copy or cast, and on every such cast from nature, before the same shall be put forth or published.

Sole right and property of all new and original sculpture, models, copies and casts, vested in proprietors for fourteen years.

Name and date affixed.

2. And be it further enacted, that the sole right and property of all works, which have been put forth or published

Works published under act vested in

proprietors for fourteen years.

under the protection of the said recited act, shall be extended, continued to and vested in the respective proprietors thereof, for the term of fourteen years, to commence from the date when such last-mentioned works respectively were put forth or published.

Putting forth pirated copies or pirated casts prosecuted.

3. And be it further enacted, that if any person or persons shall, within such term of fourteen years, make or import, or cause to be made or imported, or exposed to sale, or otherwise disposed of, any pirated copy or pirated cast of any such new and original sculpture, or model or copy, or cast of the human figure or human figures, or of any such bust or busts, or of any such part or parts of the human figure clothed in drapery or otherwise, or of any such work of any animal or animals, or of any such part or parts of any animal or animals combined with the human figure or otherwise, or of any such subject being matter of invention in sculpture, or of any such alto or basso-relievo representing any of the matters or things hereinbefore mentioned, or of any such cast from nature as aforesaid, whether such pirated copy or pirated cast be produced by moulding or copying from, or imitating in any way, any of the matters or things put forth or published under the protection of this act, or of any works which have been put forth or published under the protection of the said recited act, the right and property whereof is and are secured, extended and protected by this act, in any of the cases as aforesaid, to the detriment, damage or loss of the original or respective proprietor or proprietors of any such works so pirated; then and in all such cases the said proprietor or proprietors, or their assignee or assignees, shall and may, by and in a special action upon the case to be brought against the person or persons so offending, receive such damages as a jury on a trial of such action shall give or assess, together with double costs of suit.

Damages.

Double costs.

Purchasers of copyright secured in same.

4. Provided nevertheless, that no person or persons who shall or may hereafter purchase the right or property of any new and original sculpture or model, or copy or cast, or of any cast from nature, or of any of the matters and things published under or protected by virtue of this act, of the proprietor or proprietors, expressed in a deed in writing signed by him, her or them respectively, with his, her or their own hand or hands, in the presence of and attested by two or more credible witnesses, shall be subject to any

action for copying or casting, or vending the same; anything contained in this act to the contrary notwithstanding.

Limitation of actions.

5. Provided always, and be it further enacted, that all actions to be brought as aforesaid, against any person or persons for any offence committed against this act, shall be commenced within six calendar months next after the discovery of every such offence, and not afterwards.

Additional term of fourteen years, in case maker of original sculpture, &c., shall be living.

6. Provided always, and be it further enacted, that, from and immediately after the expiration of the said term of fourteen years, the sole right of making and disposing of such new and original sculpture, or model, or copy or cast of any of the matters or things hereinbefore mentioned, shall return to the person or persons who originally made or caused to be made the same, if he or they shall be then living, for the further term of fourteen years, excepting in the case or cases where such person or persons shall by sale or otherwise have divested himself, herself or themselves, of such right of making or disposing of any new and original sculpture, or model, or copy or cast of any of the matters or things hereinbefore mentioned, previous to the passing of this act.

5 & 6 VICT. c. 100.

An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture. [10th August, 1842.]

WHEREAS by the several acts mentioned in the schedule (A.) to this act annexed, there was granted, in respect of the woven fabrics therein mentioned, the sole right to use any new and original pattern for printing the same during the period of three calendar months: and whereas by the act mentioned in the schedule (B.) to this act annexed, there was granted in respect of all articles, except lace, and except the articles within the meaning of the acts hereinbefore referred to, the sole right of using any new and original design, for certain purposes, during the respective periods therein mentioned; but forasmuch as the protection afforded by the said acts in respect of the application of designs to certain articles of manufacture is insufficient, it is expedient to extend the same, but upon the conditions hereinafter expressed: now, for that purpose, and for the purpose of

consolidating the provisions of the said acts, be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That this act shall come into operation on the first day of September, one thousand eight hundred and forty-two, and that thereupon all the said acts mentioned in the said schedules (A.) and (B.) to this act annexed shall be and they are hereby repealed.

Commencement of act, and repeal of former acts.

Proviso as to existing copyrights.

2. Provided always, and be it enacted, that, notwithstanding such repeal of the said acts, every copyright in force under the same shall continue in force till the expiration of such copyright; and with regard to all offences or injuries committed against any such copyright before this act shall come into operation, every penalty imposed and every remedy given by the said acts, in relation to any such offence or injury, shall be applicable as if such acts had not been repealed; but with regard to such offences or injuries committed against any such copyright after this act shall come into operation, every penalty imposed and every remedy given by this act in relation to any such offence or injury shall be applicable as if such copyright had been conferred by this act.

Grant of copyright.

3. And with regard to any new and original design (except for sculpture and other things within the provisions of the several acts mentioned in the schedule (C.) to this act annexed), whether such design be applicable to the ornamenting of any article of manufacture, or of any substance, artificial or natural, or partly artificial and partly natural, and that whether such design be so applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means such design may be so applicable, whether by printing, or by painting, or by embroidery, or by weaving, or by sewing, or by modelling, or by casting, or by embossing, or by engraving, or by staining, or by any other means whatsoever, manual, mechanical or chemical, separate or combined; be it enacted, that the proprietor of every such design, not previously published either within the United Kingdom of Great Britain and Ireland, or elsewhere, shall have the sole right to apply the same to any articles of manufacture, or to any such substances as aforesaid, provided the same be done within the United Kingdom of Great Britain and Ireland, for the respective terms here-

inafter mentioned, such respective terms to be computed *from* the time of such design being registered according to *this act*; (that is to say,)

In respect of the application of any such design to ornamenting any article of manufacture contained in the first, second, third, fourth, fifth, sixth, eighth or eleventh of the classes following, for the term of three years:

In respect of the application of any such design to ornamenting any article of manufacture contained in the seventh, ninth or tenth of the classes following, for the term of nine calendar months:

In respect of the application of any such design to ornamenting any article of manufacture or substance contained in the twelfth or thirteenth of the classes following, for the term of twelve calendar months:

Class 1.—Articles of manufacture composed wholly or chiefly of any metal or mixed metals:

Class 2.—Articles of manufacture composed wholly or chiefly of wood:

Class 3.—Articles of manufacture composed wholly or chiefly of glass:

Class 4.—Articles of manufacture composed wholly or chiefly of earthenware:

Class 5.—Paper hangings:

Class 6.—Carpets:

Class 7.—Shawls, if the design be applied solely by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics:

Class 8.—Shawls not comprised in Class 7:

Class 9.—Yarn, thread or warp, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced:

Class 10.—Woven fabrics, composed of linen, cotton, wool, silk or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics; excepting the articles included in Class 11:

Class 11.—Woven fabrics, composed of linen, cotton, wool, silk or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which colours are or may

hereafter be produced upon tissue or textile fabrics, such woven fabrics being or coming within the description technically called furnitures, and the repeat of the design whereof shall be more than twelve inches by eight inches:

Class 12.—*Woven fabrics, not comprised in any* preceding class:

Class 13.—Lace, and any article of manufacture or substance not comprised in any preceding class:

Condition of copyright.

4. Provided always, and be it enacted, that no person shall be entitled to the benefit of this act, with regard to any design in respect of the application thereof to ornamenting any article of manufacture, or any such substance, unless such design have before publication thereof been registered according to this act, and unless at the time of

Registration.

such registration such design have been registered in respect of the application thereof to some or one of the articles of manufacture or substances comprised in the above-mentioned classes, by specifying the number of the class in respect of which such registration is made, and unless the name of such person shall be registered according to this act as a proprietor of such design, and unless after publication of such design every such article of manufacture, or such substance to which the same shall be so applied, published by him, hath thereon, if the article of manufacture be a woven fabric for printing, at one end thereof, or, if of any other kind or such substance as aforesaid, at the end or edge thereof, or other convenient place thereon, the letters "Rd," together with such number or letter, or number and letter, and in such form as shall correspond with the date of the registration of such design according to the registry of designs in that behalf; and such marks may be put on any such article of manufacture or such substance, either by making the same in or on the material itself of which such article or such substance shall consist, or by attaching thereto a label containing such marks.

Marks denoting a registered design.

The term "proprietor" explained.

5. And be it enacted, that the author of any such new and original design shall be considered the proprietor thereof, unless he have executed the work on behalf of another person for a good or a valuable consideration, in which case such person shall be considered the proprietor, and shall be entitled to be registered in the place of the author; and every person acquiring for a good or a valuable consideration a new and original design, or the right to apply the same to

ornamenting any one or more articles of manufacture, or any one or more such substances as aforesaid, either exclusively of any other person or otherwise, and also every person upon whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise.

Transfer of copyright, and register thereof.

6. And be it enacted, that every person purchasing or otherwise acquiring the right to the entire or partial use of any such design may enter his title in the register hereby provided, and any writing purporting to be a transfer of such design and signed by the proprietor thereof shall operate as an effectual transfer; and the registrar shall, on request, and the production of such writing, or in the case of acquiring such right by any other mode than that of purchase on the production of any evidence to the satisfaction of the registrar, insert the name of the new proprietor in the register; and the following may be the form of such transfer, and of such request to the registrar:

Form of Transfer, and Authority to register.

"I, A. B., author [*or* proprietor] of design, No. ——, having transferred my right thereto, [*or, if such transfer be partial,* so far as regards the ornamenting of —— *describe the articles of manufacture or substances, or the locality with respect to which the right is transferred,*] to B. C. of ——, do hereby authorize you to insert his name on the register of designs accordingly."

Form of Request to register.

"I, B. C., the person mentioned in the above transfer, do request you to register my name and property in the said design as entitled [*if to the entire use*] to the entire use of such design, [*or, if to the partial use,* to the partial use of such design, so far as regards the application thereof—*describe the articles of manufacture, or the locality in relation to which the right is transferred*]."

But if such request to register be made by any person to whom any such design shall devolve otherwise than by transfer, such request may be in the following form:

"I, C. D., in whom is vested by [*state bankruptcy or otherwise*] the design, No. ——, [*or, if such devolution be of a partial right,* so far as regards the application thereof to—

describe the articles of manufacture or substance, or the locality in relation to which the right has devolved]."

Piracy of designs.

7. And for preventing the piracy of registered designs, be it enacted, that during the existence of any such right to the entire or partial use of any such design no person shall either do or cause to be done any of the following acts with regard to any articles of manufacture or substances, in respect of which the copyright of such design shall be in force, without the licence or consent in writing of the registered proprietor thereof; (that is to say,)

No person shall apply any such design, or any fraudulent imitation thereof for the purpose of sale, to the ornamenting of any article of manufacture, or any substance, artificial or natural, or partly artificial and partly natural:

No person shall publish, sell or expose for sale any article of manufacture, or any substance, to which such design, or any fraudulent imitation thereof, shall have been so applied, after having received, either verbally or in writing, or otherwise from any source other than the proprietor of such design, knowledge that his consent has not been given to such application, or after having been served with or had left at his premises a written *notice signed by such proprietor or his agent* to the same effect.

Recovery of penalties for piracy.

8. And be it enacted, that if any person commit any *such act he shall for every offence forfeit* a sum not less than five pounds and not exceeding thirty pounds to the proprietor of the design in respect of whose right such offence has been committed; and such proprietor *may* recover such penalty as follows:

In England, either by an action of debt or on the case against the party offending, or by summary proceeding before two justices having jurisdiction where the party offending resides; and if such proprietor proceed by such summary proceeding, any justice of the peace acting for the county, riding, division, city or borough where the party offending resides, and not being concerned either in the sale or manufacture of the article of manufacture, or in the design to which such summary proceeding relates, may issue a summons requiring such party to appear on a day and at a time and *place to be named in such summons*, such time not

being less than eight days from the date thereof; and every such summons shall be served on the party offending either in person or at his usual place of abode; and either upon the appearance or upon the default to appear of the party offending, any two or more of such justices may proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party offending, or upon the oath or affirmation of one or more credible witnesses, which such justices are hereby authorized to administer, may convict the offender in a penalty of not less than five pounds or more than thirty pounds, as aforesaid, for each offence, as to such justices doth seem fit; but the aggregate amount of penalties for offences in respect of any one design committed by any one person, up to the time at which any of the proceedings herein mentioned shall be instituted, shall not exceed the sum of one hundred pounds; and if the amount of such penalty or of such penalties, and the costs attending the conviction, so assessed by such justices, be not forthwith paid, the amount of the penalty or of the penalties, and of the costs, together with the costs of the distress and sale, shall be levied by distress and sale of the goods and chattels of the offender, wherever the same happen to be in England; and the justices before whom the party has been convicted, or, on proof of the conviction, any two justices acting for any county, riding, division, city or borough in England, where goods and chattels of the person offending happen to be, may grant a warrant for such distress and sale; and the overplus, if any, shall be returned to the owner of the goods and chattels, on demand; and every information and conviction which shall be respectively laid or made in such summary proceeding before two justices under this act may be drawn or made out in the following forms respectively, or to the effect thereof, *mutatis mutandis*, as the case may require:

Form of Information.

"Be it remembered, that on the ——, at ——, in the county of ——, A. B. of ——, in the county of ——, [*or* C. D. of ——, in the county of ——, at the instance and on the behalf of A. B. of ——, in the county of ——,] cometh before us —— and ——, two

of her majesty's justices of the peace in and for the county of ——, and giveth us to understand that the said A. B., before and at the time when the offence hereinafter mentioned was committed, was the proprietor of a new and original design for [*here describe the design,*] and that within twelve calendar months last past, to wit, on the ——, at ——, in the county of ——, E. F. of ——, in the county of ——, did [*here describe the offence*], contrary to the form of the act passed in the —— year of the reign of her present majesty, intituled '*An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture.*'"

Form of Conviction.

"Be it remembered, that on the —— day of ——, in the year of our Lord ——, at ——, in the county of ——, E. F. of ——, in the county aforesaid, is convicted before us —— and ——, two of her majesty's justices of the peace for the said county, for that he the said E. F., on the —— day of ——, in the year ——, at ——, in the county of ——, did [*here describe the offence*] contrary to the form of the statute in that case made and provided; and we the said justices do adjudge that the said E. F. for his offence aforesaid hath forfeited the sum of —— to the said A. B."

In Scotland, by action before the court of session in ordinary form, or by summary action before the sheriff of the county where the offence may be committed or the offender resides, who, upon proof of the offence or offences, either by confession of the party offending or by the oath or affirmation of one or more credible witnesses, shall convict the offender and find him liable in the penalty or penalties aforesaid, as also in expenses; and it shall be lawful for the sheriff, in pronouncing such judgment for the penalty or penalties and costs, to insert in such judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by poinding: Provided always, that it shall be lawful to the sheriff, in the event of his dismissing the action and assoilzieing the defender, to find the complainer liable in expenses; and any judgment so to be pronounced by the sheriff in such summary application shall be final and

conclusive, and not subject to review by advocation, suspension, reduction or otherwise:

In Ireland, either by action in a superior court of law at Dublin or by civil bill in the Civil Bill Court of the county or place where the offence was committed.

Proviso as to action for damages.

9. Provided always, and be it enacted, that, notwithstanding the remedies hereby given for the recovery of any such penalty as aforesaid, it shall be lawful for the proprietor in respect of whose right such penalty shall have been incurred (if he shall elect to do so) to bring such action as he may be entitled to for the recovery of any damages which he shall have sustained, either by the application of any such design or of a fraudulent imitation thereof, for the purpose of sale, to any articles of manufacture or substances, or by the publication, sale or exposure to sale, as aforesaid, by any person, of any article or substance to which such design or any fraudulent imitation thereof shall have been so applied, such person knowing that the proprietor of such design had not given his consent to such application.

Registration may be cancelled or amended

10. And be it enacted, that in any suit in equity which may be instituted by the proprietor of any design or the person lawfully entitled thereto, relative to such design, if it shall appear to the satisfaction of the judge having cognizance of such suit that the design has been registered in the name of a person not being the proprietor or lawfully entitled thereto, it shall be competent for such judge, in his discretion, by a decree or order in such suit to direct either that such registration be cancelled (in which case the same shall thenceforth be wholly void), or that the name of the proprietor of such design, or other person lawfully entitled thereto, be substituted in the register for the name of such wrongful proprietor or claimant, in like manner as is hereinbefore directed in case of the transfer of a design, and to make such order respecting the costs of such cancellation or substitution, and of all proceedings to procure and effect the same, as he shall think fit; and the registrar is hereby authorized and required, upon being served with an official copy of such decree or order, and upon payment of the proper fee, to comply with the tenor of such decree or order, and either cancel such registration or substitute such new name, as the case may be.

Penalty on wrongfully using marks denoting a

11. And be it enacted, that unless a design applied to ornamenting any article of manufacture or any such substance as aforesaid be so registered as aforesaid, and unless

registered design.

such design so registered shall have been applied to the ornamenting such article or substance within the United Kingdom of Great Britain and Ireland, and also after the copyright of such design in relation to such article or substance shall have expired, it shall be unlawful to put on any such article or such substance, in the manner hereinbefore required with respect to articles or substances whereto shall be applied a registered design, the marks hereinbefore required to be so applied, or any marks corresponding therewith or similar thereto; and if any person shall so unlawfully apply any such marks, or shall publish, sell or expose for sale any article of manufacture, or any substance, with any such marks so unlawfully applied, knowing that any such marks have been unlawfully applied, he shall forfeit for every such offence a sum not exceeding five pounds, which may be recovered by any person proceeding for the same by any of the ways hereinbefore directed with respect to penalties for pirating any such design.

Limitation of actions

12. And be it enacted, that no action or other proceeding for any offence or injury under this act shall be brought after the expiration of twelve calendar months from the commission of the offence; and in every such action or other proceeding the party who shall prevail shall recover his full costs of suit or of such other proceeding.

Justices may order payment of costs in cases of summary proceeding.

13. And be it enacted, that in the case of any summary proceeding before any two justices in England such justices are hereby authorized to award payment of costs to the party prevailing, and to grant a warrant for enforcing payment thereof against the summoning party, if unsuccessful, in the like manner as is hereinbefore provided for recovering any penalty with costs against any offender under this act.

Registrar, &c. of designs to be appointed.

14. And for the purpose of registering designs for artieles of manufacture, in order to obtain the protection of this act, be it enacted, that the Lords of the Committee of Privy Council for the consideration of all matters of trade and plantations may appoint a person to be a registrar of designs for ornamenting articles of manufacture, and, if the Lords of the said Committee see fit, a deputy registrar, clerks and other necessary officers and servants; and such registrar, deputy registrar, clerks, officers and servants shall hold their offices during the pleasure of the Lords of the said Committee; and the Commissioners of the Treasury may from time to time fix the salary or remuneration of such

registrar, deputy registrar, clerks, officers and servants; and, subject to the provisions of this act, the Lords of the said Committee may make rules for regulating the execution of the duties of the office of the said registrar; and such registrar shall have a seal of office.

Registrar's duties.

15. And be it enacted, that the said registrar shall not register any design in respect of any application thereof to ornamenting any articles of manufacture or substances, unless he be furnished, in respect of each such application, with two copies, drawings or prints of such design, accompanied with the name of every person who shall claim to be proprietor, or of the style or title of the firm under which such proprietor may be trading, with his place of abode or place of carrying on his business, or other place of address, and the number of the class in respect of which such registration is made; and the registrar shall register all such copies, drawings, or prints, from time to time successively, as they are received by him for that purpose; and on every such copy, drawing or print he shall affix a number corresponding to such succession; and he shall retain one copy, drawing or print, which he shall file in his office, and the other he shall return to the person by whom the same has been forwarded to him; and, in order to give ready access to the copies of designs so registered, he shall class such copies of designs, and keep a proper index of each class.

Certificate of registration of design.

16. And be it enacted, that upon every copy, drawing or print of an original design so returned to the person registering as aforesaid, or attached thereto, and upon every copy, drawing or print thereof received for the purpose of such registration, or of the transfer of such design being certified thereon or attached thereto, the registrar shall certify under his hand that the design has been so registered, the date of such registration, and the name of the registered proprietor or the style or title of the firm under which such proprietor may be trading, with his place of abode or place of carrying on his business, or other place of address, and also the number of such design, together with such number or letter, or number and letter, and in such form as shall be employed by him to denote or correspond with the date of such registration; and such certificate made on every such original design, or on such copy thereof, and purporting to be signed by the registrar or deputy registrar, and purporting to have the seal of office of such registrar affixed thereto,

shall, in the absence of evidence to the contrary, be sufficient proof, as follows:

Of the design, and of the name of the proprietor therein mentioned, having been duly registered; and

Of the commencement of the period of registry; and

Of the person named therein as proprietor being the proprietor; and

Of the originality of the design; and

Of the provisions of this act, and of any rule under which the certificate appears to be made, having been complied with:

and any such writing purporting to be such certificate shall, in the absence of evidence to the contrary, be received as evidence, without proof of the handwriting of the signature thereto, or of the seal of office affixed thereto, or of the person signing the same being the registrar or deputy registrar.

Inspection of registered designs.

17. And be it enacted, that every person shall be at liberty to inspect any design whereof the copyright shall have expired, paying only such fee as shall be appointed by virtue of this act in that behalf; but with regard to designs whereof the copyright shall not have expired, no such design shall be open to inspection, except by a proprietor of such design or by any person authorized by him in writing, or by any person specially authorized by the registrar, and then only in the presence of such registrar or in the presence of some person holding an appointment under this act, and not so as to take a copy of any such design or of any part thereof, nor without paying for every such inspection such fee as aforesaid: provided always, that it shall be lawful for the said registrar to give to any person applying to him, and producing a particular design, together with the registration mark thereof, or producing such registration mark only, a certificate stating whether of such design there be any copyright existing, and if there be, in respect to what particular article of manufacture or substance such copyright exists, and the term of such copyright, and the date of registration, and also the name and address of the registered proprietor thereof.

Application of fees of registration.

18. And be it enacted, that the commissioners of the treasury shall from time to time fix fees to be paid for the services to be performed by the registrar, as they shall deem requisite, to defray the expenses of the said office, and the salaries or other remuneration of the said registrar, and of

any other person employed under him, with the sanction of the commissioners of the treasury, in the execution of this act; and the balance, if any, shall be carried to the Consolidated Fund of the united kingdom, and be paid accordingly into the receipt of her majesty's exchequer at Westminster; and the commissioners of the treasury may regulate the manner in which such fees are to be received, and in which they are to be kept, and in which they are to be accounted for, and they may also remit or dispense with the payment of such fees in any cases where they may think it expedient so to do: provided always, that the fee for registering a design to be applied to any woven fabric, mentioned or comprised in Classes 7, 9, or 10, shall not exceed the sum of one shilling; that the fee for registering a design to be applied to a paper hanging shall not exceed the sum of ten shillings; and that the fee to be received by the registrar for giving a certificate relative to the existence or expiration of any copyright in any design printed on any woven fabric, yarn, thread, or warp, or printed, embossed, or worked on any paper hanging, to any person exhibiting a piece end of a registered pattern, with the registration mark thereon, shall not exceed the sum of two shillings and sixpence.

Penalty for extortion.

19. And be it enacted, that if either the registrar or any person employed under him either demand or receive any gratuity or reward, whether in money or otherwise, except the salary or remuneration authorized by the commissioners of the treasury, he shall forfeit for every such offence fifty pounds to any person suing for the same by action of debt in the Court of Exchequer at Westminster; and he shall also be liable to be either suspended or dismissed from his office, and rendered incapable of holding any situation in the said office, as the commissioners of the treasury see fit.

Interpretation of act.

20. And for the interpretation of this act, be it enacted, that the following terms and expressions, as far as they are not repugnant to the context of this act, shall be construed as follows; (that is to say,) the expression "Commissioners of the Treasury" shall mean the lord high treasurer for the time being, or the commissioners of her majesty's treasury for the time being, or any three or more of them; and the singular number shall include the plural as well as the singular number; and the masculine gender shall include the feminine gender as well as the masculine gender.

Act may be amended, &c., this session.

21. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of parliament.

SCHEDULES referred to by the foregoing Act.

SCHEDULE (A.)

DATE OF ACTS.	TITLE.
27 Geo. 3, c. 38. (1787.)	An Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors for a limited Time.
29 Geo. 3, c. 19. (1789.)	An Act for continuing an Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors for a limited Time.
34 Geo. 3, c. 23. (1794.)	An Act for amending and making perpetual an Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors for a limited Time.
2 Vict. c. 13. (1839.)	An Act for extending the Copyright of Designs for Calico Printing to Designs for printing other woven Fabrics.

SCHEDULE (B.)

DATE OF ACT.	TITLE.
2 Vict. c. 17. (1839.)	An Act to secure to Proprietors of Designs for Articles of Manufacture the Copyright of such Designs for a limited Time.

SCHEDULE (C.)

DATE OF ACTS.	TITLE.
38 Geo. 3. c. 71. (1798.)	An Act for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned.
54 Geo. 3, c. 56. (1814.)	An Act to amend and render more effectual an Act for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned, and for giving further Encouragement to such Arts.

6 & 7 VICT. c. 65.

An Act to amend the Laws relating to the Copyright of Designs. [22nd August, 1843.

WHEREAS by an act passed in the fifth and sixth years of the reign of her present majesty, intituled "An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture," there was granted to the proprietor of any new and original design, with the exceptions therein mentioned, the sole right to apply the same to the ornamenting of any article of manufacture or any such substance as therein described during the respective periods therein mentioned: and whereas it is expedient to extend the protection afforded by the said act to such designs hereinafter mentioned, not being of an ornamental character, as are not included therein: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That this act shall come into operation on the first day of September, one thousand eight hundred and forty-three. 5 & 6 Vict. c. 100. Commencement of act.

2. And with regard to any new or original design for any article of manufacture having reference to some pur- Grant of copyright.

pose of utility, so far as such design shall be for the shape or configuration of such article, and that whether it be for the whole of such shape or configuration, or only for a part thereof, be it enacted, that the proprietor of such design not previously published within the United Kingdom of Great Britain and Ireland, or elsewhere, shall have the sole right to apply such design to any article, or make or sell any article according to such design, for the term of three years, to be computed from the time of such design being registered according to this act: provided always, that this enactment shall not extend to such designs as are within the provisions of the said act, or of two other acts passed respectively in the thirty-eighth and fifty-fourth years of the reign of his late majesty King George the Third, and intituled respectively "An Act for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned;" and "An Act to amend and render more effectual an Act for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned."

Proviso.

38 Geo. 3, c. 71.

54 Geo. 3, c. 56.

Conditions of copyright.

3. Provided always, and be it enacted, that no person shall be entitled to the benefit of this act unless such design have, before publication thereof, been registered according to this act, and unless the name of such person shall be registered according to this act as a proprietor of such design, and unless after publication of such design every article of manufacture made by him according to such design, or on which such design is used, hath thereon the word "registered," with the date of registration.

Penalty for wrongfully using marks denoting a registered design.

4. And be it enacted, that unless a design applied to any article of manufacture be registered, either as aforesaid or according to the provisions of the said first-mentioned act, and also after the copyright of such design shall have expired, it shall be unlawful to put on any such article the word "registered," or to advertise the same for sale as a registered article; and if any person shall so unlawfully publish, sell or expose or advertise for sale any such article of manufacture, he shall forfeit for every such offence a sum not exceeding five pounds nor less than one pound, which may be recovered by any person proceeding for the same by any of the remedies hereby given for the recovery of penalties for pirating any such design.

Floor or oil cloths included in class six.

5. And be it enacted, that all such articles of manufacture as are commonly known by the name of floor cloths or oil

cloths shall henceforth be considered as included in class six in the said first-mentioned act in that behalf mentioned, and be registered accordingly.

Certain provisions of 5 & 6 Vict. c. 100, to apply to this act.

6. And be it enacted, that all and every the clauses and provisions contained in the said first-mentioned act, so far as they are not repugnant to the provisions contained in this act, relating respectively to the explanation of the term proprietor, to the transfer of designs, to the piracy of designs, to the mode of recovering penalties, to actions for damages, to cancelling and amending registrations, to the limitation of actions, to the awarding of costs, to the certificate of registration, to the fixing and application of fees of registration, and to the penalty for extortion, shall be applied and extended to this present act as fully and effectually, and to all intents and purposes, as if the said several clauses and provisoes had been particularly repeated and re-enacted in the body of this act.

Appointment of registrar, &c.

7. And be it enacted, that so much of the said first-mentioned act as relates to the appointment of a registrar of designs for ornamenting articles of manufacture, and other officers, as well as to the fixing of the salaries for the payment of the same, shall be and the same is hereby repealed; and for the purpose of carrying into effect the provisions as well of this act as of the said first-mentioned act, the Lords of the Committee of the Privy Council for the consideration of all matters of trade and plantations may appoint a person to be registrar of designs for articles of manufacture, and, if the Lords of the said Committee see fit, an assistant registrar and other necessary officers and servants; and such registrar, assistant registrar, officers and servants shall hold their offices during the pleasure of the Lords of the said Committee; and such registrar shall have a seal of office; and the Commissioners of her Majesty's Treasury may from time to time fix the salary or other remuneration of such registrar, assistant registrar and other officers and servants; and all the provisions contained in the said first-mentioned act, and not hereby repealed, relating to the registrar, deputy registrar, clerks and other officers and servants thereby appointed and therein named, shall be construed and held to apply respectively to the registrar, assistant registrar and other officers and servants to be appointed under this act.

Registrar's duties.

8. And be it enacted, that the said registrar shall not register any design for the shape or configuration of any

article of manufacture as aforesaid, unless he be furnished with two exactly similar drawings or prints of such design, with such description in writing as may be necessary to render the same intelligible according to the judgment of the said registrar, together with the title of the said design, and the name of every person who shall claim to be proprietor, or of the style or title of the firm under which such proprietor may be trading, with his place of abode, or place of carrying on business, or other place of address; and every such drawing or print, together with the title and description of such design, and the name and address of the proprietor aforesaid, shall be on one sheet of paper or parchment, and on the same side thereof; and the size of the said sheet shall not exceed twenty-four inches by fifteen inches; and there shall be left on one of the said sheets a blank space on the same side on which are the said drawings, title, description, name and address, of the size of six inches by four inches, for the certificate herein mentioned; and the said drawings or prints shall be made on a proper geometric scale; and the said description shall set forth such part or parts of the said design (if any) as shall not be new or original; and the said registrar shall register all such drawings or prints from time to time as they are received by him for that purpose; and on every such drawing or print he shall affix a number corresponding to the order of succession in the register, and he shall retain one drawing or print, which he shall file at his office, and the other he shall return to the person by whom the same has been forwarded to him; and, in order to give a ready access to the designs so registered, he shall keep a proper index of the titles thereof.

Drawings.

Discretionary power as to registry vested in the registrar.

9. And be it enacted, that if any design be brought to the said registrar to be registered under the said first-mentioned act, and it shall appear to him that the same ought to be registered under this present act, it shall be lawful for the said registrar to refuse to register such design otherwise than under the present act and in the manner hereby provided; and if it shall appear to the said registrar that the design brought to be registered under the said first-mentioned act or this act is not intended to be applied to any article of manufacture, but only to some label, wrapper or other covering, in which such article might be exposed for sale, or that such design is contrary to public morality or

order, it shall be lawful for the said registrar, in his discretion, wholly to refuse to register such design: provided always, that the Lords of the said Committee of Privy Council may, on representation made to them by the proprietor of any design so wholly refused to be registered as aforesaid, if they shall see fit, direct the said registrar to register such design; whereupon and in such case the said registrar shall be and is hereby required to register the same accordingly. Proviso.

10. And be it enacted, that every person shall be at liberty to inspect the index of the titles of the designs, not being ornamental designs, registered under this act, and to take copies from the same, paying only such fees as shall be appointed by virtue of this act in that behalf; and every person shall be at liberty to inspect any such design, and to take copies thereof, paying such fee as aforesaid; but no design, whereof the copyright shall not have expired, shall be open to inspection, except in the presence of such registrar, or in the presence of some person holding an appointment under this act, and not so as to take a copy of such design, nor without paying such fee as aforesaid. Inspection of index of titles of designs, &c.

11. And, for the interpretation of this act, be it enacted, that the following terms and expressions, so far as they are not repugnant to the context of this act, shall be construed as follows; (that is to say,) the expression "Commissioners of the Treasury" shall mean the Lord High Treasurer for the time being, or the Commissioners of her Majesty's Treasury of the United Kingdom of Great Britain and Ireland for the time being, or any three or more of them; and the singular number shall include the plural as well as the singular number, and the masculine gender shall include the feminine gender as well as the masculine gender. Interpretation of act.

12. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of parliament. Alteration of act.

13 & 14 VICT. c. 104.

An Act to extend and amend the Acts relating to the Copyright of Designs. [14th August, 1850.]

WHEREAS it is expedient to extend and amend the acts relating to the Copyright of Designs: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same:

Certain designs may be registered provisionally for one year.

1. That the registrar of designs, upon application by or on behalf of the proprietor of any design not previously published within the united kingdom of Great Britain and Ireland, or elsewhere, and which may be registered under the Designs Act, 1842, or under the Designs Act, 1843, for the provisional registration of such design under this act, and upon being furnished with such copy, drawing, print, or description in writing or in print as in the judgment of the said registrar shall be sufficient to identify the particular design in respect of which such registration is desired, and the name of the person claiming to be proprietor, together with his place of abode or business, or other place of address, or the style or title of the firm under which he may be trading, shall register such design in such manner and form as shall from time to time be prescribed or approved by the Board of Trade; and any design so registered shall be deemed "provisionally registered," and the registration thereof shall continue in force for the term of one year from the time of the same being registered as aforesaid; and the said registrar shall certify, under his hand and seal of office, in such form as the said board shall direct or approve, that the design has been provisionally registered, the date of such registration, and the name of the registered proprietor, together with his place of abode or business, or other place of address.

Benefits conferred by provisional registration.

2. That the proprietor of any design which shall have been provisionally registered shall, during the continuance of such registration, have the sole right and property in such design; and the penalties and provisions of the said Designs Act, 1842, for preventing the piracy of designs, shall extend to the acts, matters and things next hereinafter enumerated, as fully as if those penalties and provi-

sions had been re-enacted in this act, and expressly extended to such acts, matters and things respectively: that is to say,

1. To the application of any provisionally registered design, or any fraudulent imitation thereof, to any article of manufacture, or to any substance.
2. To the publication, sale, or exposure for sale of any article of manufacture or any substance to which any provisionally registered design shall have been applied.

The exhibition of provisionally registered designs in certain places not to defeat copyright, &c.

3. That during the continuance of such provisional registration, neither such registration nor the exhibition or exposure of any design provisionally registered, or of any article to which any such design may have been or be intended to be applied, in any place, whether public or private, in which articles are not sold, or exposed or exhibited for sale, and to which the public are not admitted gratuitously, or in any place which shall have been previously certified by the Board of Trade to be a place of public exhibition within the meaning of this act, nor the publication of any account or description of any provisionally registered design exhibited or exposed, or intended to be exhibited or exposed, in any such place of exhibition or exposure in any catalogue, paper, newspaper, periodical, or otherwise, shall prevent the proprietor thereof from registering any such design under the said Designs Acts at any time during the continuance of the provisional registration, in the same manner and as fully and effectually as if no such registration, exhibition, exposure or publication had been made: provided that every article to which any such design shall be applied, and which shall be exhibited or exposed by or with the licence or consent of the proprietor of such design, shall have thereon or attached thereto the words "provisionally registered," with the date of registration.

Sale of articles to which provisionally registered designs, &c. have been applied to defeat copyright, but design itself may be sold.

4. That if during the continuance of such provisional registration the proprietor of any design provisionally registered shall sell, expose, or offer for sale any article, substance or thing, to which any such design has been applied, such provisional registration shall be deemed to have been null and void immediately before any such sale, offer or exposure shall have been first made; but nothing herein contained shall be construed to hinder or prevent such proprietor from selling or transferring the right and property in any such design.

Extension of period of provisional registration by Board of Trade.

5. That the Board of Trade may, by order in writing, with respect to any particular class of designs, or any particular design, extend the period for which any design may be provisionally registered under this act, for such term, not exceeding the additional term of six months, as to the said Board may seem fit; and whenever any such order shall be made, the same shall be registered in the office for the registration of designs, and during the extended term the protection and benefits conferred by this act, in case of provisional registration, shall continue as fully as if the original term of one year had not expired.

Registration of sculpture, models, &c.

6. That the registrar of designs, upon application by or on behalf of the proprietor of any sculpture, model, copy or cast, within the protection of the Sculpture Copyright Acts, and upon being furnished with such copy, drawing, print or description, in writing or in print, as in the judgment of the said registrar shall be sufficient to identify the particular sculpture, model, copy or cast, in respect of which registration is desired, and the name of the person claiming to be proprietor, together with his place of abode or business, or other place of address, or the name, style or title of the firm under which he may be trading, shall register such sculpture, model, copy or cast, in such manner and form as shall from time to time be prescribed or approved by the Board of Trade, for the whole or any part of the term during which copyright in such sculpture, model, copy or cast, may or shall exist under the Sculpture Copyright Acts; and whenever any such registration shall be made, the said registrar shall certify under his hand and seal of office, in such form as the said Board shall direct or approve, the fact of such registration, and the date of the same, and the name of the registered proprietor, or the style or title of the firm under which such proprietor may be trading, together with his place of abode or business, or other place of address.

Benefits conferred by registration of sculpture, &c.

7. That if any person shall, during the continuance of the copyright in any sculpture, model, copy or cast, which shall have been so registered as aforesaid, make, import, or cause to be made, imported, exposed for sale, or otherwise disposed of, any pirated copy or pirated cast of any such sculpture, model, copy or cast, in such manner and under such circumstances as would entitle the proprietor to a special action on the case under the Sculpture Copyright Acts, the person so offending shall forfeit for every such offence

a sum not less than five pounds and not exceeding thirty pounds, to the proprietor of the sculpture, model, copy or cast, whereof the copyright shall have been infringed; and for the recovery of any such penalty, the proprietor of the sculpture, model, copy or cast, which shall have been so pirated, shall have and be entitled to the same remedies as are provided for the recovery of penalties incurred under the Designs Act, 1842: provided always, that the proprietor of any sculpture, model, copy or cast, which shall be registered under this act, shall not be entitled to the benefit of this act, unless every copy or cast of such sculpture, model, copy or cast, which shall be published by him after such registration shall be marked with the word "registered," and with the date of registration.

Designs for ornamenting ivory, &c. may be registered under Designs Act, 1842, for three years.

8. That designs for the ornamenting of ivory, bone, papier maché, and other solid substances not already comprised in the classes numbered 1, 2 or 3, in the Designs Act, 1842, shall be deemed and taken to be comprised within the class numbered 1 in that act, and such designs shall be so registered accordingly.

Board of Trade may extend copyright in ornamental designs.

9. That the Board of Trade may from time to time order that the copyright of any class of designs, or any particular design registered, or which may be registered under the Designs Act, 1842, may be extended for such term, not exceeding the additional term of three years, as the said Board may think fit, and the said Board shall have power to revoke or alter any such order as may from time to time appear necessary; and whenever any order shall be made by the said Board under this provision, the same shall be registered in the office for the registration of designs; and during the extended term the protection and benefits conferred by the said Designs Acts shall continue as fully as if the original term had not expired.

Regulations for the registration of designs may be made by the Board of Trade.

10. That the Board of Trade may from time to time make, alter and revoke rules and regulations with respect to the mode of registration, and the documents and other matters and particulars to be furnished by persons effecting registration and provisional registration under the said acts and this act: provided always, that all such rules and regulations shall be published in the "London Gazette," and shall forthwith, upon the issuing thereof, be laid before parliament, if parliament be sitting; and if parliament be not sitting, then within fourteen days after the commencement of the then next session; and such rules and regulations,

or any of them, shall be published or notified by the registrar of designs, in such other manner as the Board of Trade shall think fit to direct.

Registrar of designs may dispense with drawings, &c. in certain cases.

11. That if, in any case in which the registration of a design is required to be made under either of the said Designs Acts, it shall appear to the registrar that copies, drawings or prints, as required by those acts, cannot be furnished, or that it is unreasonable or unnecessary to require the same, the said registrar may dispense with such copies, drawings or prints, and may allow in lieu thereof such specification or description in writing or in print as may be sufficient to identify and render intelligible the design in respect of which registration is desired; and whenever registration shall be so made in the absence of such copies, drawings or prints, the registration shall be as valid and effectual, to all intents and purposes, as if such copies, drawings or prints had been furnished.

Public books and documents in the Designs Office not to be removed without judge's order.

12. That, in order to prevent the frequent and unnecessary removal of the public books and documents in the office for the registration of designs, no book or document in the said office shall be removed for the purpose of being produced in any court or before any justice of the peace, without a special order of a judge of the Court of Chancery, or one of her Majesty's superior courts of law, first had and obtained by the party who shall desire the production of the same.

Judges may order copies of documents to be furnished to be given in evidence.

13. That if application shall be made to a judge of any of her Majesty's courts of law at Westminster, by any person desiring to obtain a copy of any registration, entry, drawing, print or document, of which such person is not entitled as of right to have a copy, for the purpose of being used in evidence in any cause, or otherwise howsoever, and if such judge shall be satisfied that such copy is bonâ fide intended for such purpose as aforesaid, such judge shall order the registrar of designs to deliver such copy to the party applying, and the registrar of designs shall, upon payment for the same of such fee or fees as may be fixed according to the provisions of the said Designs Acts in this behalf, deliver such copy accordingly.

Copies of documents delivered by the registrar to be sealed, and to be evidence.

14. That every copy of any registration, entry, drawing, print or document, delivered by the registrar of designs to any person requiring the same, shall be signed by the said registrar, and sealed with his seal of office; and every document sealed with the said seal, purporting to be a copy

of any registration, entry, drawing, print or document, shall be deemed to be a true copy of such registration, entry, drawing, print or document, and shall, without further proof, be received in evidence before all courts, in like manner, and to the same extent and effect, as the original book, registration, entry, drawing, print or document would or might be received if tendered in evidence, as well for the purpose of proving the contents, purport and effect of such book, registration, entry, drawing, print or document, as also proving the same to be a book, registration, entry, drawing, print or document of or belonging to the said office, and in the custody of the registrar of designs.

Certain provisions of Designs Acts, 1842 and 1843, extended to this act.

15. That the several provisions contained in the said Designs Acts (so far as they are not repugnant to the provisions of this act), relating to the transfer of designs, to cancelling and amending registration, to the refusal of registration in certain cases, to the mode of recovering penalties, to the awarding and recovery of costs, to actions for damages, to the limitation of actions, to the certificate of registration, to penalties for wrongfully using marks, to the fixing and application of fees for registration and to the penalty for extortion, shall apply to the registration, provisional registration, and transfer of designs, sculptures, models, copies and casts, and to the designs, sculptures, models, copies and casts entitled to protection under this act, and to matters under this act, as fully and effectually as if those provisions had been re-enacted in this act with respect to designs, sculptures, models, copies and casts registered and provisionally registered under this act; and the forms contained in the Designs Act, 1842, may for the purposes of this act be varied so as to meet the circumstances of the case.

Interpretation of terms.

16. That in the interpretation of this act the following terms and expressions shall have the meanings hereinafter assigned to the[m] unless such meanings shall be repugnant to or inconsist[ent] with the context or subject-matter; that is to say,

The expression "Designs Act, 1842," shall mean an act passed in the sixth year of the reign of her present Majesty, intituled "An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture:"

The expression "Designs Act, 1843," shall mean an act passed in the seventh year of her present Majesty,

intituled "An Act to amend the Laws relating to the Copyright of Designs:"

The expression "Sculpture Copyright Acts" shall mean two acts passed respectively in the thirty-eighth and fifty-fourth years of the reign of King George the Third, and intituled respectively "An Act for encouraging the Art of making new Models and Casts of Busts and other Things herein mentioned," and "An Act to amend and render more effectual an Act for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned:"

The expression "the Board of Trade" shall mean the Lords of the Committee of Privy Council, for the consideration of all matters of trade and plantations:

The expression "registrar of designs" shall mean the registrar or assistant registrar of designs for articles of manufacture:

The expression "proprietor" shall be construed according to the interpretation of that word in the said Designs Act, 1842:

And words in the singular number shall include the plural, and words applicable to males shall include females.

Short title.

17. That in citing this act in other acts of parliament, and in any instrument, document or proceeding, it shall be sufficient to use the words and figures following, that is to say, "The Designs Act, 1850."

RULES AND REGULATIONS

For the Provisional and Complete Registration of Designs, made, and published in the Gazette of the 22nd of November, 1850, *by order of the Right Honourable the Lords of the Committee of the Privy Council for Trade, by virtue of the power vested in them by "The Designs Act*, 1850."

1.
Registration, provisional ditto; two copies required. A third if for exhibition.

I. All persons desirous of effecting registration or provisional registration of any design, must furnish to the Registrar (except in any case in which, under the 11th section of the Designs Act, 1850, he may dispense with any of such particulars) two copies, drawings, or prints of such design, and, if such design is intended for exhibition at any place certified by the Lords of the said Committee to be a place of public exhibition within the meaning of the Designs Act, 1850, then a third copy, drawing, or print also.

2.
Paper-hangings and cotton prints may be registered instead of drawings.

II. In the case of paper-hangings, calico prints, and other furnitures of such a nature as to admit of being conveniently pasted in a book, portions of such furnitures may, with the permission of the Registrar, be received for the purpose of registration, instead of the copies, drawings, and prints before mentioned.

3.
Name and address of proprietor to be given with design.

III. Upon the face of the sheet containing such copy, drawing, or print, or if a portion of the article to be registered be furnished to the Registrar, as before provided, then, upon a sheet of paper attached thereto, or delivered therewith, must be set forth the name, of every person claiming to be the proprietor of the design, or the style or title of the firm under which he trades, together with his place of abode, or place of carrying on his business, or other place of address; and also in the cases after mentioned the following further particulars (except where the Registrar may dispense with any thereof as aforesaid), that is to say;

1. On complete registration of or-

1. If the registration of such design be sought in respect of the application thereof to ornamenting

namental designs; class to be set forth.

any article of manufacture or substance, there must, if the registration sought be complete registration, be set forth the number of the class or classes described in section 3 of the Designs Act, 1842, in respect of which the registration is made; or

2. On registration of useful designs; drawing to geometrical scale; title and description, setting forth old and new parts; dimensions of drawings; space for certificate.

2. If such design be for the shape or configuration of any article of manufacture having reference to some purpose of utility, the drawings or prints must be made on a proper geometric scale, and there must be set forth the title of the design, and such description thereof, in writing, as may be necessary to render the same intelligible, and the description must distinguish such parts of the design (if any) as are not new or original, and every such drawing or print, together with the title or description of such design, and the name and address of the proprietor must be on one sheet of paper or parchment, and on the same side thereof, and the size of such sheet must not exceed 24 inches by 15 inches, and there must be left on one of such sheets a blank space, on the same side on which are such drawing, title, description, name, and address, of the size of 6 inches by 4 inches, for the certificate hereinafter mentioned.

4. Registration of sculpture, copy or description, with name and address of proprietor required.

IV. All persons desirous of effecting registration of any sculpture, model, copy, or cast, within the protection of two several acts, passed respectively in the 38th and 54th years of the reign of King George the Third, and intituled respectively "An Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned," and "An Act to amend and render more effectual an Act for encouraging the Art of making new Models and Casts of Busts and other things therein mentioned," which two acts are in the said Designs Act, 1850, called the "Sculpture Copyright Acts," must furnish to the Registrar such copy, drawing or print, or such description, writing or print, as in the judgment of the Registrar shall be sufficient to identify the particular sculpture, model, copy, or cast, in respect of which registration is desired, and the name of the person claiming to be the proprietor, together with his place of abode or business, or other place of address, or the name, style, or title, of the firm under which he trades.

5. Registrar's

V. The Registrar shall affix a number upon every such

copy, drawing, print, or description of any design, sculpture, model, copy, or cast, so to be furnished to him as aforesaid, denoting the order in which the same has been received by him, and a corresponding number upon the duplicate and triplicate copy, drawing, print, or description, directed to be furnished to him as aforesaid; and he shall register every such copy, drawing, print, or description, in the order in which it is received by him, by entering the number thereof, and also the title or class thereof, in a book to be kept by him for that purpose; and he shall keep a proper index of all the designs, sculptures, models, and copies or casts so registered, according to the titles thereof, or arranged in such classes as to afford ready access to the same.

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6. Copy to be filed; copy to be returned; certificate of registration; third copy for exhibition.

VI. Whenever any such registration is made, the Registrar shall retain and file in his office one of the copies, drawings, prints, or descriptions hereinbefore required to be furnished to him, and he shall return the other thereof (when two only are furnished) to the person by whom the same was furnished, having first affixed thereon or attached thereto a certificate, whereby he shall certify, under his hand and seal of office, the fact of such registration, and the date, and the name of the registered proprietor, or the style or title of the firm under which he trades, together with his place of abode or business, or other place of address; and he shall cause the remaining copy, drawing, print, or description (when three have been furnished), having the certificate of provisional registration affixed thereon, to be deposited in the place of public exhibition so to be certified as aforesaid.

7. Registration of transfers; certificate.

VII. Persons desirous of having the transfer of any registered design registered, must furnish to the Registrar the written transfer of such design, or other sufficient evidence of their title, together with a written request to register, to the effect set forth in the 6th section of the Designs Act, 1842, and the Registrar shall thereupon insert the name of the new proprietor in the register. If a certificate of the transfer be desired, the certified copy of the design, or an exact copy thereof, must be furnished to the Registrar for the purpose of having such certificate affixed thereon; and the Registrar shall accordingly affix thereon a certificate under his hand and seal of office, containing the like particulars as are herein required in the case of a certificate of the registration of a design.

8. Searches: certificate.

VIII. Any person desirous of ascertaining whether with respect to any particular design there be any copyright existing, must produce to the Registrar such design, together with the registration mark thereof, or he may produce such registration mark only; or in the case of a design provisionally registered, the number thereof; and thereupon the Registrar shall give to such person a certificate under his hand and seal of office, stating whether there be any copyright of such design existing, and if there be, then in respect to what particular article of manufacture or substance such a copyright exists, and the term of such copyright, and the number and date of the registration thereof, and also the name and place of abode or business, or other address, of the registered proprietor thereof.

9. Fees.

IX. All the services hereinbefore directed to be performed by the Registrar are to be performed on payment of such fees as may be from time to time fixed by the Lords Commissioners of Her Majesty's Treasury.

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