TRADE MARKS.

THE LAW

&

OF

TRADE MARKS.

BY

C. STEWART DREWRY,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

LONDON:

KNIGHT AND CO., 90 FLEET STREET.

1878.

D 776+

LONDON:
PRINTED BY WILLIAM CLOWES AND SONS,
STAMFORD STREET AND CHARING CROSS.

Rec. Oct. 8, 1879

PREFACE.

In writing a treatise on any branch of the Law, the author has to elect between two courses of proceeding.

The *first* of these two courses, is to state a series of propositions founded on authorities, and to give references to the authorities, without in general setting forth the material facts or peculiarities of the cases referred to.

The *second* course of proceeding, is to select from a number of cases, those which lay down, or lead to, some distinct rules or principles; to state the material facts of the most important of such cases, and to quote the important parts of the judgments delivered.

The *first course* appears almost unavoidable, where the subject is vast; as for instance, in the case of such subjects as the 'Law of Trusts,' or of 'Partnership,' or of 'Executors.' A treatise on such extensive subjects, would, if the facts of decided cases were at all fully set forth, be unavoidably of such large dimensions, as to involve an expense, probably, or, at least possibly, fatal to the circulation of the work.

The *second course* does not lead to the same difficulty with respect to a work, treating of a subject, of itself contracted within such moderate limits, as to the number of authorities, as to enable the writer to state the *facts* of decided cases, and the important phrases

of the judgments delivered by the Courts, without the necessity of producing a ponderous volume.

Of the second class, is the limited subject of the 'Law of Trade Marks,' and the author has therefore adopted that class of procedure, with the hope that the work may be useful and convenient both to the student, and to the practitioner. The author begs also to point out to the reader, that in order to avoid unnecessary length, he has not thought it advisable to refer to *every* decided case; but that he has endeavoured to select such authorities as appear to him either to lay down *principles*, or to follow and confirm the *principles* laid down by previous decisions.

C. STEWART DREWRY.

4 King's Bench Walk, Temple.
May, 1878.

CONTENTS.

CHAPTER I.

PAGE

OF THE NATURE OF A TRADE MARK 1

CHAPTER II.

WHAT WILL, AND WHAT WILL NOT CONSTITUTE A TRADE MARK 20

CHAPTER III.

OF INFRINGEMENT OF TRADE MARKS 43

CHAPTER IV.

OF FRAUD IN RESPECT OF, OR CONNECTED WITH TRADE MARKS 72

APPENDIX.

The Trade Marks Registration Act, 1875 87
The Trade Marks Registration Amendment Act, 1876 . . 91
The Trade Marks Registration Extension Act, 1877 . . 92
Order in Council, 12th December, 1877 93
Rules under the Trade Marks Registration Acts, 1875-76 . 96
Instructions to Persons applying for the Registration of Trade Marks. 123

INDEX 139

TABLE OF CASES CITED.

A.

	PAGE
Ainsworth *v.* Walmsley	27, 52

B.

Banks *v.* Gibson	38
Barnet *v.* Leuchars	61
Batty *v.* Hill	24
Beard *v.* Turner	39, 64
Blackwell *v.* Crabb	39
Blanchard *v.* Hill	8
Blofield *v.* Payne	4
Bradbury *v.* Beeton	64
Braham *v.* Bustard	46
Browne *v.* Freeman	62
Burgess *v.* Burgess	32
Bury *v.* Bedford	15

C.

Canham *v.* Jones	8
Carter *v.* Carlisle	62
Chappell *v.* Davidson	35
——— *v.* Sheard	35
Cheavin *v.* Walker	65
Chubb *v.* Griffiths	57
Churton *v.* Douglas	74
Clark *v.* Freeman	76
Clement *v.* Maddick	32
Cocks *v.* Chandler	73
Collins Company *v.* Brown	12, 13, 37
Colonial Life Assurance Co. *v.* Home and Colonial Assurance Co.	41
Cope *v.* Evans	80
Crawshay *v.* Thompson	5
Croft *v.* Day	44
Crowley *v.* Millington	5

D.

Day *v.* Binning	63
Delondre *v.* Shaw	59

E.

Edelsten *v.* Edelsten	45
——— *v.* Vick	28

F.

Farina *v.* Silverlock	27, 58
Flavel *v.* Harrison	29, 51
Ford *v.* Foster	50
Franks *v.* Weaver	80

G.

Glenny *v.* Smith	52, 65

H.

Hall *v.* Barrows	17, 39
Harrison *v.* Taylor	5, 11, 46
Hirsch *v.* Jones	60
Hirst *v.* Denham	47
Hogg *v.* Kirby	9, 34
Holloway *v.* Holloway	72
Hookham *v.* Pottage	84
Hudson *v.* Osborne	63

I.

James *v.* James	81

K.

	PAGE
Kinahan *v.* Bolton . . .	24
Knott *v.* Morgan . . .	9

L.

Leather Cloth Co. *v.* American Leather Cloth Co. . . .	14
Lee *v.* Haley	74
Lewis *v* Langdon . . .	39
Liebig's Extract of Meat Co. *v.* Hanbury.	78

M.

McAndrew *v.* Bassett . .	20
Mack *v.* Petter	34
Marshall *v.* Ross . . . 29,	84
Massam *v.* Thorley's Cattle Food Co.	54
Maxwell *v.* Hogg . . .	77
——— *v.* Hogg, and Hogg *v.* Maxwell	25
Morison *v.* Salmon . . .	4
Millington *v.* Fox . . 11,	46
Mitchell's trade mark . .	1
Morgan *v.* McAdam . . .	30
Motley *v.* Downman . .	31

O.

Orr *v.* Diaper	68

P.

Perry *v.* Truefitt	10
Pidding *v.* How . . .	30
Purser *v.* Brain . . .	73

R.

Radde *v.* Norman . . .	75
Raggett *v.* Findlater . . .	43
Rodgers *v.* Nowill . .	6, 59

S.

Schweitzer *v.* Atkins. . .	83
Seixo *v.* Provezende . . .	48
Shipwright *v.* Clements .	19, 58
Shrimpton *v.* Laight .	50, 65
Singer Company *v.* Wilson .	35
Singleton *v.* Boulton . .	6
Southorn *v.* Reynolds . .	65
Spottiswoode *v.* Clarke . .	35
Springhead Spinning Co. *v.* Riley	77
Stephens *v.* Peel	79
Sykes *v.* Sykes	3

T.

Tonge *v.* Ward	57

W.

Welch *v.* Knott	53
Wheeler and Wilson Co. *v.* Shakespear	85
Woollams *v.* Ratcliff . .	23, 40
Wotherspoon *v.* Currie . .	21

Y.

Young *v.* Macrae . . .	40

INTRODUCTION.

BEFORE entering upon the examination of the authorities, it may be convenient to the render, to give a general outline of the *principles*, on which the Law of Trade Marks principally rests.

Any particular fancy name or special mark or figure, put upon goods or on the wrappers or packets in which they are sold by the maker, becomes a *trade mark* in point of law, when the goods have acquired a reputation, and the public take goods so marked, on the faith of their being the goods made by the maker or dealer, who has adopted the particular trade mark. Thus: if an ironmaster marks his goods with an "anchor," and the iron sold with that mark has obtained a reputation in the market, so that purchasers take iron thus marked, to be of the manufacture of that particular firm; then the anchor is a *trade mark*. So, if a mustard manufacturer marks the cases containing his packets of mustard, with the figure, say of a bull, and the mustard so marked, acquires a reputation in the market, so that purchasers believe when they buy bottles or cases of mustard so marked, that they are buying the mustard of that particular maker, the *bull* becomes his trade mark.

Of course the variety of such trade marks is almost infinite. They sometimes are pertinent to the nature of the goods marked; and sometimes are purely fanciful, as in the case of the "Eureka" Shirt. But,

however fanciful the mark may be, it is protected by the law against *imitation.*

Until the passing of the Act of the 25 & 26 Vict. c. 88 (1862) (the "Merchandise Marks Act") there was not adequate protection of a trade mark in a Court of *Law*; and the most effectual protection was afforded by the Courts of Chancery.

Formerly, also, the Court of Chancery did not recognise in a trade mark, the character of *property* strictly so called: and the protection held over the exclusive use of a trade mark, was grounded on the theory of the imitation of it being a *fraud*; in fact a *double fraud*: *fraud* on the original framer of the trade mark, by injuring his trade and stealing his reputation; and *fraud* as against the public, by inducing them to buy the infringer's goods, believing them to be the goods of the originator of the trade mark. But from recent decisions it is now to be collected, that the right to a *trade mark*, is a right of *property*. It is not however always practically of much importance, whether a trade mark is legally property or not. For this at least is certain, that under the Act of Parliament referred to, a legal remedy is provided against infringement of a trade mark; and it is also certain that whatever may be the doctrine in Equity as to there being an actual right of *property*, a Court of Equity will by injunction restrain infringement of a trade mark.

The remedies provided by the Act of Parliament (25 & 26 Vict. c. 88) are tolerably stringent; the Act treating the forging or counterfeiting of a trade mark, as a misdemeanour with penalties attached.

The Act however, referred to, does not take away the *civil* remedy of the person whose trade mark is infringed; that right is expressly preserved by the 11th section. The remedy obtainable in the Courts of the

Chancery Division for infringement of trade marks, is that which is most frequently resorted to; because those Courts put a final check upon the infringer, by restraining him by an injunction, from continuing to infringe.

It is almost needless to say, that when the imitation of a trade mark is palpably fraudulent; viz.: where the infringer knowingly takes the trade mark, and puts it on his own goods, he will be stopped by an injunction. And where the imitation is complete or considerable, it will be stopped, even where the defendant did not know of the existence of the plaintiff's trade mark (*a*).

Where the trade mark is visibly copied, as, for instance, where one manufacturer takes, say a "black bull" for his trade mark in his business, and another carrying on a similar business adopts a "black bull" for *his* trade mark, there there can be no difficulty; but where (as is most frequently the case) the alleged infringer has taken some part of the original trade mark, and added differences more or less striking; then, it is sometimes more difficult to decide whether there is or is not actual infringement; but the Courts in such cases, are more likely in general to grant an injunction than to refuse it; and on this ground, that if the defendant had no intention whatever of deceiving the public, he ought to have taken a totally distinct mark; and that his approaching the plaintiff's mark so far that persons *might* be deceived, affords grave ground for inferring a *fraudulent intention*. It is not absolutely essential, to prove that any body has been actually deceived. It is sufficient, if the Court, from

(*a*). The cases establishing this, will be referred to in subsequent pages.

inspection and comparison of the articles, can fairly infer that other persons *might* be deceived.

A reference to the cases actually decided, will, however, throw a clearer light than any general maxims, on the principles and distinctions observed, in the exercise of this jurisdiction of the Courts.

It has been decided, that a man's *own name* affixed to goods sold by him, is as much a subject of trade mark as any fanciful mark; assuming of course, that the goods marked with the particular name, have acquired a reputation in the market.

If the possessor of a trade mark adds to it the word "patent," with a view to holding himself out to the public as a patentee, when in fact he is not so; that is fraud on the public, and will in general deprive him in Equity, of his right to protection for his trade mark. But there is this distinction, that where it is to be collected from the evidence, that, in using the word *patent*, the person possessing the trade mark, is not intending to deceive the public, and that the public is in fact not actually deceived; then he does not forfeit his right to protection. Thus, if a person sells thread, and takes as his trade mark "A.'s *patent thread*," and it is shewn that the thread so called, had long been known in the trade by that name; and that the words "*patent* thread" merely indicate a certain class of thread, and are so understood by the public; the plaintiff in such a case would be entitled to an injunction.

It would be superfluous, and, indeed, impracticable in this introductory chapter, to refer to the numerous cases upon trade marks, which will be examined in subsequent pages; but the following rules may be perhaps correctly stated, as the broad and general rules acted upon by Courts of Equity.

1. That when a manufacturer or dealer, has acquired

a reputation with the public, for goods bearing a particular mark, he acquires an exclusive right to the use of that mark as a *trade mark.*

2. That when any person uses a mark, so far approaching the trade mark of another, that purchasers *may* be deceived, he will in general be treated as an infringer; or, at any rate, he will incur great risk of being so treated.

3. That in determining what is a sufficient approximation towards imitation, to call for the interference of the Courts of the Chancery Division, those Courts proceed very much on the principle previously referred to, viz.: that if the defendant had no intention whatever, of acquiring for himself the benefit of the reputation attaching to the trade mark of another, he should avoid all similarity, and use a trade mark clearly and obviously distinct.

The foregoing general observations upon the Law of Trade Marks, relate principally, if not wholly, to the Law as it stood before the Act of 38 & 39 Vict. c. 91, "The Registration of Trade Marks Act," and it does not appear to the writer, that that Act is intended to reverse any of the doctrines established before the Act, by judicial authority. On the contrary, the last paragraph in clause 10 of the Act, seems intended to recognise the Law as previously established. In fact, that clause taken as a whole, seems rather to extend, than to weaken the definition of what might constitute a trade mark under the old law.

THE LAW OF TRADE MARKS.

CHAPTER I.

OF THE NATURE OF A TRADE MARK.

THE recent Act of Parliament respecting trade marks (38 & 39 Vict. c. 91, 1875) directs what shall henceforth *constitute* a trade mark, but it does not define the *legal nature* of a trade mark. That question must therefore be determined by reference to the authorities.

By sect. 10 of the Act it is enacted that for the purposes of the Act

A trade mark shall consist of one or more of the following essential particulars, viz.:

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

A *written signature*, or *copy* of a *written signature*, of an individual or firm; or

A distinctive *device*, *mark*, *heading*, *label*, or *ticket*;

And there may be added to any one or more of the said particulars, any *letters*, *words*, or *figures*; also any special and distinctive word or words, or combination of figures or letters, used as a trade mark, *before the passing of the Act*, may be registered as such under the Act (*a*).

There does not appear to be any thing in the subsequent Act of 1876 varying the definitions thus given in the Act of 1875 as to what shall constitute a *trade mark*; nor does there, it is submitted, appear any

(*a*) A *single letter* of the alphabet cannot be registered as a trade mark; under the Act of 38 & 39 Vict. c. 91. *Re Mitchell's Trade mark*, Law Rep. 7 Ch. p. 36.

thing in the definitions given in sect. 10 of the Act of 1875, materially inconsistent with the leading legal decisions pronounced before the passing of that Act, as to what constitutes a trade mark.

The Act, however, of 1875 does not say, whether a trade mark is *property*, or whether it is only a species of *right* of some kind; and therefore, it does not disturb the doctrine finally laid down on that question, by high judicial authority.

Before examining minutely the jurisdiction exercised of late years, principally in Equity, in regard to the protection *by injunction* of trade marks, it will be proper to point out that that jurisdiction, is based, at least to a certain extent, upon the doctrines of the Common Law as to the *legal title* of the claimant of a trade mark. For before the Act of the 25 & 26 Vict. c. 42, Equity occasionally, (though certainly not very frequently,) would not grant an injunction in a trade mark case, if it had doubts as to the *legal* claim or title of the complainant. Even then, however, there were not many trade mark cases sent to law. Still the *basis* requisite to support *an injunction*, depended upon whether the plaintiff had a *legal* title, and that *principle* still remains untouched.

The statute above referred to has, however, in effect put an end to the old practice in Equity of sending a trade mark to Law, if the Judge in Equity had any material doubt whether there was a legal title; as by that Act (sect. 1) the Courts of Equity were, and are now obliged, in cases of the kind referred to in sect. 1, to determine every question of *Law and fact*, instead of sending to Law an inquiry as to the *legal right*.

Still, as the Courts of Equity must now in such cases decide upon the Law as well as the Equity of the case, it becomes proper to notice some of the few trade mark cases tried at the Common Law; as the doctrines to be collected from those cases, must necessarily affect the decisions of Courts of Equity.

In *Sykes* v. *Sykes* (*b*), one of the earliest cases at Law, the declaration alleged that the plaintiff, who carried on the business of a shot-belt and powder manufacturer, made and sold a large quantity of shot-belts, powder flasks, &c., and which he was accustomed to mark with the words "Sykes' Patent," in order to denote that they were made by him. The declaration also stated that he enjoyed great reputation with the public, and that the defendants knowing those facts, did wrongfully, and without the plaintiff's license, make a great quantity of shot-belts and powder flasks, marked with the words "Sykes' Patent," and sold them *as and for* shot belts, &c., *made by the plaintiff*.

The facts shewn were, that the defendants did make articles of the same description as those of the plaintiff, but of an inferior class; and did sell them as and for goods manufactured by the plaintiff, but of an inferior kind, and at lower prices; also that the persons who bought the defendant's goods, knew by whom they were manufactured; and it was shewn that the plaintiff's sale had decreased, since the defendants had commenced the business described.

The defence was, that one of the defendants, was also named "Sykes," and that he had a right to use that name, and that he had also as good a right as the plaintiff to add the word *patent*, as the plaintiff's patent had been declared to be invalid.

Bayley, J., who tried the case, overruled this objection on the ground that the defendants had no right so to mark their goods, *as and for* goods manufactured by the plaintiff; and the verdict was for the plaintiff. On a motion for a *rule nisi* for a new trial, Abbott, C.J., said, "I think the substance of the declaration was proved. It was established most clearly, that the defendants marked the goods manufactured by them with the words "Sykes' Patent," in order to denote that they were of the genuine manufacture of the plaintiff;

(*b*) 3 Barn. & Cress. 541 (in the year 1824).

and although they did not themselves sell them as goods of the plaintiff's manufacture, yet they sold them to retail dealers, for the express purpose of *being resold* as goods of the plaintiff's manufacture. I think that is substantially the same thing, and that we ought not to disturb the verdict;" and the rule was refused.

Blofeld v. *Payne* (*c*), in 1833, was a case of a kind similar to that of *Sykes* v. *Sykes*. In that case the plaintiff was the inventor and manufacturer of a metallic hone for sharpening razors, &c.; which hone he was accustomed to wrap up in certain envelopes containing directions for the use of the hone; and the declaration stated, that the envelopes were intended to distinguish the plaintiff's hones from those made by other persons. The defendant (it was alleged in the declaration) caused his metallic hones to be made and wrapped in envelopes resembling the envelopes of the plaintiff; and containing the same words, thereby denoting that they were of his, the plaintiff's, manufacture; and the defendant sold the hones so wrapped up, as and for the *plaintiff's*. There was, however, no evidence that there had been any *actual damage* to the plaintiff. The learned judge (Denman, C.J.), in charging the jury, treated the act of the defendant as *fraudulent*, and the jury found for the plaintiff, with nominal damages. On a motion before the full Court for a nonsuit, the judgment of the Court was for the plaintiff, treating the action of the defendant as *fraud*.

Morison v. *Salmon* (*d*), in 1841, was also a case of a similar kind; viz., the plaintiff made and sold *medicine*, which he sold in boxes wrapped in paper, having printed on them the words "Morison's Universal Medicine." The defendant prepared an imitation of the plaintiff's medicine, and sold it in boxes with the same words, "Morison's Universal Medicine," printed thereon; the jury found for the plaintiff, and it was held (on a motion for a new trial or to arrest judg-

(*c*) 4 Barn. & Ad. 410.

(*d*) 2 Man. & Gr. 385.

ment) by all the judges, that there was sufficient cause of action, and the rule for a new trial was refused.

Crawshay v. *Thompson* (*e*) seems to proceed upon the doctrine, that where there is a mark used by the defendant resembling not wholly, but to some extent, the mark used by the plaintiff, the question is, whether there was or not, such a close resemblance as to *deceive the unwary*; and whether there was *intention* on the part of the defendant, to injure the sale of the plaintiff's goods; or whether the alleged imitation was made in the ordinary course of business, in the execution of orders. On the trial, before Tindal, C.J., his Lordship left it to the jury to say, 1st, "Whether they were satisfied that the defendant's mark, bore such a close resemblance to the plaintiff's, as in its own nature, was calculated to deceive *the unwary*, or persons who were *moderately skilled* in the article, and to injure the sale of the plaintiff's goods." And 2ndly, "what was the *intention* of the defendant, in using the mark complained of; whether it was for the purpose of supplanting the plaintiff, or done in the usual course of trade, and in execution of foreign orders sent to their house," because, said his Lordship, "it seemed to him that unless there were such a *fraudulent intention* existing (at least before notice), and it were proved to the satisfaction of the jury, the defendant would not be liable."

The jury returned a verdict for the defendants, and on a rule *nisi* for a new trial, on the ground of misdirection, the Court was of opinion that there was *no misdirection*, and the rule was discharged (*f*).

(*e*) 4 Man. & Gr. 357.

(*f*) At the date of this case (1842) there does not appear to have been any idea in the judicial mind, that a trade mark was *property*; and having regard to that doctrine now established by the highest judicial authority, and to the cases hereinafter cited, of *Crowley* v. *Millington* and *Harrison* v. *Taylor*, it is presumed that in such a case as *Crawshay* v. *Thompson* (if now tried in Equity) the judgment would be for the

In a very early case, *Singleton* v. *Boulton* (*g*), (viz., in 1793), the plaintiff's father sold a medicine called "Dr. Johnson's Yellow Ointment." The plaintiff after his father's death continued to sell the medicine, with the same mark. The defendant sold the medicine with the same mark, and for that injury the plaintiff brought his action.

Lord Mansfield said "that if the defendant had sold a medicine *of his own*, under the plaintiff's name or mark, that would be a *fraud* for which an action would lie. But here both plaintiff and defendant used the name of the *original inventor*, and no evidence was given of the defendant having sold it, as if prepared by the plaintiff. The only other ground on which the action could be maintained, was that of *property* in the plaintiff, which was not pretended, *there being no patent*, nor any letters of administration."

It seems from this case, that at that period, the principal doctrine at common law as to a trade mark, was that it was not considered in the light of *property*, and that *fraud* was the only ground on which the Court held that infringement would be repressed.

In *Rodgers* v. *Nowill* (*h*) (in 1847) the action was for an alleged piracy by the defendant of a certain mark upon penknives and pocket-knives, to the use of which the plaintiff claimed an exclusive right. The trade mark claimed by the plaintiff consisted of a crown with *V* on the one side and *R* on the other (meaning of course "Victoria Regina"), and beneath that were the names of the plaintiffs, "J. Rodgers & Sons." The defendants imitated this mark in all respects, except that to the names "J Rodgers & Sons" they added the word "Sheffield."

---

plaintiff; as the cases of *Crowley* v. *Millington* and *Harrison* v. *Taylor*, established, that if there is an actual *imitation* or *similarity*, it is no defence to say that the defendant was *ignorant* of the plaintiff's trade mark.

(*g*) 3 Doug. 293. (*h*) 5 C. B. (Man. & Gr.) 109.

The case came before V. Williams, J.; and his Lordship told the jury, "That it was actionable for one manufacturer to mark goods with the known and accustomed mark of another, with *intent* to pass them off as goods of that person's manufacture, and to sell them with a false representation, that they were of the manufacture which such mark would denote them to be," and he left it to the jury to say, "1st. Whether the defendants had adopted a mark so closely resembling the known and accustomed mark of the plaintiff, as to be calculated to impose upon ordinary persons, and to induce them to believe the goods bearing such marks, to be of the plaintiff's manufacture; 2nd. Whether the defendants had adopted the mark alleged in the declaration, *with intent to deceive*, and had sold the goods so marked as and for goods of the plaintiff's manufacture," and the jury found for the plaintiff; and on a motion for a new trial, the Judges were unanimous in opinion that there was no ground for a new trial, and the rule was refused.

It is to be observed that in this case, not a word was said by the Court intimating that the trade mark was *property*; on the contrary, Wilde, C.J., said, "The plaintiffs do not claim *any abstract right* to the exclusive use of the mark in question; they merely say, that having adopted a particular mark, *the public have been* led to believe goods so marked, to be of *their manufacture*." And his Lordship added, "The learned Judge (V. Williams, J.) told the jury, 'that to entitle the plaintiff to a verdict, it was not enough that the defendants had adopted means *calculated* to deceive, but that they must be satisfied that the defendant did the act complained of, *with intention* to deceive,' and Coltman, J., in delivering his judgment, said, 'I agree with the law laid down by my brother *Williams*, that no man has a right to sell goods of his own manufacture, upon a *false and deceitful* representation, that they are of the *manufacture of another*.'"

Not one word was said by the Court, alluding to the doctrine that a trade mark is *property*; and the whole judgment seems to rest upon *fraud*, and *voluntary fraud*.

In this respect, the cases above referred to, tried at the Common Law, do not appear at all to reach the doctrine acted upon in *Crowley* v. *Millington*, *Taylor* v. *Harrison*, and other cases decided in Equity, and cited in subsequent pages; in which cases the Courts of Equity unquestionably adopt the rule, that it is infringement where there is ground for imputing *fraud* to the defendant, in imitating intentionally another man's trade mark; or where there is even imitation *calculated* to deceive, but without actual *intention to deceive*; yet those Courts go a great deal further, and hold the imitation of another man's trade mark to be an infringement, even where the defendant was wholly unaware of the existence of the plaintiff's trade mark.

We must now pass on to the gradual growth in Equity, of the doctrines affecting the law of trade marks, and it may now be said, settled by a series of decisions.

In early cases, and even in some comparatively recent cases, trade marks have been treated in Equity, not as actual *property*, but merely as a *right of some kind* entitled to protection.

Thus in the case of *Blanchard* v. *Hill* (*i*) Lord Hardwicke, C., said, "In the first place, the motion (a motion for an injunction) is to restrain the defendant from making cards with the same *mark* which the plaintiff has appropriated to himself; and in this respect, there is no foundation for this Court to grant such an injunction.

And in *Canham* v. *Jones* (*j*), where the plaintiff claimed under the will of one Swainson, a secret or recipe for preparing a medicine, called "Velno's Vegetable Syrup," and the defendant made a spurious

(*i*) 2 Atkyns, 484.

(*j*) 2 Ves. & B. 218.

composition and sold it under the same mark or title; the Vice-Chancellor allowed a demurrer, distinguishing the case from *Hogg* v. *Kirby* (*k*). That case was in fact a *copyright* case, obviously distinguishable from a trade mark case.

Even, however, in much later cases, the character of *property* has not been accorded to *trade marks*.

Thus in *Knott* v. *Morgan* (*l*), heard in 1836, the plaintiffs (proprietors of the London Conveyance Company) alleged that the defendants, with the design of *fraudulently* procuring the custom of persons in the habit of using the plaintiffs' omnibuses, had started an omnibus to run from Paddington to the Bank; and on the omnibuses of the defendants, were painted the words "Conveyance Company," and "London Conveyance Company," in such a position and in such a manner, as exactly to imitate the same words previously adopted by the plaintiffs on their omnibuses; also a star and garter were in like manner painted on the defendants' omnibuses, so as exactly to imitate the same symbol on the plaintiffs' omnibuses; and the liveries of the defendants' drivers and conductors also exactly imitated the plaintiffs' liveries.

The defendants, upon notice that an injunction would be applied for, obliterated from the back of their omnibuses the single word "Company," and painted on the sides, "over the word *Conveyance*," the word *original*; and between the words *conveyance* and *company*, was inserted the word *for*, in very small and almost invisible characters. On the back of the omnibuses were painted the words "London Conveyance," and on each of the sides, the words "original conveyance for company," and the defendants retained the same liveries as before, for their servants.

Lord Langdale, M.R., in delivering judgment, admitted that the plaintiffs had no exclusive right to the *words* "Conveyance Company" or "London Con-

(*k*) 8 Ves. 215. (*l*) 2 Keen, 213.

veyance Company," but his Lordship said they had a right to call upon the Court to restrain the defendants from *fraudulently* using the same *words* and *devices*, which they (the plaintiffs) had taken for the purpose of distinguishing their property, and thereby depriving them (the plaintiffs) of the fair profits of their business, by attracting custom, on the false representation, that carriages, really the defendants, belonged to and were under the management of the plaintiffs."

His Lordship plainly therefore treated the case, as simply a case of *fraud*, and not of actual invasion of *property*; and granted an injunction, restraining the use of the words adopted by the plaintiffs; and a motion on appeal to the Lord Chancellor, was dismissed with costs.

So in the case of *Perry* v. *Truefitt* (*m*), (heard in 1842), where the plaintiff had bought a new recipe for a greasy mixture for the hair, and sold it under the name or title of "*Perry's* Medicated *Mexican Balm*;" and he had acquired an extensive sale and reputation for the mixture so described. And a rival in trade named *Truefitt* (the defendant), had commenced selling a greasy mixture, somewhat similar to the plaintiff's, in bottles and with labels closely resembling those used by the plaintiff, and sold it under the title of "Truefitt's *Medicated Mexican Balm*." In that case, on a motion for an injunction by Perry, to restrain Truefitt from selling under the name of "Truefitt's *Medicated Mexican Balm*," Lord Langdale, M.R., said (*n*), "It does not seem to me that a man can acquire a *property* merely in a name or mark; but whether he has or not a *property* in the name or mark, I have no doubt that another person has not a *right* to use that name or mark for the purpose of *deception*, and in order to attract to himself that course of trade, or that custom, which, without that improper act, would have flowed to the person who first used, or was alone in the habit of using, the particular name or mark."

It is obvious that in the two cases referred to, the

(*m*) 6 Beav. 66.

(*n*) See p. 73.

Court recognised a *right* of some kind to be protected as against *fraud*; but there the doctrine as to the specific nature of the *right* stopped.

Millington v. *Fox* (*o*), heard in 1838, went somewhat further in regard to the protection of trade marks than the above mentioned cases. In *Millington* v. *Fox* there was no *fraud*; the plaintiffs had acquired, under the title of "Crowley, Millington & Co.," a reputation as manufacturers of steel, which was marked at first with the name "Crowley," and afterwards with the name "Crowley Millington;" the defendants James & Samuel Fox had for a considerable time sold steel with the same mark, "Crowley" or "Crowley Millington." There was evidence to shew that the defendants had not *fraudulently* used the plaintiffs' mark, but that they had done so in ignorance of the mark being the plaintiffs' trade mark. And Lord Cottenham, C., granted a perpetual injunction, restraining the defendants from using the plaintiffs' trade mark. In giving judgment his Lordship said: "It does not appear to me that there was any *fraudulent intention* in the use of the marks; that circumstance, however, does not deprive the plaintiffs of their *right* to the exclusive use of those names" (*p*).

So in a more recent case (*q*), the trade mark of the plaintiff (a mustard manufacturer) was the figure of an Ox, on the flank of which was printed the word "Durham;" the plaintiff's name "Harrison" was printed above the Ox; and the word "*mustard*" was printed below it. The defendants Taylor & Co. (also mustard manufacturers) used on their mustard tins, the figure of an *ox*, but without the word "Durham;" and they added their own name "Taylor." The defendants stated in their evidence, that when they took their trade mark, they knew nothing of the plaintiffs' trade mark. And Lord Hatherley (then V.C. Wood) said

(*o*) 3 Myl. & Cr. 338.
(*p*) See p. 352.
(*q*) *Harrison* v. *Taylor*, 11 Jur. N.S. 408 (heard in 1865).

it was immaterial whether the defendants, when they took their trade mark, were or were not aware of the plaintiff's use of his trade mark, and granted an injunction.

This case went undoubtedly to a great length as to *similarity*, as it is scarcely probable that a person having reasonable sight, and buying a case containing mustard, could be misled by the mere figure of an "Ox" on the defendant's label, when he could see on the plaintiff's label the word "Durham" and the plaintiff's name "Harrison;" and on the defendant's case of mustard no word "Durham," and the defendant's name "Taylor" instead of "Harrison."

The case was not however appealed, and must therefore remain an authority *pro tanto*. In both of the two last mentioned cases, the trade mark was not treated positively as *property*; but merely as a right of some kind, entitled to protection.

In the peculiar case of *The Collins Company* v. *Brown*, heard in 1857 (*r*), it was expressly stated by the Court that a trade mark is not property. In that case the plaintiffs were a company, carrying on the trade of edge tool manufacturers, in the County of Hartford, in the United States of North America; and they stamped their goods with the words "Collins & Co., Hartford cast steel warranted;" they also pasted or fixed on the articles manufactured by them, printed labels containing the words, "Look for the stamp of *Hartford*, if you want the genuine Collins & Co. Samuel W. Collins." And upon axes manufactured by them, they put printed labels containing the words "Look for the stamp of Hartford on each axe, if you want the genuine Collins & Co. Samuel W. Collins."

The plaintiffs claimed in their bill against the defendants, to have acquired an exclusive right to the said mark and labels. The bill charged the defendants with having used the said mark on goods of an inferior quality, thus passing them off as the plaintiffs', to the

(*r*) 3 Kay & John. 423.

plaintiffs' injury. The defendants demurred to the bill, on the ground that the plaintiffs had no right to any trade mark *in this country*; and counsel for the defendants referred to the fact, that *foreign copyright* or *patent right* gave no right to the author or patentee.

The learned judge said, "The point raised by this demurrer depends upon the question whether this is a *personal right* or not," and continued thus:

"It is now settled law, that *there is no property* whatever in a *trade mark*, but that a person may acquire *a right* of using a particular mark for articles which he has manufactured, so that he may be able to prevent any other person from using it; because the mark denotes that the articles so marked were manufactured by a certain person." And the judgment, after treating the case as a case of *fraud*, concluded thus: "That (viz., fraud) is the true foundation of the jurisdiction in these cases. If a man has been in the habit of using a particular mark for his goods for a long time, during which no one else has used a similar mark, and then another person begins to use the same mark, that can only be with a *fraudulent intent*; and any *fraud* may be redressed in the country in which it is committed, whatever may be the country of the person who has been defrauded (*s*).

If, however, the Courts had at the date of *Collins Company* v. *Brown* held, as the Courts now hold, that a trade mark is *property*, it seems at least doubtful whether the judgment would have been for the plaintiffs; since it would have been then difficult to see any legal distinction between *property* in a trade mark, and *property* in a copyright or in a patent.

All difficulty is however removed on that question with regard to trade marks, by the stat. of 25 & 26 Vict. c. 88 (The Merchandise Marks Act), the first clause of which defines the word person, as *any person*, whether

(*s*) See also *The Collins Company* v. *Cowen*, 3 Kay & John. 428, and *Collins Company* v. *Reeves*, 28 L. J. Ch. 56.

a subject of Her Majesty or not; and by the 22nd section, the Act gives power *to any person*, to bring an action for forging or counterfeiting *his trade mark*.

Again, in the case of *The Leather Cloth Company* v. *The American Leather Cloth Company* (*t*) (heard in 1863), the right to a trade mark was not treated in the Court of first instance, as *actual property*. The learned Judge went upon the doctrine of *deception*, recognising, however, some kind of right.

In that case there was considerable similarity between the trade mark used by the plaintiffs and that of the defendants; and it was proved by the evidence (of one witness at least) that when he asked for the plaintiffs' goods, he was offered the defendants' goods (*u*). And the Court held that that was sufficient to shew, that the use of the defendants' trade mark led to *deception*, and granted an injunction.

In the course of the judgment, the learned Judge said (*v*): "All these cases of trade marks turn, not upon a question of *property*, but upon this, whether the act of the defendant, is such as to hold out *his* goods as the goods of the plaintiff." The above decision was appealed (*w*), and the Lord Chancellor, Lord Westbury, reversing the decision of the Court below, on the ground of misrepresentation by the plaintiffs, entered into an elaborate examination of the *nature* of a trade mark. His Lordship, after commenting on several previous cases, said: "If the plaintiff has an exclusive right to use any particular mark, or symbol, it becomes his *property*, for the purpose of such application; and the act of the defendant is a violation of such *right of property*, corresponding with the piracy of *copyright*, or the infringement of *a patent*," and further, his Lordship added, "the true principle, therefore, seems to be, that the jurisdiction of the Court, in the protection given to trade marks, rests upon *property*" (*x*).

(*t*) 1 Hem. & Mil. 271. (*u*) See p. 295 of the judgment.
(*v*) p. 287. (*w*) 33 L. J. 199. (*x*) See pp. 200, 201.

The case was then appealed to the House of Lords (*y*) and the appeal was dismissed; the House of Lords acquiescing in the doctrine that a trade mark is *property*. "The right to a trade mark (said Lord Cranworth) is a right closely resembling, though not exactly the same as *copyright*. The word 'property' when used with respect to an author's right to the production of his brain, is used in a sense very different from what is meant by it when applied to a house or a watch. It means no more than that the author has the sole right of printing, or otherwise multiplying copies of his work. The right which a manufacturer has in his *trade mark*, is the exclusive right to use it for the purpose of indicating where, or by whom, or at what manufactory, the article to which it is affixed was manufactured. If the word *property* is aptly used with reference to *copyright*, I see no reason for doubting that it may with equal propriety be applied to *trade marks*;" and his Lordship went on to say, that in his opinion a trade mark might in general (treating it as *property* or as an accessory to property) be sold and transferred upon a sale and transfer of the manufacture of the goods on which the mark had been used to be affixed, and might be lawfully used by the purchaser (*z*).

In *Bury* v. *Bedford* (*a*) the circumstances were very complicated, and such as not to raise material probability that any future case will fall within the scope of the judgment. The decision, however, on one question, viz., whether a trade mark granted by a public company is *assignable*, is not without importance.

In the case referred to, John Bedford, a steel manufacturer, carried on his business in Sheffield, and at another place near Sheffield, under the style of "John Bedford." The Cutlers' Company at Sheffield had awarded to him a trade mark to be used in his business.

(*y*) 11 House of Lords Cases, 523.
(*z*) See pp. 533 & 534 of the judgment.
(*a*) 33 L. J. 465.

The mark consisted of the figure of a *Lion couchant* surmounted by crossed arrows, with four initial letters, viz., J. O. B. S., within the space formed by the crosses of the arrows. Those four letters were to be read as J. O. B. S., signifying "John Bedford, Oughtibridge, Sheffield," which were the places where John Bedford carried on his work. John Bedford also purchased from one William Ash the right to the exclusive use of a trade mark, "Wm. Ash & Co." He subsequently entered into a partnership, and it was agreed that the corporate trade mark, together with such other mark as might be agreed upon, should be a partnership asset. The partnership business was carried on for some time, using both the corporate trade mark, and the trade mark "Wm. Ash & Co." Ultimately the firm fell into difficulties, and the whole estate and effects were assigned to trustees, who in pursuance of a power given to them, sold the concern to Henry Bury, the plaintiff in the case, and the deed of sale included all the *corporate and other trade marks* of the firm, so far as the trustees could lawfully include such trade marks.

Bury, the plaintiff, then entered into the possession of the business and carried it on, using both the *corporate* trade mark, and the other trade marks of the original firm. He subsequently discovered that the defendant John Bedford, had entered into negotiations with other persons, for granting to them the use of both the corporate and the other trade mark; and the bill was filed by Bury and others, to restrain Bedford from using or granting the use of the corporate trade mark, or the mark of "Wm. Ash & Co.," or other marks of the original firm of "Bedford, Bury & Co."

The question before the Court was, whether the respective trade marks could or could not be *assigned* as had been attempted by the defendant Bedford. It was argued for the defendant, that according to the custom of the Sheffield and other Cutlers' Companies Acts, the corporate mark was not assignable; and that

in fact, the other trade mark of the original firm of Bury and others, never had been assigned to Bury.

The Master of the Rolls held that the plaintiffs had no such right in the corporate trade mark as entitled them to an injunction, and that the trade mark, "Wm. Ash & Co.," was not properly the subject of the litigation.

On appeal to the Lords Justices, their Lordships were of opinion that both the corporate trade mark, and the trade mark of Wm. Ash & Co. were *assets* of the original concern, assigned to the trustees, and by them sold to the plaintiffs. "It appears to me," said Knight Bruce, L.J., "that by law, the right to use the *corporate trade mark*, and the right also to use the other trade mark particularly mentioned in the bill, were *matters of property* capable of assignment." And his Lordship added, that by force of the deeds referred to in the case, the whole right claimed by Bedford the defendant, to the trade marks, was vested in the plaintiff.

In the case of *Hall* v. *Barrows* (*b*), the doctrine that a trade mark is *property*, was also applied. The facts, as stated concisely in the Report, were that the *plaintiffs* were the executors of Hall (a deceased partner in a firm of ironmasters), and that the surviving partner was the defendant; and the question was as to the value to be paid by the defendant to the plaintiffs, for the share of *Hall* (the deceased partner) in the business.

The plaintiffs contended that the goodwill of the business, and the exclusive right to use the trade mark of the firm, ought to be taken into account. The defendant, on the other hand, claimed both the goodwill and the trade mark, as having survived to him the defendant.

The partnership deed provided, that if either of the partners should die before the expiration of the partnership, the surviving partners should have the option of taking *all the stock* belonging thereto, on paying to

(*b*) 33 L. J. N.S. 204.

the executors of the party dying, the value of his share.

The partnership had used as a *trade mark, a crown*, surmounting the letters B. B. H., which were the initials of the partners comprising the original firm; and the articles sold under such trade mark had acquired a considerable reputation in the market.

The question in dispute was as to how the trade mark was to be valued. The Master of the Rolls had held that the letters forming part of the *trade mark* denoted a particular firm of manufacturers, and that the right to use them was not of an alienable character; and could neither be taken from the defendant, nor conferred upon *a new firm.*

For the plaintiffs (the executors of the deceased partner), it was contended that the *trade mark*, was as much a part of the business as the *goodwill.* On the other hand, it was argued for the defendant, that neither the goodwill, nor the trade mark, formed any part of the partnership assets, and that there was no *property* in them. The decision of the Master of the Rolls, was, on appeal, reversed by Lord Westbury, C., who ordered the *trade mark* to be included in the valuation of the business of the partnership. "I am of opinion" (said his Lordship in a portion of his judgment (*c*)), "that these initial letters surmounted by a crown, have become and are a *trade mark* properly so called, *i.e.*, a brand which has a reputation and currency in the market, as a sign of quality; and that, as such, the trade mark is *a valuable property* of the partnership, or an addition to the Blomfield Works, and may be properly sold with the works, and properly included as a distinct subject of value, in the valuation to the surviving partner." "And, further," his Lordship said, "the case requires only that I should decide that the exclusive right to this trade mark belongs to the partnership *as parts of its property*, and might be sold

(*c*) See p. 207 of the Report.

with the business and works, and that as it might be so sold, it must be included in the valuation to the surviving partner."

And in *Shipwright* v. *Clements* (*d*), this doctrine of *property* in a trade mark was also followed. In that case, the defendant had *sold his interest* in a business (previously carried on by both the plaintiff and defendant) to the plaintiff. Part of the business consisted in the sale of a perfume called the "Zingari Bouquet," which words were treated by the firm as a *trade mark*. The defendant at his new place of business, (carried on by him at some distance from the place where the original partnership business had been carried on), sold the same perfume, using the same designation, viz., the "Zingari Bouquet," and he contended that, as he was the original and sole inventor of the particular perfume, he had a right to sell it under that name. But Malins, V.C., said: "This (the defendant's) proposition, that he is entitled to sell the "Zingari Bouquet," after having disposed of his right to do so, is untenable. In the sale of a business, a *trade mark* passes, whether specially mentioned or not."

From these more recent authorities cited in this chapter, it may be taken now as *law*, firstly, that a a trade mark is *property*; at least, thus far: that where there is *imitation* of it, that will be *infringement* which will be restrained by the Law, even where there has been no *fraud*, but mere ignorance on the part of the infringer, of the existence of the trade mark.

2nd. That the right or title to a *trade mark* is *transferable* (*e*), and it is presumed, *descendible* in the same manner as any other personal property (*e*).

(*d*) 19 W. R. 599.
(*e*) See per Lord Cranworth in 11 House of Lords Cases, pp. 533, 534.

CHAPTER II.

WHAT WILL, AND WHAT WILL NOT CONSTITUTE A TRADE MARK.

It has been stated in pp. 1 and 2 that there does not appear anything in the definitions in sect. 10 of the Act of 1875 materially inconsistent with the leading decisions given before the passing of that Act, as to what *constitutes* a trade mark. It must be observed also that clause 10 of the Act is directory, not negative. It says what *may be* a trade mark: but it does not say what *shall not* be a trade mark. What it does say, in the concluding paragraph, in reference to trade marks used before the Act, is "That any special or distinctive word or words, or combination of figures or letters, *used as a trade mark, before the passing of the Act,* may be registered as such;" viz., as a *trade mark.*

As, therefore, it is not only possible, but probable, that some one or more of the decided cases may include as a *trade mark* something that is not specifically noticed in sect. 10 of the Act, it becomes necessary to review the leading cases decided before the passing of the Act, in order to see how far a trade mark not exactly defined in the Act of 1875, may be supported.

In the case of *McAndrew* v. *Bassett* (*a*) (on an appeal from V.C. Wood), it was held that the name of a country, or part of a country, may constitute a trade mark. The circumstances of the case were very simple. The plaintiffs had applied the word *Anatolia* to certain preparations of liquorice, as a *name*, on the sale of their goods, so that they were known in the market under the name of *Anatolia.* The defendants

(*a*) 4 De G. J. & S. 380.

upon receiving an order for the particular kind of liquorice, caused a stamp to be prepared, imitating the plaintiff's stamp; that is, with the word *Anatolia* upon it, and sold their goods under that mark. The defendants contended that the trade mark had not been used long enough by the plaintiffs, for them to acquire a right in the nature of a trade mark; that is, not long enough to acquire *general notoriety* and *public reputation* (*b*). But the L.C. said, that an element of the right to *property* in a trade mark, "may be represented as being the fact of the article being in the market as a vendible article, with that stamp or trade mark, at the time when the defendants imitated it" (*c*).

It was also argued for the defendants, that the word *Anatolia* was a general expression, and that there could be no *property* in it; but the L.C., admitting that property in a *word* cannot exist for *all purposes*, said, "*property in the word*, as applied by way of *stamp* upon a particular vendible article, exists the moment the article goes into the market so stamped, and there obtains acceptance and reputation, and gets currency as an indication of acceptance and superior quality, or of some other circumstances which render the article so stamped, acceptable to the public" (*d*).

In *Wotherspoon* v. *Currie* (*e*) a similar point was decided, as to the name of a place, being a *trade mark*. In that case the bill had been filed by Wotherspoon against Currie, to restrain him from using the word *Glenfield* in connection with starch made by him; and Malins, V.C., had granted an injunction.

The order was discharged on appeal by James, L.J.,

(*b*) See p. 384 of the judgment. (*c*) *Ibid.*

(*d*) The word *Anatolia*, it appears, was the geographical description of a tract of country, wherein liquorice root is largely grown (see p. 386 of the judgment), and does not seem to fall within any of the *positive* definitions of sect. 10 of the Act of 1875. But it is presumed that, following the decision in *McAndrew* v. *Bassett*, and in other cases, the name of a country, or tract of land, or of a town, may be protected as a trade mark, under the last clause of sect. 10 of the Act.

(*e*) L. R. 5 House of Lords, 508.

and on the subsequent hearing of the cause, the learned Vice-Chancellor, who had granted the injunction, following (as of course) the decision of the Appeal Court, dismissed the bill.

Against this decree Wotherspoon appealed to the House of Lords, and their Lordships reversed the decree of the Court below.

The facts were as follows: Wotherspoon had purchased the business of a starchmaker, from a firm of Fulton & Co., who manufactured and sold at *Glenfield*, near Paisley, a species of starch, to which they gave the name of "Glenfield Double Refined Powder Starch," and by that name it was known to the public. In the agreement for the purchase, Fulton & Co. gave the sole right to Wotherspoon, of using the words "Glenfield Double Refined Powder Starch," and agreed to retire wholly from the business. The firm of Wotherspoon "then carried on the business for some years at *Glenfield*, and afterwards went to *Maxwell Town*, near Paisley; their works were called "The *Glenfield* Starch Works," and the article sold by them, was commonly known by the name of "Glenfield Starch."

The respondent Currie afterwards began making starch at *Glenfield*, and sold the starch so made, as manufactured by Currie & Co., but with the words "Glenfield Starch" printed on the sale labels. The labels of the appellants had been and were headed by the words "Glenfield Patent Double Refined Powder Starch" in three lines; the word *Glenfield* being in good sized type; the words "patent double refined powder" in smaller type, and the word "starch" being in larger type than the word "Glenfield" (*f*). The respondent's labels were headed "The Royal Palace Double Refined *Patent Powder Starch*," and at the bottom of the labels, was the name of the firm "Currie & Co.," in very modest sized type; and below, in *very large type*, was the word *Glenfield*.

(*f*) See p. 510 of the Report.

The whole, or at least material, question was, whether the respondent Currie had a right to use the word *Glenfield*; and the House of Lords held that he had no such right, their Lordships coming to the conclusion, upon the evidence, that the word *Glenfield* had become a trade mark in the hands of the appellant. On the question, What will amount to infringement? Lord Chelmsford said (*g*): "For the purpose of establishing a case of infringement, it is not necessary to shew that there has been the use of a mark *in all respects corresponding* with that which another person has acquired an exclusive right to use, if the resemblance is such, as not only to shew an *intention* to deceive, but also such as is likely to make unwary purchasers suppose, that they are purchasing the article sold by the party to whom the right to use the trade mark belongs." And Lord Westbury, in reference to the use of the word *Glenfield*, said (referring to the evidence) that the word "was wholly taken out of its ordinary meaning, and in connection with starch, had acquired that peculiar secondary signification, to which he had referred; the word *Glenfield* therefore as a denomination of starch, had become the *property* of the appellants; it was their *right and title* in connection with the starch."

In *Woollams* v. *Ratcliff* (*h*), the plaintiff (a silk throwster), was in the habit of making up his bundles of silk in a particular form; and he used to place under the centre string of each bundle, a label of a particular form, describing the quality of the silk, and containing the following particular mark, "St. A." which it was alleged, represented "St. Albans," where the plaintiff's manufactory was; and this mark was known as the plaintiff's trade mark. The defendant made up his bundles in exact imitation of the plaintiff's *bundles*, but did not add the mark "St. A." And Wood, V.C., though observing that the conduct of the defendant was indiscreet, refused an injunction. In

(*g*) See p. 519 of the Report.

(*h*) 1 Hem. & M. 259.

this case there was no evidence to shew that anyone had been *deceived*, and had taken the defendant's silk in mistake for that of the *plaintiff's*.

A mere title of honour given to a tradesman for his trade merit is not a *trade mark*; thus, where A., a pickle merchant, had obtained a prize medal from the jurors of "the International Exhibition" of 1862, "for pickles and preserved fruit," and he sought to obtain an injunction to restrain the defendant, who had not obtained a prize, from using labels bearing the words "prize medal, 1862," the Court refused an injunction, on the ground, it would seem, that the words "prize medal" could not give to the person so rewarded, any *property* in the nature of a *trade mark* (*i*).

The words "prize medal" may not now, however, under an Act of Parliament, be used, when it is a falsehood to use that title (*j*).

In *Kinahan* v. *Bolton* (*k*), there was not, and could not be, any doubt. Hudson Kinahan and G. Kinahan, wine and spirit merchants, carried on their business under the firm of "Kinahan & Sons," and they presented a petition to the Court of Chancery against the defendant, for an injunction, and an account of whisky sold by the defendant, as *LL Whisky*.

The petitioners had for many years sold their whisky under the name of "LL Whisky," and on the casks, bottles, and jars used by them for such sales, were printed a ducal coronet and the letters and word "LL Whisky." The whisky so sold acquired a high reputation, and was known to the trade and public as "LL Whisky." The imitation by the respondent was not discovered till 1863, and the petitioners then gave notice to the respondent to desist from using the letters "LL."

The respondent sold the whisky in bottles, jars, and

(*i*) *Batty* v. *Hill*, 1 Hem. & M. 264.
(*j*) Exhibition Medals Act, 1863. See 1 Hem. & M. 271.
(*k*) 15 Irish Ch. Rep. 75.

casks, labelled LL. The defence was that "LL" did not constitute a trade mark; and further, the defendant alleged, that his goods so marked had been publicly sold by him for ten years; and he further contended, that the plaintiff's mark was *LL Whisky*, and that LL standing alone, was not a trade mark at all. It was proved, however, that the defendant had also very frequently used as his mark "LL Whisky." The plaintiffs in reply, proved that they had not any notice till 1863 of the defendant's use of the letters LL; and that in the trade, their mark LL was understood to mean a peculiar whisky sold by their firm, and not any other whisky of the same class. The Court, upon these facts, granted an injunction, observing that there could be no doubt that *two letters* may constitute a *trade mark* (*l*)."

It may perhaps be a question whether mere *letters*, such as in the case of *Kinahan* v. *Bolton*, can constitute a trade mark under the 38 & 39 Vict. cap. 91; as clause 10 does not in the *positive* definitions, speak of *letters* standing alone. The last definition in clause 10, viz., "a distinctive division, mark, heading, label, or ticket;" may *possibly* be construed to include *letters*; but the language of the clause, "and there may *be added* to any *one or more* of the said particulars (the previous clauses) any *letters*," &c., seems to imply that *letters alone*, are not within the intention of the Act. (See *ante* p. 1, *Re Mitchell's trade mark*, that a *single letter* cannot be registered as a trade mark.)

It seems, therefore, that it will at least be prudent for persons adopting a trade mark, *after the passing of the Act*, not to adopt letters *alone* as their trade mark. But any trade mark consisting of a *combination of letters*, established *before* the passing of the Act, will it is apprehended, be protected under the last clause of sect. 10.

Maxwell v. *Hogg* and *Hogg* v. *Maxwell* (*m*) was a

(*l*) See p. 80 of the judgment.

(*m*) L. R. 2 Ch. Ap. 307.

singular case of alleged claim on each side to a title to *copyright* in the nature of a *trade mark*. The circumstances were simple enough. In 1863 Messrs. Hogg conceived the idea of publishing a monthly magazine, to be called *Belgravia;* and on the 12th of October registered it at Stationers' Hall, under the name of '*Belgravia;* a Magazine of Fashion and Amusement'; entering under the head of "date of first publication," the date of the 12th of October, 1863.

In 1866, *Maxwell*, in ignorance of such a magazine as that projected by Messrs. Hogg, determined to bring out a monthly magazine called *Belgravia;* he registered it on the 11th of June, 1866, and entered into arrangements for its composition and publication, and it was extensively advertised.

On the 24th of September, 1866, Messrs. Hogg for the first time advertised their monthly magazine called *Belgravia*, and brought out the first number on the 25th, knowing the intention of *Maxwell* to publish in the preceding August. *Maxwell* did not in fact publish *before* the publication of Messrs Hogg's *Belgravia*, and he filed, on the 26th September, a bill against Messrs. *Hogg*, for an injunction to restrain them from selling this their magazine under the title *Belgravia*, and from continuing to sell or advertise any copies of the September number.

On the 25th of October, Messrs. Hogg filed a bill of a similar character against Maxwell.

Stuart, V.C., refused a motion for an injunction made by Maxwell against Messrs. Hogg; and Maxwell then appealed, and both came before the Lords Justices by arrangement, on a motion for decree.

The Court of appeal held, firstly, that Maxwell had not by his exertion and expenditure, become entitled *exclusively* to any right in the name *Belgravia*, the first number being issued by Hogg with that name, *before* Maxwell had issued *his* number, and his bill was dismissed. And, secondly, that Hogg had not under the circum-

stances, and having regard to the date, acquired any right to the use of the word *Belgravia* as a trade mark to the *exclusion of Maxwell's* right to use the *same title* for *his* publication; and Hogg's bill was also dismissed.

In fact, upon all the circumstances, the Court held that neither Maxwell nor Hogg had acquired a *trade mark* in the word *Belgravia*; as to Maxwell, because the fact of his advertising, and the expenses thereof, gave *him* no such *right;* and as to Hogg, that his *registering* did not give him any copyright in the name, and that he had acquired no such right as against Maxwell.

The principal question in *Ainsworth* v. *Walmsley* (*n*) was whether there had been such misrepresentation on the part of the defendant, as would justify an injunction. But one point bore on the question, whether a person's *name* could be treated as a trade mark; and on that point, Wood, V.C., said, "Is not a man's name as strong an instance of trade marks as can be suggested? '*Ainsworth's* thread' is as good a mark as 'Anchor thread,' 'Lion thread,' or any other which may be described by a particular name" (*o*).

In *Farina* v. *Silverlock* (*p*), no final judgment was given in Equity, the Lord Chancellor being of opinion that the question was doubtful whether there was *fraud* on the part of the defendant, and the order was, to dissolve an injunction granted by the Court below, the bill to be retained for a twelvemonth, with liberty to the plaintiff to bring an action. His Lordship, however, laid down very distinctly what the law is as to the relation between plaintiff and defendant, in respect to alleged infringement of trade mark. "I apprehend," said his Lordship, "that the law is perfectly clear, that anyone who has adopted a particular mode of *designating* his particular manufacture, has a

(*n*) L. R. 1 Eq. 518.

(*o*) That a *name* of an individual or firm may be used as a trade mark under the Act of 1875, see clause 10.

(*p*) See 6 De G. M. & G. 214.

right to say, not that other persons shall not sell exactly the same article, better or worse, or an article looking exactly like it, but that they shall not sell it in such a way, as to *steal* (so to call it) his *trade mark*, and make purchasers believe that it is the manufacture to which that *trade mark* was originally applied." (See p. 218 of the Report.)

In the case of *Edelsten* v. *Vick* (*q*) the plaintiffs, the representatives of a prior owner, carried on the business of *pin* manufacturers. The prior owner had held a patent for the particular manufacture; the patent had lapsed, and the plaintiffs continued to use the old labels of the prior firm upon the old engraved plates and wooden blocks of the old firm, so that in reality, the plaintiffs represented themselves to the public as still *patentees*, when they were in fact no longer so.

The defendants, also pin manufacturers, made up their pins in sheets of paper (of the same colour as the sheets sold by the plaintiffs), impressed with labels and stamps of the same colour, and made in imitation of, and closely resembling, the labels used by the plaintiffs. Further, the inscription on their labels, viz.: "The Inimitable Patent Solid Headed Pins" closely resembled the plaintiff's, viz.: "The Inimitable Solid Headed Pins;" and followed the very language used by the plaintiffs on their labels.

The infringement, so far as regarded the labels, was, (as appears by the judgment), clear; and the principal defence appears to have been, that the *patent*, held originally by the plaintiffs, having ceased to exist, the plaintiffs did not come into Court with clean hands. The Court, however, held that the goods having become known by a description which was originally accurate in every part, it would be going too far to hold that the continued use of that description disentitled the plaintiffs to the assistance of the law; and an injunction was granted.

(*q*) 11 Hare, 78.

"It is, no doubt," said the learned judge, "to be much preferred that no representation should be issued to the public which is not strictly true; but in a case in which the goods have become known, by a description which was originally accurate in every part, if I were to hold that the continued use of this description disentitled the party to the assistance of the Court, it would be going much further than I did in refusing to interfere by injunction, where the plaintiff had adopted and used the word *patent* untruly and without foundation" (*r*).

The case to which the learned judge referred, is *Flavel* v. *Harrison* (*s*); in that case the plaintiff sold stoves or kitchen ranges under the title of "Flavel's *Patent* Kitcheners," and he exhibited this kitchen range at the Exhibition of 1851, and his attendant was directed to inform all persons making inquiries on the subject, that the invention was protected by *patent*. This was clear *fraud* upon the public, and the Court refused an injunction.

On the other hand, if the word *patent* is used as part of a *trade mark*, and it is shewn that the word *patent* attached to a fabric, has been used by the manufacturers in reference to that fabric for a long period, and is not at all understood by the public to imply that there is a patent: then, the use of the word *patent*, as a part of a trade mark, will not prevent an injunction against a defendant, who imitates the substantial and integral part of the plaintiff's trade mark (*t*).

In this case, James, V.C., said, "It is stated in the bill, and verified by affidavit, that the term *patent thread* (the word forming part of the trade mark), has been used in the trade for many years past, and is the name by which thread of a certain class, is known by manufacturers, and in the trade. It has in fact become a word of *art*. There has been no such mis-

(*r*) See p. 87 of the judgment. (*s*) 10 Hare, 467.
(*t*) *Marshall* v. *Ross*, L. R. 8 Eq. 651.

representation, designed or undesigned, as to deprive the plaintiff of his right to an injunction."

But in the case of *Morgan* v. *McAdam* (*u*), the use of the word *patent* by the plaintiffs in their trade mark, when in fact there never had been any patent, was held to be fatal to their claim for an injunction. "The plaintiffs," said the learned judge (*v*), "aver themselves to be the makers of blacklead crucibles, under the style of the 'Patent Plumbago Crucible Company.' Their crucibles (they say) are superior to any others which are manufactured, and have acquired equal reputation both in the home and foreign market, as *patent plumbago crucibles*, manufactured by the *Patent Plumbago Crucible Company*; and the question now before us is, whether the plaintiffs so averring, are entitled to maintain a suit in this Court, to prevent any other persons calling their articles *patent plumbago crucibles*, when it turns out to be the fact, that there never was any *patent* either in America or England, or in any other part of the world, for the making of these crucibles. So that all those who are induced to buy these crucibles, thus described as *patent plumbago crucibles*, are led to believe that the article is protected by a *patent*. And further they are led to believe, that if they should be minded to set up any manufactory of the same kind for themselves, they would be unable to do so, in consequence of the plaintiffs being the possessors, either by way of licence or ownership, of a patent, preventing the world at large from imitating the article sold by them under this particular designation" (*w*).

A trade mark making or supported by a false representation as to its origin, will not be protected. Thus in the case of *Pidding* v. *How* (*x*), where the plaintiff sold

(*u*) 36 L. J. Ch. 228.

(*v*) See p. 229.

(*w*) See in p. 229 of the judgment, the comments of the Court on *Flavel* v. *Harrison*, *Edelsten* v. *Vick*, and *The Leather Cloth Company's Case*.

(*x*) 8 Sim. 477.

a particular tea, under the trade mark of "Howqua's Mixture," and on his labels and advertisements, intimated that the mixture was made by one *Howqua* in Canton, and was purchased from him and imported into this country by the plaintiff, in the packages in which it was sold; and it was proved, that the mixture was not made by *Howqua*, nor through any connection with him, but was in fact manufactured by the plaintiff *in England*; there the Court held this course of the plaintiff, to be in effect *fraud* upon the public; and dissolved an *ex parte* injunction.

In the case of *Motley* v. *Downman* (*y*), the plaintiffs had carried on the business of tin-plate manufacturers at Carmarthen for a long period under a lease; and they used the letters "M. C." as a trade mark. Subsequently they removed to another place distant forty miles from their former factory. During the period of their occupying their original factory, no manufacturer had used the letters constituting the plaintiff's trademark. But some years afterwards, the defendants took a lease of the premises, originally occupied by the plaintiffs, and branded *their* boxes with the letters "M. C."; and styled themselves the "M. C. Tin-plate Company."

There was some evidence that, long before the occupation of the works by the *plaintiffs*, the boxes of tin plate made there, had been branded with the mark "M. C." and the question was, whether the trade mark "M. C." was or not attached to the works, and not to the *persons* who had used it: in other words, whether the plaintiffs, having left the works, had a right to prevent other persons, actual tenants of the premises, from using the mark "M. C." And Lord Cottenham, C., considered it doubtful, whether the plaintiffs retained such *legal right* to the exclusive use of the letters "M. C." as would justify their claim for an injunction; and his Lordship discharged an injunction granted by

(*y*) 3 Myl. & Cr. 1 (1837).

the Court below, with liberty to the plaintiff to bring an action at law. "The real question," said his Lordship, "is, whether the plaintiffs have acquired a right to prevent other *subsequent tenants* of the works, from using a mark, which, it is clear, was originally derived from those *works*; for although they were not called the 'M. C. Works,' yet the persons carrying on the manufacture of tin-plates at them, have always used the mark M. C."(z).

The particular designation of the title of a newspaper, seems to be somewhat in the nature of a trade mark; at any rate it will be protected. Thus, in the case of *Clement* v. *Maddick* (a), where the plaintiff was the proprietor of a newspaper, published and well known to the public for many years, under the title of 'Bell's Life in London and Sporting Newspaper' at the price of 5*d.*; and the defendant had issued a newspaper under the title of '*Penny* Bell's Life and Sporting News;' V.C. Stuart granted an injunction, restraining the defendant from printing or publishing any newspaper or periodical under the name of 'The Penny Bell's Life and Sporting News,' or under any name or style of which the words 'Bell's Life' should form a part. And the learned judge said, he considered the application in the light of one to support *a right to property.*

There was some, though not strong, evidence that persons had been deceived by the defendants' title, and the defendants urged that they did not *intend* to commit any fraud; but the learned judge, following *Millington* v. *Fox*, treated that as no defence.

Burgess v. *Burgess* (b), was on one point, a rather singular case. The plaintiff's father (deceased at the date of the bill) had for many years before 1800, carried on the business of an Italian Warehouseman, making and selling various fish and other sauces.

In the year 1800, the plaintiff's father took the

(z) See p. 17 of the Report.

(a) 5 Jur. N.S. 592.

(b) 3 De G. M. & G. 896.

plaintiff into partnership, and the business was carried on at 107 Strand, under the style of "John Burgess & Son," with the Royal Arms and the words "Original and Superior Essence of Anchovies" over the door; and the business was so carried on under the style or firm of "John Burgess & Son" down to the death of the father. After that, the son continued the business, still under the style of "John Burgess & Son;" and certain goods were sold by him, under the title originally adopted and used of "Burgess' Essence of Anchovies." The plaintiff had two sons, one of whom was named William Harding Burgess, and this son carried on a similar business on his own account in "King William Street, City," and he put over his shop front, "W. H. Burgess, late of 107 Strand," with the Royal Arms, and used the following *labels:*

"36 King William Street,
"City of London.
(Royal Arms.)
Late of 107 Strand.
"Burgess'
"Essence of Anchovies."

And his labels went on with a representation of the excellence of the sauce, in which he introduced this expression: "Burgess' Universal Sauce is confidently recommended to those not partial to essence of anchovies." The plaintiffs' labels were, "107 Strand, corner of the *Savoy Steps.* John Burgess & Sons' Original and Superior Essence of Anchovies."

On a motion for an injunction, asking a very minute and extensive order, including a restriction on the defendant using his name *Burgess*; Kindersley, V.C., made an order, confining the injunction to restrain the defendant from using the words, "late of 107 Strand," and from continuing on the sides of his shop door, the plate with the words "Burgess' Fish Sauce Warehouse, *late of* 107 *Strand.*"

The plaintiff was not satisfied with this order, and

appealed to the Lords Justices for an order consistent with the extensive demand of the prayer of the bill, and the appeal was dismissed; Knight Bruce, L.J., observing, "All the Queen's subjects have a right, if they will, to manufacture and sell pickles and sauces; and not the less, that their fathers have done so before them. All the Queen's subjects have a right to sell these articles in their own names, and not the less, that they bear the same name as their fathers."

By some authorities, it would seem that the title of a literary work is, or may be treated as of the nature of a *trade mark*. Thus, in *Mack* v. *Petter* (*c*), the plaintiff was the publisher and proprietor of a book called 'The Birthday *Scripture Text Book*.' The defendant subsequently published and sold a work under the title of 'The *Children's* Birthday Text Book.'

The defendant's work was arranged on the same plan as that of the plaintiff's book. His defence was, that there could be no *copyright* in the name of the title; and that the plaintiff was entitled to no remedy, unless it could be shewn that the public had been misled, of which no evidence seems to have been produced. Lord Romilly, M.R., held however, that the plaintiff was entitled to an injunction, treating the description of the *title* as *copyright*.

So in an early case, *Hogg* v. *Kirby* (*d*), where the plaintiff was proprietor of a work entitled, 'The Wonderful Magazine,' by William Grainger Esq., and the name of *Kirby* was by agreement used as that of the publisher. In consequence of some difference between the parties, they separated; and the plaintiff issued circulars, stating that succeeding numbers would be published by him. The sixth number was published by him on the 31st of December. On the 1st of January *Kirby* and another, published a periodical work under a similar title, and described as "a new series improved" printed for "Kirby & Scott."

(*c*) L. R. 14 Eq. 431.

(*d*) 8 Ves. 215.

Lord Eldon, C., said, "I shall state the question to be, not whether this work is the same, but in a question between these parties, whether the defendant has not represented it to be the same, and whether the injury to the plaintiff is not as great, and the loss accruing ought not to be regarded in Equity, upon the same principles between them, as if it was in fact the same work (*e*). And an injunction was granted.

Properly speaking however, the similarity of the titles of *books*, does not fall strictly within the case of *trade marks*; for as Lord Cottenham, C., said in *Spottiswoode* v. *Clarke* (*f*): "In the course of the argument, cases of *trade marks* were referred to; but trade marks have nothing to do with this case." Still, the principles which affect trade marks, may be said to be the same, or nearly the same, as those which affect copyright: viz., that in both classes of cases, the persons who are infringing, are affecting some right of *property* (*g*).

The Singer Manufacturing Company v. *Wilson* (*h*) is a case in which the true principles affecting the right to a trade mark, are elaborately discussed and defined.

The facts of the case are very clearly and definitely stated in the Report.

It appeared from the evidence, that the plaintiffs (the Singer Manufacturing Company) had been for many years in a large way of business, as manufacturers of sewing machines; that the sewing machines manufactured by them had been described as "Singer Machines," or "Singer's Machines," and that those words did not import, and were not generally understood to import, any specific principle of construction, or mechanical arrangement of working parts, or any one type of machine; but simply that the machines so designated, were of the *plaintiffs' manufacture.* The

(*e*) See p. 225 of the Report. (*f*) 2 Phil. 154.
(*g*) See also on this subject, *Chappell* v. *Sheard*, 2 Kay & J. 117, and *Chappell* v. *Davidson*, 2 Kay & J. 123. (*h*) L. R. 2 Ch. Div. 434.

plaintiffs alleged, that by means of advertisements and otherwise, these manufactures were known throughout the world, as *Singer* or *Singer's* Machines; and they alleged that the name of *Singer* had become and was their *trade mark.*

It appeared also that the plaintiffs had further adopted a *trade mark* properly so called, viz., they issued price lists worded thus: "Illustrated Price Lists of the *Singer* Company's New Family Machines."—"Sole proprietors and manufacturers of the *Singer Sewing Machines* for every class of needlework." "Copy of the Company's *trade mark* plate affixed to the arm of every machine, without which, none are genuine."

Further, there was affixed to the machine a device, consisting of a shuttle, and needles crossed with a line in the form of the letter S; this device was placed in the centre of an ellipse; immediately under the device were placed the words *Trade Mark;* and over it, just inside the ellipse, was placed the words "The Singer M. F. G. Co., N. Y." and outside the ellipse, underneath it, were placed the words *Registered Trade Mark.* The plaintiffs also marked their machines in large letters, with the words, "The Singer Manufacturing Company;" and lastly, in their price lists and advertisements, the plaintiffs printed a copy of the above device, and stated, "No machine sold as *the Singer* is genuine *without this trade mark* fixed to the arm."

It was plain from all this complication of announcements and figures, that the plaintiffs did not, at least on the face of their marks, rely on the single word *Singer* as their trade mark. The defendant did not place the word *Singer* on his machine. Every machine sold by him had attached to it, in a conspicuous place, a brass plate bearing the device of *St. George and the Dragon,* surrounded by the words "*Newton Wilson & Co.,* manufacturers, 144 High Holborn." In his price lists, the defendant admitted that he sold machines (not of the plaintiffs' manufacture) as "Singer"

machines: that in his price list he described them as "*Our* Singer Machines;" and that in all his price lists were included several varieties of machines, viz., the "Wheeler and Wilson" the "Grover and Butler" the "Singer" and the "Howe." And there was evidence, that, although the defendant professed in his price lists to sell "Singer" machines, he always stated that they were manufactured by himself.

In fact therefore the question reduced itself to this; whether the plaintiffs had acquired an exclusive right to the word "Singer" as an *actual trade mark*; and Sir G. Jessel, M.R., in an elaborate judgment, admitting with reference to the facts stated, that the plaintiffs had *some trade mark*, came to the conclusion that they had no trade mark in the particular word "Singer." "I am of opinion (said his Lordship, in concluding a minute examination as to what is properly a trade mark), that the plaintiffs are mistaken in saying, that they have any right to prevent the defendant using their *name* in this way: viz., the name of the machine, when he does not use it for any other purpose than, as far as he is concerned, to shew that it is a kind of machine manufactured by him" (*i*).

On appeal to the Lords Justices, their Lordships dismissed the appeal (*j*).

The case of *The Collins Company* v. *Brown* (*k*), heard in 1837, was cited in the Singer Company's case, on the part of the plaintiffs. In that case, however, the question was, whether partial use by the defendant of the plaintiff's name and trade mark, combined with some other words, could be restrained by injunction; and the decision turned upon this, whether the defendant's user of the plaintiff's name was a *fraudulent* user, tending

(*i*) See pp. 447, 448 of the Report.

(*j*) See p. 463 of the Report in L. R. 2 Ch. Div. The whole of the judgments of both the Courts should be carefully perused, as those judgments are in fact a condensed, but at the same time, an exhaustive exposition of the *principles* on which the *title* to a trade mark rests.

(*k*) 3 Kay & J. 423.

to mislead the public into believing that they were buying the plaintiffs' goods, when they were in fact buying the defendant's goods. In that case it was held (contrary to the present doctrine of a trade mark being *property*) that, though the plaintiff had no *property* in a trade mark, he had acquired a *right* to use a particular mark, which it would be *fraud* in another person to use.

The *name* of a firm, under which the partners carry on business, is in fact a trade mark, or at least is in the nature of a trade-mark; and if the partnership is dissolved, each party has a right to use the name of the firm. This was decided in the case of *Banks* v. *Gibson* (*l*). In that case the defendants Robert Gibson and Joseph Banks carried on business for some time under the name of "Banks, Son & Co." In the event of the death of either, his representatives were to have the option of either continuing the business with the surviving partner, or of retiring. The name of the firm was afterwards changed to "Banks & Co." Joseph Banks died, and his widow being his administratrix, continued for some time in the partnership. Afterwards the partnership was dissolved, and the defendant continued to carry on business on the old premises under the name of "Banks & Co." and intimated his intention to do so. The plaintiff (the executrix of Joseph Banks) afterwards set up business of the same kind, and in the same name, viz., "Banks & Co." and she filed a bill, to restrain the defendant from using the title of "Banks & Co.," or "Banks" alone. The Master of the Rolls referring to the deed of separation of the partners, dismissed the bill, saying, "The plaintiff had not stipulated that the defendant should not use the name: they have divided the other things, and left him in partnership. In my opinion, they are both entitled to use it; and the plaintiff's case fails."

(*l*) 34 L. J. N.S. 591.

In the case of *Lewis* v. *Langdon* (*m*), Sir L. Shadwell, V.C., said, "I cannot but think when two partners carry on a business in partnership to go under a given name, that, during the partnership, it is the joint right of them both to carry on the business under that name; and that, upon the death of one of them, the rights which they before had *jointly*, become the separate right of the survivor." But, in referring to this doctrine, Mr. Justice Lindley in his 'Treatise on Partnership,' referring to that and other cases, says: "If these cases are carefully examined, they will be found scarcely to warrant so general a proposition." (*n*)

A *crest* may be a trade-mark that will be protected, but if A. has used a particular crest, and B. uses a different crest as his trade mark, that is no infringement. On the other hand, if A. accompanies his crest with other *indicia*, and B. uses *indications* so far similar as to make the whole thing a *colourable imitation*, that would be an infringement of A.'s trade mark,—the real test in cases of this kind, is whether the public are deceived, or likely to be deceived (*o*).

In the case of *Blackwell* v. *Crabb* (*p*), the plaintiff and the defendant were both manufacturers of pickles. The name of the particular pickle was "Piccalilly," except that the plaintiff spelled it *Piccalilli* and the defendant called his *Piccalilly*. Both parties used that name at the head of their labels.

The names of both parties, viz., "Crosse & Blackwell" and "Crabb & Blackwell" were printed in tolerably sized type. Both parties had on their labels, prints with a lion and unicorn supporting a shield, surmounted by a crown (at least, so it appears by the

(*m*) 7 Sim. 421, see p. 425.

(*n*) See Lindley on 'Partnership,' vol. ii. p. 887. See also *Hall* v. *Barrows*, 12 W. Rep. 322.

(*o*) See the judgment in *Beard* v. *Turner*, 13 L. T. N.S. pp. 748, 749.

(*p*) 36 L. J. N.S. 504.

not very brilliant prints in the Report); and these prints, though similar to a certain extent, were distinguishable to a quick eye. Both had on their labels the word "purveyors." But the plaintiffs had on their labels the words "purveyors *to her Majesty*" in good-sized letters; while the defendants had only the word *purveyors*; the plaintiffs had on their labels their special address in good-sized letters, while the defendants gave as their address merely, "London." The labels were not of the same colour, and Sir. W. P. Wood, V.C., on a motion for an injunction, said, "There were" great similarities, and also great differences, and refused to grant an interlocutory injunction.

In *Woollams* v. *Ratcliff* (*q*), noticed in p. 23, many witnesses were examined, who deposed that the label was an essential part of the making up; but none of them (it appeared) would have mistaken any silk for the plaintiff's, if they did not see St. A. on the bundles; and Wood, V.C., though observing that the conduct of the defendant was indiscreet, refused as before stated to grant an injunction, and dismissed the bill. It was, indeed, obvious in that case, that the mere form of making up the *bundles* could not *per se* be a trade mark, though the word and letter "St. A." might be a trade mark; and the defendant did not take that mark.

In *Young* v. *Macrae* (*r*) the plaintiff was the patentee of a process for obtaining by the distillation of bituminous coals, paraffine, and also an oil containing paraffine.

In the specification, the description given (relating to the paraffine oil) was as follows: "My said invention consists in treating bituminous coals in such a manner as to obtain an oil called paraffine (*which I call paraffine oil*), and from which I obtain *paraffine*." The plaintiff sold the goods so produced under the patent, under the name of *paraffine oil*, and he claimed an injunction

(*q*) 1 Hem. & M. 259.

(*r*) 9 Jur. N.S. 322.

to restrain the defendant from selling under the name of *paraffine oil*, or *American paraffine oil*, or any oil of similar product, which had not been manufactured by the plaintiff on their licensees. It was not charged against the defendant that he had infringed the *patent process*. The whole charge was that he described what he sold as *paraffine oil*; and the Court held that the words *paraffine oil* was not a fanciful term, so as to constitute a trade mark, but simply a description of the thing sold; and holding that the plaintiff had no trade mark in the term used, refused an interlocutory injunction.

Where a company had established itself under the name of "The *Colonial* Life Assurance Company," and another later company established itself under the name of "The *Home and Colonial* Assurance Company," the Court refused an application for an injunction by the plaintiff company (*s*).

It is submitted that, from the several authorities above cited, the following general rules may be deduced, viz.:—

1. That, irrespectively of the Act of 38 & 39 Vict., the name of a country or tract of land, or of a town, or of the name or names of one individual, or of several individuals, or a crest, or figures, or a combination of letters or figures, may constitute a trade mark.

2. That a *name* coupled with a variety of surrounding letters and figures, cannot *alone* be treated as a trade-mark (*t*).

3. That if the owner of a trade mark adds to it such words as *patent* or *patented*, when there is, in fact, no patent, and the words so used are shewn to be likely to deceive the public, then such trade mark is not valid. But that it is otherwise, if it is shewn by the circumstances that the public would not be misled;

(*s*) *Colonial Life Assurance Company* v. *Home and Colonial Assurance Company*, 33 Beav. 548.

(*t*) See the *Singer* case referred to, *ante* p. 35 *et seq.*

then the trade mark would not be rendered void by the addition of the word *patent*.

4. That generally, any trade-mark adopted with a *false representation* of its *foundation*, is not such as will be protected.

5. That the name of a *substance* generally known, will not constitute, *per se*, a trade mark.

CHAPTER III.

OF INFRINGEMENT OF TRADE MARKS.

It is not very easy to define generally and exactly, what amounts to infringement of trade-marks; and an approximation to such a definition can only be attained by analysis of the leading and most important authorities bearing on the question.

It is of course infringement where similarity is obvious, and the defendant is aware of the plaintiff's trade mark, and yet imitates it. But where there is considerable dissimilarity, though some similarity, between the plaintiff's trade mark and the defendant's; the Court will not interfere.

Thus in *Raggett* v. *Findlater* (*a*), the plaintiff was a manufacturer of stout. Before the year 1860, the stout manufactured by him had acquired considerable celebrity; it was known to the public by the name of "Nourishing Stout." In the year 1860, the plaintiff registered a *trade label*, under which he sold his stout; the label described the stout as "Nourishing *London* Stout," the words being placed round the circumference of the label; and in the centre, were the words "Raggett late Blockey" "analysed and reported on by Dr. Hassall." The defendants, also brewers, sold their beer with labels having the words "*Nourishing Stout*, bottled by Findlater, Mackie & Co., 16 Prince Albert Street, Brighton," printed in letters similar to those in the plaintiff's trade mark.

The application of the plaintiffs to the Court of Chancery, was for an injunction to restrain the defendants from using such labels as above described, or

(*a*) L. R. 17 Eq. 29.

similar to the plaintiff's, or any labels with the words *nourishing stout* thereon.

The V.C., Sir R. Malins, referring to several authorities, said, that in the cases cited in support of the plaintiff, and in other cases that had been before the Court, there had been some studious imitation, or something shewing the defendant's object to be to mislead the public, and to induce them to believe they were buying the plaintiff's goods, when they were, in fact, buying those of the defendant's (*b*), and his Lordship continued: "If I take the plaintiff's trade mark, as that round label, this of the defendant is so dissimilar, that one cannot be mistaken for the other:" and the bill was dismissed.

In *Croft* v. *Day* (*c*), the plaintiffs were the executors of Day, the surviving partner of the firm of "Day & Martin," the celebrated blacking manufacturers (known from the year 1801). Their blacking was known to the public by the name of "Day & Martin's" printed on labels on the bottles of their blacking. Their business was carried on at "No 97 High Holborn."

On the death of Day, his executors carried on the same business at the same place, in the name of "Day & Martin," which they had authority to do, under transactions between Day and his original partners.

The defendant was the nephew of the original *Day*, and set up and carried on business as a blacking manufacturer, close to the premises of the original firm, viz., at 90½ "Holborn Hill;" and he sold his blacking under the title of "Day & Martin;" and he used wrappers, similar to those used by the original "Day & Martin" on their labels, with this exception that the defendants put the "Royal Arms" in the centre of their labels, instead of a picture of the factory at 97 High Holborn used by the original "Day & Martin."

The defendant's evidence shewed, that he had applied

(*b*) See p. 34 of the Report. (*c*) 7 Beav. 84.

to an acquaintance named "Martin" for liberty to use his name, and obtained such liberty; and that a treaty for partnership was pending between him "Day," and his friend "Martin."

Lord Langdale, M.R., granted an injunction against the defendant, on the ground that the course pursued by him was in the nature of a *fraud*, tending to mislead the public; admitting that the defendant had a right to carry on the trade of a blacking maker in his own name "Day," but, holding, that he had no right to carry it on in such a way as to *deceive and defraud* the public (*d*).

In the case of *Edelsten* v. *Edelsten* (*e*), the plaintiff was a wire manufacturer, and had formerly carried on the business in partnership with Price, under the firm of "Edelsten & Price." After the death of his partner Price, the plaintiff continued to carry on the business under the same title, "Edelsten & Price." Up to the month of September, 1852, the plaintiff had used no trade mark, but, in September, 1852, he adopted an *anchor* as his trade mark, and used such trade mark on his circulars, billheads and letters; and had the same mark stamped upon the metal labels (called in the trade *tallies*) attached to each bundle of wire of a certain quality. The wire made of such quality, became known in the trade as the "Anchor Brand Wire," and acquired a high reputation, so that the "Anchor Brand Wire" was greatly sought.

The defendants also manufactured wire, and put upon their labels as a mark, a *crown and anchor*; the crown being small and at the top of the anchor; and they sold their wire with such mark.

On an appeal from V.C. Wood (who had at the hearing of the cause, directed a perpetual injunction)

(*d*) *Note.*—It is submitted that looking at the decision in *Burgess* v. *Burgess* (cited *ante*, p. 32 *et seq.*) it may be doubtful whether this case would be followed in a case having somewhat similar circumstances.

(*e*) 1 De G. J. & S. 185.

to Lord Westbury, C., his Lordship dismissed the appeal, treating the plaintiff's trade mark as *property*; and holding, even assuming the defendants to have been *ignorant* of the plaintiff's trade mark, that they must still be restrained from using it.

Upon the authority of this case, and of *Harrison* v. *Taylor* (*f*), and *Millington* v. *Fox* (*g*), it may be taken as now settled law, that it is no defence, where there is actual imitation of a trade-mark, to say that the defendant was not *aware* of the existence of the plaintiff's trade mark. It seems in fact obvious that if a trade mark is treated as *property*, then the ignorance of A., of the existence of B.'s *property*, cannot justify A. in taking that which is B.'s *property*.

In *Braham* v. *Bustard* (*h*), the plaintiffs were soap manufacturers in London. In 1862 they introduced into the market a superior kind of white soft soap, which they sold under the name of "The *Excelsior* White Soft Soap." White soft soap, *simpliciter*, had been long known as the result of a chemical process; but there was little or no demand for it, till the plaintiffs had introduced it into the market. In June, 1863, the defendant began to manufacture such soap, and sold it under the name of "Bustard & Co.'s *Excelsior* White Soft Soap."

The V.C. (Sir W. P Wood), after analysing the correspondence and the conduct of the defendants, and comparing the use of the word *Excelsior*, forming part of the plaintiff's designation of their soap, with other specific words used as a trade mark, concluded thus: "If the defendants had not desired to obtain *an unfair advantage* of the reputation of the plaintiff's goods, they would have called their soap "*Victoria* White Soft Soap," or "*Royal* White Soft Soap," or would have used some similar name. And his Lordship granted an injunction.

(*f*) 11 Jur. N.S. 408. (*g*) 3 My. & Cr. 338.
(*h*) 1 Hem. & M. 447.

A perusal of the whole case, and in particular of the evidence for the defendants (p. 452), shews, in fact, that the defendants had used the word "*Excelsior*" because they could not obtain a demand for their soap under the title simply of "White Soft Soap." In other words, there was in the transaction of the defendants, that which Equity treats as *fraud*.

In *Hirst* v. *Denham* (*i*), the plaintiff, a manufacturer of woollen cloth, had for many years sold his cloths under the names of *Turin*, *Sefton*, *Leopold*, and *Liverpool*; and he claimed the exclusive use of the *names* so mentioned, and of the tickets annexed thereto.

The defendants used the aforesaid terms as designating their cloths, which, it was alleged, were of inferior quality.

The defence of the infringer was, that the names given by the plaintiff, merely described the *patterns* of the manufacture, and that by the custom of the trade, the defendants had a right to use the *patterns*, and therefore had a right to use the *names* designating the patterns.

Bacon, V.C., however, referring to several authorities, declined to accept this defence, and granted an injunction, and after commenting on the case of *Wotherspoon* v. *Currie*, his Lordship said, "The particular facts in the the starch case (*Wotherspoon* v. *Currie*), and in the present, are different; but the *principle* of the decision is the same, and must be applied to this case, if the result leads to the conclusion, which was drawn in that case; viz., that the public might be led to believe, while they buy the defendant's goods, that they are buying an article manufactured by the plaintiff, in consequence of a *name* (*Glenfield*) being used the celebrity of which was first acquired by its being applied to the plaintiff's manufacture; which of course they think it continued to be." And his Lordship considered, that, upon the evidence, and even without the evidence, the use made by the defendauts in the

(*i*) L. R. 14 Eq. 542.

case before him, of the *names* of the plaintiff's cloths, was likely to deceive purchasers, and to lead them in buying the defendant's cloths, to believe that they were buying the plaintiff's; and an injunction was granted.

In the case of *Seixo* v. *Provezende* (*j*), the facts are somewhat complicated, and it is one of those cases, the features of which are not very likely to be repeated. But the principles laid down in it are important.

The plaintiff, the Baron de Seixo, proprietor of a *quinta*, or estate (*k*), called the "Quinta de Seixo," grew port wine grapes there, and consigned the wine habitually, to "Sadler & Harrison," in London.

The plaintiff's wines had been distinguished from other wines for several years by the following brands, viz.: the figures of a *crown and eagle*, with the letters B. S. (meaning the *Baron* or Baron de Seixo) on the head of the cask, and a *crown*, with the word *Seixo*, and the year of the vintage, at the *bunghole*. These wines had been long known in the London market as *Crown Seixo Wine*, and had acquired a great reputation.

The defendants, the Baron de Provezende, and G. C. Sottomayor, and F. Caldos, trading in London as "Caldos Brothers," had recently received from *Oporto* one hundred pipes of port, marked on the heads of the cask with the figure of a *crown*, and the letters C. B., and the words "Seixo de Cima;" and at the *bunghole* there was a *crown*, with the letters C. B., and the words "Seixo de Cima" (meaning Upper Seixo).

The bill was filed to restrain the defendants from using the mark of a *crown* and the word *Seixo*, or any other colourable imitation of the plaintiff's brands.

It was proved that the defendants' brokers had offered the wine so consigned to them as "Crown Seixo de Cima Wine," and the brokers stated that they thought it was of the plaintiff's wine.

(*j*) L. R. 1 Ch. Ap. 192.

(*k*) According to the Portuguese dictionary of Vieyra the word *quinta* means a *farm*; it is called an *estate* in the report cited.

It appeared to be clear that, if two casks, one of the *plaintiffs*, and the others of the *defendants*, had been *together* placed before a person possessed of ordinary powers of observation, he could not possibly take both casks as coming from the same firm. But, on the other hand, the differences were so far slight that, if either cask had been separately placed before a person even of ordinary powers of observation, it was not unlikely that he should mistake the cask of the defendants, for the plaintiff's cask. So that, as a *crown* and the word *Seixo*, were the prominent marks on the plaintiff's casks; if another cask was seen *separately* bearing the same marks, with only the addition of the words *de Cima;* a person of even ordinary powers of observation might well take the latter cask as coming from the plaintiff, as appeared to be the fact from the evidence of the broker, referred to in p. 193 of the Report; and to that effect is the language of Lord Cranworth, L.C., in his judgment:—

"If," said his Lordship, "the question turned on the inquiry, whether a person having a cask of the plaintiffs, and a cask of the defendants, placed before his eyes, could mistake the one for the other, there could be no doubt as to the result, for the marks on the one and the other are altogether different. But that is not the question, or not the sole question, to be considered. The principle on which relief is given in these cases is, that one man cannot offer his goods for sale, representing them to be the manufacture of a rival trader." . . . And, further, his Lordship continued:—

"Where a manufacturer has been in the habit of stamping the goods which he has manufactured, with a particular stamp or brand, so that thereby persons purchasing goods of that description know them to be of his manufacture, no other manufacturer has a right to adopt the same stamp." . . . And further, his Lordship said:—

"It is obvious that in these cases, questions of con-

siderable nicety may arise, as to whether the mark adopted by one trader is, or is not, the same as that previously used by another trader complaining of its illegal use; and it is hardly necessary to say that, in order to entitle a party to relief, it is by no means necessary that there should be *absolute identity*. What *degree of resemblance* is necessary, from the nature of things, is a matter incapable of definition *à priori*; all that courts of justice can do, is to say, that no trader can adopt a trade mark *so resembling that of a rival*, as that *ordinary* purchasers, with *ordinary caution*, are likely to be misled" (*l*). And his Lordship supported the decision of Vice-Chancellor Wood, referred to in p. 194 of the Report.

And in *Shrimpton* v. *Laight* (*m*), where the difference between the plaintiff's trade mark and the defendant's, was stronger than in *Seixo* v. *Provezende*, Sir J. Romilly, M.R. (granting an injunction against a colourable imitation), said: "The way in which the Court deals with these cases, is not to see whether manufacturers themselves would distinguish them, but whether the *public*, who may be more easily misled, would probably be deceived. I have no doubt, that if an ordinary person intended to buy the plaintiff's needles, and the defendant's needles were handed to him over the counter, he would not know the difference."

In the case of *Ford* v. *Foster* (*n*), which was the subject of a somewhat protracted litigation, and of an exhaustive judgment on appeal to the Lords Justices, the principal question was, more properly, whether the trade mark adopted by the plaintiff was substantially *a trade mark*, than a question of infringement; as the infringement was obvious, if the word used was, in point of law, *a trade-mark*. And looking at the cases

(*l*) The case of *Seixo* v. *Provezende*, and Lord Cranworth's judgment in it are particularly important, as that judgment is, in fact, a short treatise on the *principles* which govern the Court, in cases of trade marks.

(*m*) 18 Beav. 164.

(*n*) L. R. 7 Ch. Ap. 611.

referred to in the preceding chapter, as to what will *constitute* a trade mark, it seems somewhat strange that the right of the plaintiff should ever have been contested.

The plaintiff was a shirt-maker, and he brought out a shirt of a particular shape, to which he gave the name of the "*Eureka* Shirt." He marked his shirts on the inside, at the back of the collarband, with the following mark inclosed within a circle: "R. Ford's *Eureka* Shirt, London;" and after the passing of "The Merchandise Marks Act, 1862" (25 & 26 Vict. c. 86), he added the words "Trade mark;" and he always described his shirts in all his advertisements, and elsewhere, as "Ford's *Eureka* Shirts."

The defendants had for some time been making and selling shirts, which they described as "The Eureka Shirt," and they issued trade cards and price lists, advertising themselves as manufacturing and selling "The *Eureka Shirt*." The charge against the defendants was that, in so doing, they misled the public, and injured the plaintiff's business. And the Lords Justices, on an appeal from Bacon, V.C., granted an injunction restraining the defendants from using the word *Eureka*.

In the case of *Sykes* v. *Sykes*, referred to *ante*, p. 3, no notice was taken by the Court of the fact that the plaintiff used as a mark the words "Sykes' Patent," when, in fact, the patent was void. But in the case of *Flavel* v. *Harrison* (*o*), where the plaintiff had sold stoves and kitchen ranges under the title of "Flavel's *Patent* Kitchener," and, in fact, he had no such patent; Wigram, V.C., refused on that, among other grounds, to grant an injunction, and directed the motion to stand over for six months, with liberty to bring an action.

With this conflict of authorities, it is somewhat difficult to say which is to be followed. The writer submits, however, that, inasmuch as claiming the actual *ownership* of a *patent*, by the owner of a *trade mark*, when the claim is totally unfounded, is *fraud*

(*o*) 10 Hare, 407.

upon the public, the decision of V.C. Wigram, in *Flavel* v. *Harrison*, is the most likely to be followed.

In *Glenny* v. *Smith* (*p*) the circumstances were these: the plaintiffs were partners in an old firm of "Thresher & Smith," which had been established for more than one hundred and fifty years, carrying on business as hosiers and outfitters, their shop being in the Strand. The defendant had been employed in their shop for about three years, and he then left them and commenced business on his own account in Oxford Street.

His name, Frank Smith, was printed immedintely over the shop window in black letters, of some size, on a *white* ground, while upon the sun-blind, or awning, and the brass plates under the window, were the words "From Thresher & Glenny," the latter words being in *large letters*, while the word *from* was printed diagonally, and in very much smaller letters than the rest. It appeared, from the evidence, that when the sun-blind was drawn down, the defendant's name was not visible, except to persons passing immediately under the window; and it was proved that four persons had been actually misled: and Kindersley, V.C., granted an injunction in the terms prayed by the bill. "The principles," said his Honour, "applicable to cases of this kind, are not in controversy. They are clearly and shortly laid down by Lord Kingsdown, in the case of the 'American Cloth Company,' where he says, 'the fundamental rule is, that one man has no right to put off his goods for sale as the goods of a rival trader; and he cannot, therefore, in the language of Lord Langdale, in the case of *Perry* v. *Truefitt*, be allowed to use names, marks, letters, or other *indicia*, by which he may induce purchasers to believe, that the goods which he is selling, are the manufacture of another person.'"

In *Ainsworth* v. *Walmsley* (*q*) the above mentioned

(*p*) 2 Drew. & S. 476. See also 13 L. T. N.S. 11; and 11 Jur. N.S. 964.

(*q*) L. R. 1 Eq. 518.

principle was recognised; and Wood, V.C., thus stated the law: "The Court has taken upon itself to protect a man in the use of a certain trade mark, as applied to a particular description of article. He has no *property* in that mark, *per se*, any more than in any other fanciful denomination he may assume for his own private use, otherwise than with reference to his trade. If he does not carry on a trade *in iron*, but carries on a trade *in linen*, and stamps a *lion* on his *linen*, another person may stamp *a lion on iron*; but when he has appropriated a mark to a *particular species of goods*, and caused his goods to circulate with this mark upon them, the Court has said, that no one shall be at liberty to *defraud* that man, by using that *mark* and passing off goods of his manufacture, as being the goods of the owners of *that mark*. And, inasmuch as the Court protects the owner of the mark, he is entitled to authorize another (when he hands over his business to him) to place that mark on his goods. That is a right, which, being protected by this Court, may be disposed of for value; may be bought and sold, and is therefore, in that sense, *property*." And after intimating that a man's name is as strong a use of trade mark as can be suggested, the learned judge went on to say: "The use, therefore, of the *name* of another manufacturer, whether done *scienter* or not, is an interference with his business, which this Court will interpose to prevent; on the ground that the defendant is endeavouring to pass off the goods of his own, or of somebody else's manufacture, as the *manufacture of the plaintiff*."

In *Welch* v. *Knott* (*r*), the facts were that the plaintiffs, manufacturers of soda water, &c., under the firm of "Jacob Schweppe & Co.," sold their soda water in bottles, with the words "J Schweppe & Co., 51 Berners Street, Oxford Street, *Genuine Superior Aerated Waters*," stamped upon them in the manufacture; and having over the corks, coloured labels, having a certain form of signature, consisting of the words

(*r*) 4 Kay & J. 747.

"J. Schweppe & Co., by special appointment," with the form of a crown, and other special marks, constituting their trade mark.

The defendants had sold soda water in bottles stamped and impressed with similar words and figures to those stamped or impressed on the bottles used by the plaintiffs; and having pasted over the cork of each bottle, a paper label of a similar colour to those used by the plaintiffs; and having printed thereon, instead of the signature, "J. Schweppe & Co.," the words "Soda Water" in characters similar to those used by the plaintiffs; and having a crown printed on the top, similar to that printed on the plaintiff's labels.

The defence was that the defendants had occasionally purchased lots of second-hand soda water bottles, among which were bottles with the names of different firms, including that of "J. Schweppe & Co." moulded thereon; and that it was the custom of the trade, on selling bottles of soda water, to take in return for the bottles sold, an equal number of similar bottles, without regard to what might be moulded thereon.

The Court was of opinion upon the evidence, that there was no ground for attributing to the defendant any intention to mislead the public, nor for believing that the *public* had been misled; and discharged an *ex parte* injunction; admitting that if the public *had been* misled, the absence of *intention to mislead* on the part of the defendant, would have been no defence.

In *Massam* v. *J. W. Thorley's Cattle Food Company* (*s*), the plaintiffs were the executors of one *Joseph Thorley*, who had for many years carried on the business of selling a food for cattle, known as "Thorley's Food for Cattle;" the packets in which the articles were made up were covered with brown wrappers, on which the words "Thorley's Food for Cattle" were placed conspicuously at the top of a drawing of a farm-yard; and a *facsimile* of Joseph Thorley's signature was written in the right hand corner.

(*s*) L. R. 6 Ch. Div. 574.

The process of manufacture was a secret known only to *Joseph Thorley*, the deceased, and to his brother, *Josiah Watson Thorley*. The plaintiffs had registered the facsimile of *Joseph Thorley's* signature, as the trade mark of the business.

The brother, J. W. Thorley, after the death of Joseph Thorley, entered into a contract with a company (in which he took one share) to sell to the company the *secret process* of the manufacture with which his deceased brother and himself J. W. Thorley, were the only persons acquainted.

The defendants, the company, had issued a prospectus headed with a facsimile of the *seal* of the company (which they had registered as *their* trade mark) and the words, "J. W Thorley's Cattle Food Company, Limited;" and the prospectus contained the following passage: "In making this announcement, the Company beg to say, that, having made arrangements with *Mr. J. W. Thorley, brother of the late Joseph Thorley, of Thornhill Bridge, King's Cross, and for twenty-five years his manager, all the food manufactured will be under his personal supervision and control,*" &c. And the concluding paragraph was, "Therefore the public may have every confidence that the article manufactured and sold by the company, will be genuine and equally beneficial, *it being manufactured in accordance with the original recipe.*"

The motion of the plaintiffs was, according to the Report of the case, for an injunction to restrain the defendant company from carrying on business under certain prospectuses (referring, it is presumed to the prospectus above stated), so contrived as to represent the business carried on by the defendant company as being the business of the *plaintiffs*; or the goods manufactured, sold, or supplied, by or for the plaintiffs, and also restraining the defendant company from using the plaintiff's *trade mark*.

Malins, V.C., in giving judgment, commenced by

saying: "If this were a mere case of trade mark, it is perfectly clear that whatever trade mark *Joseph Thorley* acquired, and had an exclusive right to, would now belong to the plaintiffs, his executors," and on this point his Lordship referred to *Wotherspoon* v. *Currie*, and *Dence* v. *Mason*, and *Croft* v. *Day*. "But this," said his Lordship, "is the case of the production of a certain article which was made by *Joseph Thorley*, and is now made by, or can be made by *Josiah Watson Thorley*, who has just the same knowledge upon the subject as was possessed by his late brother. Now, under these circumstances, he proposes to set up in business. I will take the case first, as if he were doing so in his own individual capacity: would he then be entitled to carry on the business as *Josiah Watson Thorley's Cattle Food*, or using his initials only as, *J. W. Thorley's Cattle Food?* The article is not a patented article, and it was known to each of the two brothers equally. Their name was *Thorley*, and I can see no principle upon which, as *Joseph* was entitled to carry on business, and call what he sells *Thorley's Cattle Food*, Josiah is not entitled to do the same. His name is Thorley, and he sells the same cattle food; and I think, that, even during the lifetime of his brother, if he and his brother had differed and separated, they would both have been entitled to sell the article as *Thorley's Food for Cattle.*" . . . And, in a subsequent part of the judgment, his Lordship said: "In the present case, the evidence is conclusive, that the thing produced by the defendant, *Josiah Watson Thorley*, is the same as was produced and sold by his late brother *Joseph*. He is in possession of the same secret, obtained from the same source." . . . And in p. 581 of the Report, his Lordship said: "The plaintiff's trade mark, is simply *Joseph Thorley* with a facsimile of the signature of his own handwriting. The trade mark of the defendant is a label consisting of the heads of many of the animals who eat this food, if not all. It is as distinct as possible."

. . . I have been unable to discover anything which would lead the public to believe, they were buying one for the other. One is *Joseph Thorley's Food for Cattle*, and this will be advertised as *Josiah Watson Thorley's* or *J. W. Thorley's Cattle Food;* the two things are so perfectly distinct, that I do not think there is any danger of fraud arising out of it." And the motion of the plaintiffs for an injunction was refused.

In *Chubb* v. *Griffiths* (*t*), the defendant (an infant) had advertised second-hand iron safes for sale, and sold them; and they were marked as manufactured by the plaintiff *Chubb*. Lord Romilly, M.R., granted an injunction, saying: "I think that the defendant who sells articles and declares positively that it is *Chubb's* manufacture, is not at liberty to say that he was ignorant of the fact. He was bound to make inquiry before he made so positive a representation."

It was contended for the defendant that being an infant, it was not a case for costs against him, but the Court held that, in such a case, infancy did not protect him against costs (*u*).

It is no defence to a suit for infringement of a trade-mark, for the defendant to say, that the infringement was the act of his servant (*v*). and Lord Romilly, M.R., said: "I cannot assent to the proposition that the defendants are not legally and morally liable. It is a very different thing to infringe a patent, without knowing that the patent has been taken out, and to sell goods with the name of another person upon them. In this case the defendants sell with the name of *Tonge* upon the goods. If they did not know what their servant had done, they were bound to know (*w*)."

(*t*) 35 Beav. 127.

(*u*) The Report states simply that the defendant was *under age*, but from the facts stated, and from the order made, it may fairly be presumed that the defendant, though in the strict point of law, an infant, must have been of an age at which he was in reality competent to make an inquiry.

(*v*) *Tonge* v. *Ward*, 21 L. T. N.S. 480.

(*w*) See also Smith's 'Master and Servants,' cap. 5.

When there were partners in a business, and the partners dissolved the partnership, and one of the partners sold his share to the other, including his interest in the premises, and in the partnership, stock-in-trade, goods, chattels, &c; in fact, using such general words as would be construed to carry everything; and the name "Zingari Bouquet" had been used by the firm as a *trade mark*; it was held that that *trade mark*, though not expressly mentioned, passed under the terms used in the contract to the assignee of the retiring partner. "In the sale of a business," said the learned judge, "a trade mark passes whether specially mentioned or not."

It is therefore infringement, if the retiring partner from a business, uses the trade mark adopted by the firm (*x*).

In the case of *Farina* v. *Silverlock* (*y*), Cranworth, L.C., thus stated the law: "I apprehend that the law is perfectly clear, that anyone who has adopted a particular mode of *designating* his particular manufacture, has a right to say, not that other persons shall not sell *exactly the same article, better or worse*, or an article looking exactly like it; but that they shall not sell it in such a way, as *to steal* (so to call it) *his trade-mark*, and make purchasers believe that it is the *manufacture* to which *that trade mark* was originally applied."

In the case referred to, the circumstances were such as to shew that the labels similar to those used by the plaintiff, might in many instances be sold for a *legitimate purpose*; and there was not sufficient evidence that the defendant (a printer) had sold them for *fraudulent* purposes; and the L.C., reversing the order for an injunction of the Court below, ordered the bill to be retained for six months, with liberty to the plaintiff to bring an action.

It should be always distinctly understood, that the

(*x*) *Shipwright* v. *Clements*, 19 W. Rep. 599.
(*y*) 6 De G. M. & G. 214.

equity of a person to relief, in the form of an injunction protecting the owner of a trade mark, is founded on the jurisdiction of the Courts of the Chancery Division to give relief in the shape of *preventive justice*, in order (to use the words of Lord Cranworth, C., in *Farina* v. *Silverlock*) "to make more effectual a *legal right*, being a *right* to have a particular trade mark to designate a commodity."

In a case occurring in the year 1828, where a *foreigner* residing *abroad*, had invented a preparation, which he described in terms which would justify the creation of a trade mark; and he employed agents in England to sell his preparations with the trade mark upon them; he was not protected by the Court (*z*). But it would be otherwise now, under the 25 & 26 Vict. c. 88, sects. 1 & 2, referred to *ante*, in p. 13.

In the case of *Rodgers* v. *Nowill* (*a*), referred to *ante*, p. 6, the plaintiff, a manufacturer of cutlery, filed a bill for an injunction and an account.

The bill stated that the plaintiff's trade mark was "J. Rodgers & Sons" with the addition of *a crown* of the reigning Sovereign, between the initials, and they charged the defendant with manufacturing, or purchasing and selling cutlery stamped or impressed with marks in exact, or, at least, very close imitation of the plaintiff's marks. The defence was that the defendants purchased their goods from a firm of long standing, conducting their business under their own name, viz., "John Rodgers & Sons," and that they sometimes purchased the goods sold by them, from the said firm, "J. Rodgers & Sons," and sometimes from the plaintiff's own firm.

The Court refused to interfere by injunction, and gave liberty to the plaintiffs to bring an action at law (see the order on p. 334 of the Report).

An action was brought by the plaintiffs (*b*) and the

(*z*) *Delondre* v. *Shaw*, 2 Sim. 237.
(*a*) 6 Hare, 315.
(*b*) *Rodgers* v. *Nowill*, 5 C. B. Rep. 109 (Man. & Gr.)

jury found for the plaintiffs; and a motion for a new trial was refused. Wilde, C.J., said: "The real question is, whether the law will protect a manufacturer from having goods fraudulently palmed upon the world as goods made by him, when in truth they are not so" (*c*); and further, his Lordship said (*d*), "it has moreover been held necessary to be proved in actions of this description, that the plaintiff being a manufacturer, has been accustomed to use a certain mark, to denote that the goods so marked were of his manufacture; that such mark was well known and understood in the particular trade; and that the defendant had adopted the mark, and sold goods bearing it, as and for the plaintiff's goods, with intent to deceive. I am not aware that more has ever been required."

And Coltman, J., said: "I agree with the law laid down by my Brother Williams, that no man has a right to sell goods of his own manufacture, upon a false and deceitful representation, that they are of the manufacture of another"(*e*).

The case of *Hirsch* v. *Jones* (*f*), was of a rather singular character. The plaintiff was a cigar merchant in *London*, and bought his cigars of a particular description, from one *Joseph Genir*, a manufacturer at Havannah. In the year 1869 the plaintiff adopted a label with a device representing *Britannia*, and the inscription "Gloria de Inglaterra," which he registered at *Stationers' Hall*, as his own *copyright*. He then wrote to Genir, stating that he had secured that device as his own exclusively, so that no one else could use it, and requesting Genir to affix the said label on all the boxes of cigars consigned to the plaintiff. Genir complied with this request, using the device on all the boxes consigned to the plaintiff, adding (in Spanish, "*of Joseph Genir, manufacturer of cigars, of* Havannah," and he, Genir, so supplied the plaintiff for

(*c*) *Rogers* v. *Howill*, 5 C. B. Rep. at p. 122. (*d*) See p. 124.
(*e*) See p. 126. (*f*) 3 Ch. Div. 584.

several years. The plaintiff afterwards discovered, that Genir also supplied his own agents with boxes of similar cigars, with the brand of "Gloria de Inglaterra;" and the plaintiff brought his action to restrain *Genir* from selling any boxes with the aforesaid label affixed; he, the plaintiff, claiming that label as his own exclusive trade mark. There was no contention that the particular description of cigars should be supplied to the plaintiff exclusively. The agents of Genir were the defendants. The M.R., Sir G. Jessel, held that in that state of the action the plaintiff had no case, and refused an injunction, on the ground that the mark, if it belonged to any body, would belong to the manufacturer, Genir, and not to the plaintiff who did not *manufacture*, and did not even *select*. "If," said his Lordship, "Hirsch had put on the boxes, 'Gloria de Inglaterra, Havannah Cigars, *selected* by *Hirsch*,' he might have had a case to prevent other people imitating that: it would shew that the cigars were selected and approved by him; if he got a great reputation in that way, I can understand he would have a right of protection for that which indicates to the public that the cigars were *selected and approved* by him. That is not his case; there is nothing on the boxes to shew any thing about *Hirsch* at all."

In *Barnet* v. *Leuchars* (*g*), the plaintiff made fireworks called "Pharaoh's Serpents," and sold them in boxes, each containing one serpent, and the boxes bore a particular label. A great number of these boxes so sold, came into the defendant's hands after their contents had been used; and he put into the boxes serpents of his own make, and sold them.

The complaint of the plaintiff was, that the public were thus deceived into believing they were buying the *plaintiff's serpents*, to his injury, and this assertion was proved by witnesses. The V.C., Sir J. Stuart, said: "It is plain that the defendant by using these boxes for

(*g*) 13 L. J. N.S. 495.

the purpose of packing his own fireworks has been infringing on the plaintiff's right; according to the principle which governs these cases, an owner has an *exclusive right* to a trade mark or label, and that right is to be regarded as *his property*;" and his Honour granted an injunction.

Where the plaintiff, "Dr. Browne," a surgeon, had discovered a new medicine, which he designated as "Chlorodyne," and sold it as his medicine under that title, and he had filed a bill against the defendant "Freeman," a pharmaceutist, to restrain him from selling a medicine under the title of his, the defendant's, "Chlorodyne," and the plaintiff dismissed his bill, being advised that his case was doubtful; and afterwards the defendant adopted a new name, and sold his medicine under the title of "The *Original* Chlorodyne," and the plaintiff then filed a second bill, to restrain the use of that title by the defendant; and it was not shewn that anyone had been deceived by the title of "The Original Chlorodyne" into supposing that he was buying "Browne's Chlorodyne" the Court refused an injunction, and ordered the case to stand over to the hearing (*h*).

It has been before stated that it is immaterial in a case where A. has imitated the trade mark of B., whether A. was or was not aware of B.'s trade mark as such; and an injunction will be granted and an account directed; and in a recent case(*i*), Sir J. Romilly, M.R., said: "The more I consider this case, the more I am confirmed in the view I took with respect to the decided cases. I consider the rule at Law and in Equity to be the same. The first question which arises in all these cases is one of fact, and is, whether the mark used by the defendant is a colourable imitation of a genuine trade mark of the plaintiff? That is a question to be determined at Law, by a jury, and in Equity by the

(*h*) *Browne* v. *Freeman*, 12 W. Rep. 305.
(*i*) *Carter* v. *Carlisle*, 31 Beav. 292.

judge. If it be found that the trade mark used by the defendant, is not a colourable imitation of the genuine trade mark, the whole thing is at an end. . . . But if it be found that there has been a colourable imitation of a trade mark, it follows that the person making it, intended to imitate the genuine trade mark belonging to some individual, though he might not have known his name, or anything about the persons to whom it belonged. In all these cases, there must be imputed to a person imitating a trade mark, a desire to gain the advantages which are attached to the use of that particular trade mark, and which is the private property of another person."

In *Day* v. *Binning* (*j*), the plaintiff and defendant were both manufacturers of blacking. The plaintiff's labels described their blacking as "manufactured by Day & Martin." The defendant described his blacking, as "*equal* to Day & Martin's" and the word *equal* was printed in very small type. And an *ex parte* injunction was granted, restraining the defendant from using any labels in imitation of the plaintiff's.

Where a tradesman carrying on his business at a house on Ludgate Hill, known as "Osborne House," became bankrupt, and the plaintiff purchased from the assignees of the bankrupts the premises so called, with the fixtures and trade utensils, and the goodwill of the business; and the bankrupt, after his discharge, renewed his former line of business in partnership with his former foreman on premises in the Old Bailey, only three doors from Ludgate Hill, and called their new house "Osborne House," he was restrained by injunction from continuing to use the name of "Osborne House," or "Osborne's House," and from issuing billheads or emblems leading to hold out, that he and his partner were successors to or in continuation of the business carried on as formerly by the defendant Osborne, at Ludgate Hill (*k*).

(*j*) 1 Ch. P. Cooper, Ch. Pr. 489. (*k*) *Hudson* v. *Osborne*, 21 L. T. N.S. 386.

Though the *title* given to a publication, may, under circumstances, be treated as a *trade mark*, and entitle the owner to the protection of such trade mark, yet in a case where one comical periodical was known under the title of *Punch*, and another under the title of *Judy*, and a third publisher issued a periodical under the name of *Punch and Judy*, V.C. Malins refused to grant an injunction to the owner of *Punch*, saying, "That he came to the conclusion, that the publication of the defendant was not calculated to *mislead* any body of common intelligence and observation." "The Court," said his Lordship, "cannot interfere for the sake of heedless people, who know not, or would not take the trouble to see what they are purchasing" (*l*).

The doctrine of laches is as applicable to trade marks as to other subjects, so that the Courts will not in general grant an injunction restraining infringement of a trade mark, if there has been material delay on the part of the plaintiff in seeking his remedy, when he is cognisant of the infringement. Thus, in *Beard* v. *Turner* (*m*), where the plaintiff was cognisant of the infringement of his trade mark for a long time, viz. two years before he filed his bill, Wood, V.C., refused an injunction. But in *Harrison* v. *Taylor* (*n*), cited *ante*, though there had been considerable delay on the part of the plaintiff, the circumstances were not such as to call for the strict application of the doctrine of laches, for the defendant had persevered in the infringement after being cautioned; and though the Court granted an injunction, it refused to the plaintiff any account of profits, on the ground of his delay.

The distinction drawn by the Court in the above mentioned cases, seems founded on the broad principle of Equity, that to obtain relief, the party seeking it must come into Court with clean hands; and it would seem that in *Beard* v. *Turner* the learned judge

(*l*) *Bradbury* v. *Beeton*, 39 L. J. 57. (*m*) 13 L. J. N.S. 716.
(*n*) 11 Jur. (N. S.) 408.

inferred from the circumstances, that the plaintiff's delay *might* be founded on an unfair intention, viz., that of laying a foundation for claiming *profits*.

In determining on a question of alleged infringement of a trade mark, the Court will look, not at the evidence of *manufacturers*, that they could distinguish between the plaintiff's trade mark and the alleged imitation, but whether the *public* could perceive the difference (*o*).

In the case of *Southorn* v. *Reynolds* (*p*), the father of Edwin Southorn, the plaintiff, and his brother William Southorn, had established and for many years carried on at *Brosely* in Shropshire, a large and lucrative manufactory for making clay pipes for smoking; which pipes had obtained great repute, and had become extensively known as Southorn's *Brosely* Pipes. The brothers, after the death of their father, carried on the same business, each separately, at Brosely. The defendant was a pipe manufacturer in the City Road, and had no connection with *Brosely*, and he sold clay tobacco pipes in boxes or cases marked or printed with a label or description, part of which was in large and conspicuous letters: "Reynolds' Purified Clay Pipes, made by Southorn, from *Brosely*." A point made in the defence, was that the defendant was as much entitled to use the word *Southorn* as the plaintiffs, as he had a man of that name in his employ who acted in the manufacture of the pipes: and as to the use of the word *Brosely*, it was contended that the plaintiffs were not the only pipe makers in *Brosely*. There was however evidence that persons had been *deceived*, and thought they were buying *Southorn's pipes*, when they were in fact buying Reynold's pipes. This was clearly fraud, and Wood, V.C., granted an injunction.

In the case of *George Cheavin* v. *Walker* (*q*) a patent

(*o*) *Shrimpton* v. *Laight*, 18 Beav. 164; and see also *Glenny* v. *Smith* cited *ante*.

(*p*) 12 L. J. N.S. 75.

(*q*) L. R. 5 Ch. Div. 850.

for the manufacture of *a filter* had been granted in April, 1862, to the plaintiff's father, S. Cheavin, and the plaintiff, jointly. S. Cheavin died in August, 1862. The plaintiff had ever since manufactured and sold filters at Boston, for some time, viz., till 1867, under the style of "S. Cheavin;" and from and after that date, when he came of age, he traded under his own name, G. Cheavin. On the filters were a tablet, which, after 1867, was as follows: "*G. Cheavin's* Improved *Patent Gold Medal* Self-cleansing *Rapid Water Filter, Boston, England;*" and above that, was a medallion containing the Royal Arms, surrounded by a band, or garter, with the words: "by Her Majesty's Royal Letters Patent." The plaintiff's filters were generally known and asked for in the trade and by the public, as *Cheavin's* filter.

The patent above referred to had been allowed to lapse in 1865; so that, in fact, it was a misrepresentation to call it Cheavin's Improved *Patent* Water Filter.

The defendants made and sold filters made upon the principle of the plaintiff's filters, and bearing externally so close a resemblance to them, that the difference was not perceptible, even upon a close examination. And the defendants placed upon their filters a tablet or inscription bearing the following words: "*S. Cheavin's Patent Prize Medal* Self-cleaning Rapid Water Filter, *Improved and Manufactured* by Walker, Brightman, & Co., Boston, England."

On the plaintiff's discovery of the making and selling by the defendants of their filters, and on his calling on them to desist from infringing what he called *his trade mark*, the defendants offered to alter their labels, by reducing the size of the words *S. Cheavin's* and also to increase the size of the words "Walker, Brightman, & Co." The plaintiff, however, insisted upon the total removal of the name *Cheavin*, and in his statement of claim, asked for an injunction to restrain the

sale of filters by the defendants, bearing the name of "Cheavin, or S. Cheavin."

On the case coming on for hearing, Bacon, V.C., granted an injunction, with an inquiry as to damages and costs; his Lordship appearing to have considered the name *S. Cheavin*, to have been a *trade mark* in which the plaintiff had a *property*, and that the use of the word *patent* was only an indication that there *had* been a patent.

On appeal, the Court reversed the decision of the Court below, and dismissed the action with costs; the Court holding, firstly, that there was no trade mark; secondly, that the use of the word *patent*, when the patent was not in existence, was a false representation; and, thirdly, that there was no fraudulent imitation on the part of the defendants, as to the use of S. Cheavin's name on his labels, as it amounted to no more than that the defendants informed the public, that their filters were improved and manufactured according to S. Cheavin's expired patent.

Jessel, M.R., said, "As to the question of *trade marks*, I am of opinion that the plaintiff has no trade mark. What he uses, is an inscription, which he chooses to place or bake on his filters, and which tells its own story. The patent taken out by the plaintiff's father, was for improvements in filters, and the inscription shews that the filter is made in accordance with that patent. The inscription is not in distinctive characters, but in ordinary type. There is nothing in it to shew that it was made by any particular manufacturer. It is not possible to say that such an inscription, is a *trade mark*." As to the use of the term *patent*, his Lordship said, "No doubt a man may use the word *patent* so as to deceive no one. It may be used so as to mean that which was a patent, but is not so now. In other words, you may state in so many words, that the article is manufactured in accordance with a patent which has expired. But if you suggest that it is

protected by an *existing patent*, you cannot obtain the protection of that representation as a trade mark." Further, his Lordship said, "no man can claim a trade mark in *a falsehood*. It is *a falsehood*, to represent that the patent is still subsisting." And as to the contention of the plaintiff, that supposing the inscription not to be a trade mark, it was an advertisement which the defendants had fraudulently imitated, his Lordship said, "that he could not see any fraudulent imitation in the defendants' labels." And Lords Justices James and Baggallay both concurred in the view taken by the Master of the Rolls.

Orr v. *Diaper* (*r*) is not properly a trade mark case, but rather a case of pleading. It is, however, important, as bearing upon the right of the owner of a trade mark to the protection of the Court of the Chancery Division.

In that case, the plaintiffs carried on under the firm of "R. F. & T. Alexander & Co.," the business of sewing cotton and thread manufacturers, and they sold the same both for home and for certain foreign markets, including *Valparaiso*. The cottons and threads were made up for sale in different coloured papers; and certain *tickets, specially designed*, were used to distinguish them from the cottons and threads of other manufacturers. In the summer of 1874, the plaintiffs discovered that considerable quantities of sewing cotton of *an inferior quality*, were being sold in foreign markets (especially in *Valparaiso*), packed in the same manner as the plaintiffs', and bearing *tickets purposely designed*, in imitation of theirs, the plaintiffs'.

The defendants carried on an extensive business as shippers at Liverpool; and the plaintiffs had ascertained that they (the defendants) had been for some time shipping cotton and thread to Valparaiso and elsewhere, packed in the same manner as theirs (the

(*r*) L. R. 4 Ch. Div. 92.

plaintiffs'), and bearing counterfeit tickets. The plaintiffs' solicitors then wrote to the defendants, inquiring the names of the persons from whom they received the goods, and on whose behalf they were shipped. The defendants' solicitors wrote to the plaintiffs' solicitors, asking to be informed to what shipments they referred, stating the ship, the consignees, and the date of the shipment; and stating, that if their clients (the defendants) could give the information, they would be advised to do so.

The plaintiffs' solicitors stated in a subsequent letter, that they had ascertained that the goods had been shipped through the defendants, and adding that their clients could quite understand that Messrs. *Diaper & Co.*, were innocent of any intention to act prejudicially to them the plaintiffs; and that if they, the defendants, were prepared to give to them "the names and addresses of all persons and firms from whom they, the defendants, had received cotton thread for shipment to Valparaiso within the preceding two years, the necessity for further proceedings might cease;" and the letter added, that the writers had discovered one of the offenders, and that he shipped through Messrs. Diaper, the defendants; and that they knew that there were other persons who had shipped through the defendants' firm, but had not been able to discover their names. To this letter no reply was made. The plaintiffs then filed their claim, stating that the defendants had for two years received for shipment and had shipped, cotton thread for *Valparaiso* and elsewhere, packed in the same manner as the plaintiffs', and bearing counterfeit tickets; that the defendants well knew the tickets, and the injury to the plaintiffs, so that they ought to set forth the names of the persons and firms, &c.

The claim also stated that the discovery was so sought "in aid of proceedings in contemplation by the plaintiffs to restrain the piracy of their tickets; and

that the proceedings contemplated could not be maintained without the *discovery* sought," and the prayer was, "that the defendants might make a full and complete discovery of the matters thereinbefore stated."

No other relief was prayed, and the defendants demurred to the action, on the ground that they (the defendants) "had not such an interest in the matters alleged in it, as to entitle the plaintiffs to discovery from them on the subject; they being liable to be examined as witnesses in any proceedings which the plaintiffs might have in contemplation."

The demurrer was overruled. The learned judge concluding his analysis of the circumstances thus: "In this case, the plaintiffs do not know, and cannot discover, who the persons are who have invaded their rights, and who may be said to have abstracted their property. Their proceedings have come to a dead lock, and it would be a denial of justice, if means could not be found in this Court, to assist the plaintiffs" (*s*). And the defendants were ordered to put in their answers in one month.

It is submitted to the reader, that, from the authorities cited in the foregoing chapter, the following general rules or principles may be deduced :—

(1.) That where there is (as to a trade mark) *some similarity*, but also *considerable dissimilarity*, between the mark used by the complainant, and the mark used by the defendant, that does not amount to such *infringement* as will justify an *injunction*.

(2.) That though a defendant has in general a right to use *his own name*, he has not a right to use it to the injury of a plaintiff of the *same name*, if there is any *fraud* connected with the imitation; and if there is such fraud, his so using his name, will be treated as infringement.

(3.) That the ignorance of a defendant of the plaintiff's trade mark, is no defence to an action for in-

(*s*) See also on this kind of subject, *Dixon* v. *Enoch*, L. R. 13 Eq. 394.

fringement. And, that where there is only even a *partial* imitation of a trade mark, yet if it is made *fraudulently*, that amounts to infringement. In fact, any *fraud* in the use of another man's trade mark, calculated to *mislead the public*, is infringement.

(4.) That where there is in the alleged imitation of a trade mark, such an extent of similarity that persons of *ordinary caution* may be misled, that is *infringement*. *Secus*, if the imitation is so far different from the original mark, that persons of *ordinary perception and caution* could discover the *difference*.

(5.) That the doctrine of *laches* is applicable to cases of trade mark, so that, if the owner, without good reason, delays taking proceedings within a reasonable time, the Court will not grant an injunction.

(6.) That when the word *patent* is coupled with a trade mark, and there is no such patent, that is, in general, *fraud*. But, that surrounding circumstances, shewing that the public is not misled by the word, *may* justify the use of the word *patent*.

CHAPTER IV.

OF FRAUD IN RESPECT OF, OR CONNECTED WITH TRADE MARKS.

It is scarcely necessary to state, that *fraud* of any kind, whether relating to trade marks, or to any other subject of a *right*, is an offence of which Equity will take notice, and which it will repress. And this doctrine is strictly applied by Equity, not only to cases of *actual trade marks*, but to cases where there may not be strictly in point of law, a *trade mark*, but something indirectly approaching the nature of a *trade mark*.

Thus, in the case of *Holloway* v. *Holloway* (*a*), there were two brothers; Thomas Holloway and Henry Holloway. Thomas Holloway had for some years made and sold pills and ointments under the name of "*Holloway's* Pills and Ointment;" and Henry Holloway commenced selling, nearly close to his brother's shop, pills and ointments, under the description of "H. Holloways Pills and Ointments:" His pill boxes and pots being similar in form to the plaintiffs, and his labels and wrappers being copies of his brother's (the plaintiff's) boxes and wrappers. And an injunction was granted, the Court saying, "I think this is as clear and as plainly avowed *a fraud*, as I ever knew. I do not mean to say that I have any sort of respect for this sort of medicine; I have none; but the Law protects persons from fraudulent misrepresentations, and this is a species of property which the Law does allow."

Now in this case, it is clear, that Henry Holloway had as good a right to use his own name, as his brother

(*a*) 13 Beav. 209.

Thomas Holloway had to use his; but, the imitation of his brother's pill boxes and wrappers was clear *fraud*, whether the pill boxes and wrappers of Thomas were or were not actually a *trade mark*, though they might perhaps be in the nature of trade marks.

But in a case arising before the Act of the 25 & 26 Vict. c. 42, where there was material doubt, whether the person claiming an exclusive right to a *trade mark*, could sustain his title *at law*, an injunction was refused in Equity until the *legal title* was established, even though there was strong indication of *fraud* on the part of the defendant (*b*).

In the case referred to, there was (it appears by the Report) strong indication of *fraud* on the part of the defendant: but considerable *doubt* whether the plaintiff could maintain his title to the trade mark at law; and an injunction which had been granted was dissolved, and the plaintiff was directed to try his title at law.

In the case of *Cocks* v. *Chandler* (*c*), the plaintiff was the successor in business of the original inventor of "Reading Sauce." This sauce had been invented many years before the institution of the suit, by one James Cocks, who originally called it simply "Reading Sauce," and under that name, it had acquired considerable reputation. In order to distinguish the sauce from a sauce made subsequently by other persons, it was afterwards called by Cocks and his successors, "The *Original* Reading Sauce," and the plaintiff also used labels on which the sauce was always described as "The *Original* Reading Sauce;" and the name of the plaintiff *Cocks* and his place of business were also on the labels. The defendant used a wrapper having on it the Royal Arms, and underneath, the words "The *Original* Reading Sauce, prepared by Christopher Chandler & Co.," giving their address.

The plaintiff admitted that the only thing he could object to was the use of the word *original* on the

(*b*) *Purser* v. *Brain*, 17 L. T. N.S. 141. (*c*) L. R. 11 Eq. 446.

defendant's wrappers; and Lord Romilly, M.R., held, that the defendant was not entitled to use the word *original*; and his Lordship granted an injunction accordingly. From the language used by his Lordship, (see pp. 450, 451 of the judgment) it seems that he did not treat the title given by the plaintiff to his goods, as actually a *trade mark*, but considered the false representation of the defendant, in using the word *original*, as a *fraud* upon the public.

Lee v. *Haley* (*d*), appears to have been decided on the same principle as *Cocks* v. *Chandler*, viz., not on the ground that the plaintiff had strictly a *trade mark*, but on the ground that the defendant's conduct shewed plainly, that he endeavoured to lead the public to believe, that his business was the plaintiff's business.

"I quite agree," said Giffard, L.J., in this case, "that they (the plaintiffs) have no property in the *name*; but the principle upon which the cases on this subject proceed, is not that there is *property* in the word, but that it is a *fraud* upon a person who has established a trade, and carried it on under a given name, that some other person should assume the same name, or the same name with a slight alteration, in such a way as to induce persons to deal with him, in the belief that they are dealing with the person who has given a reputation to the name."

Churton v. *Douglas* (*e*), is also not strictly and properly a *trade mark* case, but it is approximate, and the judgment on it is founded upon the same principles as those applicable to trade mark cases, strictly so called. In the case referred to, John Douglas, the defendant, had carried on business with other persons for a considerable time, as stuff merchants, under the name of "John Douglas & Co." Subsequently the partnership was dissolved, John Douglas assigning all his interest in the business and the goodwill thereof, to his late partners, who then proceeded to carry on the

(*d*) L. R. 5 Ch. App. 155. (*e*) Johnson's Reports, 174.

business under their own name, adding the words "late John Douglas & Co."

John Douglas, the defendant, afterwards established and carried on with others, some of whom had been connected with the original firm, the same kind of business close to the premises of the original firm, and under the title of "John Douglas & Co."

Wood, V.C., observed, that "When the defendant parted with the goodwill of the business to the plaintiffs, he handed over to them *all the benefit* that might be derived by holding themselves out as the persons interested in that particular business; which business had been identified as being carried on by the particular firm" (*f*), and his Lordship, treating the conduct of the defendant as in fact *fraud*, or in the nature of *fraud*, granted an injunction restraining the defendant from carrying on the business at or in the immediate neighbourhood, either alone or in partnership with others, under the style or firm of *Douglas & Co.*; or in any other manner holding out, that he was carrying on the business in continuation of, or in succession to, the business carried on by the former firm of *Douglas & Co.*

In the case of *Radde* v. *Norman* (*g*), the plaintiffs had adopted for their salt called "Kainit," the term of "Leopoldshall Kainit" (*h*), and they claimed an exclusive right to the use of the word "*Leopoldshall.*"

The defendants advertised and sold the salt under the same title "Leopoldshall Kainit," and it was alleged by the plaintiffs, that the defendants' material was inferior to the plaintiffs', and that by such sale under the same title as the plaintiffs, they the plaintiffs were much damaged.

It was contended for the plaintiffs, that the word "Leopoldshall" was in fact a *trade mark*; and it was

(*f*) See Johnson's Reports, pp. 189, 190. (*g*) L. R. 14 Eq. 348.
(*h*) For the history of the application of the above term see pp. 348 and 349 of the Report.

urged for the defence that that view of the case could not be sustained. In giving judgment, Wickens, V.C., after referring to all the facts, said: "I must treat this case therefore, as one in which the plaintiffs have established *primâ facie*, what I admit to be a very difficult title to establish, viz., a title to the exclusive use of a *particular word* as a trade mark; and that the defendants have used the *same word* without any justification or excuse." And his Lordship granted an injunction. It should be observed that in this case, there was a good deal to shew *mala fides*, on the part of the defendants (*i*).

Clark v. *Freeman* (*j*), appears not to have been considered as properly a case of *trade mark*. In that case, the application by Sir James Clarke, an eminent physician, was for an injunction to restrain the defendant from "selling or exposing to sale, or from causing to be sold, any pills or other medicine, described as or purporting to be those *of the plaintiff*; and from publishing or circulating, or causing to be published or circulated, advertisements or handbills, so contrived or expressed, as to represent that any medicine sold or prepared to be sold *by the defendant*, was so sold by him as the *agent or on behalf of*, or *under the sanction or approbation*, or with the *authority of the plaintiff*."

The facts were as follows: the plaintiff was an eminent physician practising in London, and he had devoted especial attention to the treatment of consumptive diseases, and had written and published works treating of such diseases. The defendant, a chemist and druggist, had been offering for sale, and advertising extensively, certain pills which he called (without any authority from the plaintiff, Sir Jas. Clarke) "Sir J. Clarke's Consumptive Pills,' and he had published an advertisement to the following effect: "By Her Majesty the

(*i*) See the judgment at length. The doubt of the learned judge as to whether the use of the word "Leopoldshall" could *per se* constitute a trade mark, seems to the writer to be now set at rest by the 10th sect. of the Trade Marks Act, 1875.

(*j*) 11 Beav. 112.

Queen's permiesion, Sir Jas. Clarke's Consumptive Pills." Then followed a long tirade (in pure advertising style) upon the horrors of consumption; and the advertisement ended by using the following terms: "*Agent*: W. R. Freeman, Kennington Road, and to be had of any vendor; price 2*s.* 9*d.*" And the defendant also published handbills and advertisements to a similar effect.

It was contended for the plaintiff that this was a *fraud* and misrepresentation, which ought to be restrained by the Court, and *Sykes* v. *Sykes*, *Perry* v. *Truefitt*, *Croft* v. *Day*, and *Knott* v. *Morgan* (referred to in previous pages) were cited.

Lord Langdale, M.R., refused to grant an injunction, on the ground, firstly, that the offence seemed to be an injury in the nature of *slander*, and might be an injury to the public; that in that view, the conduct of the defendant would be in the nature of a *public offence*, and that a Judge sitting in Equity could not decide such a case, till the offence was established *at Law*: and finally, his Lordship, admitting that the act of the defendant was an injury to the plaintiff in the way of slander, and might be a serious injury to the public, said: "I think that granting an injunction in this case, would imply that the Court has jurisdiction to stay the publication of a *libel*, and I cannot think it has."

In a recent case, however (*k*), Lord Cairns, then L.J., said, referring to *Clarke* v. *Freeman*, "it always appeared to me, that *Clarke* v. *Freeman* might have been decided in favour of the plaintiff; on the ground that he had a *property* in his own name;" and in the case of the *Springhead Spinning Co.*, v. *Riley* (*l*), Malins, V.C., said, referring to *Clarke* v. *Freeman*, "I confess myself wholly unable to coincide in the reasoning of Lord Langdale in that case, and the decision may now, I think, be considered as erroneous, for the reasons stated by Lord Cairns, in *Maxwell* v. *Hogg* (*m*), and his Lordship

(*k*) *Maxwell* v. *Hogg*, L. R. 2 Ch. Ap. 307. (*l*) L. R. 6 Eq. 551.
(*m*) See p. 561 of the judgment.

added: "I must say, that it is perfectly clear to my mind, at all events, that a man has a sufficient *property* in his own name, to prevent another from falsely passing off injuriously to his reputation, medicines as personally prescribed by him, which might cause a total destruction of his character."

It must be remembered that at the date of *Clarke* v. *Freeman* (1848) it was not, in the first place, quite settled that a *name* could even as a *trade mark* be strictly, *property*; but the use of another man's name, in such a manner as that pursued by the defendant in *Clarke* v. *Freeman*, was at least a *fraud* upon the public, and equally a fraud as against *the plaintiff*; and the writer ventures to draw from the *dicta* above referred to of Lord Cairns and V.C. Malins, that if a case substantially similar to *Clarke* v. *Freeman* were to arise at this day, a Court of the Chancery Division would grant an injunction.

In the case of *Liebig's Extract of Meat Co.* v. *Hanbury* (*n*), it appears that in the year 1847 Baron Liebig had discovered and published a process for making an extract of meat; and the extract was made extensively at the Royal Pharmacy, Munich, and sold with the sanction of Baron Liebig. The name or term "Liebig's Extract of Meat" became also used as a term of art in scientific treatises. In 1864, a company called the "Fray Bentos Co.," obtained from Baron Liebig, the right of using his name in respect of their manufacture of the meat according to his process. In 1864, the plaintiffs bought the business and property of that company, and by a deed poll, the "Fray Bentos Co. granted to the plaintiffs their right to use the name of "*Liebig*."

The defendants had previously sold extract of meat manufactured by the Fray Bentos Co, and in 1866 they began to sell as "Liebig's Extract of Meat," an extract manufactured in *Australia*, after Liebig's process.

The plaintiffs filed a bill for an injunction against

(*n*) 17 L. T. N.S. 298.

the defendants, to restrain them from using the name of "Liebig's Extract of Meat," and the Court held that there was no fraud on the part of the defendants, and dismissed the bill; the Court treating the term "Liebig's Extract of Meat" as merely a term used to designate a well-known process, long before the plaintiffs bought the business.

In the case of *Stephens* v. *Peel* (*o*), the plaintiffs were the executors of Henry Stephens, who had discovered a process for making an ink of a blue colour, which possessed the peculiar quality of first writing in *blue*, and after a few hours of turning into a *jet black*; and he had manufactured and sold such ink for many years down to the time of his death; and he called this ink, "Stephens' Blue Black Writing Fluid." The words on the labels which he put on his bottles of ink, consisted in part of *white* letters on a *red* ground, and in part of *blue* letters on a white ground. The labels were surmounted by a *white* crown, on a *blue* ground, and bore in a prominent position, the words: "Stephens' Blue Black," in *white* capital letters of large type.

The defendant carried on a similar business in another part of London, and had been offering for sale, ink not made by the plaintiffs, in bottles not materially differing in size and appearance from the plaintiff's bottles.

The defendant's labels consisted in part of *white* letters on a *blue* ground, and in part of *blue* letters on a *white* ground; and were surmounted by a *white crown* upon a *blue* ground, and bore in a prominent position, the words "*Steelpens* Blue Black."

The defendants contended that the word "Steelpens" was so different from "Stephens," as to deceive no one. But the Court, as might well be expected, took a different view, and held, that, looking at the circumstances of the case, and the labels, and the surrounding circumstances, there was a fraudulent and colourable imitation of the plaintiff's trade mark.

(*o*) 16 L. T. N.S. 145.

In *Franks* v. *Weaver* (*p*), referred to by Lord Hatherley, L.C., in *Wotherspoon* v. *Currie*, the circumstances were somewhat similar to those of *Wotherspoon* v. *Currie*.

The plaintiff had invented a medicine to which he gave the name of "Franks' Specific Solution of *Copaiba*;" and under that designation he sold it.

The defendant, an agent of the plaintiff, in selling the plaintiff's medicine in the country, had been in the habit of also selling a preparation of *Copaiba*, as his own, designated on his labels, by the words "Chemical Solution of Copaiba."

In his wrappers, he referred much to the plaintiff's solution, stating the adoption of that solution by many eminent medical men. The Court held this course of proceeding to be a fraud, on the ground, that the defendant was doing that which was calculated to make persons believe that when he was selling *his own articles*, he was in fact selling the *plaintiff's*; and *that*, his Lordship said, was "palpable fraud."

The case of *Cope* v. *Evans* (*q*), seems to be somewhat inconsistent with the case of *Harrison* v. *Taylor* and *Millington* v. *Fox*, before cited, which went upon the doctrine, as before mentioned, that it is immaterial, where there is substantial similarity between the plaintiff's trade mark and the defendant's, whether the defendant did or did not know of the plaintiff's trade mark.

The Court, however, in *Cope* v. *Evans* came to the conclusion, that, considering that no one had been actually deceived, the similarity between the words "Flor fina Prairie, Superior Tabac" and "Flor de la Prairie," was not sufficient to justify an injunction; whereas, in *Harrison* v. *Taylor*, it was held that the prominent feature of an *Ox* in both the trade marks, might mislead, even though the word *mustard* on the plaintiff's mark, was not on the defendant's.

(*p*) 10 Beav. 297. (*q*) L. R. 18 Eq. 138.

James v. *James* (*s*). is rather a singular case, relating to an infringement obviously, on the facts, tainted with fraud. Robert James, an officer in the army, was the original discoverer, previously to 1833, of a chemical preparation or ointment, which became widely known and sold, as "Lieut. James' Horse Blister." He took no patent for it. Therefore the only exclusive title that he could claim, was, that, being publicly and generally known and purchased under the above name or title, that name or title would be his *trade mark*. Lieut. Robert James died in 1865, having during his life executed certain deeds, under which, on his death, the whole benefit of his discovery, and the right to use his name on the labels, became vested in the plaintiffs, as trustees, for the benefit of his own family, and of one of his brothers.

The defendant was a son of one of the trustees of the plaintiff, and had been, previously to the death of Lieut. Robert James, employed by the plaintiff for some time before 1865 in manufacturing the ointment or blister. The bill alleged that, while so employed, the defend nt, Robert *Joseph* James, had become acquainted with the secret of the ointment, but had been strictly enjoined by his father (one of the plaintiffs) and was under an implied promise, not to disclose the secret of the composition. This was however denied by the defendant.

Sometime in 1867, the defendant began to manufacture, in conjunction with a co-defendant, and to sell, an ointment which they advertised as "Lieutenant James' Horse Blister;" and their advertisements concluded with these words, "None is genuine without the trade mark, *a horse's head*, on the top of each pot, and the signature, Robert James," the defendant having dropped the name *Joseph*, part of his real and original name.

The defendants had also issued circulars as to the

(*s*) L. R. 13 Eq. 421.

value of the preparation known as "Lieut. James' Horse Blister."

The case argued for the plaintiff was in substance that, assuming the defendants' preparation to be as good as that of that of the plaintiffs', or even compounded in the same way as the plaintiffs', the defendants had no right to advertise it as "Lieut. James' Horse Blister." That, it was contended, was in effect, representing it as manufactured by the plaintiffs.

The Master of the Rolls, Lord Romilly, in giving his judgment, said (after referring to the circumstances of the case): "It appears to me that the signature (viz., Robert James) would lead the public to suppose that the article was prepared by the inventor himself, and I do not think the defendants are entitled to do that. If the name of the inventor had not been *Robert James*, I think the case would have been very different; but the name of the inventor being *Robert James*, and signed as such, I think the defendants' ointment ought to be sold in pots bearing the full signature of *Robert Joseph James*, and not the signature of *Robert James* alone." And his Lordship granted an injunction restraining the defendants from using the name of *Robert James* alone, but with liberty to use the name of *Robert Joseph James*. The injunction also restrained the defendants from using the name of *Robert James* alone on the tops of the pots, and from suggesting or asserting that the ointment sold by the plaintiffs, was spurious, and also from using on their advertisements certain other assertions that were shewn to be false (*t*).

Where manufacturers had obtained a patent for the manufacture of case-hardened ploughshares, which they marked with their name, as "*Ransome's Patent*," and with the letters H. H., to denote that the ploughshares were case-hardened, and also with certain numbers,

(*t*) See also *Lazenby* v. *White*, a case of a somewhat similar character, 41 L. J. N.S. 354.

such as No. 6, to denote their *size*; and the defendant took and used the very same marks and numbers, and admitted such use; and his defence was, that he had believed that the patent had expired, and contended that he had a right to use the letters and figure H. H. 6, the Court treated this as *fraud*, and granted an injunction to restrain the user both of the name, and of the letters and figure H. H. 6 (*u*).

In *Schweitzer* v. *Atkins* (*v*), the plaintiff, a chemist, had invented a preparation of *cocoa*, to which he applied the fancy name of *Cocoatina*, and he sold it in packets labelled "*Schweitzer's Cocoatina*, or Anti-dyspeptic Cocoa, registered;" it had been long known, and had attained an extensive sale. The defendant Atkins had been in the employ of the plaintiff, and had received money from the plaintiff to enable him, the defendant, to set up business for himself; and he, the defendant, entered into partnership with a man named *Otto* Schweitzer. They traded under the name of "Schweitzer, Atkins, & Co.," and they sold another preparation of *cocoa*, which they called *Cacaotine*, and they sold it under the title of "*Otto Schweitzer*, Atkins, & Co." Their packets and labels had a general resemblance in *colour and form* to the plaintiff's, but the packets were larger than the plaintiff's packets.

Malins, V.C., granted an injunction, pointing out the several crafty attempts to a pretended difference, and observing: "If nothing but that which was fair was intended by the defendants, I think the new firm might well have been called '*Atkins* & Schweitzer,' instead of '*Otto Schweitzer*, Atkins, & Co.' It is clear, beyond doubt to my mind, that the object of putting the names in that order, was to enable the defendants, with apparent truth, to imitate the plaintiff's trade mark; and with what other possible object did they adopt the word *cacaotine?* The appended *tine* is wholly unnecessary, and could only have been adopted

(*u*) *Ransome* v. *Bentall*, 3 L. J. N.S. 161. (*v*) 37 L. J. N.S. 847.

because of its similarity to the word used by the plaintiff. The public do not observe these *minute differences*, and I am clearly of opinion that this is a *fraudulent imitation* of the trade mark of the plaintiff."

Though, in general, it is fatal to a trade mark, if the owner of it treats the goods to which it is attached, as the subject of *a patent*, when there is, in fact, no patent; yet there will be an exception to the rule, if it is plain that the word *patent* is not used for the purpose of misleading the public, but is simply as a name attached to the goods, by which they are known to manufacturers in the particular trade (*w*).

In *Hookham* v. *Pottage* (*x*) the plaintiff and defendant had been partners in the business of tailors, drapers, &c., under the name of "Hookham and E. & S. Pottage," for a long period. Differences between them arose, and they separated. The plaintiff remained at their former place of business, and he took down the name of "Hookham and E. & S. Pottage, and put up, in substitution, "Hookham & Co." The defendant afterwards took premises seven doors below the plaintiff's, and on the same side of the street; and at first painted over his door the words, "S. Pottage, *from* Hookham *and* Pottage;" the words *from* and *and* were in small letters, and placed *diagonally* on either side of the word *Hookham*, so that at a short distance they had the appearance of being a flourish or ornament, instead of separate words. On the plaintiff remonstrating with this, through his solicitor, the defendant removed the words "From Hookham & Pottage" from over his shop door; but he afterwards replaced them in letters somewhat different from those used by him before, the words *from* and *and* being somewhat larger, and placed *horizontally*. With this exception, the appearance was identical with what it was at first. Ultimately the plaintiff filed a bill against the defendant, praying for

(*w*) *Marshall* v. *Ross*, L. R. 8 Eq. 651. (*x*) 26 L. T. N.S. 755.

an injunction; and the case was, by consent, treated as the hearing of the cause. The V.C., Sir R. Malins, after stating the facts of the case, said: "The question I have to decide is, whether the manner in which the defendant uses the name of the plaintiff, is or is not calculated to deceive. It is not necessary that I should come to the conclusion that there is *any intention* on the part of the defendant to *mislead*; that is immaterial. If it is calculated to mislead, that is, if it is calculated to mislead the public into the shop of the defendant, while it is their *intention* to go into the shop of the plaintiff, that is an injury done to the plaintiff." His Lordship then referred to some cases, and said: "All these cases proceed upon this principle, viz., that the thing done *is calculated to deceive*." His Lordship, after comments upon the facts, came to the conclusion that what the defendant had done, was *calculated* to mislead the *unconscious, unwary*, and *heedless* portion of the public, into the impression that the shop of the *defendant* was the shop of the plaintiff; and his Lordship granted a perpetual injunction.

Though a *name* may (as appears by the cases referred to in previous pages) become and constitute a trade mark, yet a name descriptive of a machine, the subject of a *patent*, cannot, in general, be a trade mark after the expiration of the patent; but if a person adopts and uses that name, so as to represent himself as the *agent* of the parties who sell the things that are the subject of the expired patent, that is fraud, and will be restrained (*y*).

It is submitted that the following general rules may be deduced from the authorities cited in this chapter:—

1. That the use by B. of a name previously adopted by A. is *fraud*; even though the *name* may not be actually a *trade mark*.

2. That even *approximate* imitation of names, or

(*y*) *Wheeler & Wilson Manufacturing Company* v. *Shakespear*, 39 L. J. N.S. 36.

labels, is *fraud*; and so is an imitation of a *material part* of the *terms* used to designate a material sold.

3. That though a man may undoubtedly, in *general*, use his *own name* for various purposes, yet he may not, by using a *part* of it only, imitate another man's name, and so mislead the public, and induce them to believe that the goods he sells under his so garbled name, are the goods sold by another man (*z*).

4. That an addition to, or an alteration made by A. in, the *trade mark* of another, so far trifling as not fairly to strike or meet the observation of the *general public*, is fraud.

(*z*) See the peculiar case of *James* v. *James*, cited *ante*, p. 81.

APPENDIX.

CONTENTS.

	PAGE
The Trade Marks Registration Act, 1875	87
The Trade Marks Registration Amendment Act, 1876	91
The Trade Marks Registration Extension Act, 1877	92
Order in Council, 12th December, 1877	93
Rules under the Trade Marks Registration Acts, 1875–7	96
Instructions to Persons applying for the Registration of Trade Marks	123

REGISTRATION OF TRADE MARKS.

[38 & 39 Vict. Ch. 91]

An Act to establish a Register of Trade Marks.

[13th August 1875.]

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

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

2. [*Characteristics of registered trade mark.*] A trade mark must be registered as belonging to particular goods, or classes of goods ; and when registered shall be assigned and transmitted only in connexion with the goodwill of the business concerned in such particular goods or classes of goods, and shall be determinable with such goodwill, but subject as aforesaid registration of a trade mark shall be deemed to be equivalent to public use of such mark.

3. [*Title of first proprietor of a trade mark.*] The registration of a person as first proprietor of a trade mark shall be primâ facie evidence of his right to the exclusive use of such trade mark, and shall, after the expiration of five years from the date of such registration, be conclusive evidence of his right to the exclusive use of such trade mark, subject

to the provisions of this Act as to its connexion with the goodwill of a business.

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

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

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

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

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

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

6. [*Restrictions on registry of trade marks.*] The registrar shall not, without the special leave of the court, to be given in the prescribed manner, register in respect of the same goods or classes of goods a trade mark identical with one which is already registered with respect to such goods or classes of goods, and the registrar shall not register with respect to the same goods or classes of goods a trade mark so nearly resembling a trade mark already on the register with respect to such goods or classes of goods as to be calculated to deceive.

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

7. [*Establishment of registry and general rules.*] Subject as aforesaid, a register office shall be established from and after such time (not being later than the first day of January one thousand eight hundred and seventy-six), in such manner and with such officers, and at such salaries, to be paid out of moneys provided by Parliament, as the Lord Chancellor may, with the consent of the Treasury, direct; and the Lord Chancellor may from time to time, with the assent of the Treasury as to fees, make, and, when made, alter, annul, or vary, such general rules as to the registry of trade marks, and as to notices to be given by advertisement before the registration of trade marks, and as to the classification of goods for the purposes of this Act, and as to the registration of first and subsequent proprietors of trade marks, and as to the fees to be charged for registration, and also for the continuance of a trade mark on the register or otherwise, and as to the removal from the register of any trade mark, as to notices, and as to the persons entitled to inspect the register, and as to any proceedings to be taken to obtain the judgment or leave of the court in any matter in which the judgment or leave of the court is required to be obtained under this Act, and generally for the purpose of carrying into effect this Act, as he may deem expedient.

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

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

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

(1.) Within the prescribed time and in the prescribed manner the Cutlers Company shall at their own expense deliver to the registrar under this Act copies of all Sheffield corporate marks in force at the time of such delivery:

(2.) When any person, after the passing of this Act, applies to the said master, wardens, searchers, and assistants to assign to him any mark or device, notice of such application, with a copy of such mark or device, shall, within the prescribed time

and in the prescribed manner, be delivered to the registrar under this Act; and such mark or device shall not be assigned until after the expiration of the prescribed period from the giving of such notice. In like manner, when any person applies for the registration under this Act of a trade mark as belonging to any goods or class of goods specified in section two of the Cutlers Company's Act of 1860, notice of such application, with a copy of such trade mark, shall, within the prescribed time and in the prescribed manner, be delivered to the Cutlers Company; and such trade mark shall not be registered until after the expiration of the prescribed period from the giving of the last-mentioned notice:

(3.) Upon the assigning of any such mark or device, or the registration of any such trade mark as aforesaid, notice of the assignment or registration shall, within the prescribed time and in the prescribed manner, be given to the registrar under this Act, or to the Cutlers Company, as the case may be:

(4.) The registrar under this Act, without the special leave of the court, to be given only in cases where the applicant proves his right, shall not in respect of any goods or classes of goods with respect to which a Sheffield corporate mark shall have been assigned and actually used, and of which mark a copy or description or notice of the assigning whereof shall have been delivered or given to the registrar as aforesaid, register a trade mark identical with such Sheffield corporate mark, or so nearly resembling the same as to be calculated to deceive:

(5.) The master, wardens, searchers, and assistants of the Cutlers Company shall not assign to any person a mark or device identical with any trade mark registered under this Act, and notice of the registration whereof shall have been given to the Cutlers Company as aforesaid, or so nearly resembling the same as to be calculated to deceive:

(6.) Any person to whom a Sheffield corporate mark legally belongs shall be entitled to have the same mark registered also as a trade mark under this Act, in respect of any particular goods or classes of goods, in the same manner and upon the same terms and conditions in and upon which he might have registered the same if it were not a Sheffield corporate mark:

(7.) Nothing in this Act shall prejudice or affect the rights and privileges of the Cutlers Company, nor, save as is otherwise in this Act expressly provided, shall any of the provisions of this Act apply to or in the case of any Sheffield corporate mark.

10. [*Definitions.*] For the purposes of this Act:

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

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

A written signature or copy of a written signature of an individual or firm; or

A distinctive device, mark, heading, label, or ticket;

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

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

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

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

11. [*Short title of Act.*] This Act may be cited for all purposes as the Trade Marks Registration Act, 1875.

TRADE MARKS REGISTRATION AMENDMENT ACT 1876.

[39 & 40 Vict. Ch. 33.]

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

[38 & 39 Vict. c. 91.] Whereas by the Trade Marks Registration Act, 1875, in this Act referred to as the principal Act, it is provided that from and after the first day of July one thousand eight hundred and seventy-six, a person shall not be entitled to institute any proceeding to prevent the infringement of any trade mark as defined by the principal Act until and unless such trade mark is registered in pursuance of that Act.

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

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

1. [*Amendment of s. 1 of the principal Act.*] There shall be repealed

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

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

2. [*Saving of marks and devicee not capable of being registered under Act.*] When an application by any person to register as a trade mark a device, mark, name, word, combination of words, or other matter or thing proposed for registration as a trade mark, which has been in use as a trade mark before the passing of the recited Act, has been refused, it shall be the duty of the registrar, on request, and on payment of the prescribed fee, to give to the applicant a certificate of such refusal, and a certificate so granted shall be conclusive evidence of such refusal.

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

TRADE MARKS REGISTRATION EXTENSION ACT, 1877.

[40 & 41 VICT. CH. 37.]

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

[39 & 40 VICT. c. 33.] WHEREAS by section one of the Trade Marks Registration Amendment Act, 1876, it is provided that from and after the first day of July one thousand eight hundred and seventy-seven a person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of any trade mark as defined by the Trade Marks Registration Act, 1875 [38 & 39 VICT. c. 91,] (referred to in such Amendment Act and in this Act as the principal Act), until and unless such trade mark is registered in pursuance of the principal Act, or until and unless, with respect to any device, mark, name, combination of words, or other matter or thing in use as a trade mark before the passing of the principal Act, registration thereof as a trade mark under the principal Act shall have been refused, as is in the said Act thereafter mentioned:

And whereas by reason of the difficulties attending the registration of trade marks used in the textile industries it has been found impossible to complete the registration of such trade marks within the time

specified by the said section, and it is therefore expedient to prolong such time as aforesaid:

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

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

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

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

ORDER IN COUNCIL.

At the Court at Windsor, the 12th day of December, 1877.

Present:

The Queen's most Excellent Majesty in Council.

WHEREAS by section one of "The Trade Marks Registration Extension Act, 1877," 40 & 41 Victoria, cap. 37, it is enacted that "in so far "as relates to the registration of trade marks used in the textile in- "dustries, but not further or otherwise, section one of the Trade Marks "Registration Amendment Act, 1866, shall be construed as if for the "words, 'from and after the first day of July one thousand eight hundred "'and seventy-seven,' there were substituted the words 'from and after "'the first day of January one thousand eight hundred and seventy- "'eight, or such further time as Her Majesty may by Order in Council determine:'"

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

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

C. L. PEEL.

RULES UNDER THE TRADE MARKS REGISTRATION ACTS, 1875-7.

ARRANGEMENT OF RULES.

Preliminary.

Rule.
1. Classification of goods in schedule.
2. Fees.
3. Determination of doubt as to classes.
4. Registration of different trade marks, or trade marks in different classes.

Application for Registry.

5. Proceedings on application.
6. Contents of statement on application.
7. Requisites of statement.
8. Nature and size of representation of trade mark.
9. Declaration to accompany application.
10. Application by company.
11. Application by firm.
12. Acknowledgment of application by registrar.

Advertisement of Application and Notice of Opposition.

13. Advertisement of application.
14. Definition of official paper.
15. Means of advertising trade mark to be supplied to official paper.
16. Notice and proceedings for opposition.

Registration of Trade Marks.

17. Time of registration of trade mark.
18. Duty of registrar in case of disputed claim.
19. Prohibition of registration of identical trade marks.
20. Entries to be made in register.
21. Notice of registration.
22. Trust not to be entered in register.

Registration of subsequent Proprietors.

23. Registration of assignee or transmittee.
24. Production of assignment, &c., by assignee.
25. Right of transmittee or his assignee.
26. Evidence to be produced on transmission.
27. Declaration by assignee and transmittee.
28. Assignee, &c., of joint owners.
29. Registration of joint owners as separate owners of separate trade marks.

Continuance of a Trade Mark on the Register.

30. Removal of trade mark after fourteen years, unless fee paid.
31. Payment of additional fee after expiration of fourteen years.
32. Power of Commissioners to restore trade marks.
33. Trade mark like one removed not to be registered for five years.
34. Removal of trade mark where no business in goods.

Alteration and Rectification of Register.

Rule.
35. Alteration of non-essential parts of trade mark.
36. Entry of rectification in register.
37. Publication of rectification or alteration of register.
38. Notice to registrar of opposition in any matter.
39. Alteration of address, &c., in register.

Inspection of Register.

40. Inspection and copies of register.
41. Certificate by registrar.

Application to the Court.

42. Definition of court.
43. Application to court.
44. Submission to court of conflicting claims.
45. Settlement of special case.

Cutlers' Company.

46. Time for delivery of old Sheffield marks.
47. Manner of delivery of old Sheffield marks.
48. Time for delivery of new Sheffield marks.
49. Manner of delivery of new Sheffield marks.
50. Period between notice to registrar and assignment of new Sheffield marks.
51. Time for notice of application to register new trade marks to Cutlers Company.
52. Manner of giving notice to Cutlers Company of application.
53. Time between notice to Cutlers Company and registration of trade mark.
54. Time for notice of assignment of mark, or registration of mark.
55. Manner of giving notice of assignment or registration of mark.
56. Description of copies for purpose of Cutlers Company.

Cotton Goods.

57. Establishment of office for exhibition of cotton trade marks at Manchester.
58.* Representations of cotton marks to be sent to Manchester Office on or before the 1st December 1876.
59. Committee of experts to be appointed, and to divide cotton marks into two classes.
60. Committee to form list of marks sent in to Manchester office.
61. Marks may be added to list.
62. Any person claiming to be the proprietor of a cotton mark in Class 1. may apply to be registered.
63. Cotton mark not to be registered except in manner herein prescribed.

Declaration and Evidence.

64. Dispensing with declaration, evidence, &c.
65. Manner in which and persons before whom declaration is to be taken.

* See Amended Rule 58, page 108.

Rule.
66. Notice of seal of officer taking declaration to prove itself.
67. Declaration by infant, lunatic, &c.

Commissioners of Patents.

68. Registrar subject to Commissioners of Patents.

Notices.

69. Notices to be in writing and served by post.
70. Mode of addressing notices.
71. Construction of Rules.
72. Forms.

ADDITIONAL RULES RELATING TO COTTON MARKS.

Representations of cotton marks to be sent to the Manchester office by owners resident in the United Kingdom on or before the 1st January 1877; by owners resident abroad on or before the 1st March 1877.
Advertisement of cotton marks.
Time of registration of cotton marks.
APPLICATION OF REGISTERED PROPRIETOR TO CANCEL ENTRY ON REGISTER.
SCHEDULES.

RULES.

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

Now, therefore, I, the Right Honourable Hugh MacCalmont Baron Cairns, of Garmoyle in the County of Antrim, Lord High Chancellor of Great Britain, in pursuance of the said Act, and of all other powers enabling me in this behalf, do hereby, without prejudice to any proceedings that may have been taken under any former rules as to the registry of trade marks before made by me, annul all such rules, and do hereby make the following Rules:

PRELIMINARY.

1. [*Classification of goods in schedule.*] For the purposes of these Rules goods are classified in the manner appearing in the first schedule hereto.

2. [*Fees.*] The fees to be charged in pursuance of these Rules are the fees specified in the second schedule hereto.

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

4. [*Registration of different trade marks, or trade marks in different classes.*] A trade mark or trade marks may be registered in pursuance

of the same application by the same person in respect of all or any goods, subject to the payment of the additional fees specified in the second schedule in respect of the registration of different trade marks or the extension of the same trade marks to goods in different classes.

Application for Registry.

5. [*Proceedings on application.*] A person, whether a British subject or an alien, desiring to register a trade mark shall apply to the registrar by sending to him a statement accompanied by such declaration as is herein-after mentioned and the prescribed fee.

6. [*Contents of statement on application.*] The statement shall contain the following particulars:—

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

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

C. The class or classes of goods (being some one or more of the classes mentioned in the first schedule): and

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

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

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

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

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

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

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

10. [*Application by company.*] *Where an application for the

* See Instructions, paragraph 10, p. 124.

registry of a trade mark is made by or on behalf of a corporate body of persons, the statement and declaration shall be made by the secretary or other principal officer of the body of persons; and the registrar may require such proof as he thinks fit that the application made is duly authorised by such body of persons.

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

12. [*Acknowledgment of application by registrar*] On receipt of the application the registrar shall send to the applicant an acknowledgment thereof.

ADVERTISEMENT OF APPLICATION† AND NOTICE OF OPPOSITION.‡

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

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

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

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

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

If the applicant sends such counter-statement the registrar shall require the person who gave notice of opposition to give security, in such manner and to such amount as the registrar may require, for such costs as may be awarded in respect of such opposition; and if such

* *See* Instructions, par. 9, p. 124. † *See* Instructions, paragraphs 31–35, pp. 128-9.
‡ *See* Instructions, paragraphs 36–39, pp. 129-130.

security is not given within fourteen days after such requirement was made, or such further time as the registrar may allow, the opposition shall be deemed to be withdrawn.

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

Registration of Trade Marks.

17. [*Time of registration of trade mark.*] On the expiration of three months from the date of the first appearance of the advertisement in the official paper, the registrar may, if he is satisfied that the applicant is entitled to registration, register the trade mark in respect of the description of goods for which he may be entitled to be registered, and the applicant as the proprietor thereof, on payment of the prescribed fee.

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

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

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

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

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

Registration of subsequent Proprietors.

23. [*Registration of assignee or transmittee.*] The person to whom any registered trade mark has been assigned or transmitted may apply to be registered as proprietor thereof.

24. [*Production of assignment, &c., by assignee.*] Where the trade

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

25. [*Right of transmittee or his assignee.*] Where a trade mark has been transmitted by the death of the registered proprietor, the legal personal representative of such proprietor shall be recognised as having the title to the mark.

Where the trade mark has been transmitted by marriage, bankruptcy, or otherwise by operation of law, the person applying as the transmittee to be registered shall send to the registrar, together with his application, a statement of the manner in which such trade mark has been transmitted, and a declaration verifying such statement.

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

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

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

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

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

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

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

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

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

28. [*Assignee &c. of joint owners.*] Where two or more persons are registered as joint proprietors of the same registered trade mark,

those proprietors, or the survivors or survivor of them, or their or his assignee or transmittee, shall alone be recognised by the registrar as having any title to the mark.

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

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

Continuance of a Trade Mark on the Register.

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

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

32. [*Power of Commissioners to restore trade mark.*] Where after the said three months a trade mark has been removed from the register for non-payment of the prescribed fee, the Commissioners of Patents, or one of them, may, if they are satisfied that it is just so to do, restore such trade mark to the register on payment of the prescribed additional fee and compliance with such conditions as they may think just.

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

34. [*Removal of trade mark where no business in goods.*] The court may, on the application of any person aggrieved, remove any trade mark from the register on the ground, after the expiration of five years from the date of the registry thereof, that the registered proprietor is no

engaged in any business concerned in the goods within the same class as the goods with respect to which a trade mark is registered.

Alteration and Rectification of Register.

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

36. [*Entry of rectification in register.*] Where due notice of an order of any court rectifying the register has been given to the registrar, the registrar shall forthwith, upon an official copy of so much of the order as relates to such rectification being left with the registrar and payment of the prescribed fee, rectify the register in accordance with the order.

37. [*Publication of rectification or alteration of register.*] Whenever the register is rectified or altered in any particular in respect to any trade mark, the registrar shall, if he thinks that such rectification or alteration should be made public, at the expense of any person interested publish, by advertisement or otherwise, and in such manner as he thinks just, the circumstances attending the rectification or alteration of the register.

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

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

39. [*Alteration of address, &c., in register.*] If the registered proprietor of a trade mark send to the registrar, together with the prescribed fee, notice of an alteration in his address, the registrar shall alter the register accordingly.

Inspection of Register.

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

41. [*Certificate by registrar.*] The registrar when required for the purpose of any legal proceeding or other special purpose to give a certificate as to any entry, matter, or thing which he is authorised by the Act, or any of these rules to make or do, may, on payment of the prescribed fee, give such certificate, and shall specify on the face of it the legal proceeding or other purpose for which such certificate is granted.

APPLICATION TO THE COURT.

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

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

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

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

CUTLERS COMPANY.

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

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

48. [*Time for delivery of new Sheffield marks.*] The time within which the Cutlers Company are to deliver to the registrar notice of an application to them for assigning any mark or device, with a copy of such mark or device, shall be as soon as practicable after the date at which such company have determined on the mark or device to be assigned.

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

50. [*Period between notice to registrar and assignment of new Sheffield marks.*] The period before the expiration of which such mark or device shall not be assigned by the Cutlers Company, shall be six weeks from the date of sending the said notice to the registrar.

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

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

53. [*Time between notice to Cutlers Company and registration of trade mark.*] The period from the giving of such notice, before the expiration of which the trade mark is not to be registered shall be six weeks from the date of sending such notice to the Cutlers Company.

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

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

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

Cotton Goods.

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

~~58.~~* [*Representations of cotton marks to be sent to Manchester office on or before Dec. 1st, 1876.*] ~~Every person who at the date of the passing of the Act used any cotton mark shall, on or before the first day of December one thousand eight hundred and seventy-six, send to the Manchester office three representations of such cotton mark, in such form and with such a description as may be from time to time required by the Commissioners of Patents.~~

* *See* amended Rule 58, page 103.

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

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

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

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

62. [*Any person claiming to be the proprietor of a cotton mark in Class* 1 *may apply to be registered.*] Any proprietor of a cotton mark not specified in the second class in such list may apply to be registered as proprietor of such cotton mark in manner and subject to the conditions in which he may apply to be registered as proprietor of any other trade mark, but it shall not be lawful for the registrar to register any person as proprietor of any cotton mark in the second class of the aforesaid list except in pursuance of an order of the court.

63. [*Cotton mark not to be registered except in manner herein prescribed.*] A cotton mark shall not be registered except in manner and subject to the conditions prescribed by these rules with respect to the registry of cotton marks.

(NOTE.—*For additional Rules relating to Cotton Marks, see page* 107.)

DECLARATION AND EVIDENCE.

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

65. [*Manner in which and persons before whom declaration is to be taken.*] The declarations required by these rules shall be made and

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

The declaration, when taken out of the United Kingdom, shall

(*a.*) If made in any part of Her Majesty's dominions be made and subscribed before some court, justice, or officer authorised by law in such part of Her Majesty's dominions to administer an oath for the purpose of a legal proceeding; and,

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

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

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

Commissioners of Patents.

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

NOTICES.

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

70. [*Mode of addressing notices.*] Any application, statement, notice, and document to be served or sent on or to the registrar shall be deemed to be properly addressed if addressed to the registrar of trade marks at his office; and if required to be served on or sent to the proprietor of any trade mark shall be deemed to be properly addressed if addressed to the registered proprietor at his registered address.

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

72. [*Forms.*] The forms in the third schedule to these Rules or such other forms as the registrar may direct may be used in all cases to which they are applicable.

CAIRNS, *C.*

August, 1876.

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

CRICHTON.
R. WINN.

September, 1876.

ADDITIONAL RULES RELATING TO COTTON MARKS.

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

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

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

Now, therefore, I, the Right Honourable Hugh MacCalmont, Baron Cairns, of Garmoyle, in the county of Antrim, Lord High Chancellor

of Great Britain, in pursuance of the Trade Marks Registration Act, 1875, and of all powers enabling me in that behalf, do hereby annul the said rule, and direct that there be substituted therefor the following rule; that is to say,

58. [*Representations of cotton marks to be sent by owners resident in the United Kingdom on or before Jan.* 1, 1877; *by owners resident abroad on or before Mar.* 1, 1877.] Every person who at the date of the passing of the Act used any cotton mark shall, if resident in the United Kingdom, on or before the first day of January one thousand eight hundred and seventy-seven, and if resident elsewhere, on or before the first day of March one thousand eight hundred and seventy-seven, send to the Manchester office three representations of such cotton mark, in such form and with such a description as may be from time to time required by the Commissioners of Patents.

CAIRNS, *C.*

1st December, 1876.

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

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

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

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

CAIRNS, *C.*

26th February, 1877.

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

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

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

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

CAIRNS, *C.*

4th February, 1878.

SCHEDULES.

FIRST SCHEDULE.

CLASSIFICATION OF GOODS.

	Illustrations.
	Note.—Goods are mentioned in this column by way of illustration, and not as an exhaustive list of the contents of a class.
Class 1. Chemical substances used in manufactures, photography, or philosophical research, and anti-corrosives.	Such as— Acids, including vegetable acids. Alkalies. Artists' colours. Pigments. Mineral dyes. Varnish.
Class 2. Chemical substances used for agricultural, horticultural, veterinary, and sanitary purposes.	Such as— Artificial manure. Sheep washes. Deodorisers.
Class 3. Chemical substances not included in Class 1, used in medicine and pharmacy.	Such as— Tinctures. Extracts. Barks. Patent medicines. Cod-liver oil. Plaisters. Lozenges.
Class 4. Raw or partly prepared vegetable, animal, and mineral substances used in manufactures, not included in other classes.	Such as— Resins. Oils, not included in other Classes. Dyes, other than mineral. Tanning substances. Fibrous substances (*e.g.* cotton, hemp, flax, jute). Wool. Silk.

Class 4—cont.	Bristles. Hair. Feathers. Cork. Seeds. Bone. Sponge.
Class 5.	
Unwrought and partly wrought metals used in manufacture.	Such as— Iron and steel, pig or cast. „ rough. „ bar and rail, including rails for railways. „ bolt and rod. „ sheets, and boiler and armour plates. „ hoops. „ wire. Lead, pig. „ rolled. „ sheet. Copper. Zinc. Gold, in ingots.
Class 6.	
Machinery of all kinds, and parts of machinery, except agricultural machines included in Class 7.	Such as— Steam engines. Boilers. Pneumatic machines. Hydraulic machines. Locomotives. Sewing machines. Weighing machines. Machine tools. Mining machinery. Fire engines.
Class 7.	
*Agricultural and horticultural machinery, and parts of such machinery.	Such as— Ploughs. Drilling machines. Reaping machines. Thrashing machines. Churns. Cyder presses. Chaff cutters.
Class 8.	
Philosophical instruments, instruments and apparatus for useful purposes, or for teaching.	Such as— Gauges. School desks. Logs.

* *See* Instructions, paragraph 19, p. 125.

Class 9.	
Musical instruments.	
Class 10.	
Horological instruments.	
Class 11.	
Instruments, apparatus, and contrivances for surgical or curative purposes, or in relation to health.	Such as— Bandages. Friction gloves. Lancets.
Class 12.	
Cutlery and edge tools.	Such as— Knives. Forks. Scissors. Shears. Files. Saws.
Class 13.	
Metal goods not included in other classes.	
Class 14.	
Goods of precious metals (including aluminium, nickel, Britannia metal, &c.), and jewellery, and imitations of such goods and jewellery.	Such as— Plate. Clock cases and pencil cases of such metals. Sheffield and other plated goods. Gilt and ormolu work.
Class 15.	
Glass.	Such as— Window and plate glass. Painted glass. Glass mosaic. Glass for optical purposes.
Class 16.	
Porcelain and earthenware.	Such as— China. Stoneware. Terra-cotta. Statuary porcelain. Tiles. Bricks.
Class 17.	
Manufactures from mineral and other substances for building or decoration.	Such as— Cement. Plaster. Imitation marble.

Class 18.

Engineering, architectural, and building contrivances.	Such as— Diving apparatus. Warming apparatus. Ventilating apparatus. Filtering apparatus. Lighting contrivances. Drainage contrivances. Electric and pneumatic bells.

Class 19.

Arms, ammunition, and stores not included in Class 20.	Such as— Cannon. Small-arms. Fowling-pieces. Swords. Shot and other projectiles. Camp equipage. Equipments.

Class 20.

Explosive substances.	Such as— Gunpowder. Gun cotton. Dynamite. Fog-signals. Percussion caps. Fireworks. Cartridges.

Class 21.

Naval architectural contrivances and naval equipments not included in classes 19 and 20.	Such as— Boats. Anchors. Chain cables. Rigging.

Class 22.

Carriages.	Such as— Railway carriages. Waggons. Railway trucks. Velocipedes. Bath chairs.

Class 23.

Cotton yarn and thread.

Class 24.

Cotton piece goods of all kinds.

Class 25.

Cotton goods not included in Classes 23, 24, or 38.

Class 26.

Linen and hemp yarn and thread.

Class 27.

Linen and hemp piece goods.

Class 28.

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

Class 29.

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

Class 30.

Silk, spun, thrown, or sewing.

Class 31.

Silk piece goods.

Class 32.

Other silk goods not included in Classes 30 and 31.

Class 33.

Yarns of wool, worsted, or hair.

Class 34.

Cloths and stuffs of wool, worsted, or hair.

Class 35.

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

Class 36.

Carpets, floor-cloth, and oil-cloth.	Such as— Drugget. Mats and matting. Rugs.

Class 37.

Leather, and skins unwrought and wrought.	Such as— Saddlery. Harness. Whips. Portmanteaus. Furs.

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

Class 43. Fermented liquors and spirits.	Such as— Beer. Cyder. Wine. Whisky. Liqueurs.
Class 44. Mineral and nërated waters, natural and artificial, including ginger beer.	
Class 45. Tobacco, whether manufactured or unmanufactured.	
Class 46. Seeds for agricultural and horticultural purposes.	
Class 47. Candles, common soap, detergents, illuminating, heating, or lubricating oils, matches, and starch, blue, and other preparations for laundry purposes.	Such as— Washing powders. Benzine collas.
Class 48. Perfumery (including toilet articles, preparations for the teeth and hair, and perfumed soap).	
Class 49. Games of all kinds. Archery. Fishing tackle. Toys.	Such as— Billiard tables. Roller skates. Fishing nets and lines.
Class 50. *Miscellaneous, including— (1.) Goods manufactured from ivory, bone, wood, not included in other classes. (2.) Goods manufactured from straw or grass, not included in other classes. (3.) Goods manufactured from animal and vegetable substances, not included in other classes. (4.) Tobacco pipes.	Such as— Coopers' wares.

* *See* Instructions, paragraph 20, p. 126.

Class 50—*cont.*

(5.) Umbrellas, walking sticks, brushes, and combs.
(6.) Furniture cream, plate powder.
(7.) Tarpaulins, tents, rick-cloths, rope, twine.
(8.) Buttons of all kinds, other than of precious metal or imitations thereof.
(9.) Packing and hose of all kinds.
(10.) Goods not included in the foregoing classes.

GENERAL NOTE.

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

SECOND SCHEDULE.*

FEES.

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

	£	s.	d.
1. On application to register one trade mark for one or more articles included in one class	1	0	0
2. On application to register more than one trade mark for one or more articles included in one class, for each additional trade mark after the first . . .	0	10	0
3. On application to register a trade mark in respect of goods in different classes, for every class after the first to which such trade mark is extended, an additional fee of	0	2	0
4. For registration of one trade mark	1	0	0
5. Where the same person is registered at the same time for more than one trade mark, for registration of each additional mark after the first	0	10	0
6. Where the same person is registered at the same time for the same trade mark in respect of goods in different classes, for the registration of one mark in each class after the first an additional fee of	0	2	0
~~7. For entering notice of opposition . . . . .~~	~~2~~	~~0~~	~~0~~
~~8. For registering subsequent proprietor . . . .~~	~~1~~	~~0~~	~~0~~
9. For altering address on the register	0	5	0
10. For every entry in the register of a rectification thereof or an alteration therein, not otherwise charged .	0	10	0
11. For continuance of mark at expiration of fourteen years.	2	0	0

* *See* Instructions, paragraphs 28–30, pp. 127-8.

	£	s.	d.
12. Additional fee where fee is paid within three months after expiration of fourteen years	1	0	0
13. Additional fee for restoration of trade mark when removed for non-payment of fee	2	0	0
~~14. For certificate. . . . . .~~	~~4~~	~~0~~	~~0~~
15. For inspecting register, for every quarter of an hour .	0	1	0
16. For office copy of documents, 2*d.* per folio, but never less than	0	1	0
17. Settling a special case by registrar	2	0	0

Note.

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

ADDITION TO SECOND SCHEDULE.

	£	s.	d.
8. For registering subsequent proprietor in cases of assignment or transmission, the first mark . . .	1	0	0
and for every additional mark assigned or transmitted at the same time.	0	2	0
14. For certificate of registration to be used in legal proceedings	1	0	0
18. For certificate of registration to be used for the purpose of obtaining registration in foreign countries . .	0	5	0
19. For copy of notification of registration. . . .	0	2	0
20. In cases where a trade mark requires a greater space than two inches of the depth of the page of the *Trade Marks Journal*, for each additional inch or part of an inch .	0	2	6

Approved
CRICHTON.
ROW. WINN.

CAIRNS, *C.*

14th March, 1877.

ADDITION TO SECOND SCHEDULE.

	£	s.	d.
7. For entering notice of opposition, for each trade mark, whether in one or more classes	2	0	0
21. For certificate of refusal to register a trade mark under section 2 of 39 & 40 Vict. c. 33	1	0	0
22 For certificate of refusal, at the same time, for more than one trade mark, for each additional mark after the first	0	10	0

Approved
CRICHTON.
ROW. WINN.

CAIRNS, *C.*

25th June, 1877.

ADDITION TO SECOND SCHEDULE.

	£	s.	d.
23. For cancelling the entry of a trade mark upon the register, on the application of the owner of such trade mark .	0	5	0

Approved
CRICHTON.
ROW. WINN.

CAIRNS, *C.*

4th February, 1878.

THIRD SCHEDULE.

FORM A.

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

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

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

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

‖ The day of 187 .

(Signed) *John Jones.* ¶

FORM B.

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

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

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

No. 1 is † and is represented on paper 1 annexed hereto;
No. 2 is † and is represented on paper 2 annexed hereto; [*and so forth*].

* Here insert name, address, and calling of the applicant.
† Here insert in writing description of trade mark.
‡ Here insert description of the goods, and the class or classes under which the applicant desires to have them registered.
§ This paragraph may be omitted if the trade mark was not used before the 13th of August 1875.
‖ Here insert date.
¶ Here insert signature.

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

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

As to No. 2, in respect of the following goods contained in class *

[*and so forth*].

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

‡ The day of 187 .

(Signed) *John Jones.* §

Form C.

Form of Declaration to accompany Statement on Application for Registration of one Trade Mark.

I, *A.B.*, of do hereby solemnly and sincerely declare, to the best of my knowledge and belief, as follows:—

(1.) The statement signed by me and dated the day of , and marked with the letter "A," and shown to me at the time of making this declaration is true:

(2.) The description of the trade mark in such statement is a true description of the trade mark for the registration of which I apply:

(3.) I am lawfully entitled to the use of the trade mark of which the said description is a true description.

And I make this declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the session of Parliament held in the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present session of Parliament, intituled 'An Act for the more effectual abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.'"

Signed *A.B.*

Declared before me .

Note.—*The above Form will require to be altered so as to suit an application for the registration of more than one trade mark.*

---

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

† This paragraph may be omitted if the trade marks were not used before the 13th of August 1875.

‡ Here insert date.

§ Here insert signature.

Form D.

Form of Declaration * to accompany Statement on Application for Registration of one Trade Mark.

I, *A.B.*, of , do hereby solemnly and sincerely declare, to the best of my knowledge and belief, as follows:

(1.) The statement signed by me, and dated the day of , and marked with the letter "A," and shown to me at the time of making this declaration, is true:

(2.) The description of the trade mark in such statement is a true description of the trade mark for the registration of which I apply:

(3.) I am lawfully entitled to the use of the trade mark of which the said description is a true description.

Signed *A.B.*

Declared before me .

NOTE.—*The above Form will require to be altered so as to suit an application for the registration of more than one trade mark.*

Form E.

Form of Assignment of Trade Mark.

Trade mark, class †
Name
Place of business

I, ‡ *A.B.*, of in the county of being registered proprietor of the trade mark above particularly described, in consideration of pounds paid to me by *E.F.*, carrying on business at in the county of under the firm of *F. & Co.*, hereby assign the said trade mark to the said *E.F.*, together with the goodwill of the business concerned in the goods with respect to which the trade mark is registered.

In witness whereof I have hereunto subscribed my name and affixed my seal, this day of 18 .

(Signed)

Executed by the above-named *A.B.*,
in the presence of .
[*insert description and place of residence*].

Executed by the above-named *E.F.*,
in the presence of .

Form F.

Declaration by Transmittee applying to be Registered as Proprietor.

Trade mark, class , No. . §
Name of owner
Firm
Place of business

* This Form is to be used when the Declaration is made out of the United Kingdom.
† Here enter number or other means of identifying trade mark in register.
‡ Alter as necessary if there be more than one proprietor.
§ Here enter number or other means of identifying trade mark in register.

(1.) I, * the undersigned, *A.B.*, of in the county of , † carrying on business at in the county of , declare as follows:

I declare that *A.B.*, the registered proprietor of the trade mark above described † [died at , in the county of , having first made his will, dated the day of whereby he appointed me executor and I proved [*or* confirmed] his said will on the day of in the Court of], *or* [died at in the county of on the day of , intestate, and letters of administration of his estate and effects were [confirmation as executor of the said was] on the day of duly granted to me by the Court of .]:

Or,

I declare, that [the estate of] *C.D.*, the registered proprietor of the trade mark above described, was, on the day of duly † [*adjudged a bankrupt*] [*sequestrated*], and that *I was on* the day of appointed trustee of the [sequestrated] estate of the said *C.D.*, and I am by law entitled to be registered as proprietor of the said trade mark in place of the said *C.D.*:

Or,

I declare, that on the day of I inter-married with and am now the husband of *C.D.*, the registered proprietor of the trade mark above described; and † I declare that on such marriage the interest of the said *C.D.* in the said trade mark and in the goodwill of the business concerned in the goods with respect to which the trade mark is registered became by law vested in me, and that *I* am entitled to be registered as owner of the said trade mark in place of the said *C.D.*, and I declare that *C.D.* is the person referred to in the annexed certificate.

(2.) *I* am lawfully entitled to the goodwill ‡ of the business concerned in the goods with respect to which the trade mark so transmitted to me is registered.

And I make this declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the session of Parliament held in the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present session of Parliament, intituled 'An Act for the more effectual abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.'"

(Signed)

Dated at the
day of 18 .

Made and subscribed by the above-named
A.B. in the presence of me,

(Signed)

* Alter accordingly, if more than one person makes the declaration.
† Alter according to circumstances.
‡ If the declarant is entitled only to some share in the goodwill, the share must be specified.

INSTRUCTIONS TO PERSONS APPLYING FOR THE REGISTRATION OF TRADE MARKS.

Applications.

Applications may be made either on printed forms or altogether in writing, and may be delivered by hand, or sent, prepaid, by post. If by post, they should be addressed to

The Registrar,
Trade Marks Registry Office,
4, Quality Court,
Chancery Lane,
London, W.C.

The attention of Applicants is called to the following points:

1. The papers necessary for the preparation of an Application to the Trade Marks Registry Office are:—
(*a.*) The Statutory Declaration.
(*b.*) The Statement on Application.
(*c.*) Two Representations of each Trade Mark.

Specimen Forms of Statement on Application and of the Declaration will be found in the Rules under the Trade Marks Registration Acts, 1875-7 (*ante*, pp. 119-121). The Applicants should carefully read over Nos. 1-11 of those Rules, and should attend to the notes attached to the Forms above referred to.

2. *All applications must be made in the English language.*

3. Agents and other persons who may be interested in several Applications should note that communications relating to different Applications must be made in separate letters.

Persons acting as agents should write their name and address on the back of the Application papers.

The Declaration.

Form C. *See* Rules, p. 120.

4. Declarations made *in the United Kingdom* are made under the authority of the Act 5 & 6 Will. IV. cap. 62 (*see* Rule 65), and should conclude in the form set out in that Act, viz., "And I make this "Declaration conscientiously believing the same to be true and by "virtue of the provisions of an Act made and passed in the session of "Parliament held in the fifth and sixth years of the reign of His late "Majesty King William the Fourth, intituled 'An Act to repeal an Act "'of the present session of Parliament intituled "An Act for the "'more effectual abolition of Oaths and Affirmations taken and "'made in various departments of the State, and to substitute "'Declarations in lieu thereof, and for the more entire suppression "'of voluntary and extra-judicial oaths and affidavits, and to make "'other provisions for the abolition of unnecessary oaths.'"

5. The Declaration must be made before a Justice of the Peace or before a Commissioner for administering oaths (*see* Rule 65). If made

before a Commissioner it should bear a 2*s.* 6*d.* Inland Revenue *impressed* stamp.

6. Declarations made *out of the United Kingdom* are not made under the authority of the Act 5 & 6 Will. IV. cap. 62, and should not conclude with the statutory termination above quoted, but should be made strictly in accordance with Form D. of the Third Schedule of the Rules; such Declarations do not require an Inland Revenue stamp.

7. Declarations made out *out of Her Majesty's dominions* may, in cases where it is impracticable to make them before a British consular officer, be subscribed before a mayor or other public official, whose signature or official seal must, however, be certified by a British consular officer, or by the Consul of the respective foreign nation in London.

8. The Declaration and the statement on Application should contain the full name, address, and calling of the Applicant, and should bear the ordinary signature of the person by whom made. The trading name under which the business is carried on must also in every case be given.

9. When the Trade Mark to which an Application relates is the property of a *Firm*, the Declaration and the Statement should be made by *one member* of the firm, and should be signed by him *alone*.

The Declaration should in such a case commence as follows:—

"I of the firm of of ,* " and the first words of the third paragraph should be altered from "I am lawfully, &c.," to "My said firm are lawfully, &c."

The Statement on Application should commence as follows:—

"I of and on behalf of the Firm of of ,*
apply that the said firm may be registered as proprietors of the following Trade Mark, &c., &c., "

and the words at the foot of the Statement "I have used the said Trade Mark, &c." should then be altered to "My said firm have used the said Trade Mark, &c."

10. When the Trade Mark is the property of a *Company*, the Declaration and the Statement should be made by the Managing Director or by the Secretary of the Company and should be signed by him *alone*. The Declaration and Statement on Application in such cases should be worded in a manner similar to that set out above for a firm, except that the words "Managing Director [*or* Secretary] of" should be used at the head of the Declaration, and the words "Managing Director [or Secretary] of and on behalf of" at the head of the Statement.

11. In filling up the first paragraph of the Declaration the date in full of the Statement on Application should be accurately quoted; and the blank spaces of the jurat clause at the foot of the Declaration should also be carefully filled up.

NOTE.—*All alterations or erasures in the Declaration must be initialled by the Authority before whom the same is declared.*

THE STATEMENT ON APPLICATION.

Form A. or B. *See* Rules, p. 119.

12. The Statement should be certified as an Exhibit to the Declaration by the authority before whom the latter document is declared.

* Here insert trade or business.

13. The name of the person making the Declaration should be inserted in the certifying clause at the foot of the Statement, and the other blank spaces of this clause should also be carefully filled up.

14. The Statement should give an accurate description of the mark, specifying any words, devices, or other things forming a conspicuous part of the mark. It should also specify *separately for each class* the description or descriptions of goods in respect of which the registration of the mark is applied for.

15. Ornamental or coloured groundwork, such as plaids or checks, cannot be claimed as part of a mark unless such groundwork be included within the mark by some border or lines which border or lines should be referred to in the description of the mark.

16. Where part of a label or mark consists of words or figures which vary with the different goods or qualities of goods to which the mark is applied, these variable parts should not be set out in the description of the mark, but should be referred to in general terms as "printed matter," or as "other words referring to the goods to which the mark is applied," in which case these parts may appear in the representation in one variety or the applicant may leave these parts of the mark or label blank, describing the blank spaces as "to be filled according to the quality or description of the goods with printed matter" or "to be filled with other words, referring to the goods to which the mark is applied, as above.

17. Terms or symbols common to a trade, such as, in the iron trade, the words "best, best, best" "charcoal," "coke," "platine," "scrap," and representations of a crown or horse-shoe, or, in the wine and spirit trade, representations of vine leaves, grape clusters, stars, or diamonds, are not trade marks or parts of trade marks within the meaning of the Trade Marks Registration Act, 1875, and must not be shown upon representations of new marks; and where such terms or symbols have been used in combination with trade marks before the passing of that Act, they must be disclaimed in the Statement on Application as being "terms" or "symbols," as the cast may be, "common to the trade concerned in the goods."

18. It is not intended to place upon the Register under the Trade Marks Registration Act, 1875, a series of Trade Marks which differ from one another only in respect of indications of quality or quantity commonly used in a trade. Protection for the whole of such a series of Marks will be obtained by the Registration of *one* of the series, the description of which Mark in the Statement on Application should be so worded as to include a reference to the common elements in combination with which it is used by the Applicant.

For instance, if a manufacturer of iron is in the habit of using a number of combinations of a certain device together with a crown, a horse-shoe, the words "best," "best, best," "charcoal," or any other common indications of quality, he should include them in one description by the addition, after the description of the device which is private property, of words such as the following: "used in combination with a crown, a horse-shoe, a crown and a horse-shoe, or other mark, device, or word or words, commonly used by the trade to signify quality."

19. Applications for the Registration of Trade Marks in Class 7

should only be made in respect of the larger kinds of agricultural and horticultural implements and machines and parts of the same; for all the smaller descriptions of metal implements, such as gardening, draining, excavating, and mining tools, other than with a cutting edge, application should be made in Class 13.

20. Marks for the under-mentioned goods should be claimed in Class 50:
Bags, sacks, tarpaulins, rick-cloths, cart-covers, tents, brattice cloth.
Brushes (except artists' brushes) and combs.
Buttons of all kinds, other than of precious metals or imitations thereof.
Cordage, rope, twine.
Coopers' wares.
Drinking flasks, not of precious metals or imitations thereof.
Fuel (patent and artificial).
Furniture cream, plate powder, diamond cement, polishing paste.
Grindstones, oilstones, hones, emery.
Hose.
Knapsacks.
Preparations for softening leather.
Rugs (described in the Statement as "not included in Class 36").
Steam-packing.

NOTE.—*All alterations or erasures in the Statement on Application must be initialled by the Authority before whom the Declaration is made.*

THE REPRESENTATIONS.

21. The Representations accompanying an Application must be sent *in duplicate*, each Representation of each Mark upon a separate half-sheet of foolscap paper, and with a margin of not less than one inch and a half on the left-hand side of the page. The two Representations of each Mark must in all cases be *exactly* similar.

22. Representations of a larger size than foolscap may be folded, but all such Representations must be mounted on linen.

23. Representations should be not only of a durable nature but of such a kind as will admit of their being preserved and bound together in volumes as records of the property of the Applicants.

24. No Representation or part of a Representation supplied for the purposes of Registration should be in pencil.

25. The words "Registered," "Copyright," "Entered at Stationers' Hall," "To counterfeit this is forgery," will not be registered under the Trade Marks Registration Act, 1875, and should, therefore, not appear upon the Representations annexed to the Application, nor should any reference to such words be made in the Description of a Mark given in the Statement on Application.

MARKS NOT USED BEFORE THE PASSING OF THE TRADE MARKS REGISTRATION ACT, 1875 (*13th August*, 1875).

26. The definition of a Trade Mark not used prior to the passing of the Trade Marks Registration Act, 1875, is given in the 10th section of that Act, as follows:—

"A Trade Mark consists of one or more of the following essential particulars; that is to say,

"A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

"A written signature or copy of a written signature of an individual or firm; or

"A distinctive device, mark, heading, label, or ticket."

All Marks, therefore, which it is desired to register, and which were not used prior to the 13th August, 1875, *must include one or more of the above essential particulars.*

The 10th section goes on—"and there may be added to any one or more or the said particulars any letters, words, or figures, or combination of letters, words, or figures."

27. The following devices and words will not be registered as new Marks or parts of new Marks;

Representations of Her Majesty the Queen, or of any member of the Royal Family, or of Foreign Sovereigns.

Royal or national arms, crests, or mottoes.

Representations of the Royal Crown or of National flags.

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

Prize or exhibition medals.

The words "trade mark," "warranted," "guaranteed."

Words implying a guarantee of the special quality of the goods to which the mark is applied, such as "best," "pure," "genuine" "excellent."

Notice.—Considerable disappointment and expense arise from applications to register as new Trade Marks, Marks which, though distinctive in themselves, nearly resemble Marks already registered. It is desirable, therefore, that persons wishing to adopt new Marks should, before engraving blocks and circulating impressions of such Marks among their customers, make a search at the Trade Marks Registry Office with the view of ascertaining whether their proposed Mark is already registered, or whether, from its being calculated to deceive by a resemblance to other Marks already in use, it would be refused registration under the 6th Section of the Trade Marks Registration Act, 1875 (38 & 39 Vict. c. 91). The fee for inspecting the Register is one shilling per quarter of an hour.

Persons resident in the country may cause a search to be made for them at the Trade Marks Registry Office as to any Trade Mark, or proposed Trade Mark, by forwarding to the Office a copy of the Mark, accompanied by a Post Office Order for the fee of one shilling, and a statement of the class or classes of goods to which the mark is applied.

Fees.

28. Fees will not be received in cash. They may be paid by a Post Office Order payable to H. Reader Lack at the General Post Office, London, and *crossed*; or, if they exceed five pounds, may be paid by a cheque drawn to the "Registrar of Trade Marks or Bearer," and *crossed* "Bank of England."

29. The following are extracts from the Schedule of Fees annexed to the Rules under the Trade Marks Registration Acts, 1875-77:—

	£	s.	d.
(i.) On application to register one trade mark for one or more articles included in one class	1	0	0

	£	s.	d.
(ii.) On Application to register more than one trade mark for one or more articles included in one class, for each additional trade mark after the first	0	10	0
(iii.) On Application to register a trade mark in respect of goods in different classes, for every class after the first to which such trade mark is extended, an additional fee of	0	2	0
(iv.) For Registration of one trade mark . . .	1	0	0
(v.) Where the same person is registered at the same time for more than one trade mark, for Registration of each additional mark after the first	0	10	0
(vi.) Where the same person is registered at the same time for the same trade mark in respect of goods in different classes, for the Registration of one mark in each class after the first an additional fee of	0	2	0

The fees referred to in the above paragraphs, iv., v., vi., viz., the fees for final *Registration*, as distinct from the fees payable *on Application*, should *not* be paid at the time of making the Application. Notice will be sent when the fees for Registration are required.

30. Each Application should be accompanied by a memorandum upon paper of foolscap size (to which the Post Office Order or Cheque should be fastened), setting forth the name, address, and business of the applicant, and the amount of fees remitted; for example,—

Messrs. John Jones & Co.,
Moon Street,
Birmingham;
Chemists.

FEES ON APPLICATION.

	£	s.	d.
One trade mark in Class 4	1	0	0
or			
Two trade marks in Class 4	1	10	0
or			
Twenty trade marks in Class 47 . . .	10	10	0
or			
One trade mark in Classes 5, 6, and 7 . .	1	4	0
or			
Two trade marks, both to be registered in Classes 5, 6, and 7	1	18	0
or			
Two trade marks, one to be registered in Class 12, the other in Class 13	2	0	0

An Application will not be attended to unless it be accompanied by the proper fees.

ADVERTISEMENT IN THE TRADE MARKS JOURNAL.

31. A Wood-block or Electrotype must be furnished for each Mark in each Class (except in the case of Cotton Marks, Classes 23, 24, 25), even though the Mark consists only of a word or of words.

32. Great inconvenience and delay arise from neglect of the requirement

that the Wood-blocks or Electrotypes furnished must correspond *exactly* with the Representations annexed to the application, one of which latter is returned for the guidance of the applicant along with the instructions for advertisement. The Blocks must also afford distinct impressions of the Marks; worn, battered, or mutilated Blocks cannot be accepted.

33. The Blocks and Electrotypes need not be larger than is required to show the Mark in a distinct manner; and provided the Mark is clearly represented, it is not necessary that it should be on a Block two inches square.

The largest space available for the representation of any single Mark is eight and a half inches broad by ten inches deep.

When a Block or Electrotype exceeds two inches in depth, a charge for additional space is made, at the rate of two shillings and sixpence for every inch or part of an inch beyond the two inches.

No Block should exceed two inches in *breadth*, unless a larger size is necessary in order to show the Mark distinctly.

34. The Number given by the Registrar should *not* be cut on the face of the Block or Electrotype, but should only be marked upon the side in such a manner as to secure its identification.

A description of the manner in which the mark is applied should not be cut upon the Block.

35. All Blocks or Electrotypes should be sent to the Office of the Registrar, together with the papers marked "Form 2," and with the copy of the representation sent for the guidance of the applicant in preparing the Blocks.

It would greatly facilitate the compilation of the *Trade Marks Journal* if each applicant would affix an impression of the Mark from the Block, as cut for the *Journal*, to the "Form 2" before forwarding it to the Trade Marks Registry Office.

Oppositions.

36. Any person who claims as his own, or as part of his own, a Trade Mark for which application has been made by another person, should, on seeing such application advertised in the *Trade Marks Journal*, send to the Registrar a Notice (*in duplicate*) of Opposition under Rule 16 setting out the particulars indicated in the form given below.

A separate Notice of Opposition is necessary in respect of *each* Trade Mark opposed.

Each Notice of Opposition should be accompanied by the prescribed fee, viz., 2*l*.

Upon receipt of a Notice of Opposition, the Registrar suspends the Registration of the Trade Mark in question and transmits one copy of the Notice to the Applicant, who is required within three weeks to deliver a Counter-statement (*in duplicate*) of the grounds on which he relies for his Application.

A separate Counter-statement is necessary in respect of *each* Trade Mark opposed.

Upon delivery of the Counter-statement, the Registrar requires the Opponent to give security for such costs as may be awarded in respect

of the Opposition; and the Applicant is afforded an opportunity of objecting to the solvency of the security.

If no objection is made to the security given, the Registrar requires the Opponent, within a period of six weeks, to take the necessary steps to bring the matters in dispute before the Chancery Division of the High Court of Justice, and to give him notice that such steps have been taken.

37. The manner in which the Opponent should give the Registrar notice that an opposition matter has been duly brought before the Court is by delivering at the Trade Marks Registry Office a copy of the Notice of Motion or of the Summons which has been, within the six weeks referred to above, served upon the Applicant, which copy of Notice of Motion or of Summons must bear an Endorsement of Service, signed by the Opponent's Solicitor.

38. The Registrar is empowered under Rule 45, on receiving a notice from the parties in an Opposition matter that they wish to have a finding from him on certain matters of fact before taking the opinion of the Court on certain questions of law, and on payment of 1*l.* each by the parties, to examine the facts alleged in the presence of both parties or their agents, and to state a case on which to obtain the opinion of the Court.

39. The following Forms indicate the particulars which the Registrar requires to be furnished in the case of Oppositions under Rule 16 :—

FORM OF NOTICE OF OPPOSITION.

Trade Marks Registration Act, 1875.
In the Matter of an Application No.
by of

To the Registrar of Trade Marks.

I of hereby give notice that I oppose the Registration of the Trade Mark advertised under the above number for Class , in the *Trade Marks Journal* of the day of 187 No. , page .

The grounds of opposition are as follows :—

(To be dated and signed by the Opponent or his Solicitor.)

FORM OF COUNTER-STATEMENT.

Trade Marks Registration Act, 1875.
In the Matter of an Application No.
and of the Opposition thereto No.

To the Registrar of Trade Marks.

In reply to the Notice of Opposition in this matter by of I give notice by way of Counter-statement that I rely for my Application on the following grounds :—

(To be dated and signed by the Applicant or his Solicitor.)

Form of Bond.

The following is suggested as a Form of Bond such as the Registrar would be able to accept from persons opposing Applications, and who have been required to give security for costs:—

Trade Marks Registration Act, 1875.
In the Matter of an Application No.
and of the Opposition thereto No.

Know all men by these presents that we of and of are jointly and severally held and firmly bound to Henry Reader Lack the Registrar of Trade Marks in the penal sum of pounds of good and lawful money of Great Britain to be paid to the said Henry Reader Lack or to other the Registrar of Trade Marks for the time being For which payment to be well and faithfully made we bind ourselves and each of us our and each of our heirs executors and administrators firmly by these presents. Sealed with our Seals

Dated this day of 18 .

Whereas pursuant to the provisions of the Trade Marks Registration Act 1875 and the General Rules made thereunder by the Lord Chancellor an application (No.) has been made by of to the Registrar of Trade Marks for the registration of a certain Trade Mark in such application particularly described And whereas the above-bounden have delivered a notice of opposition to such registration and the said have sent to the said Registrar a counter-statement of the grounds on which they rely for their application And whereas the said Registrar pursuant to the said General Rules hath required the said to enter into the above-written obligation (subject to the condition herein-after contained) as security for such costs as may be awarded in respect of such opposition

Now the condition of the above-written obligation is such that if the said or either of them their or either of their heirs executors or administrators do and shall well and truly pay or cause to be paid to all such costs as the High Court of Justice shall think fit to award to the said in respect of the said opposition then the above-written obligation is to be void or else to remain in full force and virtue.

Signed sealed and delivered by the above-bounden and in the presence of

---

Notice to have Case stated by Registrar under Rule 45.

In the Matter of the Opposition No. to the Application No.

Sir,

Notice is hereby given that I , the Opponent in this matter, and I , the Applicant, are unable to agree upon the facts on which the opinion of the Court is to be taken in pursuance of Rule 44, and that we request you to a fix a day on which we can attend

before you and obtain your finding on the matters of fact to be submitted to the Court as settled.

(To be dated and signed by the Parties or their Solicitors.)

To the Registrar of Trade Marks,
Trade Marks Registry Office,
4, Quality Court,
Chancery Lane,
London, W.C.

THE MANCHESTER BRANCH OF THE TRADE MARKS REGISTRY OFFICE.

40. For the convenience of merchants and manufacturers engaged in the cotton trade, a Branch of the Trade Marks Registry Office was opened at 48, Royal Exchange, Manchester, on the 24th October, 1876.

Mr. Joseph Fry has been appointed by the Commissioners of Patents as Keeper of the Manchester Office.

41. The following gentlemen have been appointed by the Commissioners of Patents to form the Committee of Experts under Rule 59 of the Rules under the Trade Marks Registration Acts:

Edmund Ashworth, Esq., President of the Chamber of Commerce, Manchester.
John Cheetham, Esq., Vice-President of the Chamber of Commerce, Manchester.
A. Bernus, Esq.
Chas. S. Carlisle, Esq.
James Chapman, Esq.
W. F. Danson, Esq.
B. Davies, Esq.
George R. Davies, Esq.
S. A. Fulda, Esq.
P. Goldschmidt, Esq.
C. P. Henderson, jun., Esq.
A. J. Hunter, Esq.
H. J. Leppoc, Esq.
G. Lord, Esq.
J. W. D. Mather, Esq.
E. Crompton Potter, Esq.
E. Reiss, Esq.
S. P. Schilizzi, Esq.
H. M. Stenthal, Esq.
E. H. Sykes, Esq.
A. Wallace, Esq.

42. The following Rules have been issued, under date the 26th February, 1877, with respect to the Advertisement and time of Registration of Trade Marks in Classes 23, 24, and 25:—

(1.) [*Advertisement of cotton marks.*] As soon as may be after the receipt of an application, made as provided by the Trade Marks Rules, for the registration of a mark in classes 23, 24, 25 aforesaid, or in any one or more of such classes, the Registrar shall insert in the official paper

an advertisement of such application, shewing the name and address of the applicant, the class in which he applies, the number given to the mark by the Registrar, the places in London and Manchester respectively where a specimen of such mark is deposited for exhibition, and distinguishing whether the mark has or has not been used prior to the thirteenth day of August one thousand eight hundred and seventy-five.

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

43. Pending the conclusion of the labours of the Manchester Committee of Experts in regard *to old* Cotton Trade Marks, and with the object of sparing to the inventors of *new* Cotton Marks—that is to say, Marks designed since the 13th August, 1875, and intended to be applied to goods in classes 23, 24, or 25—the expense of making formal application to the Registrar's Office in London for Marks which it may be subsequently found are not entitled to registration, the Commissioners of Patents have given their consent to the following arrangement:—

Persons having designs for *new* Cotton Marks shall be allowed to deposit at the Manchester Branch duplicate copies of such marks *under cover*, to remain unopened until the Committee of Experts shall have completed the examination of *old* Trade Marks applied for in the Cotton Classes.

Each of the two copies of each Mark deposited should be mounted upon a separate half-sheet of foolscap paper.

Every packet containing such designs should be *sealed* and addressed to

The Keeper,
Trade Marks Registry Office,
(Manchester Branch),
48, Royal Exchange.
Manchester.

The name and address of the depositor, and the words "Designs for New Cotton Trade Marks," should be written conspicuously upon the packet.

It will nevertheless be open to inventors of New Cotton Marks, if they prefer it, to make formal application for the registration of such Marks to the Registrar's Office in London, but such application must in every case be accompanied by the proper fees.

APPLICATIONS FOR COTTON MARKS.

44. The Statement on Application for the registration of Trade Marks in the Cotton Classes (classes 23, 24, and 25) may be prepared according to a Form which differs slightly from the Forms A. and B. as given in the Third Schedule to the Rules, and which requires no description of the Marks.

The following is an example:—

Form B.

I, *John Jones, of and on behalf of the firm of John Jones & Co., of* 55, *Moon Street, in the City of Manchester, Merchants*, apply that the said firm may be registered as proprietors of the following Trade Marks, which are represented respectively on the several papers annexed hereto; that is to say,

No. 1 on papers "1;"
No. 2 on papers "2;"
No. 3 on papers "3."

I desire that the said Trade Marks may be registered in respect of the description of goods following; that is to say,

As to No. 1, in respect of the following goods contained in Class 23, namely Cotton Yarn [*or* Cotton Thread].

As to No. 2, in respect of the following goods contained in Class 24, namely Cotton Piece Goods.

As to No. 3, in respect of the following goods contained in Class 25, namely Cotton Goods not included in Classes 23, 24, or 38.

The said firm have used the said Trade Marks respectively in respect of the goods for which I desire them to be registered for the several respective periods before the date of this statement as herein-after respectively set out; that is to say,

No. 1 for 3 months;
No. 2 for 1 month;
No. 3 for 2 weeks.

The day of 187 .

(Signed) *John Jones.*

When an Application is prepared according to the above example, each of the two Representations of each Mark should, for the purposes of identification, *bear the Signature of the Applicant.*

The statutory Declaration accompanying an Application prepared according to the above example should run as follows:—

Form C.

I, *John Jones, one of the firm of John Jones & Co., of* 55, *Moon Street, in the City of Manchester, Merchants*, do hereby solemnly and sincerely declare, to the best of my knowledge and belief, as follows:

(1.) The statement signed by me, and dated the day of 187 , and marked with the letter "B," and shown to me at the time of making this declaration, is true:

(2.) The representations of the Trade Marks in such statement referred to are correct representations of the Trade Marks for the registration of which I apply:

(3.) My said firm are lawfully entitled to the use of the said Trade Marks:

(4.) And I make, &c., &c.

Declared at
this day of
187 .
Before me,

(Signed) *John Jones.*

45. Borders are not recognised as distinctive parts of Trade Marks or Labels in the Cotton Classes; it is necessary, therefore, *when any border appears in connection with a proposed new Cotton Trade Mark*, that the following note (signed by the Applicant) should be written upon the face or back of each of the papers to which the representations of the Mark are affixed :—

"The border of this Mark is not in itself claimed as the property of the Applicant."

Certificates of Refusal.

46. Owners desirous of obtaining the Registrar's Certificate of Refusal under section 2 of the Trade Marks Registration Amendment Act, 1876, should forward a written application for the same to

The Registrar,
Trade Marks Registry Office,
4, Quality Court,
Chancery Lane,
London, W.C.

The letter of application should be accompanied by two unmounted copies of each Mark for which a certificate is required, and the Registrar's number (or numbers) should be quoted.

A Post Office Order (made payable to H. Reader Lack at the General Post Office, London, and *crossed*) should be forwarded in payment of the proper fees, which are calculated at the rate of 1*l.* for the first Mark refused, and 10*s.* for each subsequent Mark for which a certificate is required for the same owner at the same time.

When the certificate required relates to a Mark placed by the Manchester Committee of Experts in the Second Class of Cotton Marks, the number given to the Mark at the Manchester Branch Office should be quoted in the letter of application.

Certificates of Refusal relating to Marks placed in the Second Class of Cotton Marks will be in due course advertised in the *Trade Marks Journal*.

Assignment of Registered Marks.

47. If the assignee resides within the United Kingdom, the deed of assignment, or a certified copy of such deed, should be sent to, or left at, the Trade Marks Registry Office, and Application should at the same time be made by the assignee to be registered as proprietor.

The following Form gives the particulars the Registrar requires:—

Form of Application by Assignee of registered Trade Mark applying to be registered as Proprietor.

(A) Trade Mark No.* . Class. .
Advertised *Trade Marks Journal*, No. , p. .
Name of owner
Firm
Place of Business
I the undersigned *A.B.* of , in the county of , carrying

* Here enter number or other means of identifying Trade Mark on Register.

on business at , in the county of , * , apply to be registered as proprietor of the Trade Mark above mentioned in succession to the said .

The said , by deed dated the day of 18 , and made between and , assigned to me the said the said Trade Mark, together with the goodwill of the business concerned in the goods with respect to which the said Trade Mark is registered.

The day of 18 .

(Signed) *A.B.*

This form of Application should be verified by a declaration as in Form C. given in the Third Schedule to the Rules, substituting for paragraphs (2) and (3) in that Form the words "And I am lawfully entitled to the goodwill of the business concerned in the goods with respect to which the Trade Mark referred to in the said statement marked with the letter 'A' is registered. And I make, &c."

The Application Form and the Declaration should be accompanied by the fee for registering a subsequent proprietor, as prescribed in the Second Schedule to the Rules under the Trade Marks Registration, Act, 1875-7, item 8.

Rectification of Register.

48. Where an Order of Court has been obtained to rectify the register the person interested or his agent should send the Registrar an office copy of the Order or of the material part thereof, with a Post Office Order for the amount 10*s*.

The following is suggested as a convenient form :—

To the Registrar of Trade Marks.

Sir, Mark No.

Enclosed is an office copy of an Order of Court to rectify the entry of the Trade Mark No. on the Register of Trade Marks as to the particulars in said order specified, together with a Post Office Order for 10*s*., the fee prescribed by the Second Schedule to the Rules published under the Trade Marks Registration Acts 1875-7.

(Signed) *John Jones.*

Notice.

49. Copies of the Rules under the Trade Marks Registration Acts, 1875-7, and of each number of the *Trade Marks Journal*, may be obtained, on payment of a shilling for each copy, of the following publishers :—

Knight and Co., 90, Fleet Street ;
Stevens and Sons, 119, Chancery Lane ;
E. Stanford, 55, Charing Cross ;
Shaw and Sons, Fetter Lane ;
Butterworths, 7, Fleet Street ;
G. Downing, 8, Quality Court, Chancery Lane ;
Trübner and Co , 57 and 59, Ludgate Hill ;
Waterlow and Sons, Limited, 25, 26, and 27, Great Winchester Street, 60 and 61, London Wall, and 49, Parliament Street ;

* Here state calling.

J. M. Johnson and Sons, Limited, 3, Castle Street, Holborn, and 56, Hatton Garden;
Palmer and Howe, 1, 3, and 5, Bond Street, Manchester;
Alex. Thom, 87 and 88, Abbey Street, Dublin;
A. and C. Black, Edinburgh.

Copies will also be sent by post by any of the above publishers on a prepaid application, containing the name and address of the sender, and accompanied by a Post Office Order for the amount due in respect of the copies required

Printed Forms of Declaration and of Statement on Application for the use of person wishing to register Trade Marks are not sold at the Registry Office, but they may be obtained from several of the firms named above.

Trade Marks Registry Office,
4, Quality Court,
Chancery Lane,
London, W.C.
13th February, 1878.

H. READER LACK,
Registrar.

INDEX.

ACTS OF PARLIAMENT,
Reference to Acts of 1875 & 1876 .. 1
Act of 1875 does not state whether *trade mark* is or is not *property*, 2
does not on that point disturb doctrines of recent authorities, 2
Act of 1875 *directory* not *negative*, 20
Act of 25 & 26 Vict c. 42 .. 2
Act of 25 & 26 Vict. c. 88 ; definition of the word *person*, 14

COMMON LAW,
Jurisdiction of Courts of Common Law at an early period in respect of *trade marks*, 2 to 8
trade marks not treated as *property* in the cases referred to, 7
at that early period, *fraud* only apparently the basis of jurisdiction, 6–8
the *legal title* of, disputed, formerly submitted to the exclusive jurisdiction of Courts of Common Law, 2

COPYRIGHT, whether copyright constitutes a trade mark, 25, 26, 27

CREST, a crest may constitute a trade mark, 39

DOCTRINE, now settled that a trade mark is *property*, 14, 15

EQUITY,
Equity would not, before the Act of 25 & 26 Vict. c. 42, grant an injunction, if there were doubts as to the *legal title* to a trade mark, 2
cases of trade marks in Equity not now sent to Law under the 25 & 26 Vict. c 42 .. 2
Equity must now decide on the legal right as well as the equity of a case, 2
former doctrine in Equity as well as at Law, that a *trade mark* is not property, but a *right* of some kind which will be protected, 8–14

FRAUD,
at a comparatively early period, infringement of trade mark not considered actual invasion of *property*, but simply a case of fraud, 10
but where there was *infringement*, held that defendant had no *right* to use a trade mark for the purpose of *deception*, 10
at a later period, held, that where there was actual *imitation*, though no evidence of any *fraudulent* intention, an injunction would be granted, 11, 12
Repression of fraud by Equity, applicable not merely to cases of *actual trade mark*, but to cases approaching the *nature* of trade marks, 72
where A., selling the same kind of goods as those sold by B., his brother, imitates the labels used by B., that will be repressed as *fraud*, though A. has a right to use his own name, 72
if the word *original*, applied by the originator of an article of use, is copied by a subsequent maker of similar articles, the imitator will be restrained, though the *title* given by the original maker may not be actually a trade mark, 73, 74, 75
the imitation of a particular *word*, designating a particular article, will be repressed, even where the Court may doubt whether the particular word is a *trade mark*, 75, 76
Imitation by A. of the labels used by B. on the articles sold by him, and very close though not *absolute imitation* of B.'s name, is fraud, 79
it is fraud where an agent selling goods made by his principal, mixes those goods with goods made by himself, so as to lead purchasers to believe that he is selling the goods of his principal, 80

INFRINGEMENT,
where A. makes up bundles of goods in a given manner, and takes *specific letters*, as his trade mark, and B. imitates the making up of the bundles but does not take the *specific letters*, that is not *infringement*, 40
there is no infringement where there is material *dissimilarity*, 43, 44
though a man may carry on business in his own name, yet if he does so in such a manner as to deceive the public, and induce them to believe it is the business of another using the same name, that is fraud, 45
where there is an imitation, which, though, not exactly similar, is *calculated* to *deceive*, that is infringement, 45
where there is actual imitation of a trade mark, though the party so imitating, was ignorant of the prior ownership of the trade mark, that is infringement, 46

INFRINGEMENT :—*continued.*
where the act of a defendant amounts to taking an unfair advantage of the reputation of the plaintiff's goods, that is infringement, 46
where there is deception, calculated to mislead the *public*, that is infringement, 47, 48
if a trader adopts a trade mark, so far resembling that of a rival in the trade, that *ordinary* purchasers with *ordinary* caution are likely to be misled, that is infringement, 50
the question as to what constitutes infringement, is not where *manufacturers* would distinguish between the trade mark, and the alleged imitation of it, but whether *the public* would be deceived, 50
where the owner of a trade mark describes it as his *patent*, when he has no patent, that is *fraud* and the trade mark will not be protected, 51
one tradesman has no right to put off his goods for sale as the goods of a rival trader, 53
where there is some similarity but no proof of intention to mislead the public, and no proof that the public *has been deceived*, an injunction will not be supported, 54
but if the public *is deceived*, absence of *intention* to deceive, is no defence, 54
where there is nothing to shew that the public has been deceived, there is no infringement, 57
it is no defence in an action for infringement, that the infringement was the act of the *defendant's servant*, 57
as to what will, and what will not, be infringement, see per Lord Cranworth, C., 58
where a foreigner employs agents using a trade mark in respect of his goods, he will now be protected (25 & 26 Vict. c. 88, sects 1 & 2), 59
no man has a right to sell goods of his own make, upon a false representation that they are of the manufacture of another, 60
it is infringement, if A. packs goods of his own make, in boxes made by B., bearing a special label in the nature of a trade mark, 61
distinction as to infringement, where there is, and where is not a *colourable imitation*, 62, 63
when there is not such imitation as to mislead persons of *common intelligence and observation*, there is no infringement, 64
where there is evidence as to the course pursued by a defendant, such as to shew that persons *have been deceived*, that is infringement, 65
see general rules as to infringement, 70, 71

LEGAL TITLE,
Under old practice as to injunction, if legal title of plaintiff doubtful, the case would be sent to Law. 2
under statute of 25 & 25 Vict. c. 42, Courts of Equity, in such matters, are to determine every question of *law and fact*, 2

LETTERS,
two letters of the alphabet may, it is said, constitute a *trade mark*, 25
but, *semble*, that this rule is doubtful as to trade marks taken since the Act of 38 & 39 Vict. c. 91 .. 25

LITERARY WORK,
the title of a literary work, has been held to be a trade mark, 34
but, *semble*, that is not law, 35

MANUFACTURER,
where the name of a manufacturer is mixed up with other marks, it is not *per se* a trade mark; but it will be treated as such, where there is fraud in the imitator, 37, 38

NAME,
the name of a country or of a particular place, *may* constitute a trade mark, 20, 21
but it does not always necessarily constitute a trade mark, 23
the use of the name of an individual may constitute a trade mark, 27
but the use of the name of an individual, being the name of his father, is not infringement, 33, 34

NEWSPAPER,
the particular designation of a newspaper, *may* it seems be treated as being in the *nature* of a trade mark, 32

PATENT,
where the use of the word *patent*, accompanying a trade mark may be, and where it will not be, *fatal* to the trade mark, 28, 29, 30

TRADE MARK,
not treated formerly at Law or in Equity as *property*, but only as a *right* of some kind, 4 to 8
an exclusive right in a trade mark is now recognised, even when there is no *fraud* on the part of the infringer, 11, 12
is now finally held to be *property*, 14, 15
may be assets of a firm, 15–19

TRADE MARK—*continued.*
passes to executors of original owner, 56
rules deduced from the authorities, 19
a title of honour given to a tradesman, for *trade merit*, does not constitute a *trade mark*, 24
trade marks supported by a false representation will not be protected, 30, 31
on the sale of a business where there is a trade mark, it passes to the purchasers, whether expressly mentioned or not, 58
the doctrine of *laches*, applicable to cases of *trade mark*, 64, 65

Ex. L. a. a.

LONDON:

PRINTED BY WILLIAM CLOWES AND SONS,

STAMFORD STREET AND CHARING CROSS.

RECENT WORKS.

The Law of Public Health & Local Government. Ninth Edition.

Embracing the Public Health Consolidation Act, 1875, and all other Acts giving Powers to Local Authorities. By W. CUNNINGHAM GLEN, Senior Legal Assistant and Principal of the Legal Department of the Local Government Board, and ALEX. GLEN, M.A. LL.B., Barristers-at-Law. Price 36s.

Law Times—"There is no book on the subject bearing any comparison with this one by Mr. Glen. . . . . The work must be considered absolutely complete."

Public Health.—"We cannot speak in too high terms of Mr. Glen's 'Law of Public Health.' It affords throughout evidence of the care and accuracy with which it has been compiled, and which, with the vast amount of information given, renders it an indispensable guide. An index, extending over eighty pages, facilitates reference to any part of this *magnum opus*."

Cheap Edition of the Public Health Act and the Rivers Pollution Act:

With an Index by F. STRATTON, Solicitor. A well-printed portable volume, bound in limp cloth. Price 3s.

Local Government Board Orders:

This volume contains the whole of the Orders now in force issued by the Poor Law Commissioners, the Poor Law Board, and the Local Government Board. The Circulars and other Explanatory Documents issued in relation to the Orders, Notes of Reference, and Index. Preceded by a Tabular Statement shewing the Orders in force in each Union and Parish. Price 20s.

Local Government Chronicle.—"In short the work is thoroughly good and useful, complete and trustworthy."

KNIGHT & CO., 90 FLEET STREET.

The Law of By Laws;

With an Appendix containing the Model By Laws issued by the Local Government Board, the Board of Trade, and the Education Department. By W. G. LUMLEY, Esq., LL.M., Q.C., Counsel to the Local Government Board, and to the Education Department. Price 10s.

Law Times.—"Should be in the hands of all whose duty it is to make and enforce Bye Laws."

Saturday Review.—"The arrangement appears to us peculiarly good . . . No body having the power to frame By-laws need be at a loss as to the proper manner of carrying out its task. Mr. Lumley is therefore to be congratulated on having hit upon and ably treated a hitherto almost untouched branch of the law, and one which is also of considerable and daily increasing importance."

Solicitor's Journal.—"This book not only supplies a want which must have been felt in many quarters of late, but it is of no small historical and archæological value, and is moreover pleasantly written."

The Examiner.—"Contains a good deal of interesting archæology, and no inconsiderable amount of valuable information."

The Economist.—"Mr. Lumley's work is all that could be desired. He has spared no labour to make it complete."

Scotsman.—"The work will be hailed with gratitude."

School Board Chronicle.—"Local authorities generally will find it desirable to have this book in their offices."

Local Government Chronicle.—"Will long remain the standard work upon the subject."

Iron.—"This work will be of great value."

A Legal Guide for the Clergy:

With Appendix of recent Statutes, and the Judgment of the Final Court on the Appeal of Mr. Ridsdale. By R. DENNY URLIN, of the Middle Temple, Esq., Barrister-at-Law. Price 4s. 6d.

Saturday Review. "Will save clergymen from the pitfalls offered by ignorance of the law and inability to get information in a compendious form."

Oxford University Herald. "Leaning upon the arm, so to speak, of the author, they need not stumble in the way they have to go."

Spectator. "Laymen may learn a good deal from its pages." "A concise view of the law."

The Law as to the Pollution of Rivers:

Embracing The Rivers' Pollution Prevention Act, 1876.
By ALEX. GLEN, M.A., LL.B., Cantab., Barrister-at-Law.
Price 2s. 6d.

Saturday Review. "Mr. Glen has produced a compact analysis of the law as to the pollution of rivers, showing the new powers given to authorities, and to private persons."

Public Health.—"Messrs Knight and Co. could not have brought out a more useful little manual. The references to other enactments are very useful, and the decisions of the courts will throw light upon obscure parts. The editor has carefully noted the distinctive sources of river pollution. The notes show a large experience and reading."

Manchester Guardian.—"Local authorities have an excellent guide to their duties in Mr. Glen's compendious text-book."

Iron. "The Legal Manuals published by Knight and Co. are in good repute, and the present work is no exception as respects fulness and accuracy."

Metropolitan.—"The introduction forms a useful digest, and very necessary notes are appended."

Medical Times. "One of those handy books which will be particularly useful."

The Lunacy Laws. Second Edition:

Containing all the Statutes relating to Private Lunatics—Pauper Lunatics—Criminal Lunatics—Commissions of Lunacy—Public and Private Asylums—and the Commissioners in Lunacy; with an Introductory Commentary, Notes to the Statutes, including References to decided Cases; and a Copious Index of 129 pages. By DANBY P. FRY, Barrister-at-Law, Assistant Secretary to the Local Government Board. Price 21s.

Saturday Review.—"Mr. Fry has rendered a useful service in putting these laws together in a connected and intelligible form."

Public Health.—"It is almost needless to say that it is the standard work of its kind, and that the new edition, with its corrections and additions, will be heartily welcomed. The purpose of Mr. Fry's book has been to render assistance to all charged with the care of insane persons by thoroughly acquainting them with their responsibilities."

Lancet.—"The second edition of this valuable work appears opportunely. It is ably edited, conveniently arranged, and will be indispensable."

Law Times.—"It is a decidedly valuable compendium of the law of which it treats, which, unhappily, is one of growing importance."

Former Notice.—"There are no books so useful as those which collect all the law on a single subject, arranged so that any part of it may be readily found. This has been the design of the volume before us; it has been accomplished with care and industry."

Metropolitan.—"It will undoubtedly be considered a leading authority in Lunacy matters. Its value cannot be too highly estimated, and Mr. Fry must be congratulated upon the success with which he has produced this, the second edition of his work."

Iron.—"The name of the author will be a sufficient guarantee for the completeness of his production."

The Medical Mirror.—"And it is so clearly written that no one having this manual by him need ever be at a loss to promptly ascertain the exact condition of the law upon any particular point concerning persons of unsound mind."

Journal of Mental Science.—"This work is invaluable to all connected with the care and treatment of the insane, and it must find a place on the board room table of every asylum in England and Wales. A copious index completes the book, and adds materially to its value."

Medical Times and Gazette.—"Mr. Danby P. Fry, a barrister of long standing and repute, has given the subject much patient search and labour, and we consider medical men owe him a debt of gratitude for the service he has done."

Law Magazine.—"The profession is indebted to Mr. Fry for placing at its disposal a work which will be found very useful in the administration of an important department of the law."

Carnarvon and Denbigh Herald.—"This is not the first time for Mr. Fry to appear as a legal writer and annotator, and from a very careful perusal of the introductory commentary of the work we now review, and a close inspection of the arrangement of the whole, we have no hesitation in pronouncing it to be a most excellent and serviceable manual."

North Wales Chronicle.—"Mr. Fry's work cannot but be highly serviceable. From the completeness of its matter, its valuable foot notes, its reference to decided cases, its minute index, and elaborate and clear introductory Commentary, is, we are persuaded, well calculated to communicate every information required on the subject."

Inquirer.—"This book is one of the best of its kind that we have ever seen, and must form a part of the library of every public man. A book of this kind is a necessity, and the author who does such work as this well, renders a service to society. There is not about this work any of that hasty book-making which characterises some of the editors of our Acts of Parliament."

The Law of Parliamentary and Municipal Registration:

With an Introduction, Notes, Useful Tables, the most Important Decisions given in Appeal Cases from the Revision Courts, and a full Index. By ALEX. CHARLES NICOLL and ARTHUR JOHN FLAXMAN, of the Middle Temple, Barristers-at-Law.

Price *7s. 6d.*

From A. C. Marten, Esq., Q.C., M.P.—"A very excellent work; reflecting great credit on the Editors."
From Francis H. Bacon, Esq., of Lincoln's Inn, Revising Barrister.—"A very useful work. and one which was very much wanted."
Law Journal.—"Mr. Nicoll and Mr. Flaxman have accomplished their task in a manner that does them very great credit."
Solicitor's Journal.—"The plan of the book appears to be well conceived."
City Press.—"The book is, of course, especially valuable to those who are officially interested in the business; but will also be of use to the large class which takes a deep interest in political matters."
Globe.—"A very useful book."
Westminster Review.—"A serviceable edition of the Law of Registration."
Fun.—"Another of those books without which every gentleman's library, no matter how otherwise well stocked, must mourn in melancholy incompleteness."
Yorkshire Post.—"A book like this possesses great value."
Sheffield Independent.—"States in a clear manner the Law relating to Registration."
Lynn Advertiser.—"A useful manual. The editors have been eminently successful in making the law concise and clear."
Oldham Express.—"This book will be of great use."
Bromsgrove Messenger.—"An excellent epitome."
Law Magazine.—"The law is well and concisely set out."

A Guide to the Construction and Management of Workhouses:

By the late EDWARD SMITH, M.D., LL.B., F.R.S., Local Government Board Inspector. Price 8*s.* 6*d.*

Local Taxation and the Rating of Machinery:

By THOMAS F. HEDLEY. Price 8*s.*

The Poor Law Amendment and Divided Parishes Act, 1876, &c.:

With Notes, Appendix, and Index. By EDMUND LUMLEY, B.A., Barrister-at-Law. Price 2*s.*

KNIGHT & CO., 90 FLEET STREET.

The Chairman's Handbook. Third Edition:

Suggestions and Rules for the conduct of Chairmen of Public and other Meetings, drawn from the procedure and practice of Parliament, with an Introductory Letter address to the Right Honourable the Speaker. By REGINALD F. D. PALGRAVE, the Clerk Assistant of the House of Commons. Price 1s. 6d.

The Times.—". . . Mr. Palgrave has tried to make the ways of public meetings easy, and the burden of chairmanship light. His position in the House of Commons gives him authority, and he has received suggestions and aid from members of that House possessing large experience in Parliamentary and local administration. The result is a most useful and timely Handbook, *setting forth the rules which govern public meetings, and explaining and illustrating them* so that they may be understood and applied by any man of average capacity. . . . On many points of occasional doubt and difficulty the Handbook will prove a safe and plain guide. No question which may reasonably be expected to arise from the mode of electing a chairman down to the happy time at which the business is settled and the meeting adjourned, is left without a simple solution. . . ."

Morning Post.—"It would be impossible to over-estimate the value of the Chairman's Handbook."

Pall Mall Gazette.—"Many useful suggestions."

Morning Advertiser.—"This convenient handy book, a code of clear and lucid rules."

Daily News.—"We agree with Mr. Palgrave that the standard to which Chairmen should seek to conform is that embodied in the well-tried practice of the House."

Daily Telegraph.—"A valuable aid not only to Chairmen, but to all who take part in public meetings."

Newcastle Daily Chronicle.—"We must again indicate our high sense of the value of this little work."

Scotsman.—"We very much doubt whether there could arise any question at a public meeting which a reference to his little volume would not at once determine."

The Guardian.—"An invaluable assistant and undoubted authority."

Law Times.—"Cannot fail to be of service."

Saturday Review.—"Put together in a clear and concise form."

Athenæum.—"The rules laid down will be found most useful."

Second Notice.—"Has met with the success it deserved. The author has carefully revised it."

Economist.—"This is a handy little book. Nobody is better qualified than the author to speak with authority upon the matter."

Graphic.—"This useful little manual."

Illustrated News.—"Of great service to all who take part in public meetings."

Banker's Magazine.—"Exactly the book which every Chairman will be glad to have in his pocket."

Nonconformist.—"The reader knows the subject from the title, but cannot know, without the work, with what practical sagacity and experience Mr. Palgrave has treated it."

Builder.—"It will prove a useful help. The fact that it is written by Mr. Palgrave is an assurance that it may be depended upon."

Iron.—"Gives many hints on the subject, which will be of general utility."

Leeds Mercury.—"A very useful book. Possessing an authoritative guide like this Chairmen should find no difficulties."

Metropolitan.—"With good effect a copy might well be placed on the table at every public meeting."

Stamford Mercury.—"Exceedingly useful, not only to novices in debate, but also to Chairmen of experience."

Eastern Morning News.—"It will be a great help to many."

School Board Chronicle.—"It affords a great deal of excellent information, much good advice, and a body of rules well worthy of attention."

Local Government Chronicle.—"The information is full, precise, and adequate: the rules distinct and comprehensive; the directions clear."

Elgin Courant.—"This little book is of much value."

Sheffield Post.—"Mr. Palgrave has done his work very well—an admirable guide."

The Churchwarden's Guide. Ninth Edition:

Edited by W. G. BROOKE, M.A., Barrister-at-Law. This work is not only a Guide to Churchwardens, but forms also a complete Legal Text Book, with Tables of Statutes and Cases brought down to the present time, and including the Public Worship Regulation Act, &c. Price 4s. 6d.

Saturday Review.—"The fact that it has gone through nine editions shows how much such a work is wanted by those who fill that anxious office."

Law Times.—"An invaluable, and, we believe, trustworthy Guide."

Second Notice.—"It states the law with accuracy and clearness."

Churchman's Magazine.—"Drawn up with great care and clearness."

The Rock.—"A most valuable work."

Second Notice.—"The latest changes are duly noted."

Church Times.—"Exceedingly well compiled. A clear and authoritative statement of the duties and liabilities of Churchwardens."

Cambridge Chronicle and University Journal.—"Has been carefully revised, and such alterations and additions introduced as recent legislation or decisions rendered necessary."

Iron.—"A handy compendium of all matters affecting the duties and privileges of Churchwardens."

Stamford Mercury.—"The utility of this Guide is evident."

Norwich Mercury.—"Possessing this book Churchwardens need never remain in doubt as to what would be the proper course to pursue under any circumstances that may arise."

School Board Chronicle.—"The result of all experience and all legal decisions on the subject."

The Metropolitan.—"The whole matter is clearly set forth in a very plain and unmistakable manner."

Builder.—"There are a good many rocks upon which Churchwardens may strike . . . they will find the price of this Guide a good investment."

Sheffield Independent.—"An authentic and full digest, well got up."

Western Morning News.—"It is superfluous to say anything in praise of the Churchwarden's Guide, which has long been so highly valued throughout the country."

Bookseller.—"This new edition seems thoroughly well timed."

Warrington Guardian. "It seems to arm the Churchwarden at every point."

Sussex Daily News. "We have rarely seen a work that bore such evident traces of careful compilation—it is simply indispensable to every Churchwarden."

Newcastle Daily Chronicle.—"Of considerable use—carefully brought down to the latest date."

Glen's Highway Acts. Fourth Edition:

By ALEX. GLEN, M.A., LL.B., Barrister-at-Law. This Edition contains all the important Decisions of the Courts subsequent to the previous editions. Price 4s.

Practical Magazine.—"*Should be in the hands of every solicitor. Is an exposition* of the powers and duties of those who have the management of Highways."

Iron.—"In this Edition many important improvements have been effected."

The Education Acts Manual. Thirteenth Edition:

Embracing the Education Acts, 1870, 1873, 1874, and 1876.
By HUGH OWEN, Jun., Barrister-at-Law. Price 10s. 6d.

School Board Chronicle.—"The constant companion of all School Board Clerks, Chairmen, and Members of Boards who pride themselves upon being well 'posted up' in the duties in which they are engaged."

Second Notice.—"Crammed with information, always to the point, and always correct. If the work were not already in existence it would not now be possible to produce such a book."

Third Notice.—"It seems to us indispensable."

Fourth Notice.—"More perfect and more useful."

Fifth Notice.—"Owen's Manual has become a necessary part of the machinery of the School Board system."

Sixth Notice.—"Owen's Manual is not only a safe guide, but a guide which will very rarely fail whenever happens a difficulty or dead-lock."

The Standard.—"Well arranged, and full of the most instructive information."

Second Notice.—"Exceedingly well carried out."

Daily News.—"A well-arranged, clear, and comprehensive exposition."

Hour.—"A guarantee against every sort of irregularity."

Law Times.—"Thoroughly deserves the large measure of popular favour which it has received."

Builder.—"The accuracy and utility of the work are testified by the number of editions through which it has already passed."

Western Daily Press.—"Clear and intelligible . . . A complete *vade mecum.*"

Second Notice.—"One of the most useful manuals we have seen."

Churchman.—"It is very comprehensive."

The Tablet.—"One of the most perfect and authoritative of its kind."

The Rock.—"A valuable and well-timed exposition."

Second Notice.—"All that anyone can need to know respecting the Education Acts is set forth in a clear and comprehensive manner."

Nonconformist.—"Clear, compact, and exhaustive."

Metropolitan.—"Mr. Owen has smoothed away difficulties."

Second Notice.—"The fact that this work has reached its eighth edition shows how much the valuable labours of Mr. Owen are appreciated."

Windsor Express. "Possesses a degree of authority which no other work can obtain."

Education League Paper.—"It is the fullest, and most complete Hand-book."

The Bookseller.—"Will be found of value by every Board."

Examiner.—"Deserving of a favourable recognition."

Carnarvon Herald.—"We advise all interested in Education to possess it."

Echo.—"This manual is very complete."

Leeds Mercury.—"Carefully prepared."

Manchester Guardian.—"An excellent work."

South Wales Press.—"Very useful to all interested in the question."

City Press.—"A well-timed and useful book."

Cardigan Advertiser.—"Of immense value to all interested in working the Act."

Parochial Critic.—"May be read with advantage."

Northern Daily Express.—"Will be found very useful."

Bristol Daily Post.—"A most complete and useful manual."

North Wales Chronicle.—"There must be very few difficulties which are not solved in its pages."

Iron.—"A valuable and trustworthy manual."

Second Notice.—"The most perfect and authoritative work of its kind."

The Record.—"An intelligible compendium."

Eastern Morning News.—"By an author who is now perhaps the greatest authority upon the subject."

Oxford Times.—"Accurate, clear, and intelligible."

Birmingham Post.—"Distinctly the best Book of its class."

Cambrian News.—"We could give numberless instances of its completeness."

Scholastic Register.—"Contains all that can be required upon the subject."

The Education Act, 1876. Third Edition:

With an Introduction, Annotations, and Index, and an Appendix containing the provisions of the Factory Acts as to the Attendance of Children at School, Regulations of the Education Department, and Specimen Bye Laws. By HUGH OWEN, Jun., Barrister-at-Law, author of "The Education Acts Manual," Thirteenth Edition.

Price 4s.

Pall Mall Gazette.—"An exceedingly useful and convenient edition. It can hardly fail to be of great service to those upon whom the new Act has imposed so many new and important duties in which they are engaged."

School Board Chronicle.—"Whatever the difficulties and whatever the pitfalls in the way of those whose business it is to consider and to carry into effect the provisions of the new Education Act, everybody may feel himself perfectly safe in the hands of Mr. Owen He makes no mistakes; he stumbles into no misinterpretations; he never misleads those who rely upon him."

Law Times.—"The Introduction furnishes a digest, and the Notes are of a useful character."

Oxford Times.—"This valuable and inexpensive Book."

Echo.—"Mr. Owen's name, as an Expositor of the first Education Act, is too well known to need a word of commendation."

Literary World.—"Mr. Owen has done well to issue this in a separate form, and has done his work admirably."

Birmingham Post.—Indispensable to persons interested in the working of the Act."

Mercantile Gazette.—"Will doubtless prove of great service to those on whom new and important duties devolve."

Builder.—"The Notes will be of great service to those who will have to administer the Act."

Baptist.—"Mr. Owen's Notes are most useful."

Beehive.—"A most valuable and useful Book"

The Methodist.—"Excellent and well-arranged."

Record.—"Mr. Owen's 'Education Acts Manual,' recommended in these columns, has now reached the Eleventh Edition, and the present work, we think, will be quite as popular."

The School Board Election Manual:

Being a complete guide as to procedure in Elections of Boards, and Applications for Boards, in Boroughs and Parishes. By HUGH OWEN, Jun., Esq., Barrister-at-Law. Price 3s.

School Board Chronicle. "The instructions are full, clear, and circumstantial."

Bristol Daily Post.—"It cannot fail to be useful."

An Exemplification and Guide to the Keeping of the Accounts of School Boards:

By GEORGE GIBSON, one of the District Auditors of the Local Government Board.

Price 6s.

School Board Chronicle.—"To know how to keep School Board Accounts demands some study and some intelligence; but the thing can be learned by any educated man of average capacity, and Mr. Gibson has, by the publication of this book, made the task easy and safe. School Board Accounts are kept, not according to any general rules, but in strict accordance with the general order of the Local Government Board, which rigidly prescribes the form in which, and the persons by whom, they shall be kept: and Mr. Gibson gives in this volume all the requisite information to the utmost detail, with forms, examples, and everything that is necessary to enable a newly-appointed School Board Clerk to set about the work and to carry it out in due and proper form. It is a book which may be absolutely relied upon."

Metropolitan.—"Messrs. Knight & Co. have just issued a work by Mr. George Gibson, which will prove useful. It is, as described in the title, 'An Exemplification and Guide to the Keeping of the Accounts of School Boards.' Mr. Gibson is the author of a very elaborate, yet intelligible, work of a similar character, for the use of Urban and Rural authorities: and, being a district auditor, is of all men best qualified to explain how School Board Books should be kept. We have seen similar productions by other authors, but we must say that, for clearness and completeness, this is the best. The book is of handy size, and well got up."

The Licensing Laws:

The Licensing Acts, 1872, 1874; preceded by the unrepealed sections of the Licensing Act, 1828, and the Wine and Beerhouse Acts, 1869, 1870. By GEORGE C. WHITELEY, M.A., Cantab., Barrister-at-Law.

Price 5s.

The five Licensing Acts are arranged so as to form one comprehensive statute, with copious explanatory notes; together with an introduction giving a full description of the Licensing System, and an appendix of statutes; the whole forming a complete handbook.

Law Times.—"A decidedly creditable and useful publication."

Cambridge Chronicle.—"A complete treatise upon the Licensing Laws which it simplifies and explains."

Manchester Guardian.—"Very carefully done . . . especially valuable."

Morning Advertiser.—"The arrangement is excellent, and the value of Mr. Whiteley's opinions cannot be over-estimated."

The Law.—"Mr. Whiteley's work will be most serviceable."

Standard.—"This is a perfect and exhaustive treatise on the whole of the Licensing Laws."

The Law relating to the Registration of Births, Deaths, and Marriages. Second Edition:

By W. CUNNINGHAM GLEN, Esq., and ALEX. GLEN, Esq., M.A., LL.B., Barristers-at-Law. It contains all the Statutes relating to the registration of Births, Deaths, and Marriages; Non-Parochial Registers; the duties of Registration Officers; and the Marriage of Dissenters in England. To these are added the whole of the Statutes which cast any collateral duty upon Registration Officers, together with the legal decisions upon each Statute. A very full Index completes the Work. Price 5s.

The Law. "No amount of trouble seems to have been spared to render the book complete . . . Nothing can be better done to clear the subject than is done by the present work, which is in every way excellently got up."

School Board Chronicle. "A complete exposition of the law . . . a laboriously edited work, a table of contents of a dozen pages, and an index of twenty-six pages. Should be in every library of reference."

Lancet. "A second edition, much extended, and greatly improved."

The Boarding-Out System:

A practical Guide to the Boarding-Out System for Pauper Children. Containing Suggestions, Forms, and Regulations. By Colonel C. W. GRANT, R.E., J.P. for Somerset, &c. Price 1s. 6d.

Pall Mall Gazette.—"Colonel Grant's little handbook may be consulted with profit."

Election of Guardians. Second Edition:

A Handbook for the Election of Guardians of the Poor, containing the Statutory Enactments, the Orders of the Local Government Board, including that of 1877, and a Guide to the Practice at Elections. By DANBY P. FRY, Barrister-at-Law. Price 5s.

Manual for Overseers, Assistant Overseers, Collectors, & Vestry Clerks. Fourth Edition:

Containing full and plain Instructions as to their Duties and the mode of Keeping their Accounts. By HUGH OWEN, JUN., Barrister-at-Law. Price 4s. 6d.

Metropolitan.—"A clear and succinct guide as to what to do and how to do it."

Manual for Medical Officers of Health. Second Edition:

By the late EDWARD SMITH, M.D., LL.B., F.R.S., Inspector to the Local Government Board. Price 8s. 6d.

Law Times.—"Will prove a most useful guide to Medical Officers."

The Medical Press and Circular.—"Well calculated to serve the purpose for which it is published. There must be many who will be glad to have brought before them their duties by one in the position of Dr. E. Smith."

Public Health.—"It is written by Dr. Edward Smith, one of the Inspectors of the Local Government Board, and contains, in a concise form, everything that a medical officer of health would require to know. We can highly recommend it."

The Watchman.—"All thoughtful and intelligent persons will find much to interest and profit."

Doctor.—"Seems to us likely to prove very serviceable."

Iron.—". . . Thus, in the course of 346 pages, Dr. Smith has produced a work perfectly unique in the value and variety of its contents, and in its interest, &c."

The Hour.—"The matter is clearly arranged, and the importance of giving a classified table of contents as well as an alphabetical index has not been overlooked."

Metropolitan.—"We owe a debt of gratitude to the author for such valuable assistance."

Lancet.—"Contains many useful practical hints."

Handbook for Inspectors of Nuisances:

Containing full Information as to Appointment and Duties under the Orders of the Local Government Board and the Public Health and other Acts. With numerous Illustrations of Sanitary Appliances. By the late Dr. EDWARD SMITH. Price 5s.

Metropolitan.—"When we consider the great importance of the office of Inspector of Nuisances, we see more and more how necessary it is the officer in question should not only be active, upright, and intelligent, but educated to think and act correctly for himself, and this handbook of Dr. Smith's is just the very work he requires to attain that object."

Suggestions to the Charitable. Third Edition :

Being Suggestions for Systematic Inquiry into the Cases of Applicants for Relief. With an Appendix containing extracts from Statutes, Regulations of the Local Government Board, and other matters relating to the Poor. By C. J. RIBTON TURNER, of the Charity Organization Society. Price 2*s.* 6*d.*

The Poor Law System of Elberfeld :

Being a Report to the Local Government Board. By ANDREW DOYLE, Inspector. Price 6*d.*

Relief of the Poor in Belgium :

An Account of the Administrations and of the Reformatory Schools of Ruysselede and Beernem, with lithographed plan. Edited by F. T. BIRCHAM, Assistant Local Government Board Inspector. Price 1*s.*

Vaccination Officer's and Public Vaccinator's Handbook. Second Edition :

By WALTER BULLAR ROSS, Solicitor, Clerk to Guardians, &c.
Price 4*s.*

Medical Times. —"We can strongly recommend it."

Solicitor's Journal. "The Vaccination Officer will do well to put himself under Mr. Ross's guidance."

The Medical Record. "Few we imagine, can afford to dispense with this book."

Law Times. "We can honestly recommend it."

Ipswich Journal. "An Index of no less than 35 pages . . .very neatly got up."

Suffolk Mercury. "Mr. Ross has done good service to the community."

Suffolk Chronicle. "An admirable *vade mecum.*"

Metropolitan. "How to master every detail in connection with the enforcement of Vaccination, is clearly and fully set forth."

School Board Chronicle. —"Seeks to move Local Authorities and Officers to such mode of performing their work as will lead to the desired result."

Bury Post. "The fullest and most lucid information as to the construction of the law, and may safely be relied on."

Reports of Poor Law District Conferences :

In 8vo, bound in cloth, with Index, &c.

The Volume for 1875, price 6*s.* 6*d.*
Ditto 1876, price 7*s.* 6*d.*
Ditto 1877, price 5*s.* 6*d.*

KNIGHT & CO., 90 FLEET STREET.

The Law relating to Vaccination. Sixth Edition:

Comprising the Vaccination Acts, the Instructional Circulars, Orders, and Regulations issued by Authority. With Introduction, Notes, and Index. By DANBY P. FRY, Barrister-at-Law, and Assistant-Secretary to the Local Government Board. Price 5s.

Sanitary Record.—"This handy volume contains a complete *vade mecum* for the use of all who are in any way concerned in the administration of the Vaccination Acts. The present edition, like all Mr. Fry's works, is an admirable digest."

The Law.—"Of great practical utility; a reliable guide, brought down to the present time and the most recent decisions carefully noted. It is of a handy size, and well got up in every respect."

Builder.—"The Book is a useful one."

Standard.—"A very compendious and useful Manual."

City Press.—"The Law is clearly stated."

Birmingham Morning Post.—"Of inestimable service."

Bristol Mercury.—"Its usefulness as a guide must be obvious."

Public Health.—"A thoroughly complete handbook."

Metropolitan.—"The best Manual extant on the subject."

A Manual for Elections by Ballot—Municipal and Parliamentary. Second Edition:

By HUGH OWEN, Junr., Barrister-at-Law. The present edition of the Ballot Act Manual contains *The Municipal Elections Act*, and *The Returning Officers (Parliamentary Elections) Act* of 1875, by which some material alterations were made in the previous law. The notes in the first edition have been carefully revised, and considerable additions have been made. Price 3s. 6d.

Echo.—"Extremely good and useful."

Hints to Householders, and Officers and Members of Sanitary Authorities:

Being Practical Information as to the Removal of Nuisances injurious to Health. This Work supplies useful information as to the law on the subject, it is written in plain language and is adapted either for the professional or general reader.

Price 6d., or 1s. in cloth.

City Press.—"Will be found useful in many emergencies."

Medical Examiner.—"A handy Guide for the Public Health Official whose legal knowledge is frequently and unexpectedly taxed."

EDUCATION ACT, 1876.

With a view to enable Local Authorities readily to carry out the requirements of section 7, KNIGHT & Co. have published the following Pamphlets and Placards, shewing clearly the Law respecting the

EMPLOYMENT & EDUCATION OF CHILDREN.

PAMPHLETS—250th Thousand.

I.—Plain Information for Parents as to the Law respecting the Employment and Education of Children.	1s. Per doz. — 7s. 6d. Per 100. — 17s. 6d. Per 250.
II.—The same in the Welsh Language.	28s. Per 500.
III. Information for Employers.	48s. Per 1,000.

PLACARDS.—110th Thousand.

In bold type, size 30 in. by 20 in., shewing the provisions of the Act as to the Employment and Education of Children

*I.—For School Boards.**	3s. 6d. Per quire. — 12s. Per 100 — 25s. Per 250.
II.—For Town Councils.	
*III.—For Boards of Guardians.**	

A specimen of any of the above sent on application.

* In English and Welsh.

KNIGHT & CO., 90 FLEET STREET.

Official Publications

ISSUED BY AUTHORITY OF

THE EDUCATION DEPARTMENT,

BY KNIGHT & CO.

		Price. s.	d.		By post. s.	d.
	Rules for Planning and Fitting-up Schools, with Plans	1	0	...	1	2
	The Regulations of February 9th... per doz.	2	0	...	2	3
1	The New Code (1878) ... ... The Articles of the Code are referred to by number in official correspondence. With it should also be procured Papers 2 and 3.	0	2½	...	0	3
2	The Minute of 7th February, 1871 ... .. This Minute relates to the approval of Time Tables (Education Act, 1870, Section 7).	0	0½	...	0	1
3	The Instructions on the Code	0	1	...	0	1½
4	The Scotch Code (1877) ... ... The Articles of the Code are referred to by number in official correspondence. With it should be obtained Paper 5.	0	2½	...	0	3
5	Minute of 23rd June, 1[illegible] ... ... This Minute relates to [illegible]pproval of Time Tables (Education—Scotland [illegible] Act, Section 68).	0	0½	...	0	1
6	The Report (1876) of the Committee of Council on Education (England and Wales), Vol. I. REPORT TO HER MAJESTY AND PARTS I. TO IV. OF APPENDIX, *containing the New Code, 1876, Tables, Annual Reports of Inspectors, and List of Elementary Schools aided from the Parliamentary Grant.* (711 pages).	3	9	...	4	6½
	Ditto, Vol. II. ... ... PART V. OF APPENDIX, *containing* VOL. V. *of the Bye-laws for enforcing the attendance at School, which have been sanctioned by order of Her Majesty in Council.* (280 pages).	1	6	...	1	10
7	The Report (1876) of the Committee of Council on Education in Scotland .. .. *This volume contains the Scotch Code (1876) Tables, Annual Reports of Inspectors, and List of Schools aided from the Parliamentary Grant.* (281 pages).	1	6	...	1	10
8	The Third Report of the Board of Education for Scotland to the Scotch Education Department ... ... 413 pages.	2	2	...	2	8
9	The Second Annual Report by the Accountant to the Board of Education for Scotland ... 95 pages.	0	6½	...	0	8

Thirty-seventh Year.

The Local Government Directory, 1878, with Almanac and Guide :

CONTENTS. *Price* 8*s.* 6*d.*

UNIONS in England and Wales, with the Area and Population of each; the Day of Meeting, Number of Parishes, and of Elected and Ex-officio Guardians, and the Inspectors' and Auditors' Districts; the Names and Addresses of the Clerks and Treasurers; the Names of the Chairmen, Vice-Chairmen, Relieving Officers, Medical Officers, Workhouse Masters, Chaplains, and Teachers, with the Certificates awarded to the latter, and the Situation and Capacity of the Workhouse, &c.

SIMILAR PARTICULARS AS TO

URBAN, RURAL, METROPOLITAN, AND PORT SANITARY AUTHORITIES. Burial Boards, &c. Particulars of the Local Government Board and its Officers, Auditors, District Schools, Reformatory and Industrial Schools, Public Analysts, Schools and Institutions certified by the Local Government Board, the Lunacy Commission, List of Lunatic Asylums, the Calendar, with Memoranda of Business to be done each Month, &c.

ALSO, AN ARTICLE ON THE

POOR LAW AND SANITARY LEGISLATION OF 1877,

By W. CUNNINGHAM GLEN, Esq., of the Local Government Board, Barrister-at-Law.

Standard.—"The Work abounds in a mass of information, which will be found of great value."

Spectator.—"Messrs. Knight's Directory is of the greatest utility."

Medical Press.—"This is a very useful Handbook for all who need information on Local Government, &c."

The Tablet.—"Full of information on all points connected with Local Government, arranged in a most convenient form."

The Rock.—"A most useful Work, full of information, all of which is arranged in the best possible manner."

Lancet.—"The book is, in fact, a 'requisite' in the office of all clerks."

Sheffield Independent.—"A mass of details often wanted, but altogether inaccessible without a compilation of this kind."

Iron.—"Besides the list of public bodies, with the names of their officers, we have an abstract of the Local Government Legislation of 1875, and an Appendix, giving the titles and prices of the Poor Law and Local Government forms, of which Messrs. Knight and Co. are the Publishers."

School Board Chronicle.—"The mass of information originally compiled here, and revised from year to year . . . must be very convenient."

Second Notice.—"We imagine there is not a Guardian's office in the country where the Work is not to be found handy for constant reference."

Sanitary Record.—"Contains a mass of useful information relating to all departments of Public Health."

Metropolitan.—"Rapidly achieving the amount of usefulness and reputation gained by its monster contemporary."

Second Notice.—"One of the most valuable Books of Reference published in England."

Third Notice.—"A work which has long become indispensable."

Parochial Critic.—"This excellent Annual . . contains a large mass of information on matters connected with Local Government, and is a valuable book of reference."

Builder.—"This is a very useful work."

Public Health.—"This is a very useful publication, and one which is almost indispensable. The fact that it has now reached its thirty-fourth year of issue, and that during nearly the whole of that time the firm by which it is produced has held the position of authorized publishers to various Government Departments, are a sufficient guarantee of its correctness, which we have also tested by close examination."

Watchman.—"This is a very convenient and useful book—contains a large amount of information."

Medical Times.—"This volume—it cannot be called a little one—deserves a few words of praise and recommendation for its completeness and usefulness."

Second Notice.—"This admirable Directory."