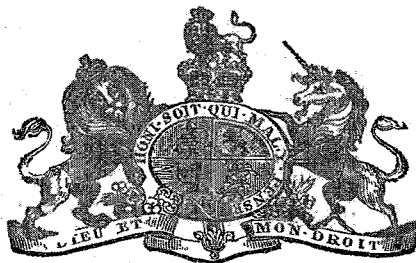


## New Zealand.



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1889, No. 12.

Title. AN ACT to amend the Law relating to Patents for Inventions, Registration of Designs, and of Trade-marks.

[2nd September, 1889.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short Title. 1. The Short Title of this Act is "The Patents, Designs, and Trade-marks Act, 1889."

It shall come into operation on the first day of January, in the year one thousand eight hundred and ninety.

2. In this Act, unless the context otherwise requires,—

Commencement of Act.

Interpretation.

“British possession” means any territory or place situate within Her Majesty’s dominions, and not being or forming part of the United Kingdom, or of the Channel Islands, or of the Isle of Man; and all territories and places under one Legislature, as hereinafter defined, are deemed to be one British possession for the purposes of this Act:

“Copyright” means the exclusive right to apply a design to any article of manufacture or to any artificial or natural, or partly artificial and partly natural, substance in the class or classes in which the design is registered:

“Court” means the Supreme Court of New Zealand:

“Court of summary jurisdiction” means any two or more Justices of the Peace, or a Resident Magistrate acting under “The Justices of the Peace Act, 1882;” and “summary conviction” means a conviction under that Act:

“Design” means any design applicable to any article of manufacture, or to any substance, artificial or natural, or partly artificial and partly natural, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined, not being a design for a sculpture, or other thing within the protection of “The Sculpture Copyright Act, 1814” (fifty-fourth George the Third, chapter fifty-six), or other Act in substitution thereof for the time being in force in New Zealand:

“Invention” means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies (that is, the Act of the twenty-first year of the reign of King James the First, chapter three, intituled “An Act concerning Monopolies and Dispensations with Penal Laws and the Forfeiture thereof”), and includes an alleged invention:

“Legislature” includes any person or persons who exercise legislative authority in the British possession, and, where there are local Legislatures as well as a central Legislature, means the central Legislature only:

“Patent” means letters patent for an invention:

“Patentee” means the person for the time being entitled to the benefit of a patent:

“Prescribed” means prescribed by any of the Schedules to this Act, or by general rules under or within the meaning of this Act:

“Registrar” means the Registrar of Patents, Designs, and Trade-marks:

“Trade-mark” means a trade-mark registered in the Register of Trade-marks kept under this Act, and includes any trade-mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of section one hundred and three of the Act of the Imperial Parliament shortly intituled “The Patents, Designs, and Trade-marks Act, 1883,” are, under Her Majesty’s Order in Council, for the time being applicable :

“True and first inventor” means the person who is the actual inventor of an invention, or his nominee or assignee, but does not include the unauthorised importer of an invention from any place outside the colony :

“United Kingdom” includes the Channel Islands and the Isle of Man.

Patent Office.  
Registrar of Patents.

3. (1.) The Governor may from time to time appoint such person as he thinks fit to be Registrar of Patents, Designs, and Trade Marks, and in like manner may appoint a place to be the “Patent Office.”

(2.) The person who, at the commencement of this Act, holds the office of Patent Officer under the Acts hereby repealed shall be and act as Registrar of Patents, Designs, and Trade Marks under this Act.

(3.) The place at the commencement of this Act used as the Patent Office shall be deemed to have been appointed under this Act.

Deputy-Registrar.

4. (1.) The Governor may at any time appoint a fit and proper person to be Deputy-Registrar, to act in case of the death, illness, or absence of the Registrar, and such deputy shall, during the time he shall so act, have all the powers and privileges, and shall perform all the duties, and be subject to the responsibilities of the Registrar.

(2.) Whenever the Registrar shall die, the Deputy-Registrar shall act as such from the day of such death, and, in the case of illness or absence, shall act as such from such day as the Registrar shall certify under his hand to the Deputy-Registrar that he is ill and unable to perform his duties, or that he is about to be absent ; and such Deputy-Registrar shall cease to act as such on the day on which he shall receive from the Registrar a certificate under his hand to the effect that he has resumed his duties.

Local offices and  
Patent Office  
Agents.

5. The Governor from time to time may, for all such purposes as he may deem necessary, appoint local Patent Offices and Patent Office Agents in such places as he shall think fit, and may alter or revoke the appointment of such offices and agents respectively.

All appointments of local Patent Offices and Patent Office Agents made under any Act hereby repealed, and subsisting at the time of the commencement of this Act, shall be deemed to be made under this Act.

Such agents shall not demand or receive from any applicant for a patent, or from any one on his behalf, any fees or charges whatever other than such as are from time to time payable under this Act.

## PART II.

## PATENTS.

*Application for and Grant of Patent.*

6. (1.) Any person, whether a British subject or not, may make an application for a patent. Persons entitled to apply for patent.

(2.) Two or more persons may make a joint application for a patent, and a patent may be granted to them jointly.

(3.) A patent may also be granted to several persons jointly, some or one of whom only are or is the true and first inventors or inventor.

7. (1.) If a person possessed of an invention dies without making application for a patent for the invention, application may be made by, and a patent for the invention granted to, his legal representative. Patent on application of representative of deceased inventor.

(2.) Every such application must be made within six months of the decease of such person, and must contain a declaration by the legal representative that he believes such person to have been the true and first inventor of the invention.

8. (1.) An application for a patent must be made in the form set forth in the First Schedule to this Act, or to the like effect, and must be left at, or sent by post to, the Patent Office, or left at a local Patent Office. Application and specification.

(2.) An application must contain a declaration attested by a witness to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application one or more of the applicants, claims or claim to be the true and first inventor or inventors, and for which he or they desires or desire to obtain a patent, and must be accompanied by either a provisional or complete specification, in the form in the First Schedule to this Act, or to the like effect, written in a plain legible hand, or printed in fair legible type upon parchment or paper, and signed by the applicant.

(3.) A provisional specification must describe the nature of the invention, and be accompanied by drawings, if required.

(4.) A complete specification, whether left on application or subsequently, must particularly describe and ascertain the nature of the invention, and in what manner it is to be performed, and must be accompanied by drawings, if required, or a reference to the drawings, if any, which accompanied the provisional specification. A copy of the complete specification, and of the drawings accompanying it or referred to in it, shall be deposited in the Patent Office at the same time, and together with the complete specification.

(5.) A specification, whether provisional or complete, must commence with the title, must be limited to one invention, and, in the case of a complete specification, must end with a distinct statement of the invention claimed.

(6.) If such application be made at any local Patent Office, the Patent Office Agent shall give to the applicant or his agent a receipt therefor in the form set forth in the First Schedule or to the like effect, and shall forthwith transmit the documents and a copy of his receipt to the Patent Office.

Registrar to examine application.

9. The Registrar shall examine every application in priority according to the time at which it was received at the Patent Office, in order to ascertain whether the nature of the invention has been fairly described, and the application, specification, and drawings (if any) have been prepared in the prescribed manner, and the title sufficiently indicates the subject-matter of the invention.

Power to refuse application or require amendment.

(1.) If he finds that the nature of the invention is not fairly described, or that the application, specification, or drawings has not or have not been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject-matter of the invention, he may refuse to accept the application, or require that the application, specification, or drawings be amended before he proceeds with the application; and in the latter case the application shall, if the Registrar so directs, bear date as from the time when the requirement is complied with.

(2.) If he finds the application and specification to be in accordance with this Act and the prescribed regulations, he shall accept the same by indorsing on the application the word "Accepted," with his signature and the exact time of such acceptance, and shall cause the said time of acceptance to be recorded in the Patent Office.

(3.) When an application has been accepted the Registrar shall give notice thereof to the applicant.

Applications for similar patents.

10. If after an application for a patent has been made, but before the patent thereon has been sealed, another application for a patent is made, accompanied by a specification bearing the same or a similar title, the Registrar, if he thinks fit, on the request of the second applicant, or of his legal representative, may, within two months of the grant of a patent on the first application, either decline to proceed with the second application or allow the surrender of the patent, if any, granted thereon.

Time for leaving complete specification.

11. If the applicant does not leave a complete specification with his application, he may leave it at any subsequent time within nine months from the date of the acceptance of the application; and unless a complete specification is left within that time the application shall be deemed to be abandoned.

Comparison of provisional and complete specification.

12. (1.) Where a complete specification is left after a provisional specification the Registrar shall examine both specifications for the purpose of ascertaining whether the complete specification has been prepared in the prescribed manner, and whether the invention particularly described in the complete specification is substantially the same as that which is described in the provisional specification.

(2.) If he finds that the conditions hereinbefore contained have not been complied with, the Registrar may refuse to accept the complete specification unless and until the same shall have been amended to his satisfaction; but any such refusal shall be subject to appeal to the Court.

(3.) The Court shall hear the applicant and the Registrar or any one appearing on behalf of either of them, and may make an order determining whether and subject to what conditions (if any) the complete specification shall be accepted.

13. Unless a complete specification is accepted within twelve months from the date of the application, then (save in the case of an appeal having been lodged against the refusal to accept) the application shall, at the expiration of those twelve months, become void.

Specification void if not accepted within twelve months.

14. Where an application for a patent has been abandoned or become void, the provisional specification and drawings (if any) accompanying or left in connection with such application shall not at any time be open to public inspection, or be published by the Registrar.

Specifications, &c., not to be published unless application accepted.

15. On the acceptance of the complete specification the Registrar shall advertise the acceptance in the *Gazette*, and the application and specification or specifications with the drawings (if any) shall be open to public inspection.

Advertisement on acceptance of specification.

16. (1.) Any person may, at any time within two months from the date of the advertisement of the acceptance of a complete specification, give notice in writing in duplicate at the Patent Office of opposition to the grant of the patent, and shall state in such notice the particular grounds of his objection.

Opposition to grant of patent.

(2.) Where notice of opposition is given, the Registrar shall appoint a day for hearing the opposition, not being earlier than fourteen nor later than twenty-eight days after receiving notice thereof, and shall give notice of the hearing so appointed and of the opposition to the applicant, and shall, after hearing the applicant and the person so giving notice, if desirous of being heard, decide on the case.

(3.) The decision of the Registrar, however, shall be subject to appeal to the Court, which may hear the applicant and any person so giving notice and being, in the opinion of the Court, entitled to be heard in opposition to the grant, and shall determine whether the grant ought or ought not to be made.

17. On the expiration of two months from the date of the acceptance of an application if there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, as soon as the decision is made or given a patent may be granted; and at any time thereafter before the expiration of the term of provisional protection, on application in writing by the applicant or his agent, with payment of the fee thereon, the Registrar shall cause a patent to be prepared for such invention, and the Governor may direct such patent to be sealed with the Seal of the Colony.

Application to be made for sealing of patent after acceptance of specification.

18. A patent shall be sealed as soon as may be, and not after the expiration of fifteen months from the date of the application, except in the cases hereinafter mentioned, that is to say,—

Sealing of patent.

(a.) When the sealing is delayed by an appeal to the Court, the patent may be sealed at such time as the Court may direct:

(b.) Where the application for sealing is made before the expiration of the term of provisional protection, but the sealing is delayed through accident, and not from the wilful default of the applicant, the patent may be sealed at such time as the Governor may direct:

(c.) If the person making the application dies before the expiration of the fifteen months aforesaid the patent may be granted to his legal representative and sealed at any time within twelve months after the death of the applicant.

Time may be extended for leaving and accepting specification.

19. Notwithstanding anything contained in sections eleven, thirteen, and eighteen, a complete specification may be left and accepted within such extended times, not exceeding one month and three months respectively after the nine and twelve months respectively mentioned in the aforesaid sections eleven and thirteen, as the Registrar may, on payment of the prescribed fee, allow; and, where such extension of time has been allowed, a further period of four months after the fifteen months mentioned in section eighteen shall be allowed for the sealing of the patent.

*Patent.*

Date of patent.

20. Every patent shall be dated and sealed as of the day of the acceptance of the application.

But no proceeding shall be taken in respect of an infringement committed before the publication of the specification.

In case of more than one application for a patent for the same invention, the sealing of a patent on one of those applications shall not prevent the sealing of a patent on an earlier application.

Extent of patent.

21. Every patent when sealed shall have effect throughout the colony and its dependencies.

Term of patent.

22. (1.) The term limited in every patent for the duration thereof shall be fourteen years from the date from which it takes effect.

(2.) But every patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to make the prescribed payments within the prescribed times.

Patent for one invention only.

23. Every patent shall be granted for one invention only, but may contain more than one claim; but it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it comprises more than one invention.

Conditions for granting patent.

24. Every patent shall be in the form contained in the First Schedule, or to the like effect, and shall be made subject to the provisions of this Act, and to the conditions and restrictions that may be inserted in such patent by virtue thereof.

Periodical payments.

25. If in any case, by accident, mistake, or inadvertence, an applicant for a patent, or a patentee, fails to make any prescribed payment within the prescribed time, he may apply, on payment of an application-fee of one pound, to the Registrar for an enlargement of the time for making that payment.

Extension of time.

Thereupon the Registrar shall, if satisfied that the failure has arisen from any of the above-mentioned causes, on receipt of the prescribed fee, enlarge the time accordingly, subject to the following conditions:—

(a.) The time for making any payment shall not in any case be enlarged for more than three months:

(b.) If any proceeding shall be taken in respect of an infringement of the patent committed after a failure to make any payment within the prescribed time, and before the enlargement thereof, the Court before which the proceeding is proposed to be taken may, if it shall think fit, refuse to award or give any damages in respect of such infringement.



*Provisional Protection.*

26. After the acceptance of an application for a patent in respect of an invention, the invention may, during the period between the date of the application and the date of sealing such patent, be used and published without prejudice to the patent to be granted for the same; and such protection from the consequences of use and publication is in this Act referred to as "provisional protection."

Provisional protection.

27. During the aforesaid term of provisional protection the applicant may, by notice in writing signed by him and delivered or sent by post to the Registrar, abandon his application, and thereupon such protection shall cease.

Applicant may abandon.

28. After the acceptance of a complete specification, and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification.

Effect of acceptance of complete specification.

But an applicant shall not be entitled to institute any proceeding for infringement unless and until a patent for the invention has been sealed.

29. In any case where the determination of the Registrar is not in favour of the grant of a patent, the invention for which such patent is sought shall thereupon, or upon the confirmation of such determination if appealed from, cease to be protected.

Protection ceases on refusal to grant patent.

*Amendment of Specification.*

30. (1.) An applicant or a patentee may, from time to time, by request in writing left at the Patent Office, seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of such amendment and his reasons for the same.

Amendment of specification.

(2.) The request and the nature of such proposed amendment shall be advertised by the Registrar in the *Gazette*; and at any time within one month from its advertisement any person may give notice at the Patent Office of opposition to the amendment.

(3.) Where such notice is given the Registrar shall give notice of the opposition to the applicant or patentee, and shall hear and decide the case subject to an appeal to the Court, which may hear the applicant or patentee and the person so giving notice, and being, in the opinion of the Court, entitled to be heard in opposition to the request, and shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(4.) Where no notice of opposition is given or the person so giving notice does not appear the Registrar shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(5.) When leave to amend is refused by the Registrar the person making the request may appeal from his decision to the Court, which may hear the person making the request and the Registrar or any person appearing on his behalf, and may make an order determining whether and subject to what conditions, if any, the amendment ought to be allowed.

(6.) No amendment shall be allowed that would make the specifi-

cation, as amended, claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before amendment.

(7.) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall in all Courts and for all purposes be deemed to form part of the specification.

(8.) The foregoing provisions of this section do not apply when and so long as any action for infringement or other legal proceeding for revocation of a patent is pending.

31. In an action for infringement of a patent, and in a proceeding for revocation of a patent, the Court or a Judge may at any time order that the patentee shall, subject to such terms as to costs and otherwise as the Court or a Judge may impose, be at liberty to apply at the Patent Office for leave to amend his specification by way of disclaimer, and may direct that in the meantime the trial or hearing of the action shall be postponed.

32. Where an amendment by way of disclaimer, correction, or explanation has been allowed under this Act no damages shall be given in any action in respect of the use of the invention before the disclaimer, correction, or explanation, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

#### *Compulsory Licenses.*

33. If on the petition of any person interested it is proved to the Governor that by reason of the default of a patentee to grant licenses on reasonable terms—

- (a.) The patent is not being worked in the colony; or
- (b.) The reasonable requirements of the public with respect to the invention cannot be supplied; or
- (c.) Any person is prevented from working or using to the best advantage an invention of which he is possessed,

the Governor may order the patentee to grant licenses on such terms as to the amount of royalties, security for payment, or otherwise, as the Governor, having regard to the nature of the invention and the circumstances of the case, may deem just, and any such order may be enforced by mandamus.

#### *Extension of Term of Patent.*

34. (1.) A patentee may, after advertising in the *New Zealand Gazette* his intention to do so, present a petition to the Governor, praying that his patent may be extended for a further term; but such petition must be presented at least six months before the time limited for the expiration of the patent.

(2.) Any person may enter a caveat, addressed to the Governor, against the extension.

(3.) If the Governor shall be pleased to refer any such petition and caveat to the Court the Court shall proceed to consider the same, and the petitioner and any person who has entered a caveat shall be entitled to be heard by himself or by counsel on the petition.

(4.) The Court shall, in considering their decision, have regard

Power to disclaim part of invention during action, &c.

Restriction on recovery of damages.

Power for Governor to order grant of licenses.

Extension of term of patent on petition to Governor.

to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(5.) If the Court report that the patentee has been inadequately remunerated by his patent the Governor may extend the term of the patent for a further term not exceeding seven, or in exceptional cases fourteen, years; or may order the grant of a new patent for the term therein mentioned, and containing any restrictions, conditions, and provisions that the Court may think fit.

#### *Revocation.*

35. (1.) Revocation of a patent may be obtained on petition to the Court. Revocation of patent.

(2.) Every ground on which a patent might, at the commencement of this Act, be repealed shall be available by way of defence to an action of infringement, and shall also be a ground of revocation.

(3.) A petition for revocation of a patent may be presented by—

(a.) The Attorney-General:

(b.) Any person authorised by the Attorney-General:

(c.) Any person alleging that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims:

(d.) Any person alleging that he, or any person under or through whom he claims, was the true inventor of any invention included in the claim of the patentee:

(e.) Any person alleging that he, or any person under or through whom he claims an interest in any trade, business, or manufacture, had publicly manufactured, used, or sold within the colony, before the date of the patent, anything claimed by the patentee as his invention.

(4.) The plaintiff must deliver with his petition particulars of the objections on which he means to rely, and no evidence shall, except by the leave of the Court or a Judge, be admitted in proof of any objection of which particulars are not so delivered.

(5.) Particulars delivered may be from time to time amended by leave of the Court or a Judge.

(6.) The defendant shall be entitled to begin and give evidence in support of the patent, and if the plaintiff gives evidence impeaching the validity of the patent the defendant shall be entitled to reply.

(7.) Upon any such petition the Court may make such order for expunging, vacating, or varying any entry in the register as to it may seem fit, and may make such order as to costs as it shall think fit.

(8.) Where a patent has been revoked on the ground of fraud, the Registrar may, on the application of the true inventor made in accordance with the provisions of this Act, grant to him a patent in lieu of and taking effect from the same date as the date of revocation of the patent so revoked, but the patent so granted shall cease on the expiration of the term for which the revoked patent was granted.

*Crown.*

Patent to bind  
Crown.

36. (1.) A patent shall have to all intents the like effect as against Her Majesty the Queen, her heirs and successors, as it has against a subject.

(2.) But the officers or authorities administering any department of the service of the Crown or the Government of the colony may, by themselves, their agents, contractors, and others, at any time after the application, use the invention for the services of the Crown or the Government of the colony, on terms to be before or after the use thereof agreed on, with the approval of the Minister having the control of such department, between those officers or authorities and the patentee, or, in default of such agreement, on such terms as may be settled by such Minister after hearing all parties interested.

*Legal Proceedings.*

Hearing with  
Assessor.

37. (1.) In an action or proceeding for infringement or revocation of a patent the Court may, if it thinks fit, and shall, on the request of either of the parties to the proceeding, call in the aid of an Assessor specially qualified, and try and hear the case wholly or partially with his assistance: the action shall be tried without a jury, unless the Court shall otherwise direct.

(2.) The remuneration, if any, to be paid to an Assessor under this section shall be determined by the Court, and be paid in the same manner as the other expenses of the execution of this Act.

Delivery of particu-  
lars.

38. (1.) In an action for infringement of a patent the plaintiff must deliver with his statement of claim, or by order of the Court or the Judge, at any subsequent time, particulars of the breaches complained of.

(2.) The defendant must deliver with his statement of defence, or by order of the Court or a Judge, at any subsequent time, particulars of any objections on which he relies in support thereof.

(3.) If the defendant disputes the validity of the patent the particulars delivered by him must state on what grounds he disputes it, and, if one of those grounds is want of novelty, must state the time and place of the previous publication or user alleged by him.

(4.) At the hearing no evidence shall, except by leave of the Court or a Judge, be admitted in proof of any alleged infringement or objection of which particulars are not so delivered.

(5.) Particulars delivered may be from time to time amended by leave of the Court or a Judge.

(6.) On taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant; and they respectively shall not be allowed any costs in respect of any particular delivered by them unless the same is certified by the Court or a Judge to have been proven or to have been reasonable and proper, without regard to the general costs of the case.

Order for inspection,  
&c., in action.

39. In an action for infringement of a patent the Court or a Judge may, on the application of either party, make such order for an injunction, inspection, or account, and impose such terms and give such directions respecting the same and the proceedings thereon, as the Court or a Judge may see fit.

40. In an action for infringement of a patent the Court or a Judge may certify that the validity of the patent came in question; and if the Court or Judge so certifies, then, in any subsequent action for infringement, the plaintiff in that action, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses as between solicitor and client, unless the Court or Judge trying the action certifies that he ought not to have the same.

Certificate of validity questioned, and costs thereon.

41. Where any person claiming to be the patentee of an invention, by circulars, advertisements, or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged manufacture, use, sale, or purchase of the invention, any person or persons aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as may have been sustained thereby, if the alleged manufacture, use, sale, or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats; but this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.

Remedy in case of groundless threats of legal proceedings.

#### *Register of Patents.*

42. (1.) There shall be kept at the Patent Office a book called the Register of Patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licenses under patents, and of amendments, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may from time to time be prescribed.

Register of Patents.

(2.) The register of patents shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

(3.) Copies of deeds, licenses, and any other documents affecting the proprietorship in any letters patent or in any license thereunder must be supplied to the Registrar in the prescribed manner for filing in the Patent Office.

#### *Fees.*

43. There shall be paid, in respect of applications and grants of patents and other matters under this Part of the Act, the fees mentioned in the Second Schedule to this Act, or such other fees as may be from time to time prescribed by the Governor in Council; and such fees shall be paid into the Public Account and form part of the Consolidated Fund.

Fees in Schedule.

#### *Miscellaneous.*

44. A patent granted to the true and first inventor shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection.

Patent to first inventor not invalidated by application in fraud of him.

45. A patentee may assign his patent for, or grant licenses for the use of, the invention protected thereby, in the whole colony or any place in or part of the colony.

Assignment for particular places.

Loss or destruction of patent.

46. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the Registrar, the Governor may at any time cause a duplicate thereof to be sealed.

Exhibition at industrial or international exhibition not to prejudice patent rights.

47. The exhibition of an invention at any colonial, intercolonial, or international exhibition held at any place either within or beyond the colony, and declared by the Governor by notification in the *Gazette* to be an "industrial exhibition" for the purposes of this Act, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor or his legal personal representative to apply for and obtain provisional protection and a patent in respect of the invention, or the validity of any patent granted on the application, subject as follows, namely,—

In the case of an exhibition held at any place within the colony,—

(a.) The exhibitor must, before exhibiting the invention, give the Registrar notice of his intention to do so; and

(b.) The application for a patent must be made before or within six months from the date of the opening of the exhibition.

In the case of an exhibition held at any place outside the colony,—

The foregoing conditions shall also apply; but the Governor may exempt, either absolutely or upon such terms and conditions as he shall think fit, any exhibitor from the condition of giving previous notice to the Registrar of his intention to exhibit.

Power to require models on payment.

48. The Registrar may at any time require a patentee to furnish him with a model of his invention on payment to the patentee of the cost of the manufacture of the model; the amount to be settled, in case of dispute, by the Controller and Auditor-General.

Foreign vessels in colonial waters.

49. (1.) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of the Supreme Court of New Zealand, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connection with the manufacture or preparation of anything intended to be sold in or exported from New Zealand.

(2.) But this section shall not extend to vessels of any foreign State of which the laws authorise subjects of such foreign State, having patents or like privileges for the exclusive use of or exercise of inventions within its territories, to prevent or interfere with the use of such inventions in British vessels while in the ports of such foreign State, or in the waters within the jurisdiction of its Courts, where such inventions are not so used for the manufacture or preparation of anything intended to be sold in or exported from the territories of such foreign State.

50. (1.) Where application is made for a patent for any improvement in instruments or munitions of war, and it is made to appear to the Governor that, in the interest of the public service, the

Reference to Secretary of State for War of certain inventions.

particulars of the invention and of the manner in which it is to be performed should be kept secret, pending a reference to Her Majesty's Principal Secretary of State for the War Department, the Governor may, with the consent of the inventor, direct the Registrar to place the application for such patent, with the specification or specifications and the drawings (if any), and any amendment of the specification or specifications, and any copies of such documents and drawings, in a packet sealed by authority of the Governor, and thereupon all proceedings in relation to the granting of a patent for the said invention shall be suspended.

(2.) At the expiration of nine months from the sealing of the said packet, or any time before such time, the Governor may direct the Registrar—

(a.) To deliver such sealed packet to any person authorised by the Governor in writing to receive it on behalf of the Secretary of State; or

(b.) To open it, in order that the proceedings for the grant of a patent in respect thereof may be resumed; and thereupon such proceedings shall be resumed as if there had been no interruption therein, and the interval during which the aforesaid packet was sealed shall not be reckoned as any part of the time between the application for a patent and the granting thereof.

(3.) The communication of any invention for any improvement in instruments or munitions of war to the Secretary of State, or to any person or persons authorised by him to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant of any patent for the same.

(4.) No person shall be entitled to claim or to receive any compensation in respect of the granting of a patent being delayed by reason of the sealing up thereof for a time in the interest of the public service.

51. The provisions of "The Stamp Act, 1882," shall not apply in respect of documents deposited at the Patent Office and relating to patents, and the granting of letters patent for inventions. "Stamp Act, 1882,"  
not to apply.

#### *Existing Patents.*

52. (1.) The provisions of this Act relating to applications for patents and proceedings thereon shall have effect in respect only of applications made after the commencement of this Act. Provisions respect-  
ing existing patents.

(2.) Every patent granted before the commencement of this Act shall be subject only to the payment of such fees, and at such times, as prescribed by the law in force, at the times respectively when such patents were granted.

(3.) Every patent granted after the commencement of this Act upon an application pending at the time of the said commencement shall be granted subject to the amount and time of payment of fees prescribed by this Act.

(4.) In all other respects this Act shall extend to all patents granted before the commencement of this Act, or on applications then pending, in substitution for such enactments as would have applied thereto if this Act had not been passed.

Former reduction of fees for patents to be retrospective.

53. And whereas under section fourteen of "The Patents Act, 1870," certain payments in respect of patents were required to be made within three years after the granting thereof, and by section three of "The Patents Act Amendment Act, 1881," the term of five years was substituted in lieu of the aforesaid term of three years, and doubts have been entertained whether such amendment would have operation in relation to any patents granted at any time previous to the passing of the amending Act aforesaid: To set such doubts at rest,—

It is hereby declared that the aforesaid term of five years and the fees required to be paid respectively by "The Patents Act Amendment Act, 1879," and "The Patents Act Amendment Act, 1881," shall be deemed to have applied to all patents granted under "The Patents Act, 1870," in respect whereof the periodical fees hereinabove mentioned had not been paid at the time of the passing of the said Amendment Acts; and all patents granted under "The Patents Act, 1870," in respect whereof the fees have been paid before the expiration of five years from the granting thereof, shall be deemed to have been and to be in full force and effect.

### PART III.

#### INDUSTRIAL DESIGNS.

Application for registration of designs.

54. (1.) The Registrar may, on application by or on behalf of any person claiming to be the proprietor of any new or original design not previously published in New Zealand, register the design under this Part of this Act.

(2.) The application must be made in the form set forth in the First Schedule to this Act, or to the like effect, and must be left at or sent by post to the Patent Office.

(3.) The application must contain a statement of the nature of the design and the class or classes of goods in which the applicant desires that the design be registered.

(4.) The same design may be registered in more than one class.

(5.) In case of doubt as to the class in which a design ought to be registered the Registrar may decide the question.

(6.) The Registrar may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal therefrom to the Court, which may hear the applicant and the Registrar, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

Drawings, &c., to be furnished on application.

55. (1.) On application for registration of a design the applicant shall furnish to the Registrar the prescribed number of copies of drawings, photographs, or tracings of the design sufficient, in the opinion of the Registrar, for enabling him to identify the design; or the applicant may, instead of such copies, furnish exact representations or specimens of the design.

(2.) The Registrar may, if he thinks fit, refuse any drawing, photograph, tracing, representation, or specimen which is not in his opinion suitable for the official records.



56. (1.) The Registrar shall grant a certificate of registration to the proprietor of the design when registered. Certificate of registration.

(2.) The Registrar may, in case of loss of the original certificate, or in any other case in which he deems it expedient, grant a copy or copies of the certificate.

57. (1.) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration. Copyright on registration.

(2.) Before delivery on sale of any articles to which a registered design has been applied, the proprietor must, if exact representations or specimens were not furnished on the application for registration, furnish to the Registrar the prescribed number of exact representations or specimens of the design, and if he fails to do so the Registrar may erase his name from the register, and thereupon his copyright in the design shall cease.

58. Before delivery on sale of any articles to which a registered design has been applied the proprietor of the design shall cause each such article to be marked with the prescribed mark, or with the prescribed word or words or figures, denoting that the design is registered; and if he fails to do so the copyright in the design shall cease, unless the proprietor shows that he took all proper steps to insure the marking of the article. Marking registered designs.

59. (1.) During the existence of copyright in a design, the design shall not be open to inspection except by the proprietor, or a person authorised in writing by the proprietor, or a person authorised by the Registrar or by the Court, and furnishing such information as may enable the Registrar to identify the design, nor except in the presence of the Registrar, or of an officer acting under him, nor except on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof. Inspection of registered designs.

But where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

(2.) When the copyright in a design has ceased the design shall be open to inspection, and copies thereof may be supplied to any person on payment of the prescribed fee.

60. On the request of any person producing a particular design, together with its mark of registration, or producing only its mark of registration, or furnishing such information as may enable the Registrar to identify the design, and on payment of the prescribed fee, it shall be the duty of the Registrar to inform such person whether the registration still exists in respect of such design, and, if so, in respect of what class or classes of goods, and stating also the date of registration and the name and address of the registered proprietor. Information as to existence of copyright.

61. If a registered design is used in manufacture in any foreign country and is not used in this country within six months of its registration in this country, the copyright in the design shall cease. Cesser of copyright in certain events.

62. (1.) There shall be kept at the Patent Office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assign- Register of Designs.

ments, and of transmissions of registered designs, and such other matters as may from time to time be prescribed.

(2.) The register of designs shall be *prima facie* evidence of any matters by this Act directed or authorised to be entered therein.

Fees on registration,  
&c.

63. There shall be paid in respect of applications and registration and other matters under this Part of this Act the fees mentioned in the Second Schedule to this Act, or such other fees as may be from time to time prescribed by the Governor in Council; and such fees shall be paid into the Public Account and form part of the Consolidated Fund.

Exhibition at industrial or international exhibition not to prevent or invalidate registration.

64. The exhibition at any colonial, intercolonial, or international exhibition held at any place within or beyond the colony, and declared by the Governor, by notification in the *Gazette*, to be an "industrial exhibition" for the purposes of this Act, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof, subject as follows, namely,—

In the case of an exhibition held at any place within the colony,—

(a.) The exhibitor must, before exhibiting the design or article, or publishing a description of the design, give the Registrar notice of his intention to do so; and

(b.) The application for registration must be made before or within six months from the date of the opening of the exhibition.

In the case of an exhibition held at any place beyond the colony,—

The foregoing conditions shall also apply, but the Governor may exempt, either absolutely or upon such terms and conditions as he shall think fit, any exhibitor from the condition of giving previous notice to the Registrar of his intention to exhibit.

#### *Legal Proceedings.*

65. During the existence of copyright in any design,—

(a.) It shall not be lawful for any person without the license or written consent of the registered proprietor to apply, or cause to be applied, such design or any fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered, for purposes of sale to any article of manufacture or to any substance artificial or natural or partly artificial and partly natural; and

(b.) It shall not be lawful for any person to publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitation thereof is so applied, knowing that the same has been so applied without the consent of the registered proprietor.

Every person who acts in contravention of this section is liable for every offence to forfeit a sum not exceeding fifty pounds to the registered proprietor of the design, who may recover such sum in a

Penalty on piracy of registered design.

summary way as a simple contract debt by action in any Court of competent jurisdiction.

But the total sum forfeited in respect of any one design shall not exceed one hundred pounds.

66. Notwithstanding the remedy given by this Act for the recovery of such penalty as aforesaid, the registered proprietor of any design may, if he elects to do so, bring an action for the recovery of any damages arising from the application of any such design, or of any fraudulent or obvious imitation thereof for the purpose of sale, to any article of manufacture or substance, or from the publication, sale, or exposure for sale by any person of any article or substance to which such design or any fraudulent or obvious imitation thereof is so applied, such person knowing that the proprietor had not given his consent to such application. Action for damages.

67. The author of any new or original design shall be considered the proprietor thereof, unless he executed the work on behalf of another person for a good or valuable consideration, in which case such person shall be considered the proprietor; and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to any such article or substance as aforesaid, either exclusively of any other person or otherwise, and also every person on whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise. Definition of  
"proprietor."

## PART IV.

### TRADE-MARKS.

#### *Registration of Trade-marks.*

68. (1.) The Registrar may, on application by or on behalf of any person claiming to be the proprietor of a trade-mark, register the trade-mark. Application for  
registration.

(2.) The application must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the Patent Office.

(3.) The application must be accompanied by not less than four representations of the trade-mark, or such other number thereof as may be prescribed from time to time, and must state the particular goods or classes of goods in connection with which the applicant desires the trade-mark to be registered.

(4.) The Registrar may, if he thinks fit, refuse to register a trade-mark, but any such refusal shall be subject to appeal to the Court, which may hear the applicant and the Registrar, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(5.) Where an applicant for the registration of a trade-mark is out of the colony at the time of making the application he shall give the Registrar an address for service in the colony, and if he fails to do so the application shall not be proceeded with until the address has been given.

Limit of time for proceeding with application.

69. Where registration of a trade-mark has not been or shall not be completed within twelve months from the date of the application, by reason of default on the part of the applicant, the Registrar shall give notice of the non-completion to the agent employed on behalf of the applicant, and, if at the expiration of fourteen days from that notice the registration is not completed, shall give the like notice to the applicant; and if at the expiration of the latter fourteen days, or such further time as the Registrar may in special cases permit, the registration is not completed, the application shall be deemed to be abandoned.

Conditions of registration of trade-mark.

70. (1.) For the purposes of this Act, a trade-mark must consist of or contain at least one of the following essential particulars:—

- (a.) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or
- (b.) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade-mark; or
- (c.) A distinctive device, mark, brand, heading, label, or ticket; or
- (d.) An invented word or words; or
- (e.) A word having no reference to the character or quality of the goods, and not being a geographical name.

(2.) There may be added to any one or more of the essential particulars mentioned in this section any letters, words, or figures, or combination of letters, words, or figures, or of any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade-mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be added on the register.

(3.) Provided as follows:—

- (a.) A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof;
- (b.) Any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures used as a trade-mark before the commencement of this Act, may be registered as a trade-mark under this Part of this Act.

71. A trade-mark must be registered for particular goods or classes of goods.

72. No trade-mark shall be registered for artificial manures manufactured in the colony unless accompanied by a chemical analysis setting forth the component parts of the substance of such manure.

Every such analysis shall be in writing made by a competent analytical chemist, and signed by him, stating after his signature his qualifications as such chemist, and his signature thereto shall be attested by at least one witness.

A copy of the said analysis shall, before sale or exportation, be indorsed on or affixed to every bag, box, or other parcel of the manure

Connection of trade-mark with goods.

Trade-mark for artificial manures to be accompanied by analysis.

to which such trade mark is attached, and shall be deemed to form part of such trade-mark.

73. When a person claiming to be the proprietor of several trade-marks which, while resembling each other in the material particulars thereof, yet differ in respect of (a) the statement of the goods for which they are respectively used or proposed to be used, or (b) statements of numbers, or (c) statements of price, or (d) statements of quality, or (e) statements of names of places, seeks to register such trade-marks, they may be registered as a series in one registration. A series of trade-marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade-marks composing a series shall be deemed and treated as registered separately.

Registration of a series of marks.

74. A trade-mark may be registered in any colour or colours, and such registration shall, subject to the provisions of this Act, confer on the registered owner the exclusive right to use the same in that or any other colour or colours.

Trade-marks may be registered in any colour.

75. Every application for registration of a trade-mark under this Part of this Act shall, as soon as may be after its receipt, be advertised by the Registrar in the *New Zealand Gazette* unless the Registrar refuse to entertain the application.

Advertisement of application.

76. (1.) Any person may, within two months, or such further time as the Registrar may allow, of the advertisement of the application, give notice in duplicate at the Patent Office of opposition to the registration of the trade-mark, and the Registrar shall send one copy of such notice to the applicant.

Opposition to registration.

(2.) Within two months after receipt of such notice, or such further time as the Registrar may allow, the applicant may send to the Registrar 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 abandoned his application.

(3.) If the applicant sends such counter-statement the Registrar shall furnish a copy thereof to the person who gave notice of opposition, and shall, after hearing the applicant and the opponent, if so required, decide whether the trade-mark is to be registered, but his decision shall be subject to appeal to the Supreme Court, who shall hear the appeal, and after hearing the applicant and the opponent, and the Registrar, may make an order determining whether, and subject to what conditions (if any), registration is to be permitted.

(4.) If the applicant abandons his application after notice of opposition in pursuance of this section, he shall be liable to pay to the opponent such costs in respect of the opposition as the Registrar may determine to be reasonable.

(5.) When the opponent is out of the colony he shall give the Registrar an address for service in the colony.

77. A trade-mark, when registered, shall be assigned and transmitted only in connection with the good-will of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that good-will.

Assignment and transmission of trade-mark.

78. Where each of several persons claims to be registered as proprietor of the same trade-mark the Registrar may refuse to register any of them until their rights have been determined according to law, and the Registrar may himself submit or require the claimants to submit their rights to the Court.

Conflicting claims to registration.

Restrictions on registration.

79. (1.) Except where the Court has decided that two or more persons are entitled to be registered as proprietors of the same trade-mark, the Registrar shall not register in respect of the same goods or description of goods a trade-mark identical with one already on the register with respect to such goods or description of goods.

(2.) Except as aforesaid, the Registrar shall not register with respect to the same goods or description of goods a trade-mark having such resemblance to a trade-mark already on the register with respect to such goods or description of goods as to be calculated to deceive.

Further restriction on registration.

80. It shall not be lawful to register as part of or in combination with a trade-mark any words the use of which would, by reason of their being calculated to deceive or otherwise, be deemed disentitled to protection in a Court of justice, or any scandalous design.

Saving for power to provide for entry on register of common marks as additions to trade-marks.

81. (1.) Nothing in this Act shall be construed to prevent the Registrar entering on the register in the prescribed manner, and subject to the prescribed conditions, as an addition to any trade-mark,—

(a.) In the case of an application for registration of a trade-mark used before the commencement of this Act,—

Any distinctive device, mark, brand, heading, label, ticket, letter, word, or figure, or combination of letters, words, or figures, though the same is common to the trade in the goods with respect to which the application is made ;

(b.) In the case of an application for registration of a trade-mark not used before the commencement of this Act,—

Any distinctive word or combination of words, though the same is common to the trade in the goods with respect to which the application is made.

(2.) The applicant for registration of any such addition must, however, state in his application the essential particulars of the trade-mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

But a person need not under this section disclaim his name, or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name, or the foreign equivalent thereof.

(3.) Any device, mark, brand, heading, label, ticket, letter, word, figure, or combination of letters, words, or figures, which was or were before the commencement of this Act publicly used by more than three persons on the same or a similar description of goods shall, for the purposes of this section, be deemed common to the trade in such goods.

#### *Effect of Registration.*

82. Application for registration of a trade-mark shall be deemed to be equivalent to public use of the trade-mark.

83. The registration of a person as proprietor of a trade-mark shall be *prima facie* evidence of his right to the exclusive use of the trade-mark, and shall, after the expiration of five years from the date of the registration, be conclusive evidence of his right to the

Application for registration equivalent to public use.

Right of first proprietor to exclusive use of trade-mark.

exclusive use of the trade-mark, subject to the provisions of this Act.

84. (1.) A person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of a trade-mark unless, in the case of a trade-mark capable of being registered under this Act, it has been registered in pursuance of this Act, or of an enactment repealed by this Act, or, in the case of any other trade-mark in use before the commencement of this Act, registration thereof under this Part of this Act, or of an enactment repealed by this Act, has been refused. The Registrar may, on request, and on payment of the prescribed fee, grant a certificate that such registration has been refused.

Restrictions on actions for infringement, and on defence to action in certain cases.

(2.) In an action for infringement of a registered trade-mark the Court or a Judge may certify that the right to the exclusive use of the trade-mark came in question, and if the Court or a Judge so certifies, then in any subsequent action for infringement the plaintiff in that action, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses, as between solicitor and client, unless the Court or Judge trying such subsequent action certifies that he ought not to have the same.

Certificate as to exclusive use and costs.

#### *Register of Trade-marks.*

85. There shall be kept at the Patent Office a book called the Register of Trade-marks, wherein shall be entered the names and addresses of proprietors of registered trade-marks, notifications of assignments and of transmissions of trade-marks, and such other matters as may be from time to time prescribed.

Register of Trade-marks.

The Registrar shall grant a certificate of registration to the applicant for the registration of a trade-mark, when registered, without further fee than the registration-fee.

Certificate of registration.

A copy or duplicate of any such certificate may be issued by the Registrar from time to time to any person applying for the same, on payment of the prescribed fee.

86. (1.) 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 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.

Removal of trade-mark after fourteen years unless fee paid.

(2.) 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.

(3.) 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.

(4.) Where after the said three months a trade-mark has been removed from the register for non-payment of the prescribed fee, the Registrar may, if satisfied that it is just so to do, restore such trade-mark to the register on payment of the prescribed additional fee.

(5.) Where a trade-mark has been removed from the register for non-payment of the fee or otherwise, such trade-mark shall nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade-mark which is already registered, unless it is shown to the satisfaction of the Registrar that the non-payment of the fee arises from the death or bankruptcy of the registered proprietor, or from his having ceased to carry on business, and no person claiming under that proprietor or under his bankruptcy is using the trade-mark.

#### *Existing Trade-marks.*

87. All trade-marks duly registered under any Act hereby repealed shall be deemed to be registered under this Act as from the day of the commencement thereof, without prejudice however to the order of priority in which they were respectively registered, and shall be renewed before the expiration of fourteen years from the aforesaid commencement, in accordance with the provisions of the last-preceding section, and subject to the same notices and the payment of the same fees as in the said section mentioned.

#### *Fees.*

88. There shall be paid in respect of registration and renewals of trade-marks and other matters under this Part of the Act the fees mentioned in the Second Schedule to this Act, or such other fees in respect thereof as may be from time to time prescribed by the Governor in Council; and such fees shall be paid into the Public Account, and form part of the consolidated revenue.

#### *Offences and Legal Proceedings.*

89. (1.) Every person who—
- (a.) Forges any trade-mark; or
  - (b.) Falsely applies to goods any trade-mark or any mark so nearly resembling a trade-mark as to be calculated to deceive; or
  - (c.) Makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade-mark; or
  - (d.) Applies any false trade description to goods; or
  - (e.) Disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade-mark; or
  - (f.) Falsely represents that the goods offered for sale have been manufactured or made in the colony; or
  - (g.) Applies or uses the word "colonial," or any similar word or words, to any goods not manufactured in the colony; or
  - (h.) Uses any word, mark, or sign tending to mislead any person as to the real or actual manufacturer or maker of goods,

Trade-marks heretofore registered to be subject to renewal.

Fees for registration, &c.

Offences as to trade-marks and trade descriptions.



or the place where such goods have been made or manufactured;

(i.) Causes any of the things above in this section mentioned to be done,

shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be guilty of an offence against this Act.

(2.) Every person who sells, or exposes for or has in his possession for sale, or any purpose of trade or manufacture, any goods or things to which any forged trade-mark or false trade description is applied, or to which any trade-mark or mark so nearly resembling a trade-mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—

(a.) That, having taken all reasonable precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade-mark, mark, or trade description; and

(b.) That, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(c.) That otherwise he had acted innocently,  
be guilty of an offence against this Act.

(3.) Every person guilty of an offence against this Part of this Act is liable—

(a.) On conviction on indictment, to imprisonment, with or without hard labour, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and

(b.) On summary conviction, to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding twenty pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a penalty not exceeding fifty pounds; and

(c.) In any case to forfeit to Her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed.

(4.) The Court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the Court thinks fit; and if sold the proceeds of the sale shall be applied in the like manner as if the proceeds were a penalty incurred under this Act.

(5.) If any person feels aggrieved by any conviction made by a Court of summary jurisdiction he may appeal therefrom in manner as provided in cases of appeals from Justices.

(6.) Any person charged with an offence under this section before a Court of summary jurisdiction shall, on appearing before the Court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly.

90. (1.) For the purposes of this Part of this Act,—

The expression "trade description" means any description, statement, or other indication, direct or indirect,—

Definitions of trade descriptions and false trade description.

(a.) As to the number, quantity, measure, gauge, or weight of any goods; or

(b.) As to the place or country, or, if a colony, the name of the particular colony in which any goods, and the material or substance thereof, were made or produced; or

(c.) As to the mode of manufacturing or producing any goods; or

(d.) As to the material or substance of which any goods are composed; or

(e.) As to any goods being the subject of an existing patent, privilege, or copyright:

And the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Act:

The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect; and the fact that a trade description is a trade-mark, or part of a trade-mark, shall not prevent such trade description being a false trade description within the meaning of this Act:

The expression "goods" means anything which is the subject of trade, manufacture, or merchandise:

The expressions "persons," "manufacturer, dealer, or trader," and "proprietor" include any body of persons corporate or unincorporate, and any servant or employé:

The expression "name" includes any abbreviation of a name.

(2.) The provisions of this Act respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade-mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3.) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description; and for the purpose of this enactment the expression "false name or initials" means, as applied to any goods, any name or initials of a person which—

(a.) Are not a trade-mark, or part of a trade-mark; and

(b.) Are identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description, and not having authorised the use of such name or initials; and

(c.) Are either those of a fictitious person or of some person not *bonâ fide* carrying on business in connection with such goods.

91. A person shall be deemed to forge a trade-mark who either—

What deemed forging trade-mark.

(a.) Without the assent of the proprietor of the trade-mark makes that trade-mark or a mark so nearly resembling that trade-mark as to be calculated to deceive; or

(b.) Falsifies any genuine trade-mark, whether by alteration, addition, effacement, or otherwise;

and any trade-mark or mark so made or falsified is in this Act referred to as a forged trade-mark.

In any prosecution for forging a trade-mark the burden of proving the assent of the proprietor shall lie on the defendant.

92. (1.) A person shall be deemed to apply a trade-mark, or mark, or trade description to goods who—

Applying marks and descriptions.

(a.) Applies it to the goods themselves; or

(b.) Applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or

(c.) Places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade-mark or trade description has been applied; or

(d.) Uses a trade-mark, or mark, or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade-mark, or mark, or trade description.

(2.) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression "label" includes any band or ticket.

A trade-mark, or mark, or trade description shall be deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed or affixed to the goods, or to any covering, label, reel, or other thing.

(3.) A person shall be deemed to falsely apply to goods a trade-mark or mark who without the assent of the proprietor of a trade-mark applies such trade-mark, or a mark so nearly resembling it as to be calculated to deceive; but in any prosecution for falsely applying a trade-mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

93. Where a defendant is charged with making any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a trade-mark, or with falsely applying to goods any trade-mark, or any mark so nearly resembling a trade-mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves—

Exemption of certain persons employed in ordinary course of business.

(a.) That in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines,

or other instruments for making, or being used in making, trade-marks, or as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the colony, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

- (b.) That he took reasonable precautions against committing the offence charged; and
- (c.) That he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade-mark, mark, or trade description; and
- (d.) That he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade-mark, mark, or description was applied,

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

Application of Act to watches.

94. Where a watch-case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall *prima facie* be deemed to be a description of that country within the meaning of this Act, and the provisions of this Act with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch-case.

Trade-mark, how described in pleading.

95. In any indictment, pleading, proceeding, or document in which any trade-mark or forged trade-mark is intended to be mentioned it shall be sufficient, without further description and without any copy or facsimile, to state that trade-mark or forged trade-mark to be a trade-mark or forged trade-mark.

Rules as to evidence.

96. In any prosecution for an offence against this Part of this Act,—

- (1.) A defendant, and his wife or her husband, as the case may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness.
- (2.) In the case of imported goods, evidence of the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced.

Punishment of accessories.

97. Every person who, being within the colony, procures, counsels, aids, abets, or is accessory to the commission, without the colony, of any act which, if committed in the colony, would under this Act be a misdemeanour, shall be guilty of that misdemeanour as a principal, and be liable to be indicted, proceeded against, tried, and convicted in any place in the colony in which he may be, as if the misdemeanour had been there committed.

98. (1.) Where, upon information of an offence against this Part of this Act, a Justice has issued either a summons requiring the defendant charged by such information to appear to answer the same or a warrant for the arrest of such defendant, and either the said Justice on or after issuing the summons or warrant, or any other Justice, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, such Justice may issue a warrant under his hand by virtue of which it shall be lawful for any constable named or referred to in the warrant to enter such house, premises, or place at any reasonable time by day, and to search there for and seize and take away those goods or things; and any goods or things seized under any such warrant shall be brought before a Court of summary jurisdiction for the purpose of its being determined whether the same are or are not liable to forfeiture under this Act.

Search-warrant.

(2.) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Act is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a Court of summary jurisdiction may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the Court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.

(3.) Any goods or things forfeited under this section, or under any other provision of this Part of this Act, may be destroyed or otherwise disposed of in such manner as the Court by which the same are forfeited may direct, and the Court may, out of any proceeds which may be realised by the disposition of such goods (all trade-marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

99. "The Vexatious Indictments Act, 1870," shall apply to any offence punishable on indictment under this Act in like manner as if such offence were one of the offences specified in section two of that Act.

Extension of "Vexatious Indictments Act, 1870," to offences under this Act.

100. On any prosecution under this Part of this Act the Court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

Costs of defence or prosecution.

101. No prosecution for an offence against this Part of this Act shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

Limitation of prosecution.

102. On the sale or in the contract for the sale of any goods to which a trade-mark, or mark, or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade-mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this

Implied warranty on sale of marked goods.

Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

Provisions of Act as to false description not to apply in certain cases.

103. Where, at the commencement of this Act, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Act with respect to false trade descriptions shall not apply to such trade description when so applied.

But where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner with that name, the name of the place or country, or, if a colony, the name of the particular colony in which the goods and the material or substance thereof were actually made or produced, with a statement that they were made or produced there.

Prohibition on importation.

104. Whereas it is expedient to make further provision for prohibiting the importation of goods which if sold would be liable to forfeiture under this Part of this Act:

Be it therefore enacted as follows:—

- (1.) All such goods, and also all goods of foreign manufacture bearing any name or trade-mark being or purporting to be the name or trade-mark of any manufacturer, dealer, or trader in the United Kingdom, or New Zealand, or any other British possession, unless such name or trade-mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into the colony, and, subject to the provisions of this section, shall be included among goods prohibited to be imported as if they were specified in section sixty-six of "The Customs Laws Consolidation Act, 1882."
- (2.) Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in the United Kingdom, or New Zealand, or any other British possession, that name, unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if it were the name of a place in the United Kingdom, or New Zealand, or other British possession, as the case may be.
- (3.) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the Customs Acts, the Commissioner of Trade and Customs may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy himself, in accordance with those regulations, that the goods are such as are prohibited by this section to be imported.

- (4.) The aforesaid Commissioner may from time to time make, revoke, and vary regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.
- (5.) Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.
- (6.) The regulations may provide for the informant reimbursing the Commissioner of Trade and Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.
- (7.) All regulations under this section shall be published in the *New Zealand Gazette*.
- (8.) This section shall have effect as if it were part of "The Customs Laws Consolidation Act, 1882."

105. (1.) This Act shall not exempt any person from any action, Savings.  
 suit, or other proceeding which might, but for the provisions of this Act, be brought against him.

(2.) Nothing in this Act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Act.

(3.) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the colony who *bona fide* acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

## PART V

### INTERNATIONAL AND INTERCOLONIAL ARRANGEMENTS.

106. (1.) If Her Majesty is pleased, by Order in Council, to apply the provisions of section one hundred and three of the Imperial Act called "The Patents, Designs, and Trade-marks Act, 1883," to the Colony of New Zealand, then any person who has applied for any protection for any invention, design, or trade-mark, in England or in any foreign State, with the Government of which Her Majesty has made an arrangement under the said section for mutual protection of inventions, designs, or trade-marks, or any of them, shall be entitled to a patent for his invention, or to registration of his design or trade-mark, as the case may be, under this Act, in priority to other applicants; and such patent or registration shall take effect from the same date as the date of the application in England or such foreign State, as the case may be:

International arrangements for protection of inventions, designs, and trade-marks.

Provided that his application is made, in the case of a patent, within twelve months, and in the case of a design or trade-mark, within six months, from his applying for protection in England or the foreign State with which the arrangement is in force.

Nothing in this section contained shall entitle the patentee or proprietor of the design or trade-mark to recover damages for infringements happening prior to the date of the actual acceptance of his specification, or the actual registration of his design or trade-mark in this colony, as the case may be.

(2.) The publication in New Zealand, during the respective periods aforesaid, of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during such periods of the trade-mark, shall not invalidate the patent which may be granted for the invention or the registration of the design or trade-mark.

(3.) The application for the grant of a patent, or the registration of a design, or the registration of a trade-mark under this section, must be made in the same manner as an ordinary application under this Act; but, in the case of trade-marks, any trade-mark the registration of which has been duly applied for in the country of origin may be registered under this Act.

(4.) The provisions of this section shall, in the case of foreign States, apply only in the case of those foreign States with respect to which Her Majesty shall from time to time, by Order in Council, declare the provisions of the aforesaid section of the said Imperial Act to be applicable, and so long only in the case of each State as the Order in Council shall continue in force with respect to that State.

107. (1.) Where it is made to appear to the Governor in Council that the Legislature of any British possession other than New Zealand has made satisfactory provision for the protection of inventions, designs, and trade-marks, or any of them, patented or registered in New Zealand, the Governor may from time to time, by Order in Council, apply all or any of the provisions of the last-preceding section relating to the protection of inventions, designs, and trade-marks patented or registered in England, with such variations or additions, if any, as the Governor in Council may seem fit, to inventions, designs, and trade-marks, or any of them, patented or registered in such British possession.

(2.) An Order in Council under this section shall, from a date to be mentioned for the purpose in the Order, take effect as if its provisions had been contained in this Act; but the Governor in Council may revoke any such Order in Council.

## PART VI.

### GENERAL.

#### *Proceedings at Patent Office.*

108. There shall be a seal for the Patent Office, and impressions thereof shall be judicially noticed and admitted in evidence.

Provision for colonies and India.

Seal of Patent Office.



109. There shall not be entered in any register kept under this Act, or be receivable by the Registrar, any notice of any trust expressed, implied, or constructive.

Trust not to be entered in registers.

110. The Registrar may refuse to receive an application for, or to grant a patent for, an invention, or to register a design or trade-mark of which the use would, in his opinion, be contrary to law or morality, or if he knows that the alleged invention, design, or trade-mark is not new; and on such refusal any provisional protection which may have been given or obtained shall cease.

Refusal to grant patent, &c., in certain cases.

111. Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, or to a registered trade-mark, the Registrar shall, on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade-mark, in the register of patents, designs, or trade-marks, as the case may be. The person for the time being entered in the register of patents, designs, or trade-marks, as proprietor of a patent, copyright in a design, or trade-mark, as the case may be, shall, subject to the provisions of this Act and to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the same, and to give effectual receipts for any consideration for such assignment, license, or dealing: But any equities in respect of such patent, design, or trade-mark may be enforced in like manner as in respect of any other personal property.

Entry of assignments and transmissions in registers.

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

Inspection of and extracts from registers.

113. Printed or written copies or extracts, purporting to be certified by the Registrar and sealed with the seal of the Patent Office, of or from patents, specifications, disclaimers, and other documents in the Patent Office, and of or from registers and other books kept there, shall be admitted in evidence in all Courts of justice, and before all Justices, Commissioners, and other persons acting in any judicial or administrative capacity, and in all proceedings, without further proof or production of the originals.

Sealed copies to be received in evidence.

114. A certificate purporting to be under the hand of the Registrar as to an entry, matter, or thing which he is authorised by this Act, or any general rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Certificate of Registrar to be evidence.

115. Every appeal from any action or decision of the Registrar shall be heard and determined by the Court sitting at Wellington.

Appeals against decisions of Registrar to be heard before Court sitting at Wellington.

Notice of every appeal from any action or decision of the Registrar shall be given in writing to such Registrar or sent so as to reach him within twenty-four hours of the time when the same was taken or given.

116. (1.) The Court,—

(a.) On the application of any person aggrieved by the omission,

Rectification of registers by Court.

without sufficient cause, of the name of any person or of any other particulars from any register kept under this Act, or by any entry made, without sufficient cause, in any such register, may make such order for making, expunging, or varying the entry as the Court thinks fit; or the Court may refuse the application; or

- (b.) On the petition of any person by way of appeal from any decision of the Registrar, where such appeal is granted under any provisions of this Act, may hear the matter of such petition, and may confirm, vary, or revoke any decision of the Registrar, or make such other order in the matter as to it may seem fit.

(2.) The Court may, in any proceeding under this section, decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3.) Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the Registrar; and on production to him of any such order the Registrar shall rectify the register in accordance with the said order.

117. The Judges of the Supreme Court, or any two of them, may make, from time to time, rules of procedure and practice for regulating proceedings in Court on applications and petitions under this Act, and subject thereto such proceedings shall be regulated according to the existing procedure and practice of the Court in like matters.

The costs of all parties of and incident to such proceedings shall be in the discretion of the Court; and the orders of the Court respecting costs shall be enforceable in the same manner as other orders of the Court.

118. The Registrar may, on request in writing, accompanied by the prescribed fee,—

- (a.) Correct any clerical error in or in connection with an application for a patent, or for registration of a design or trade-mark; or
- (b.) Correct any clerical error in the name, style, or address of the registered proprietor of a patent, design, or trade-mark; or
- (c.) Cancel the entry or part of the entry of a trade-mark on the register: Provided that the applicant accompanies his request by a statutory declaration made by himself, stating his name, address, and calling, and that he is the person whose name appears on the register as the proprietor of the said trade-mark;
- (d.) Permit an applicant for registration of a design or trade-mark to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the design or trade-mark to be registered.

119. (1.) The registered proprietor of any registered trade-mark may apply to the Court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of

Judges of Supreme Court may make rules of procedure under Act.

Power for Registrar to correct clerical errors.

Alteration of registered mark.

this Act, and the Court may refuse or grant leave on such terms as it may think fit.

(2.) Notice of any intended application to the Court under this section shall be given to the Registrar by the applicant, and the Registrar shall be entitled to be heard on the application.

(3.) If the Court grants leave the Registrar shall, on proof thereof, and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

120. Every person who makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, is guilty of a misdemeanour. Falsification of entries in registers.

121. Where any discretionary power is by this Act given to the Registrar he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a trade-mark or design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent. Exercise of discretionary power by Registrar.

122. The Registrar, at any time, for the purposes of this Act,— Power of Registrar to call and examine witnesses, papers, and documents, and to adjourn cases.

(1.) May require the attendance of any persons as witnesses, and the production of books, documents, and papers, and may examine witnesses on oath, and administer oaths for the purpose;

(2.) May, if he thinks fit, obtain the assistance of any scientific, expert, or other person;

(3.) May require the several parties to any case or matter before him to deposit such sums as he shall think fit, to meet the costs of or incident to hearing such case or matter; and may, by writing under his hand, order to be paid to any person he may call to his aid as aforesaid some remuneration for his attendance, and may also, in like manner, order that the costs of any hearing upon any objections, or otherwise in relation to the grant of such letters patent, or the protection acquired by the applicant under this Act, shall be paid; and, in and by such writing, shall fix the amount of such remuneration or costs, and by or to whom the same respectively shall be paid.

Every such order shall be in the form contained in the First Schedule, or to the like effect, and may be made a rule of the Supreme Court;

(4.) May adjourn the hearing of an application, or other matter for the time being under his consideration, from time to time, or *sine die*;

(5.) In opposed cases, shall hear and examine the applicant, the objectors, and their respective witnesses, if any, and consider their evidence separately and apart from and in the absence of the other, his witnesses and evidence, unless it is otherwise mutually agreed by the applicant and the objectors.

123. (1.) Any application, notice, or other document authorised or required to be left, made, or given at the Patent Office, or to Applications and notices by post.

the Registrar, or to any other person under this Act, may be sent by a prepaid letter through the post; and, if so sent, shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

(2.) In proving such service or sending it shall be sufficient to prove that the letter was properly addressed and put into the post.

124. Whenever the last day fixed by this Act, or by any rule for the time being in force, for leaving any document or paying any fee at the Patent Office falls on Christmas Day, Good Friday, or on a Saturday or Sunday, or bank holiday, or any day observed as a day of public fast or thanksgiving, herein referred to as excluded days, it shall be lawful to leave such document or to pay such fee on the day next following such excluded day, or days if two or more of them occur consecutively.

125. If any person is, by reason of infancy, lunacy, or other inability, incapable of making any declaration or doing anything required or permitted by this Act, or by any rules made under the authority of this Act, 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 purposes of this Act, be as effectual as if done by the person for whom he is substituted.

126. (1.) After the commencement of this Act a person shall not be entitled to describe himself as a patent agent, whether by advertisement, by description on his place of business, by any document issued by him, or otherwise, unless he is registered as a patent agent in pursuance of this Act.

(2.) The Governor in Council shall, as soon as may be after the passing of this Act, and may from time to time make such general regulations under the next following section for giving effect to this section.

(3.) If any person knowingly describes himself as a patent agent in contravention of this section, he shall be liable on summary conviction to a penalty not exceeding twenty pounds.

(4.) In this section "patent agent" means exclusively an agent for obtaining patents in the colony.

127. (1.) The Governor in Council may from time to time make such general regulations and do such things as he may think expedient, subject to the provisions of this Act,—

(a.) For regulating the practice of registration under this Act:

(b.) For classifying goods for the purpose of designs and trade-marks:

(c.) For making or requiring duplicates of specifications, amendments, drawings, and other documents:

(d.) For securing and regulating the publishing and selling of

Provision as to days for leaving documents at office.

Declaration by infant, lunatic, &c.

Register of patent agents.

Power for Governor in Council to make general rules for classifying goods and regulating business of Patent Office.

copies of specifications, drawings, amendments, and other documents:

- (e.) For securing and regulating the publishing and selling of indexes to, and abridgments of, specifications and other documents in the Patent Office; and providing for the inspection of indexes, and abridgments, and other documents:
- (f.) For regulating the presentation of copies of Patent Office publications to patentees and to public authorities, bodies, and institutions at home and abroad:
- (g.) For regulating the registration of patent agents, and the terms and conditions of such registration:
- (h.) Generally for regulating the business of the Patent Office, and all things by this Act placed under the direction or control of the Registrar.

(2.) Any of the forms in the First Schedule to this Act may be altered or amended by regulations made as aforesaid.

(3.) General regulations may be made under this section at any time after the passing of this Act, but not so as to take effect before the commencement of this Act, and shall, subject as hereinafter mentioned, be of the same effect as if they were contained in this Act, and shall be judicially noticed.

(4.) Any regulations made in pursuance of this section shall be gazetted, and forthwith be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or, if not, then as soon as practicable after the beginning of the then next session of Parliament.

(5.) If either House of Parliament, within the next forty days after any regulations have been so laid before such House, resolve that such regulations or any of them ought to be annulled the same shall, after the date of such resolution, be of no effect, without prejudice to the validity of anything done in the meantime under such regulations or regulation, or to the making of any new regulations or regulation.

128. The Registrar shall, in every year, cause a report respecting the execution by or under him of this Act to be laid before both Houses of Parliament, and therein shall include for the year to which each report relates all general regulations made in that year under or for the purposes of this Act, and an account of all fees, salaries, and allowances, and other money received and paid under this Act.

Annual reports of Registrar.

### Offences.

129. (1.) Any person who represents that any article sold by him is a patented article when no patent has been granted for the same in New Zealand, or describes any design or trade-mark applied to any article sold by him as registered which is not so, is liable for every offence, on summary conviction, to a penalty not exceeding fifty pounds.

Penalty on falsely representing articles to be patented.

(2.) A person shall be deemed, for the purposes of this enactment, to represent that an article is patented, or a design or a trade-mark is registered, if he sells the article with the word "patent," "patented," "registered," or any word or words or letters expressing or implying that a patent or registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to, the article.

Penalty on false representation as to Royal warrant.

130. Any person who falsely represents that any goods are made by a person holding a Royal warrant, or for the service of Her Majesty, or any of the Royal Family, or the Governor of the colony, or any department of Her Majesty's service in the United Kingdom or New Zealand, is liable, on summary conviction, to a penalty not exceeding twenty pounds.

Recovery of penalties.

131. Any penalty under this Act may be recovered in a summary way before any two or more Justices of the Peace, or a Resident Magistrate acting under "The Justices of the Peace Act, 1882," and any information in respect of any matter arising under this Act may be laid within six months from the time when such matters came to the knowledge of the informant.

*Repeal; Transitional Provisions; Savings.*

Repeal and saving for past operation of repealed enactments, &c.

132. The enactments described in the Third Schedule to this Act are hereby repealed: But this repeal of enactments shall not—

- (a.) Affect the past operation of any of those enactments, or any patent or copyright or right to use a trade-mark granted or acquired, subject, however, to renewal of such right under this Act, or any application pending, or appointment made, or order or direction made or given, or right, privilege, obligation, or liability acquired, accrued, or incurred, or anything duly done or suffered under or by any of those enactments before or at the commencement of this Act; or
- (b.) Interfere with the institution or prosecution of any action or proceeding, civil or criminal, in respect thereof; and any such proceeding may be carried on as if this Act had not been passed; or
- (c.) Take away or abridge any protection or benefit in relation to any such action or proceeding.

Former registers to be deemed continued.

133. (1.) The register of patents kept under any enactment repealed by this Act shall be deemed part of the same book as the register of patents kept under this Act.

(2.) The register of trade-marks kept under any enactment repealed by this Act shall be deemed part of the same book as the register of trade-marks kept under this Act.

Saving for prerogative.

134. Nothing in this Act shall take away, abridge, or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof.

Schedules.

**SCHEDULES.**

**FIRST SCHEDULE.**

**FORMS OF APPLICATION, ETC.**

**FORM OF APPLICATION FOR PATENT.**

I [*Here insert name, address, and calling of person making declaration*] declare that [A.B. of                      and] I am [*or are*] in possession of an invention for [*"improvements in sewing-machines"*]; that I [*or the said A.B.*] am [*or is*] the true and first inventor thereof; and that the same is not in use by any other person or persons to the best of my knowledge and belief; and I humbly pray that a patent may be granted to me [*or us*] for the said invention, as described in the specification herewith.

[*Witness to signature.*]

[*Signature of inventor.*]

Dated this                      day of                      , 18 .

## FORM OF PROVISIONAL SPECIFICATION.

I [*Here insert name, address, and calling of inventor*] do hereby declare the nature of my invention for [*“improvements in sewing-machines”*] to be as follows:—

[*Here insert short description of invention.*]

[*Signature of inventor.*]

Dated this        day of        , 18 .

## FORM OF COMPLETE SPECIFICATION.

[*Here insert title, as in declaration.*]

I [*Here insert name, address, and calling of inventor*] do hereby declare the nature of my invention for [*“improvements in sewing-machines,”*] and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement:—

[*Here insert full description of invention.*]

Having now particularly described and ascertained the nature of my said invention, and in what manner the same is to be performed, I declare that what I claim is [*Here state distinctly the features of novelty claimed*].

[*Signature of inventor.*]

Dated this        day of        , 18 .

## RECEIPT FOR SPECIFICATION.

RECEIVED from A.B., for transmission to the Registrar of Patents, Designs, and Trade-marks, specification for an invention for [*Insert the title*], at the hour of [*Insert the time*], on this        day of        , 18 .

Local Patent Office,

O.A., Patent Office Agent.

## FORM OF PATENT.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To all to whom these presents shall come, greeting:

WHEREAS [*Here insert name, address, and calling of inventor, as in declaration*] hath represented unto us that he is in possession of an invention for [*Here insert title of invention, as in declaration*], that he is the true and first inventor thereof, and that the same is not in use by any other person, to the best of his knowledge and belief: And whereas the said inventor hath represented that he is desirous of obtaining letters patent for securing unto him our special license for an invention for [*the said invention*]; and by an instrument in writing under his hand, deposited in the Patent Office under the provisions of “The Patents, Designs, and Trade-marks Act, 1889,” the patentee hath particularly described and ascertained the nature of the said invention, and in what manner the same is to be performed: Now, therefore, know ye that we have given and granted, and by these presents, for us, our heirs and successors, do give and grant, unto the patentee our special license and authority that the patentee, by himself or his servants or agents, or such others as he shall at any time agree with during the term herein expressed, shall and lawfully may make, use, and vend his said invention within our Colony of New Zealand and its dependencies, in such manner as to him shall seem meet: To have, hold, and enjoy the said license, privilege, and advantage unto and by the patentee for and during the term of fourteen years now next ensuing; and that he shall and lawfully may have and enjoy the whole profit, benefit, and advantage from time to time coming, accruing, and arising by reason of the said invention during the said term: Subject, however, in all things to the provisions of “The Patents, Designs, and Trade-marks Act, 1889,” and to the conditions and restrictions thereby imposed [and inserted herein, if any]:

Provided that these our letters patent are on this condition, that if at any time during the said term it shall appear that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof within our said colony and its dependencies, or that the said patentee is not the first and true inventor thereof within our said colony as aforesaid, these our letters patent shall forthwith determine and be void to all intents and purposes, notwithstanding anything hereinbefore contained: Provided also that if the said patentee shall not pay all fees by law required

to be paid in respect of the grant of these letters patent or in respect of any matter relating thereto at the time or times and in the manner for the time being provided by law; and also if the said patentee shall not supply or cause to be supplied for our service all such articles of the said invention as may be required by the officers or commissioners administering any department of our service, in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled in manner for the time being by law provided, then and in any of the said cases these our letters patent, and all privileges and advantages whatever hereby granted, shall determine and become void, notwithstanding anything hereinbefore contained: Provided also that nothing herein contained shall prevent the granting of licenses in such manner and for such considerations as they may by law be granted.

In witness whereof we have caused these our letters to be made patent, and to be sealed and bear date as of the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_.

Governor.

Seal of the Colony.

FORM OF ORDER FOR EXPENSES.

UPON hearing the objection of A.B. to the grant to C.D. of letters patent for [*Insert the title as in the specification*], I do by this writing under my hand order that the said A.B. shall pay to the said C.D. the sum of \_\_\_\_\_ for the costs of \_\_\_\_\_ such hearing [*or to E.F. the sum of \_\_\_\_\_ as a remuneration for his attendance at such hearing*].

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

P.O.,

Registrar of Patents, Designs, and Trade-marks.

FORM OF APPLICATION FOR REGISTRATION OF DESIGN.

You are hereby requested to register the accompanying \_\_\_\_\_ design, in Class \_\_\_\_\_, in the name of [*Here insert legibly the name and address of the individual or firm*], of \_\_\_\_\_, who claims to be the proprietor thereof, and to return the same to \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

Statement of nature of design:

Registration fees enclosed, £ \_\_\_\_\_.

To the Registrar, Patent Office, Wellington.

(Signed.)

FORM OF APPLICATION FOR REGISTRATION OF TRADE-MARK.

(One representation to be fixed within this square, and three others on separate sheets of foolscap of same size.)  
(Representations of a larger size may be folded, but must be mounted upon linen and affixed hereto.)

You are hereby requested to register the accompanying trade-mark [*In Class iron in bars, sheets, and plates; in Class \_\_\_\_\_, steam-engines and boilers; and in Class \_\_\_\_\_, warming apparatus*] in the name of [*Here insert legibly the name, address, and business of the individual or firm*], who claims to be the proprietor thereof.

Registration fees enclosed, £ \_\_\_\_\_.

To the Registrar, Patent Office, Wellington.

(Signed.)

NOTE.—If the trade-mark has been in use before the date of the passing of this Act state length of use.



## SECOND SCHEDULE.

## FEES.

*In respect of Patents and Renewal.*

	£	s.	d.
On lodging application with provisional specification	0	10	0
On filing complete specification	0	10	0
On filing complete specification in first instance	0	10	0
On depositing amended specification, or application for amendment to specification...	1	0	0
On obtaining letters patent, or any duplicate thereof	2	0	0
At or before the expiration of the fourth year	5	0	0
At or before the expiration of the seventh year	10	0	0
On lodging particulars of objections	0	10	0
On hearing objection (by the objector)	2	0	0
On application for enlargement of time for deposit of specification	1	0	0
On obtaining such enlargement of time in addition to or otherwise payable	5	0	0
On lodging application for enlargement of time of any payment	1	0	0
On obtaining enlargement of time in addition to fee otherwise payable	3	0	0
On presenting petition for extension of term	2	0	0
On notice to Registrar of intended exhibition of patent under section 47...	0	10	0
On notice of appeal to Supreme Court against any action or decision of Registrar	1	0	0
Search and inspection: For each book or specification	0	1	0
Entry of assignment or license	0	10	0
Certificate of assignment or license	0	10	0
Filing of memorandum of alteration or disclaimer	2	10	0
Entering any caveat	2	10	0
Copy or extract from register under seal	0	10	0
Copy or extract of any writing, per common-law folio...	0	0	6
Copy of any drawing: Cost according to agreement.			
On request to Registrar to correct clerical error	0	5	0
On registration as a patent agent	1	1	0

*In respect of Industrial Designs.*

On application to register one design to be applied to single articles in each class, except in classes next hereinafter enumerated	0	10	0
On application to register one design to be applied to single articles in classes of printed or woven designs in textile piece-goods, or on handkerchiefs and shawls	0	1	0
On application to register one design to be applied to a set of articles for each class of registration	1	0	0
On notice of appeal to Supreme Court against refusal of Registrar to register	1	0	0
Copy of certificate of registration, each copy	0	1	0
On request for certificate of Registrar, for legal proceedings or other special purpose	0	5	0
On request to enter name of subsequent proprietor: Same as registration-fee.			
On notice to Registrar of intended exhibition of an unregistered design	0	5	0
Inspection of design of which the copyright has expired, for each quarter of an hour	0	1	0
Copy of any such design: Cost according to agreement.			
On request to correct clerical error	0	5	0
On request for search under section 59	0	5	0
On request to enter new address	0	5	0
For copy or extract of any writing per common-law folio	0	0	6
For certifying office copies, MSS. or printed	0	1	0

\* But never less than one shilling.

*In respect of Trade-marks.*

On application to register a trade-mark for one or more articles included in one class	0	5	0
On notice of appeal to Supreme Court on refusal of Registrar to register...	1	0	0

NOTE.—The term "set" to include any number of articles ordinarily on sale together, irrespective of the varieties of size and arrangement in which the particular design may be shown on each separate article.

	£	s.	d.
For registration of a trade-mark for one or more articles included in one class ... ..	1	0	0
For registering a series of trade-marks, for every additional representation after the first in each class ... ..	0	5	0
For entering notice of opposition, for each trade-mark, whether in one or more classes... ..	1	0	0
On application to register a subsequent proprietor in cases of assignment or transmission, the first mark... ..	1	0	0
For every additional mark assigned or transmitted at the same time ... ..	0	2	0
For certificate of refusal to register a trade-mark under section 82 ... ..	1	0	0
For certificate of refusal at the same time for more than one trade-mark, for each additional trade-mark after the first ... ..	0	10	0
For continuance of mark at expiration of fourteen years ... ..	1	0	0
Additional fee where fee is paid within three months after expiration of fourteen years ... ..	0	10	0
Additional fee for restoration of trade-mark where removed for non-payment of fee ... ..	1	0	0
For altering address on the register, for every trade-mark ... ..	0	5	0
For every entry in the register of a rectification thereof, or an alteration therein, not otherwise charged... ..	0	10	0
For cancelling the entry or part of the entry of a trade-mark upon the register, on the application of the owner of such trade-mark ... ..	0	5	0
On request to Registrar to correct a clerical error ... ..	0	5	0
For certificate of registration to be used in legal proceedings ... ..	0	10	0
For certificate of registration to be used for the purpose of obtaining registration in foreign countries ... ..	0	5	0
For copy of notification of registration ... ..	0	2	0
For inspecting register, for every quarter of an hour ... ..	0	1	0
For making a search amongst the classified representations of trade-marks, for every quarter of an hour ... ..	0	1	0
Copy of any trade-mark: Cost according to agreement.			
For copy or extract of any writing per common-law folio ... ..	*0	0	6
For certifying office copies, MSS. or printed ... ..	0	1	0
For certificate of Registrar under section 112 ... ..	0	5	0
In cases where a trade-mark requires a greater space than two inches of the depth of the page of the <i>New Zealand Gazette</i> , for each additional inch or part of an inch ... ..	0	2	0

\* But never less than one shilling.

### THIRD SCHEDULE.

#### ACTS REPEALED.

21 James I., c. 3 [1623].—The Statute of Monopolies. Sections 10, 11, and 12.

1883, No. 14.—The Patents Act, 1883.

1885, No. 2.—The Patents Act 1883 Amendment Act, 1885.

1866, No. 9.—The Trade-marks Act, 1866.

1882, No. 4.—The Trade-marks Act Amendment Act, 1882.