Sub-letting.

4. Where the Land Commissioners shall after the passing of this Act sanction an advance for the purchase of a holding which is agreed to be sold subject to a sub-tenancy or sub-letting of any kind, they may prescribe such terms as to rent and otherwise with regard to the part sub-let as they think fit.

Notice to be given when the existing fund will be exhausted.

5. When, in the opinion of the Land Commissioners, the applications for advances will exhaust the amount provided by this Act, it shall be their duty to give public notice of the same, and of their intention to receive no further application until there be some undisposed of residue, or till further provision be made by Parliament.

Notice of completed transactions.

6. The Land Purchase Commissioners shall publish in the next "Dublin Gazette" notice of any completed transactions.

Short title.

7. This Act may be cited for all purposes as the Purchase of Land (Ireland) Amendment Act, 1888.

CHAPTER 50.

An Act to amend the Patents, Designs, and Trade Marks Act, 1883. [24th December 1888.]

46 & 47 Vict. c. 57.

WHEREAS it is expedient to amend the Patents, Designs, and Trade Marks Act, 1883, herein-after referred to as the principal Act:

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

Register of patent agents.

1.—(1.) After the first day of July one thousand eight hundred and eighty-nine 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 Board of Trade shall, as soon as may be after the passing of this Act, and may from time to time, make such general rules as are in the opinion of the Board required for giving effect to this section, and the provisions of section one hundred and one of the principal Act shall apply to all rules so made as if they were made in pursuance of that section.

(3.) Provided that every person who proves to the satisfaction of the Board of Trade that prior to the passing of this Act he had been bonâ fide practising as a patent agent shall be entitled to be registered as a patent agent in pursuance of this Act.

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

(5.) In this section "patent agent" means exclusively an agent for obtaining patents in the United Kingdom.

2. For section seven of the principal Act the following section shall be substituted, namely :— Amendments of 46 & 47 Vict. c. 57.

s. 7, as to applications.

"**7.** (1.) If the examiner reports 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, the comptroller 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 comptroller so directs, bear date as from the time when the requirement is complied with.

"(2.) Where the comptroller refuses to accept an application or requires an amendment, the applicant may appeal from his decision to the law officer.

"(3.) The law officer shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions (if any), the application shall be accepted.

"(4.) The comptroller shall, when an application has been accepted, give notice thereof to the applicant.

"(5.) 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 comptroller, 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."

3. In sub-section five of section nine of the principal Act the words "other than an appeal to the law officer under this Act" shall be omitted. s. 9, as to disclosure of reports of examiners.

4. In sub-section one of section eleven of the principal Act the words from "or on the ground of an examiner" to "a previous application," both inclusive, shall be omitted, and there shall be added in lieu thereof the following words, namely, "or on the ground that the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of the provisional specification and the leaving of the complete specification." s. 11, as to opposition to grant of patent.

5. For sub-section ten of section eighteen of the principal Act the following sub-section shall be substituted, namely :— s. 18, as to amended specifications.

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

6. After sub-section one of section fifty-two of the principal Act the following words shall be added; namely, s. 52, as to inspection of designs.

"Provided that where registration of a design is refused on the "ground of identity with a design already registered, the appli- "cant for registration shall be entitled to inspect the design so "registered."

s. 58, as to piracy of registered designs.

7.—(1.) In section fifty-eight of the principal Act the words "or cause to be applied" shall be added after the word "apply."

(2.) To the same section the following words shall be added: "Provided that the total sum forfeited in respect of any one design "shall not exceed one hundred pounds."

s. 62, as to application for registration.

8.—(1.) In sub-section two of section sixty-two of the principal Act for the words "the patent office in the prescribed manner" shall be substituted the words "such place and in such manner as "may be prescribed."

(2.) To the same section of the principal Act the following sub-section shall be added:—

"(6.) Where an applicant for the registration of a trade mark "otherwise than under an international convention is out of the "United Kingdom at the time of making the application he shall "give the comptroller an address for service in the United King- "dom, and if he fails to do so the application shall not be "proceeded with until the address has been given."

s. 63, as to limit of time for proceeding with application.

9. In section sixty-three of the principal Act for the words "the "application shall be deemed to be abandoned" shall be substituted the words "the comptroller 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 comptroller may in special cases permit, the regis- "tration is not completed, the application shall be deemed to be "abandoned."

s. 64, as to fancy words.

10.—(1.) For section sixty-four of the principal Act the following section shall be substituted, namely—

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

"(*a.*) A name of an individual or firm printed, impressed, or "woven in some particular and distinctive manner; or

"(*b.*) A written signature or copy of a written signature of the "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 invented words; or

"(*e.*) A word or words having no reference to the character or "quality of the goods, and not being a geographical name.

"(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 entered on the register.

" (3.) Provided as follows:

" (i.) 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:

" (ii.) Any special and distinctive word or words, letter, figure, " or combination of letters or figures, or of letters and figures " used as a trade mark before the thirteenth day of August " one thousand eight hundred and seventy-five, may be " registered as a trade mark under this part of this Act."

s. 67, as to colours of trade marks.

11. In section sixty-seven of the principal Act the words "or colours" shall be added after the word "colour" in each place where that word occurs.

s. 68, as to advertisement of applications.

12. In section sixty-eight of the principal Act after the word comptroller shall be added the words "unless the comptroller refuse " to entertain the application."

s. 69, as to opposition to registration.

13.—(1.) In sub-section one of section sixty-nine of the principal Act for the words "two months" shall be substituted the words " one month or such further time, not exceeding three months, as " the comptroller may allow."

(2.) In the same sub-section the word "first" shall be omitted.

(3.) In sub-section two of the same section for the words "two months" shall be substituted the words "one month."

(4.) For sub-sections three and four of the same section the following sub-sections shall be substituted; namely,

" (3.) If the applicant sends such counter-statement the comp- " troller 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 " Board of Trade, who shall, if required, hear the applicant and " the opponent and the comptroller, and may make an order deter- " mining whether, and subject to what conditions (if any), regis- " tration is to be permitted.

" (4.) The Board of Trade may, however, if it appears expedient, " refer the appeal to the court, and in that event the court shall " have jurisdiction to hear and determine the appeal, and may " make such order as aforesaid.

" (5.) 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 " comptroller may determine to be reasonable.

" (6.) Where the opponent is out of the United Kingdom he " shall give the comptroller an address for service in the United " Kingdom."

s. 72, as to restrictions on registration.

14. In sub-section two of section seventy-two of the principal Act, the following words shall be added at the beginning of the sub-section, namely, "except as aforesaid," and for the words "so nearly resembling" shall be substituted the words "having such resemblance to."

s. 73, as to restriction on registration.

15. In section seventy-three of the principal Act the word "exclusive" shall be omitted.

s. 74, as to additions to trade marks.

16. For sub-section two of section seventy-four of the principal Act the following sub-section shall be substituted; namely,

"(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.

"Provided that 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."

s. 75, as to effect of registration.

17. For section seventy-five of the principal Act the following section shall be substituted; namely,

"Application for registration of a trade mark shall be deemed to "be equivalent to public use of the trade mark, and the date of the "application shall for the purposes of this Act be deemed to be, "and as from the first day of January one thousand eight hundred "and seventy-six to have been, the date of the registration."

Certificate as to exclusive use and costs thereon.

18. After section seventy-seven of the principal Act the following section shall be added and numbered 77A; namely,

"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 the "subsequent action certifies that he ought not to have the same."

Amendments of 46 & 47 Vict. c. 57.

19.—(1.) In sub-section five of section seventy-nine of the principal Act, for the words "the five years" shall be substituted the words "one year."

s. 79, as to removal of trade mark from the register.

(2.) To the same sub-section the following words shall be added; namely, "unless it is shown to the satisfaction of the comptroller "that the nonpayment of the fee arises from the death or bank-"ruptcy of the registered proprietor, or from his having ceased to "carry on business, and that no person claiming under that "proprietor or under his bankruptcy is using the trade mark."

s. 81, as to Sheffield marks.

20.—(1.) For sub-section two of section eighty-one of the principal Act the following sub-section shall be substituted:

"(2.) The Cutlers' Company shall enter in the Sheffield register, "in respect of metal goods as defined in this section, all the trade "marks entered before the first day of January one thousand eight

" hundred and eighty-nine in respect of metal goods either in the " register established under the Trade Marks Registration Act, 38 & 39 Vict. " 1875, or in the register of trade marks under this Act, belonging c. 91. " to persons carrying on business in Hallamshire or within six " miles thereof. The Cutlers' Company shall also, on request made " in the prescribed manner, enter in the Sheffield register, in respect " of metal goods, all the trade marks which shall have been " assigned by the Cutlers' Company and actually used before the " first day of January one thousand eight hundred and eighty-four, " but which have not been entered in either of the said other " registers."

(2.) In subsections three and eight of the same section, for the words " on cutlery, edge tools, or on raw steel, or on goods made " of steel, or of steel and iron combined, whether with or without a " cutting edge," shall be substituted the words " on metal goods."

(3.) For subsection seven of the same section the following subsection shall be substituted:

(7.) The provisions of this Act and of any general rules made under this Act with respect to the registration of trade marks, and all matters relating thereto, shall, subject to the provisions of this section, apply to the registration of trade marks on metal goods by the Cutlers' Company, and to all matters relating thereto; and this Act and any such general rules shall, so far as applicable, be construed accordingly with the substitution of the Cutlers' Company, the office of the Cutlers' Company, and the Sheffield Register, for the Comptroller, the Patent Office, and the Register of Trade Marks, respectively; and notice of every entry, cancellation, or correction made in the Sheffield Register shall be given to the Comptroller by the Cutlers' Company: Provided that this section shall not affect any life estate and interest of a widow of the holder of any Sheffield mark which may be in force in respect of such mark at the time when it shall be placed upon the Sheffield Register.

(4.) To the same section the following subsections shall be added; namely,—

(14.) For the purposes of this section the expression " metal goods " means all metals, whether wrought, unwrought, or partly wrought, and all goods composed wholly or partly of any metal.

(15.) For the purpose of legal proceedings in relation to trade marks entered in the Sheffield register a certificate under the hand of the master of the Cutlers' Company shall have the same effect as the certificate of the comptroller.

21. In section eighty-seven of the principal Act, after the words " subject to," shall be added the words " the provisions of this Act and to." s. 87, as to entry of assignments, &c.

22. In section eighty-eight of the principal Act, after the words " subject to," shall be added the words " the provisions of this Act and to." s. 88, as to inspection.

23. In section ninety of the principal Act, after the words " of the name of any person," shall be added the words " or of any other particulars." s. 90, as to rectification of register.

s. 91, as to correction of errors.

24. To section ninety-one of the principal Act the following subsection shall be added; namely,

"(*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 connexion with which he has "desired the design or trade mark to be registered."

Proceedings of Board of Trade.

25. After section one hundred and two of the principal Act the following section shall be added and numbered 102A; namely,

"(1.) All things required or authorised under this Act to be done "by, to, or before the Board of Trade, may be done by, to, or "before the President or a secretary or an assistant secretary "of the Board.

"(2.) All documents purporting to be orders made by the Board "of Trade and to be sealed with the seal of the Board, or to be "signed by a secretary or assistant secretary of the Board, or "by any person authorised in that behalf by the President of "the Board, shall be received in evidence, and shall be deemed "to be such orders without further proof, unless the contrary "is shown.

"(3.) A certificate, signed by the President of the Board of Trade, "that any order made or act done is the order or act of the "Board, shall be conclusive evidence of the fact so certified."

Jurisdiction of Lancashire Palatine Court.

26. After section one hundred and twelve of the principal Act the following section shall be added and numbered 112A; namely,

"The Court of Chancery of the County Palatine of Lancaster "shall, with respect to any action or other proceeding in relation "to trade marks the registration whereof is applied for in the "Manchester Office, have the like jurisdiction under this Act as "Her Majesty's High Court of Justice in England, and the ex-"pression 'the court' in this Act shall be construed and have "effect accordingly.

"Provided that every decision of the Court of Chancery of the "County Palatine of Lancaster in pursuance of this section shall "be subject to the like appeal as decisions of that court in other "cases."

Construction of principal Act.

27. The principal Act shall, as from the commencement of this Act, take effect subject to the additions, omissions, and substitutions required by this Act, but nothing in this Act shall affect the validity of any act done, right acquired, or liability incurred before the commencement of this Act.

Commencement of Act.

28. This Act shall, except so far as is by this Act otherwise specially provided, commence and come into operation on the first day of January one thousand eight hundred and eighty-nine.

Short title.

29. This Act may be cited as the Patents, Designs, and Trade Marks Act, 1888, and this Act and the Patents, Designs, and Trade Marks Acts, 1883 to 1886, may be cited collectively as the Patents, Designs, and Trade Marks Acts, 1883 to 1888.