

ORDRES EN CONSEIL.

(Enregistré sur les Records le 4 novembre 1922.)

1922

AT THE COURT AT BUCKINGHAM PALACE,
The 13th day of October, 1922.

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

MR. SECRETARY SHORTT

LORD STEWARD

MR. MUNRO

LORD SOMERLEYTON.

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 12th day of October, 1922, in the words following, viz.:—

“YOUR MAJESTY having been pleased by Your General Order of Reference of the 10th day of May, 1910, to refer unto this Committee the humble Petition of the States of the Island of Guernsey : (1) that at a Meeting of the States of Deliberation held on the 6th day of May, 1914, a Petition was submitted to the States by several members of that body, praying them to consider the advisability of instituting legislation for the protection of Patents, Designs and Trade Marks, when the States appointed a Committee to consider the best means of protecting Inventors in this Island and to report thereon to the States: (2) that at a Meeting of the said States held on the 22nd day of April, 1918, the Report of the aforesaid Committee was adopted by the States, and the Royal Court was requested to prepare a Bill or ‘Projet de Loi’ to give effect to the recommendations contained in the aforesaid Report : (3) that on the 24th day of June, 1922, a Bill or ‘Projet de Loi’ on the subject, prepared by the Law Officers of the Crown, was adopted by the Royal Court, and the

Loi ayant
rapport aux
Patentes,
Dessins et
Marques de
Fabrique.
(Patents,
Designs and
Trade Marks
Law
(Guernsey)
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Lieutenant-Bailiff was requested to submit the same to the States for their approval : (4) that at Meetings of the States of Deliberation held on the 26th July, and the 4th October, 1922, the said Bill or ' *Projet de Loi* ' was, with modifications, approved, and the Acting President was authorized to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto : (5) that the said Bill or ' *Projet de Loi* ' is intituled ' *Loi ayant rapport aux Patentes, Dessins et Marques de Fabrique* ' and is in the words and figures set forth in the Schedule to the Petition : And most humbly praying that Your Majesty would be graciously pleased to grant Your Royal Sanction to the Bill or ' *Projet de Loi* ' intituled ' *Loi ayant rapport aux Patentes, Dessins et Marques de Fabrique,* ' and to order and direct that the same shall have the force of Law within the Island of Guernsey :

" THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said *Projet de Loi* into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said *Projet de Loi*."

HIS MAJESTY, haivng taken the said Report into consideration, is pleased, by and with the advice of His Privy Council, to approve of and ratify the said " *Projet de Loi*," and to order, as it is hereby ordered, that the same shall have the force of Law within the Island of Guernsey.

AND HIS MAJESTY doth hereby further direct that this Order, and the said " *Projet de Loi* " (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

And the Lieutenant-Governor or Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other His Majesty's Officers, for the time being, in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

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COLIN SMITH.

“PROJET DE LOI” referred to in the foregoing Order in Council.

LOI AYANT RAPPORT AUX PATENTES, DES- SINS ET MARQUES DE FABRIQUE.

Attendu qu'il convient de légiférer en ce qui concerne les Patentes, Dessins et Marques de Fabrique ;

Et attendu que les certificats d'enregistrement émanent du Bureau des Patentes à Londres et qu'il convient que les articles de la Loi à ce sujet soient rédigés en Anglais.

PART I.—DEFINITIONS.

SEC. 1.—In and for the purposes of this Law, unless Definitions. the context otherwise requires :—

“The Royal Court or ‘the Court’ means (except for the purposes of Sections 21, 29 subsection (2), 31 subsection (2), 52, and 60 hereof) the Royal Court of Guernsey sitting as an Ordinary Court and composed of the Bailiff or his Lieutenant and not less than two Jurats. For the purposes of Sections 21, 29 subsection (2), 31 subsection (2), 52 and 60 hereof “the Royal Court’ or ‘the Court’ means the Royal Court of Guernsey sitting as a Full Court and composed of the Bailiff or his Lieutenant and not less than seven Jurats.

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“ Law Officers of the Crown ” means His Majesty’s Procureur and His Majesty’s Comptroller for the Island of Guernsey, or either of one of them in the absence of the other.

“ Patent Office ” means the Patent Office established in England by virtue of the Acts of the British Parliament relating to Patents, Designs, and Trade Marks.

“ Patent ” means Letters patent for an invention.

“ Patentee ” means the person for the time being entered on the register as the grantee or proprietor of the patent.

“ Design ” means only the features of shape, configuration, pattern or ornament applied to any article by an industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye ; but does not include any mode or principle of construction or anything which is in substance a mechanical device.

“ Article ” means (as respects designs) any article of manufacture and any substance artificial or natural, or partly artificial and partly natural.

“ Copyright ” means the exclusive right to apply a design to any article in any class of goods in which the design is registered.

A “ mark ” shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof.

“ Trade Mark ” means a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale.

“ Register ” means :—

In the case of a patent the Register of Patents directed to be kept by Section 2 hereof.

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In the case of a design the Register of Designs directed to be kept by Section 22 hereof.

In the case of a trade mark the Register of Trade Marks directed to be kept by Section 38 hereof.

“Registered proprietor” means (as respects designs or trade marks) the person whose name is entered on the Register in respect of a design or trade mark, or, where the property in such design or trade mark has devolved from the original proprietor upon any other person, includes that other person.

“Registered design” means a design which is actually upon the Register.

“Registered trade mark” means a trade mark which is actually upon the Register.

“Registration” means the entry upon the Register of a patent, design, or trade mark or other matter relating thereto.

“Prescribed fees” means the fees from time to time prescribed by Ordinance of the Royal Court in pursuance of Section 60 hereof.

PART II.—PATENTS.

REGISTER OF PATENTS.

SEC. 2.—There shall be kept by His Majesty's Greffier a Register which shall be called the Register of Patents, wherein shall be entered all such matters as the Royal Court may direct or permit to be entered therein.

Register of
Patents.

SEC. 3.—The Register of Patents shall be *prima facie* evidence of any matters by this Law directed or authorized to be entered therein.

REGISTRATION AND EFFECT OF REGISTRATION.

SEC. 4.—The Royal Court may, upon the application of the patentee and upon production to the Court

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of a Patent under the Seal of the Patent Office, direct that such Patent be entered upon the Register provided the formalities prescribed by this Law have been duly observed.

SEC. 5.—(1) The registration of a Patent shall confer upon the patentee full power, sole privilege, and authority that the said patentee by himself, his agents or licensees, and no others, may at all times thereafter during such time as the Patent shall remain in force within the Islands of this Bailiwick, make, use, exercise, and vend the invention for which the said Patent shall have been granted, within the said Islands, in such manner as to him or them may seem meet, and that the said patentee shall have and enjoy the whole profit and advantage from time to time accruing by reason of the said invention.

(2) A Patent registered by virtue of this Law shall take its effect and be in force in the Islands of this Bailiwick as from the date of such registration, and shall remain in force therein for so much of a term of sixteen years from the date of the said patent as may be unexpired at the time of such registration, and, where an extension of the term of a patent has been registered in accordance with this Law, for such extended term.

SEC. 6.—(1) A patent registered in accordance with the present law shall have to all intents the like effect as against His Majesty the King as it has against a subject :

Provided that any Government Department may, by themselves or by such of their agents, contractors, or others as may be authorized in writing by them at any time after the application, make, use or exercise the invention for the service of the Crown on such terms as may, either before or after the use thereof, be agreed on, with the approval of the Treasury, between the department and the patentee, or in default of agreement, as may be settled in the manner

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hereinafter provided. And the term of any agreement or licence concluded between the inventor or patentee and any person other than a Government Department, shall be inoperative as far as concerns the making, use or exercise of the invention for the service of the Crown :

Provided further that, where an invention which is the subject of any patent has, before the date of the patent, been duly recorded in a document by, or tried by or on behalf of, any Government Department (such invention not having been communicated directly or indirectly by the applicant for the patent or the patentee) any Government Department or such of their agents, contractors or others, as may be authorized in writing by them, may make, use and exercise the invention so recorded or tried for the service of the Crown, free of any Royalty or other payment to the patentee, notwithstanding the existence of the patent. If in the opinion of the Department the disclosure to the applicant or the patentee, as the case may be, of the document recording the invention, on the evidence of the trial thereof, if required, would be detrimental to the public interest, it may be made confidentially to Counsel on behalf of the applicant or the patentee, or to any independent expert mutually agreed upon :

Provided further that the States of the Island of Guernsey may by themselves, their agents, contractors or others, at any time after registration, use the said invention for the public service of the Island or any of them upon such terms as may, either before or after the use thereof be agreed on between the Treasurer of the States and the patentee, or in default of agreement as the Court may direct after hearing all the parties.

(2) In case of any dispute as to the making, use or exercise of an invention under this section or the terms therefor, or as to the existence or scope of any

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record or trial as aforesaid, the matter shall be referred to the Royal Court for decision, who shall have power to refer the whole matter or any question or issue of fact arising thereon to be tried before a special or official referee or an arbitrator upon such terms as it may direct. The Court, referee, or arbitrator, as the case may be, may with the consent of the parties, take into consideration the validity of the patent for the purposes only of the reference and for the determination of the issue between the applicant and such Government Department. The Court, referee or arbitrator, further in settling the terms as aforesaid, shall be entitled to take into consideration any benefit or compensation which the patentee, or any other person interested in the patent, may have received directly or indirectly from the Crown or from any Governmental Department in respect of such patent.

(3) The right to use an invention for the service of the Crown or of the States under the provisions of this section or any provisions for which this section is substituted shall include and shall be deemed always to have included the power to sell any articles made in pursuance of such rights which are no longer required for the service of the Crown, or of the States.

SEC. 7.—The Royal Court may, upon the application of the patentee and upon the production to the Court of any of the following orders or grants under the Seal of the Patent Office, direct that the same order or grant be entered upon the Register provided the formalities prescribed by this Law have been duly observed :—

- (a) An order extending the term for which a Patent has been granted.
- (b) A Patent of addition, provided that when registered a Patent of addition shall only be in force for so long as the original patent remains in force therein, and no longer.

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- (c) An order restoring a lapsed patent.
- (d) An order granting permission to a patentee to amend his specification, including the drawings forming part thereof.

Upon the registration of any such order or grant the same shall have its effect as from the date of such registration.

SEC. 8.—The Royal Court may, upon the application of any person interested and upon production to the Court of any of the following orders under the Seal of the Patent Office, direct that such order be entered upon the Register, provided the formalities prescribed by this Law have been duly observed :—

- (a) An order directing the granting by the patentee of compulsory licences ;
- (b) An order revoking a patent, either absolutely or conditionally ;

and from the date of such registration the same order shall have its effect.

FORMALITIES FOR REGISTRATION.

SEC. 9.—(1) Every application for registration in accordance with Sections 4, 7, and 8 of this Law shall be lodged with His Majesty's Greffier not less than ten days before the day on which the application is to be made to the Court. In the case of an application for the registration of a Patent in accordance with Section 4 of this Law, or of a Patent of addition in accordance with Section 7 (b) of this Law, or of amended specifications or drawings in accordance with Section 7 (d) of this Law, that applicant shall at the same time deliver to His Majesty's Greffier a copy under the Seal of the Patent Office of the complete specification for the invention, or of the amended specification as the case may be, together with copies of all the drawings forming part of such specification. If the application be granted by the Court the specifications and drawings shall

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remain deposited at the Greffe Office, and they shall be numbered in consecutive order by the Greffier, a reference to such number being made in the Register. Every specification and drawing lodged in conformity with this Section shall be open to the inspection of the public during the ordinary hours in which the Greffe Office is open for public business and on payment of the prescribed fee.

(2) The applicant shall give public notice of every application by means of an announcement, in such form as the Court may prescribe, which shall be inserted once in the *Gazette* and two consecutive days in two of the local daily papers.

(3) Every application shall, before being made to the Court, be submitted to the Law Officers of the Crown, who shall report to the Court that all the prescribed formalities have been observed.

(4) The applicant shall, before making his application to the Court, pay to the States of Guernsey the duty payable together with the prescribed fees.

(5) Any person may at the time when the application is considered by the Court, oppose the application, and the Court shall after hearing the parties, and, if the Court thinks fit so to do, hearing the evidence, decide whether, and subject to what conditions the registration is to be permitted.

(6) When an application is made under Section 4 or Section 7 of this Law by a person other than the person named in the Patent to which such application relates, the application shall not be entertained by the Court unless the applicant proves to the satisfaction of the Court that he is entitled to the benefit of the Patent.

(7) An application for registration in pursuance of Sections 7 or 8 of this Law shall not be entertained by the Court unless the original patent shall have previously been registered.

(8) This Section shall not apply to applications made under Section 11 of this Law.

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SEC. 10.—There shall be paid to the States of the Island of Guernsey :—

- (a) For every Patent registered in accordance with this Law ;
- (b) For every extension of the term of a Patent registered in accordance with this Law ;
- (c) For every Patent of addition registered in accordance with this Law ;
- (d) For every restoration of a lapsed Patent registered in accordance with this Law ;

such duties as shall be prescribed by Ordinance of the Royal Court under the powers given by Section 60 of this Law.

SECRET INVENTIONS-

SEC. 11.—(1) Where the benefit of an invention and the Patent obtained for the invention have been assigned to the Secretary of State for War or to the Admiralty on behalf of His Majesty, and the Secretary of State or the Admiralty have certified that it is in the interest of the public service that the particulars of the invention and the manner in which it is to be performed should be kept secret, the Royal Court shall, upon the application of the Secretary of State or the Admiralty, or of some person authorized by them, or of the Law Officers of the Crown, direct that such Patent be entered upon the Register without delivery to the Greffier of any specifications or drawings and without publication or disclosure of such specifications and drawings and upon such registration the invention shall be protected within the Island in the same manner as if the Patent had been registered in conformity with Section 9 of this Law, and the benefit of the invention and patent shall effectually vest in the Secretary of State or the Admiralty on behalf of His Majesty, and all covenants

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and agreements contained in the said assignment for keeping the invention secret and otherwise shall be valid and effectual (notwithstanding any want of valuable consideration) and may be enforced accordingly by the Secretary of State or the Admiralty.

(2) The duty to the States of Guernsey and other prescribed fees shall not be payable in the case of a Patent registered under this section.

(3) Sections 9 and 58 of this Law shall not apply to Patents registered under this Section.

INFRINGEMENT AND LEGAL PROCEEDINGS.

SEC. 12.—Save as otherwise expressly provided by this Law, any person who, during the time that a Patent registered by virtue of this Law shall remain in force either directly or indirectly makes use of or puts into practice the invention for which such Patent shall have been granted, or any part of the same, or who in any wise imitates the same or makes or causes to be made any addition thereto or subtraction therefrom whereby to pretend himself the inventor thereof, without the consent, licence, or agreement of the Patentee in writing and either under his hand and seal or else acknowledged before two Jurats of the Royal Court, shall be punishable by such penalties as may justly be inflicted for contempt of His Majesty's Royal Command and shall in addition be answerable to the Patentee according to Law for his damages thereby occasioned.

SEC. 13.—Where an amendment of a specification has been registered in accordance with Section 7 of this Law no damages shall be given in any action in respect of the use of the invention before the registration of such amendment 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.

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SEC. 14.—A Patentee shall not be entitled to recover any damages in respect of any infringement of a Patent which has been registered in accordance with this Law from any defendant who proves that at the date of such infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the words “patent,” “patented,” or any words implying that a patent has been obtained for the article, stamped, engraved, impressed on, or otherwise applied to the article, shall not be deemed to constitute notice of the fact that the invention is protected in the Island unless the word or words are accompanied by words stating that the patent has been registered in Guernsey together with the year of such registration and the number of the patent.

SEC. 15.—(1) In any action or proceeding for infringement of a patent, or for the revocation of the registration of any patent, grant, or other order relating to a patent, the Court may, if it think fit, call in the aid of an assessor specially qualified, and try the case wholly or partially with his assistance.

(2) The Court of Judgments and Records may, if they think fit, in any proceeding before them, call in the aid of an assessor as aforesaid.

(3) The remuneration, if any, to be paid to an assessor under this Section shall be determined by the Court or the Court of Judgments and Records, as the case may be, and shall be paid by the States of Guernsey as part of the expenses of the execution of this Law.

SEC. 16.—In any action for the infringement of a patent, the plaintiff shall be entitled to relief by way of injunction and damages, but not to an account of profits, but subject as aforesaid the Court may on the application of either party make an order for an inspection or account, and may impose such terms and give such directions respecting the same as the Court may think fit.

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SEC. 17.—Where any person claiming to have an interest in a patent of an invention for which a patent has been registered in accordance with this Law, by circular, advertisements, or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damages (if any) as he has sustained thereby, if the alleged infringement to which the threats related was not in fact an infringement of the patent : Provided that this Section shall not apply if an action for infringement of the patent is commenced and prosecuted with due diligence.

REVOCATION OF REGISTRATION.

SEC. 18.—A petition for the revocation of the registration of a patent or of any grant, order, or other matter relating to a patent, may be presented to the Court :—

(a) By the Law Officers of the Crown ; or

(b) By any person alleging—

- (i) That the registration was obtained in fraud of his rights, or of the rights of any person under or through whom he claims ; or
- (ii) 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, before the date of the patent, anything claimed by the patentee as his invention ;
- (iii) That four years having elapsed since the date of the patent, the patented invention (being one capable of being worked in this Island) is not being worked in the Island on a commercial scale ;

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(iv) That the demand for the patented article in the Island is not being met to an adequate extent and on reasonable terms ; and the Court, after hearing the parties if desirous of being heard, may make an order revoking any such registration or dismissing the application.

MISCELLANEOUS.

SEC. 19.—Where a patent registered in accordance with this Law has been granted to two or more persons jointly they shall, unless otherwise specified in the patent, be treated for the purpose of the devolution of the legal interest therein, as joint tenants, but subject to any contract to the contrary, each of such persons shall be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a licence without their consent, and if any such person dies, his beneficial interest in the patent shall devolve on his personal representatives as part of his personal estate.

SEC. 20.—(1) It shall not be lawful in any contract made after the promulgation of this Law in relation to the sale or lease of or licence to use any work or article or process protected by a patent which has been registered in accordance with this Law, to insert a condition the effect of which will be :—

- (a) To prohibit or restrict the purchaser, lessee, or licensee from using any article or class of articles, whether patented or not, or any patented process, supplied or owned by any person other than the seller, lessor, or licensor, or his nominees ; or
- (b) To require the purchaser, lessee, or licensee to acquire from the seller, lessor, or licensor, or his nominees, any article or class of articles not protected by the patent ;

and any such condition shall be null and void as being in restraint of trade and contrary to public policy :

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Provided that this subsection shall not apply if :—

- (i) The seller, lessor, or licensor proves that at the time the contract was entered into the purchaser, lessee, or licensee had the option of purchasing the article or obtaining a lease or licence on reasonable terms, without such conditions as aforesaid ; and
- (ii) The contract entitles the purchaser, lessee, or licensee to relieve himself of his liability to observe any such condition on giving the other party three months' notice in writing and on payment in compensation for such relief in the case of a purchase of such sum, or in the case of a lease of licence of such rent or royalty, for the residue of the term of the contract, as may be fixed by the contract.

In any action, application, or proceedings under this Law, no person shall be stopped from applying for or obtaining relief by reason of any admission made by him as to the reasonableness of the terms offered to him under subsection (1) (1).

(2) Any contract relating to the lease of or licence to use or work any patented article or patented process whether made before or after the promulgation of this Law, may at any time after the patent or all the patents by which the article or process was protected at the time of making the contract has or have ceased to be in force, and notwithstanding anything in the same or in any other contract to the contrary, be determined by either party on giving three months' notice in writing to the other party.

(3) The insertion by the patentee in a contract, made after the promulgation of this Law, of any condition which by virtue of this section is null and void shall be available as a defence to an action for infringement of the patent to which the contract related, brought while that contract is in force.

(4) Nothing in this Section shall :—

- (a) Affect any condition in a contract whereby a person is prohibited from selling any goods other than those of a particular person ; or
- (b) Be construed as validating any contract which would apart from this Section be invalid ; or
- (c) Affect any right of determining a contract on condition exercisable independently of this Section ; or
- (d) Affect any condition in a contract for the lease of or licence to use a patented article whereby the lessor or licensor reserves to himself or his nominees the right to supply such new parts of the patented article as may be required to put or keep it in repair.

SEC. 21.—(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 Royal Court of Guernsey, 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 the Islands of the Bailiwick, or the United Kingdom, or the Isle of Man.

(2) This section shall not extend to vessels of any foreign State of which the laws do not confer corresponding rights with respect to the use of inventions in British vessels while in the ports of that State or in the waters within the jurisdiction of its Courts.

PART III. DESIGNS.

REGISTER OF DESIGNS.

SEC. 22.—(1) There shall be kept by His Majesty's Greffier a Register which shall be called the Register of Designs wherein shall be entered all such matters as the Royal Court may direct or permit to be entered therein.

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(2) The Register of Designs shall be *primâ facie* evidence of any matters by this Law directed or authorized to be registered therein.

REGISTRATION AND EFFECT OF REGISTRATION.

SEC. 23.—The Royal Court may, upon the application of the proprietor of a design, and upon production to the Court of a certificate under the Seal of the Patent Office to the effect that the said design has been registered in England, direct that the same certificate be entered upon the Register.

SEC. 24.—Where a design has been registered in one or more classes of goods the Royal Court may, upon the application of the proprietor of the design and upon production to the Court of a certificate under the Seal of the Patent Office to the effect that the design has been registered in England in some one or more classes, direct that such Order be entered upon the Register.

SEC. 25.—When a certificate has been entered upon the Register in accordance with Sections 23 or 24 of this Law the registered proprietor of the design for which such certificate has been granted shall, subject to the provisions of this Law, have copy-right in the design within the Island as from the date of such registration and for so much of a term of five years from the date of the said certificate as may be unexpired at the time of such registration, and where an extension of the term has been registered in accordance with this Law, for such extended term.

SEC. 26.—The Royal Court may, upon the application of the proprietor of a design and upon production to the Court of an order under the Seal of the Patent Office extending the period of the copy-right of the design, direct that such Order be entered upon the Register.

SEC. 27.—Every application for the registration of a design shall, before being made to the Court,

be submitted by the applicant to the Law Officers of the Crown.

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SEC. 28.—Within three days after the registration of a design the proprietor thereof shall deposit at the Greffe three exact representations or specimens of the design, and if he fails to do so the Greffier may cancel the registration of the design and thereupon the copyright in the design within the Island shall cease.

SEC. 29.—(1) Before delivery on sale of any of the articles to which a registered design has been applied the proprietor shall cause each such article to be marked with the mark or with the marks or with the words or figures which may from time to time be prescribed by the Rules made by the Board of Trade in England under the Acts of the British Parliament relating to Patents and Designs, in order to denote that the design is registered, and if he fails to do so the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright on the design :

Provided that nothing in this section shall be construed as entitling any person to recover any penalty or damages in respect of the application to any article of a design which has not been registered in accordance with this Law.

(2) Where the Board of Trade, by rule made under the Acts of the British Parliament relating to Patents and Designs, have dispensed with or modified as regards any class or description of Articles the requirements as to marking prescribed by the said Acts of Parliament the Royal Court may by Ordinance dispense with or modify the requirements of this

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section as regards the classes or descriptions of articles governed by the said rules.

SEC. 30.—The disclosure of a design by the proprietor to any other person in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor of the design, and the acceptance of a first or confidential order for goods bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if the design is registered subsequently to the disclosure or acceptance.

SEC. 31.—(1) During the existence of copyright in a design the design shall not be open to inspection except by the proprietor or a person authorized in writing by him or a person authorized by the Court and furnishing such information as may enable the Greffier to identify the design, and shall not be open to the inspection of any person except in the presence of the Greffier or of an officer acting under him and on payment of the prescribed fee, and the person making the inspection shall not be entitled to take any copy of the design or any part thereof.

(2) Where it is established to the satisfaction of the Royal Court that the Board of Trade, by rule made under the Acts of the British Parliament relating to Patents and Designs, has prescribed a lesser period than the duration of the copyright for the non-disclosure of a design in any class of goods, the Royal Court may by Ordinance direct that as respects the same class of goods the provisions of subsection (1) hereof shall only apply during such period as the Court may determine.

(3) After the expiration of the copyright in a design the design shall be open to inspection and copies thereof may be taken by any person on payment of the prescribed fee.

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SEC. 32.—On the request of any person furnishing such information as may enable the Greffier to identify the design, and on payment of the prescribed fee, the Greffier shall inform such person whether the registration still exists in respect of the design and, if so, in respect of what classes of goods, and shall state the date of registration and the name and address of the proprietor.

The registration of a design shall have to all intents the like effect as against His Majesty the King as it has against a subject :

Provided that the provisions of Section 6 of this Law shall apply to registered designs as though those provisions were herein re-enacted and in terms made applicable to registered designs.

CANCELLATION OF REGISTRATION.

SEC. 33.—The Royal Court may, on the application of any person and upon production to the Court of an order under the Seal of the Patent Office cancelling the registration in England of a design, direct that such Order be entered upon the Register, and thereupon the copyright in the design shall cease.

SEC. 34.—A petition for the cancellation of the registration of a design may be presented to the Court :—

- (a) By the Law Officers of the Crown ; or
- (b) By any person alleging that the registration was obtained in fraud of his rights or of the rights of any person under or through whom he claims ;

and the Court, after hearing the parties if desirous of being heard, may make an order cancelling any such registration or may dismiss the petition.

INFRINGEMENTS AND LEGAL PROCEEDINGS.

SEC. 35.—During the existence of copyright within the Island it shall not be lawful for any person :—

- (a) For the purpose of sale to apply or cause to be applied to any article in any class of goods

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in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied ; or

- (b) Knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section he shall be liable for every contravention to pay to the registered proprietor of the design a sum not exceeding fifty pounds, recoverable as a simple contract debt, or, if the proprietor elects to bring an action for the recovery of damages for such contravention and for an injunction against the repetition thereof, he shall be liable to pay such damages as may be awarded and to be restrained by injunction accordingly :

Provided that the total sum recoverable as a simple contract debt in respect of any one design shall not exceed One hundred pounds.

SEC. 36.—Section 17 shall apply in the case of designs in the like manner as it applies in the case of patents with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention.

MISCELLANEOUS.

SEC. 37.—There shall be paid to the States of the Island of Guernsey :—

- (a) For every design registered in accordance with this Law ;

(b) For every registration of a design in classes other than those in which it is registered : 1922

(c) For every extension of the term of copyright of a design ;

such duties as shall be prescribed by Ordinance of the Royal Court under the powers given by Section 60 of this Law.

REGISTER OF TRADE MARKS.

SEC. 38.—(1) There shall be kept by His Majesty's Greffier a Register which shall be called the Register of Trade Marks wherein shall be entered all such matters as the Royal Court may direct or permit to be entered therein.

(2) The Register of Trade Marks shall be *prima facie* evidence of any matters by this Law directed or authorized to be entered therein.

REGISTRATION AND EFFECT OF REGISTRATION.

SEC. 39.—The Royal Court, may, upon the application of the proprietor of a trade mark and upon production to the Court of a certificate under the Seal of the Patent Office to the effect that the said trade mark has been registered in England, direct that such certificate be entered upon the Register.

SEC. 40.—(1) Every application for registration under Section 39 of this Law shall be lodged with His Majesty's Greffier not less than ten days before the day on which the application is to be made to the Court, and shall be accompanied by three exact specimens or representations of the trade mark. The applicant shall give public notice of the application by means of an announcement, in such form as the Court may prescribe, which shall be inserted for not less than seven consecutive days in a notice-box in the vestibule of the Royal Court.

(2) Every application for registration under Section 39 of this Law shall, before being made to the

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Court, be submitted to the Law Officers of the Crown.

(3) Any person may, at the time when an application for registration is considered by the Court, oppose the application, and the Court shall, after hearing the parties, and, if the Court think fit, after hearing the evidence, decide whether, and subject to what conditions, the registration is to be permitted.

(4) Every applicant for registration shall, before making his application to the Court, pay to the States of Guernsey the duty payable and the fees prescribed by this Law.

SEC. 41.—The registration of a certificate as aforesaid shall, subject to any limitations and conditions entered upon the Register, give to the proprietor of the trade mark the exclusive right within the Island of such trade mark upon or in connexion with the goods in respect of which it is registered from the date of such registration and for so much of a term of fourteen years from the date of such certificate as may be unexpired at the time of such registration, and, where an extension of the term has been registered in accordance with this Law, for such extended term :

Provided always that when two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods, no rights of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

SEC. 42.—The Royal Court may, upon the application of the registered proprietor of a trade mark which has been registered under this Law, and upon production to the Court of an order or certificate

under the Seal of the Patent Office extending the term for which the said trade mark has been registered in England, direct that such order or certificate be entered upon the Register, and thereupon the same shall have its effect within the Island.

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SEC. 43.—A trade mark may be limited in whole or in part to one or more specified colours and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

SEC. 44.—There shall be paid to the States of the Island of Guernsey :—

(a) For every trade mark registered under this Law,

(b) For every extension of the term of a trade mark registered under this Law,

such duties as shall be prescribed by Ordinance of the Royal Court under the powers given by Section 60 of this Law.

ASSIGNMENTS.

SEC. 45.—A trade mark when registered shall be assigned and transmitted only in connexion with the goodwill of the business concerned in the goods for which it is registered and shall be determinable with that good will. But nothing in this section shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in the Island in connexion with any goods for which it is registered together with the goodwill of the business therein in such goods.

INFRINGEMENTS AND LEGAL PROCEEDINGS.

SEC. 46.—In all legal proceedings relating to a registered trade mark (including applications under Section 54 of this Law) the fact that a person is

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registered as proprietor of such trade mark shall be *primâ facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

SEC. 47.—If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Court in deciding whether such trade mark shall be entered or shall remain upon the Register (including a decision upon an application made under Section 54 hereof) may require, as a condition of its being upon the Register, that the proprietor shall disclaim any right to the exclusive use of any part of parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration ; Provided always that no disclaimer upon the Register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

SEC. 48.—In any action for the infringement of a trade mark the Court shall admit evidence of the usages of the trade in respect to the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connection with such goods by other persons.

SEC. 49.—No registration under this Law shall interfere with any *bonâ fide* use by a person of his own name or place of business or that of any of his predecessors in business, or the use by any person of any *bonâ fide* description of the character or quality of his goods.

SEC. 50.—Nothing in this Law shall be deemed to affect the rights of action against any person for

passing off goods as those of another person or the remedies in respect thereof.

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PART V.—GENERAL.

PROVISIONS AS TO REGISTERS AND OTHER DOCUMENTS AT THE GREFFE.

SEC. 51.—The existing Register of Patents, Designs, and Trade Marks shall be closed, and no further entries shall be made therein.

Existing
Registers to
be closed.

SEC. 52.—Every Register kept under this Law shall be open to the inspection of the public, during the hours in which the Greffe is open for public business, subject to the provisions of this Law and to such regulations as the Royal Court shall by Ordinance from time to time prescribe, and certified copies, under the hand of the Greffier, of any entry in any such Register shall be given to any person requiring the same on payment of the prescribed fee.

Register open
to public
inspection.

SEC. 53.—There shall not be entered in any Register kept under this Law or be receivable by the Greffier any notice of any trust, expressed, implied, or constructive.

Notice of
Trust not to
be entered.

SEC. 54.—(1) The Court may on the application of any person aggrieved by the non-insertion in or omission from any Register to be kept under this Law of any entry, or of any entry made in any such Register without sufficient cause, or by an entry wrongly remaining on any such Register or by an error or defect in any entry in any such Register make such order for making, expunging, or varying such entry as it may think fit.

Court may
amend
Register.

(2) The Court may in any proceeding under this Section decide any question that it may be necessary or expedient to decide in connection with the rectification of a Register.

(3) In case of fraud in the registration or transmission of a patent, design, or trade mark, the Law Officers of the Crown at the instance of the Greffier

Fraud.

_____ 1922 _____ may apply to the Court under the provisions of this section.

Amendments
by Greffier.

SEC. 55.—The Greffier may, on request in writing from the patentee or registered proprietor accompanied by the prescribed fee :—

- (a) Correct any clerical error in or in connection with any patent or specification.
- (b) Cancel the registration of a design or a trade mark either wholly or in respect of any particular goods or classes of goods in connection with which the design or trade mark is registered.
- (c) Correct any clerical error in the representation of a design or trade mark, or in the name or address of the proprietor of any patent, design or trade mark, or in any other matter which is entered upon the register of patents, or the register of designs, or the register of trade marks.
- (d) Enter any change in the name or address of the person who is registered as proprietor of a patent, design, or trade mark.
- (e) Enter a disclaimer or memorandum relating to a design or trade mark which does not in any way extend the rights given by the existing registration of such design or trade mark.

ASSIGNMENT AND TRANSMISSION.

SEC. 56.—(1) Where a person becomes entitled by assignment, transmission, or other operation of law, to a patent, which has been registered under this Law, or to the copyright in a registered design, or to a registered trade mark, the Royal Court shall, upon the application of such person and on proof of title to the satisfaction of the Court, register such person as the proprietor of the patent, design, or trade mark.

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(2) Where any person becomes entitled as mortgagee, licensee, or otherwise to any interest in a patent or design which has been registered under this Law, the Court shall, upon the application of such person, and on proof of title to the satisfaction of the Court, direct that notice of the interest shall be entered in such manner as the Court may prescribe upon the Register of patents or designs, as the case may be.

SEC. 57.—The person registered as the proprietor of a patent, design, or trade mark shall, subject to the provisions of this Law and to any rights appearing from the Register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the patent, design or trade mark, and to give effectual receipts for any consideration for any such assignment, licence, or dealing.

SEC. 58.—A person who has become entitled by assignment, transmission, or other operation of law, or by mortgage, licence, or otherwise, to any patent which has been registered under this Law, or to the copyright in a registered design, or to a registered trade mark, or to any interest in any such patent, design, or trade mark, shall not be entitled to recover any penalty or damages in respect of any infringement of such patent, or of the copyright in such design, or of such trade mark, as the case may be, unless his title thereto or interest therein has been entered upon the register in pursuance of Section 56 hereof.

POWERS OF THE ROYAL COURT.

SEC. 59.—In addition to the matters which by this Law the Royal Court is authorized to direct or permit to be entered on the Registers to be kept under this Law, the Royal Court may direct or permit the entry in any such Register of any other matters affecting

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the validity or proprietorship of a patent, design, or trade mark, and which in the opinion of the Court is proper to be so entered.

SEC. 60.—The Royal Court may by Ordinance :—

- (a) Subject to the provisions of this Law regulate the procedure to be followed and prescribe the forms to be used for or in connexion with any application, action, or proceeding under this Law ;
- (b) Prescribe the fees payable under this Law ;
- (c) Generally make such regulations and orders as may from time to time be necessary or expedient for giving effect to the provisions of the Law ;

and the Court may from time to time vary, or revoke any such Ordinance.

LEGAL PROCEEDINGS AND EVIDENCE.

SEC. 61.—Impressions of the Seal of the Patent Office shall be judicially noticed and received in evidence.

SEC. 62.—Printed or written copies or extracts, sealed with the Seal of the Patent Office, of or from patents specifications, and other documents, shall be admitted in evidence, and in all proceedings without further proof or production of the originals.

SEC. 63.—(1) In any action for the infringement of a patent, design, or trade mark the Court may, either at the time when the action is entered upon the roll of causes for pleading or at any time afterwards, and on the application of any of the parties, make an order restraining the other party or parties or any of them from making, using, exercising, applying or selling the invention, design or trade mark, or an order imposing such conditions or restrictions as the Court may think fit upon the manufacture, use, exercise, application, or sale thereof, until a definitive and final judgment has been given in the action or

for such shorter period as the Court may determine, and subject to such penalties for the breach of any such order as the Court may think proper, and the Court may from time to time vary or revoke any such order.

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(2) The Court may direct that the costs in respect of any order made under this Section shall be costs in the action, or may order the same to be paid by any one or more of the parties.

(3) An order made under this Section shall not be subject to appeal.

SEC. 64.—Where in any civil action or proceeding under this Law it has been ordered that witnesses shall be heard and that the evidence shall be taken in writing, the Court shall not proceed in accordance with the “Loi relative à l'examen des Temoins à futur 1908,” but shall direct that the evidence shall be taken down in writing, at the time of the trial of the action or the hearing of the proceeding, by a shorthand writer or by such other person as the Court may appoint.

(2) Evidence taken in writing in the manner prescribed by the last preceding subsection shall be received by the Court of Judgments and Records.

MISCELLANEOUS.

SEC. 65.—The Greffier may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Law, apply to the Law Officers of the Crown for directions in the matter.

Law Officers
of the Crown
may give
directions.

SEC. 66.—Nothing in this Law shall in any way derogate from the provisions of the Law intituled “Loi pour empêcher l'usage à Guernesey, sans autorité, des Armoiries Royales, 1913” : Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a design or trade mark containing the Royal Arms to continue to use such design or trade mark,

Royal Arms.

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Domicile. SEC. 67.—(1) The proprietor of any patent, design, or trade mark which has been registered in accordance with this Law shall be bound to elect domicile in this Island and to cause a notice of such domicile to be entered in the Register, and any notice or summons in connexion with any matter arising out of this Law shall be deemed to be sufficiently sent, served or given on or to him, if it is sent to such domicile.

(2) If any person neglects or omits to elect a domicile as aforesaid a notice or summons shall be deemed to be sufficiently given or sent to or served on him if it is sent to the Greffe Office.

Prerogative
of the Crown. SEC. 68.—Nothing in this Law 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.

SEC. 69.—This Law may be cited as “The Patents, Designs and Trade Marks Law (Guernsey), 1922.”
