user has rendered such trade mark in fact distinctive for the goods in respect of which it is registered or proposed to be registered.” Where the mark is limited to specified colours, that fact may be taken into account in deciding whether the mark is distinctive (s. 10). There are certain special rules as to cotton marks.

Trade marks containing the essential particulars are not regis­trable if they contain any matter which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a court of justice or would be contrary to law or morality, or any scandalous design (s. 11). (See *Eno* v. *Dunn,* 1890, 15 App. Cas. 293, and the “ Motricine ” case, 1907, 2 Ch. 435.) Registration of the same matter as a trade mark under the act of 1905 and as a design under the Patents and Designs Act (1007) is possible *(re U.S. Playing Card Co.'s Applic.,* 1907, W. N. 251 ).

Old marks are registrable, *i.e.* any special or distinctive word or words, letter, numeral or combination of letters or numerals, used by the applicant or his predecessors in business before the 14th of August 1875, subject to the qualification that it has “ continued to be used either in its original form or with additions or alterations not substantially affecting the same down to the date of the application for registration ” (s. 9). In the case of new marks, but not of old marks, a trade mark is not registrable except by order of the court in respect of any goods or description of goods which is identical with a mark already on the register with respect to such goods or description of goods, or so nearly resembles such registered mark as to be calculated to deceive (s. 19).

Most controversy arose under the acts of 1883 and 1888 as to the meaning of the phrase “ invented word ” preserved in the act of 1905. An invented word need not be wholly meaningless, nor is it disqualified because words may have suggested it. Thus “ mazawattee ” was held to be an “ invented word,” although the latter part of it was a Sinhalese term meaning “ estate,” and there were estates in Ceylon having names ending with “ wattee ” from which tea came; and in a leading case on the construction of the clauses under consideration *(Eastman Co.'s Trade Mark,* L. Rep. 1898, A. C. 571), the word “ solio ’’ was held to be registrable as a trade mark for photographic printing paper under both clauses, although it was objected that “ solio” was equivalent to “sunio.” The expression “ calculated to deceive " has been considered by the courts in very many cases. It is not merely or chiefly the retailer or dealer who has to be kept in view when the question of the likeli­hood of deception is under consideration. The courts have regard also, and mainly, to the ultimate purchaser whom the trade mark may reach, and careless or unwary persons are considered as well as those who are careful and intelligent. The judge’s eye is the ultimate test as to the degree of resemblance that is calculated to deceive, although expert evidence on the point is admissible. “ Savonol ” for soap *(J. C. & J. Field Ltd.* v. *Wagel Syndicate Ltd.,* 1900, 17 R.P.C. 266), “ tachytype " for typographical and composing machines (in *re Linotype Co.'s Application,* 1900, 17 R.P.C. 380), have been held to be invented words. But the following have been held not invented—“ uneeda ” (=you need a) in *re National Biscuit Co.* (1902 ; 1 Ch. 783) ; “ absorbine ” for an absorbent prepara­tion *(Christy & Co.* v. *Tipper & Son,* 1905, 21 R.P.C. 97, 775); “ bioscope ” *(Warwick Trading Co.* v. *Urban,* 1904, 21 R.P.C. 240); “ cyclostyle ” *(re Gestetner's Trade Mark,* 1907, 2 Ch. 478) ; and cf. in *re Kodak and Trade Marks* (1903, 20 R.P.C. 337).

Subsections (3) and (4), it should be noted, are independent: the former deals with newly-coined words, the latter deals with the existing words of the English language, or of other languages likely to be known to the public. A word which is really “ invented ” may be registered, whether it is descriptive or not. An old word used in a new sense is not invented *(Hommel* v. *Bauer & Co.,* 1904, 21 R.P.C. 576). The exact scope of clause (5) as to other distinctive marks has not been much discussed by the courts. Registration was allowed of the word “ apollinaris ” as a distinctive mark for the mineral waters of the applicants, on an undertaking to apply it only to water from the Neuenahr spring or district (in *re Apollinaris Trade Mark,* 1907, 2 Ch. 178). Under prior legislation the mark had been refused registration as being a geographical name *(re Apollinaris Co's Trade Mark,* 1891, 2 Ch. 186).

Identical marks (except old marks) may not be registered in respect of the same goods, or goods of the same description, for two different, persons (s. 19); and where several appli­cants make rival claims to identical marks the registrar may refuse to register until their rights have been determined by the court or settled by agreement in manner approved by the registrar, or, on appeal, by the board of trade (s. 20). In the case of honest concurrent user or of other special circumstances making it proper so to do, the court may permit the registration of the same mark or of nearly identical marks for the same goods by more than one owner, subject to such conditions or limitations, if any, as to mode or place of use or otherwise as the court may think it right to impose (s. 21).

New provisions were made in 1905 as to what are called “ associated trade marks.” Where registration is sought for a mark so closely resembling a mark of the applicant already on the register for the same goods as to be calculated to deceive or cause confusion if used by any one but the applicant, the registration of the new mark may be conditional on entering both marks as associated trade marks (s. 24). This section applies only to marks closely resembling one already on the register for the same goods or des- cription of goods, and has nothing to do with identical marks *(Birmingham Small Arms Co.'s Application,* 1907, 2 Ch. 396).

ln the case of combined trade marks provision is made for regis­tering as separate trade marks -the part in which the applicant has exclusive rights, and as associated marks trade marks of which the exclusive portion forms a part (s. 25),

A series of trade marks of the same owner may be registered on one registration as associated marks (s. 26).

Provision is made for allowing the registration of marks used upon or in connexion with goods by an association (or person) which undertakes the examination of goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of the examination by marks used upon or in connexion with the goods. These marks cannot be registered unless the board of trade consider their registration of public advantage. Their registration is not conditional on the association or person being a trader or having goodwill in connexion with the examination or certification. The registration gives the association or person the rights of the owner of a registered trade mark, except that assign­ment and transmission needs permission of the board of trade (s.62).

In respect of cotton piece-goods, marks consisting of a line heading alone or a word alone are not registrable, and no word or line heading is treated as distinctive in respect of such goods, ln respect of cotton yarn the same rule applies with respect to words, and no registration of any cotton mark gives any exclusive right to the use of a word, letter, numeral, line, heading or combination thereof [s. 64 (10)].

By s. 68, which is a re-enactment of s. 105 of the Patents, &c., Act, 1883, it is made illegal for any person without the authority of the king to use the royal arms in any trade in such a manner as to create the belief that he has authority so to do; a similar provision is embodied in the Merchandise Marks Act 1898 of the Isle of Man.

The central register of trade marks is kept at the Patent Office, Southampton Buildings, London, and is under the charge of the comptroller-general of patents, designs and trade marks, who is appointed by and acts under the superintendence of the board of trade, and has a deputy—the registrar of trade marks. There is a branch registry at Manchester, whose chief officer is the keeper of cotton marks, which deals with all applications for the registration of trade marks for cotton goods falling within classes 23, 24, 25 in schedule 3 of the Trade Marks Rules 1906. The registry has been long established, but was not recognized by statute till 1905. Records are kept and are open to public inspection of all applications made since 1875, whether granted or refused.

There is a branch registry at Sheffield containing the marks for metal goods (“ Sheffield marks ”) registered by persons carrying on business in or within six miles of Hallamshire. The care of this register is vested in the Cutlers’ Company, who are substituted for the comptroller as to registration of “Sheffield marks” (s. 63). Applications made to the company are notified to the registrar, and may not be proceeded with if he objects. Any person aggrieved by the registrar's objection may appeal to the court. Applications made to the registrar for metal marks are notified to the Cutlers’ Company. Persons aggrieved by the decision of the Cutlers’ Company have an appeal to the courts (s. 64).

In 1906 fourteen applications were made at the head registry which were all dealt with by the Cutlers’ Company. That company, by arrangement made with the sanction of the treasury, retain all fees taken at Sheffield with respect to registration up to £400, and half of the fees received in excess of that amount *(Pari. Pap.,* 1907, No. 164, p. 9).

A trade mark must be registered in respect of particular goods or classes of goods (s. 8), and the classification in force is scheduled to the Trade Marks Rules 1906 (R. & O., 1906, No. 233). Doubts as to the class to which the goods in question belong are settled by the registrar. The procedure for obtaining registration is regulated by the act of 1905 and the rules above mentioned. The registrar has power to refuse applications or accept them absolutely or subject to conditions, amendments and modifications (s. 12). His discretion is not absolute, but subject to the provisions of the act *(re Birmingham Small Arms Co.'s Application,* 1907, 2 Ch. 396) ; and he must if required state his reasons, and his decision is subject to appeal to the board of trade or the court at the option of the applicant [s. 12 (3)].

“ New marks ” may not be placed on the register except by order of the court for any goods or description of goods which are identical with marks already on the register with respect to the same goods, &c., or so nearly resemble a registered mark as to be calculated to deceive (s. 19). The question whether particular goods are of the same description is not determined solely by reference to the statu­tory classification. “ The true test,” says Kerly *(Trade Marks,* p. 181), “ would seem to be supplied by the question: Are the two sets of goods so commonly dealt in by the same trader that his