customers, knowing his mark in connexion with one set, and seeing it upon the others, would be likely to suppose that it was used upon them also to indicate that they were his goods? ” Wine and spirits, beer, and even aperient drinks and baking powder, have been held to be “ goods of the same description.” When a trade mark contains (1) parts not separately registered as trade marks or (2) matter common to the trade or otherwise of a non-distinctive character, the registrar, or the board of trade or the court, in deciding whether the mark shall be entered or retained on the register, may impose as a condition that the owner shall disclaim all right to exclusive use of any part or parts of such trade mark or of all or any portion of such matter to the exclusive use whereof they deem him not to be entitled, or make any other disclaimer which they consider needful to define his rights under the registration (s. 15). Marks calculated to deceive are not entitled to protection *(Eno* v. *Dunn,* 1890, 15 Aρp. Cas. 250).

Applications as accepted are advertised ; the advertisements state the conditions, if any, imposed on acceptance (s. 13). Notice of opposition to the registration of a trade mark may be given under s. 14 of the act of 1905 (which replaces s. 69 of the act of 1883). The registrar after consideration decides whether the opposition is well or ill founded. His decision is subject to appeal to the High Court or by consent of the parties to the board of trade (1905, s. 14 (5)]. In 1906 there were 251 notices of opposition, of which 51 were heard. There were 4 appeals to the board of trade, all referred by the board to the court under s. 59 of the act.

There may be added to any one or more of the “ essential particu­lars ” above enumerated any letters, words or figures, or a combination of these. But the right to the exclusive use of the added matter must be disclaimed. A man is not required, however, to disclaim his own name, or trade name, or that of his place of business, if the name appears in the mark. The number of applications to register trade marks in 1884 was 7104, and the number of marks registered 4523. In 1906 the corresponding figures were 11,414 and 4731. These figures included 153 applications made to the Cutlers’ Company at Sheffield *(Parl. Pap.,* 1907, 164, 24th report).

The register may be corrected on the request of the registered owner of a trade mark as to errors or changes of address in the name of the registered owner, or by cancelling entries of marks or by striking out classes of goods for which a mark is registered or by entering disclaimers or memoranda as to a mark, provided that they do not extend the rights given by the existing registration (s. 33).

A registered trade mark may be altered or added to in matters not substantially affecting its identity (s. 34). Thus a firm on be- coming a limited company has been allowed to add the word “ limited ” to its name upon a registered mark, but no alteration will be permitted in regard to any “ essential particular.” In the above cases the corrections or alterations are made by the registrar subject to appeal to the board of trade (ss. 32, 34). A registered trade mark may be taken off by order of the court on the application of a person aggrieved, on the ground that it was registered without a bona fide intention to use it in connexion with a particular class of goods, and that there has not been any such bona fide user, or that there has been no such bona fide user during the five years preceding the application. Non-user may be excused if proved to be owing to special circumstances and not to any intention not to use or to abandon the use of the mark (s. 37). (See *re Hare's Trade Mark,* 1907, 24 R.P.C. 263).

The register may be rectified by order of the court on the application of any person aggrieved, or in the case of fraud in registration or transmission of the mark on the application of the registrar. The powers of rectification include correcting or expunging wrong entries, supplying errors and omissions and defects (s. 35).

Registration is effective for 14 years but is renewable (s. 28). The registration if valid gives the proprietor the exclusive right to the use of the mark on or in connexion with the goods in respect of which it is registered (1905, s. 39). This rule is subject to the following qualifications. *(a)* Where two or more persons are registered owners of the same or substantially the same mark in respect of the same goods, no one of them shall as against any other of them have any right of exclusive user except so far as their respective rights have been defined by the court. (*b)* Registration of a trade mark does not entitle the proprietor to interfere with or restrain the user by any person of a similar mark upon or in connexion with goods upon or in connexion with which such person has by himself or his predecessors in business continuously used such trade mark from a date anterior to the use of the mark by the registered proprietor, or to object to the registration of the other man’s similar mark for concurrent user.

In all legal proceedings relating to a registered trade mark registration is prima facie evidence of validity, and after seven years from the original registration, or seven years from the passing of the act of 1905, whichever shall last happen, the original registration shall be taken to be valid in all respects unless it was obtained by fraud, or the mark offends against s. 11 of the act. This provision as to validity limits the power which formerly existed of getting rid of long registered marks by proceedings to rectify the register.

Registered trade marks are assignable and transmissible only with the goodwill of the business concerned in the goods for which they are registered, and are determinable with the goodwill (s. 22). Associated marks are assignable and transmissible only as a whole and not separately (s. 27). The owner of a registered mark may assign the right to use his registered mark in any British possession or protectorate or foreign country in connexion with any goods for which it is registered, together with the goodwill of the business therein of such goods (s. 22). Provision is made for apportioning marks where the goodwill of a business by dissolution of parthership or otherwise does not pass to a single successor (s. 23).

The assignments, &c., on proof of title, are recorded on the register (s. 33). It is a condition precedent to an action for the infringement of a new trade mark that the plaintiff should be the registered proprietor of the mark at the time when the action comes on for hearing. This last provision does not apply to. an action for “ passing-off ” *(vide infra).* In actions for infringement, evidence of passing off, or that the infringing mark is calculated to deceive, is not necessary. The court decides on the probability of deception by inspecting and comparing the marks *(Hennessy* v*. Keating,* 1907, 24 R.P.C. 485).

In the case of an old mark in use before the 14th of August 1875 proceedings may be taken if registration under the act of 1907 has been refused (s. 42).

The right to a trade mark lapses if the mark ceases to be distinc­tive and becomes *publici juris',* if it is separated from the goodwill (a trade mark can only be assigned with the goodwill) ; if the mark is applied by the trader to spurious goods (as where boxes of cigarettès were so labelled, in conformity with an alleged custom of the trade, as to indicate that they were of Russian manufacture, which was not the fact; or when the mark is abandoned); (temporary disuse, however, is not abandonment unless the mark has in the meantime become associated with the goods of another trader); or where, as in the “ linoleum ” case (7 Ch. D. 834) it has become the name of the goods, and so merely descriptive; or after fourteen years where registration is not renewed. In dealing with a claim for infringement the court must admit evidence of the usages of trade as to the get-up of the goods for which the mark is registered, and of any trade marks or get-up legitimately used with such goods by other persons (s. 43).

The registrar has an uncontrolled discretion in the administration of the act, except in those cases in which an appeal is given from his acts or refusals to the court or the board of trade (ss. 53, 54). In cases of difficulty he consults the law officers (s. 56).

Actions or other proceedings with relation to trade marks, so far as they are for the court, may be brought in the High Court of Justice in England or Ireland and in the Court of Session in Scotland (ss. 3, 69). In the case of marks registered on application at the Manchester branch, the chancery court of Lancaster has concurrent jurisdiction with the High Court (s. 71). Actions for infringement of a trade mark are not within the jurisdiction of the county court *(Bow v.Hart,* 1905, I K.B. 592). An annual report is made by the comptroller-general of patents, &c., as to proceedings with reference to trade marks.

III. “ *Passing-off ” and Trade Name.—*A trader has generally, besides his trade mark, numerous other symbols, which he uses as *indicia* of his goods, *e.g.* the name of title under which he himself trades, the name under which his goods are known and sold, badges of property which are termed “ trade name,” and the distinctive “ get-up ” of the goods as they appear in the market. These symbols enjoy the protection of the law, under certain conditions, equally with trade marks. No trader is entitled to “ pass off ” his goods as those of another, and if he infringes this rule he is liable to an action for an injunction and damages, and these rights are preserved by the Trade Marks Act 1905 (s. 45). The right to be protected against “ passing-off ” is restricted to goods of the same description as those upon which the trader uses the “ get-up,” &c., imitated. Even if the “ pass- ing-off ” is done innocently it will be restrained *(Millington* v. *Fox,* 1838, 3 Mylne and Craig, 338). This case is described as not one of the use of a properly descriptive name, but rather a case of the same class as those in which a fancy or invented name is used *(Cellular Clothing Co.* v. *Maxton,* 1899, App. Cas. 326, 341). Although the first purchaser is not deceived, still if the article delivered to him bears words or marks such that it is “ calculated to deceive ” a purchaser from him, the use of them is illegal.

To this general rule there are several exceptions:—

I. No monopoly is allowed in names that are merely descriptive. But words which prima facie are descriptive, such as “ camel-hair belting,” for belting made of camel-hair *(Reddaway* v. *Banham.*