

or, in the case of appeal, the Court, may require him to give security for the costs of the proceedings or appeal, and in default of such security being given may treat the application or appeal as abandoned.

Cf. Registered Designs Act 1949, s. 30 (U.K.); 1921–22, No. 18, ss. 45, 127

39. Evidence before Commissioner—(1) Subject to regulations made under this Act, the evidence to be given in any proceedings before the Commissioner under this Act may be given by affidavit or statutory declaration; but the Commissioner may if he thinks fit in any particular case take oral evidence instead of or in addition to such evidence as aforesaid, and may allow any witness to be cross-examined on his affidavit or declaration. Any such statutory declaration may, in the event of an appeal under this Act, be used before the Court instead of evidence by affidavit, and where so used shall have all the incidents and consequences of evidence by affidavit.

(2) Subject to any such regulations as aforesaid, the Commissioner shall in respect of requiring the attendance and the examination of witnesses on oath and the discovery and production of documents have the same powers as the Commissioner of Patents has in proceedings under the Patents Act 1953.

(3) Any evidence given on oath before the Commissioner shall be deemed to be given in a judicial proceeding for the purposes of sections [108 and 109 of the Crimes Act 1961].

(4) Section [111 of the Crimes Act 1961] shall apply to every affidavit and statutory declaration made for the purposes of this Act.

Cf. Registered Designs Act 1949, s. 31 (U.K.); 1921–22, No. 18, s. 129

In subss. (3) and (4), ss. 108, 109 and 111 of the Crimes Act 1961, being the corresponding enactments in force at the date of this reprint, have been substituted for ss. 130, 131 and 133 of the repealed Crimes Act 1908.

40. Recognition of agents—Where by this Act any act has to be done by or to any person in connection with a registered design or proposed registered design or any proceedings relating thereto, the act may, unless otherwise prescribed, be done by or to an agent of that person duly authorised in the prescribed manner.

Cf. 1921–22, No. 18, s. 136

41. Commissioner may dispense with production of probate or letters of administration in certain cases—

(1) For the purposes of this section, unless the context otherwise requires,—

“Deceased proprietor” means a registered proprietor of any design who has died, whether before or after the commencement of this Act; and includes any applicant for the registration of a design who has died before it is registered, whether before or after the commencement of this Act:

“Qualified person”, in relation to any deceased proprietor, means a person who satisfies the Commissioner—

(a) That he has obtained or is entitled to obtain probate of the will of the deceased proprietor or letters of administration in his estate in the place where the deceased proprietor was domiciled at his death, or that he is the legal representative of the deceased proprietor in that place:

(b) That probate of the will of the deceased proprietor or letters of administration in his estate have not been granted or resealed in New Zealand:

(c) That the Commissioner of Inland Revenue is satisfied that no [estate duty] will be payable in New Zealand in the estate of the deceased proprietor:

(d) That the interests of the creditors of the deceased proprietor, and of all persons beneficially interested under his will or on his intestacy, will be adequately safeguarded if the Commissioner of Designs registers the qualified person as the proprietor of the design.

(2) Upon application in the prescribed manner and payment of the prescribed fees, the Commissioner of Designs, in his discretion and without requiring the production of probate or letters of administration, may,—

(a) Where the registered proprietor of any design has died, whether before or after the commencement of this Act, register any qualified person as the proprietor of the design:

(b) Where an applicant for the registration of a design has died before the registration of the design, whether before or after the commencement of this Act, allow any qualified person to complete the application and may register that person as the proprietor of the design.

(3) Every qualified person who is registered under this section as the proprietor of a design shall hold it subject to all existing interests and equities affecting it.

(4) Nothing in sections [70 or 73 of the Administration Act 1969] shall be deemed to restrict the operation of this section.

Cf. 1947, No. 37, s. 5

“Qualified person”: In para. (c) of this definition the words “estate duty” were substituted for the words “death duty” by s. 89 (7) of the Estate and Gift Duties Act 1955; but the substituted words apply only in relation to the estates of persons dying after the commencement of that Act.

In subs. (4), ss. 70 and 73 of the Administration Act 1969, being the corresponding enactments in force at the date of this reprint, have been substituted for ss. 49 and 52 of the repealed Administration Act 1952.

S. 67 of the Administration Act 1969 provides that nothing in that Act shall affect the powers of any person, etc., to register any person to be the owner of any property in accordance with the provisions of, *inter alia*, this section.

Offences

42. Offences in respect of designs required to be kept secret—(1) Every person who fails to comply with any direction given under section 9 of this Act, or who makes or causes to be made an application for the registration of a design in contravention of that section, commits an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding [\$1,000], or to both such imprisonment and such fine.

(2) Where an offence against section 9 of this Act is committed by a body corporate, every person who at the time of the commission of the offence is a director, general manager, secretary, or other similar officer of the body corporate, or is purporting to act in any such capacity, shall be deemed to have committed that offence unless he proves that the offence was committed by the body corporate without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence by the body corporate as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

(3) *Repealed by s. 214 (1) of the Summary Proceedings Act 1957.*

Cf. Registered Designs Act 1949, s. 33 (U.K.)

A District Court Judge has summary jurisdiction in respect of offences under this section; see s. 6 (1) of the Summary Proceedings Act 1957.

43. Falsification of register, etc.—(1) Every person who makes or causes to be made a false entry in the register of designs, or a writing falsely purporting to be a copy of an

entry in that register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, commits an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years.

(2) *Repealed by s. 214 (1) of the Summary Proceedings Act 1957.*

Cf. Registered Designs Act 1949, s. 34 (U.K.); 1921–22, No. 18, s. 143 (1)

A District Court Judge has summary jurisdiction in respect of offences under this section; see s. 6 (1) of the Summary Proceedings Act 1957.

44. Fine for falsely representing a design as registered—(1) Every person who falsely represents that a design applied to any article sold by him is registered in New Zealand in respect of that article commits an offence and shall be liable on summary conviction to a fine not exceeding [\$40]; and for the purposes of this provision a person who sells an article having stamped, engraved, or impressed thereon or otherwise applied thereto the words “registered in New Zealand” or any other words expressing or implying that the design applied to the article is registered in New Zealand shall be deemed to represent that the design applied to the article is registered in respect of that article.

(2) Every person who, after the copyright in a registered design has expired, marks any article to which the design has been applied with the words “registered in New Zealand” or any word or words implying that there is subsisting copyright in the design in New Zealand or causes any such article to be so marked commits an offence and shall be liable on summary conviction to a fine not exceeding [\$40].

Cf. Registered Designs Act 1949, s. 35 (U.K.); 1921–22, No. 18, s. 143 (3), (4)

Supplemental

45. Hours of business—[(1) The Commissioner, from time to time by notice in the *Journal*, may fix the hours during which the Patent Office shall be open for the transaction of public business under this Act, and may declare the Patent Office closed for the transaction of public business on any day.]

(2) Where the time prescribed for doing any act or taking any proceeding expires on a day on which the Patent Office is not open . . . and by reason thereof the act or proceeding cannot be done or taken on that day, the act or proceeding

shall be deemed to be in time if done or taken on the next day on which the Patent Office is open

Cf. Registered Designs Act 1949, s. 39 (U.K.); 1921–22, No. 18, s. 133

Subs. (1) was substituted for the original subs. (1) by s. 2 (1) of the Designs Amendment Act 1976.

In subs. (2) the words “as aforesaid” were omitted in 2 places, as indicated by the points of omission, by s. 2 (2) of the Designs Amendment Act 1976.

[45A. Closing of Patent Office at short notice—

(1) Notwithstanding subsection (1) of section 45 of this Act, where, because of an emergency or other temporary circumstances, the Commissioner is satisfied that it is or will be necessary or desirable to close the Patent Office on any day and it is not practicable to give notice of the closure in the *Journal* as required by that subsection, the Commissioner may, without giving that notice, declare the Patent Office closed for the transaction of public business on that day in accordance with the provisions of this section.

(2) In every case where the Commissioner proposes to declare or has declared the Patent Office closed under subsection (1) of this section he shall, if practicable, display a public notice of that fact in or on the building in which the Patent Office is situated.

(3) As soon as practicable thereafter the Commissioner shall also cause a copy of the public notice, or (if no such notice was displayed) a notice of the exercise of his powers under this section, to be published in the *Journal*.]

This section was inserted by s. 3 of the Designs Amendment Act 1976.

46. Regulations—(1) Subject to the provisions of this Act, the Governor-General may from time to time, by Order in Council, make all such regulations as may in his opinion be necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power conferred by subsection (1) of this section, it is hereby declared that regulations may be made under this section for all or any of the following purposes:

- (a) For regulating the business of the Patent Office in relation to designs:
- (b) For regulating all matters by this Act placed under the direction or control of the Commissioner:
- (c) For prescribing the form of applications for registration of designs and of any representations or specimens of designs or other documents which may be filed at