THE LAW RELATING TO

THE MERCHANDISE MARKS ACTS

1887 TO 1894

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BY

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"A HANDY GUIDE TO THE LICENSING LAWS"

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PREFACE

THE object aimed at in this book has been to reduce to order a somewhat involved Act of Parliament; and to enable the reader to find without difficulty on any branch of the subject the authorities thereon, which are brought up to date. The dominant provisions of the Act are comprised in subsections (1) and (2) of § 2. The greater part of the rest of the Statute consists principally of definitions, and explanations of the terms made use of in § 2, to which various sections reference has to be frequently made. As the explanatory sections are scattered indiscriminately throughout the Statute, a study of the Statute to one imperfectly connected with it is at first confusing. It has been the aim of the author to avoid this confusion by quoting the sections whenever referred to, and illustrating the various points dealt with by the Act by setting out fully the contentions both of the prosecution and defence in the cases on a subject which is somewhat complicated, and possibly the less

known because the cases arising out of it are for the most part only unofficially reported.

It is hoped that the work will assist the student to master the difficulties of the law relating to merchandise marks, and be of use to all interested in the suppression of "Trade Deceptions."

H. M. FINCH.

6, Plowden Buildings,
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October, 1904.

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THE

MERCHANDISE MARKS ACT, 1887

50 & 51 Vict. c. 28.

An Act to consolidate and amend the Law relating to Fraudulent Marks on Merchandise. [23rd August, 1887.]

Be it 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:—

1. This Act may be cited as the Merchandise Marks Act, 1887. Short title.

2.—(1) Every person who— Offences as to trade marks and trade description.

(*a*) forges any trade mark; or

(*b*) falsely applies to goods any trade mark

or any mark so nearly resembling a trade mark as to be calculated to deceive; or

(*c*) makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade mark; or

(*d*) applies any false trade description to goods; or

(*e*) disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade mark; or

(*f*) causes any of the things above in this section mentioned to be done,

shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be guilty of an offence against this Act.

(2) Every person who sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive

is falsely applied, as the case may be, shall, unless he proves—

(*a*) that having taken all reasonable precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description; and

(*b*) that on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(*c*) that otherwise he had acted innocently;

be guilty of an offence against this Act.

(3) Every person guilty of an offence against this Act shall be liable—

(i.) on conviction on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and

(ii.) on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding twenty pounds, and in

the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding fifty pounds; and

(iii.) in any case, to forfeit to Her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed.

(4) The court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

(5) If any person feels aggrieved by any conviction made by a court of summary jurisdiction, he may appeal therefrom to a court of quarter sessions.

(6) Any offence for which a person is under this Act liable to punishment on summary conviction may be prosecuted, and any articles liable to be forfeited under this Act by a court of summary jurisdiction may be forfeited, in manner provided by the Summary Jurisdiction Acts: Provided that a person

42 & 43 Vict. c. 49.

charged with an offence under this section before a court of summary jurisdiction shall, on appearing before the court, and before

the charge is gone into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly.

Definitions. 46 & 47 Vict. c. 57.

3.—(1) For the purposes of this Act—

The expression "trade mark" means a trade mark registered in the register of trade marks kept under the Patents, Designs, and Trade Marks Act, 1883, and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs, and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable:

The expression "trade description" means any description, statement, or other indication, direct or indirect,

(*a*) as to the number, quantity, measure, gauge, or weight of any goods, or

(*b*) as to the place or country in which any goods were made or produced, or

(*c*) as to the mode of manufacturing or producing any goods, or

(*d*) as to the material of which any goods are composed, or

(*c*) as to any goods being the subject of an existing patent, privilege, or copyright,

and the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Act:

The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Act:

The expression "goods" means anything which is the subject of trade, manufacture, or merchandise:

The expressions "person," "manufacturer, dealer, or trader," and "proprietor" include any body of persons corporate or incorporate:

The expression "name" includes any abbreviation of a name.

(2) The provisions of this Act respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods, any name or initials of a person which—

(*a*) are not a trade mark or part of a trade mark, and

(*b*) are identical with, or a colourable imitation of the name or initials of a person carrying on business in connexion with goods of the same description, and not having authorised the use of such name or initials, and

(*c*) are either those of a fictitious person or of some person not bonâ fide carrying on business in connexion with such goods.

Forging trade mark.

4. A person shall be deemed to forge a trade mark who either—

(*a*) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or

(*b*) falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise;

and any trade mark or mark so made or falsified is in this Act referred to as a forged trade mark.

Provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

Applying marks and descriptions.

5.—(1) A person shall be deemed to apply a trade mark or mark or trade description to goods who—

(*a*) applies it to the goods themselves; or

(*b*) applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or

(*c*) places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or

(*d*) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connexion with which it is used are designated or described by that trade mark or trade description.

(2) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression "label" includes any band or ticket.

A trade mark, or mark, or trade description, shall be deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing.

(3) A person shall be deemed to falsely

apply to goods a trade mark or mark, who without the assent of the proprietor of a trade mark applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

Exemption of certain persons employed in ordinary course of business.

6. Where a defendant is charged with making any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves—

(*a*) that in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for making, or being used in making, trade marks, or as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the

charge he was so employed by some person resident in the United Kingdom, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

(*b*) that he took reasonable precautions against committing the offence charged; and

(*c*) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and

(*d*) that he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or description was applied,

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

Application of Act to watches.

7. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a

description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall primâ facie be deemed to be a description of that country within the meaning of this Act, and the provisions of this Act with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case.

Mark on watch case.

8.—(1) Every person who after the date fixed by Order in Council sends or brings a watch case, whether imported or not, to any assay office in the United Kingdom for the purpose of being assayed, stamped, or marked, shall make a declaration declaring in what country or place the case was made. If it appears by such declaration that the watch case was made in some country or place out of the United Kingdom, the assay office shall place on the case such a mark (differing from

the mark placed by the office on a watch case made in the United Kingdom) and in such a mode as may be from time to time directed by Order in Council.

(2) The declaration may be made before an officer of an assay office, appointed in that behalf by the office (which officer is hereby authorised to administer such a declaration), or before a justice of the peace, or a commissioner having power to administer oaths in a Supreme Court of Judicature in England or Ireland, or in the Court of Session in Scotland, and shall be in such form as may be from time to time directed by Order in Council.

(3) Every person who makes a false declaration for the purposes of this section shall be liable, on conviction on indictment, to the penalties of perjury, and on summary conviction to a fine not exceeding twenty pounds for each offence.

Trade mark, how described in pleading.

9. In any indictment, pleading, proceeding, or document, in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to

state that trade mark or forged trade mark to be a trade mark or forged trade mark.

Rules as to evidence.

10. In any prosecution for an offence against this Act,—

(1) A defendant, and his wife or her husband, as the case may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness.

(2) In the case of imported goods, evidence of the port of shipment shall be prima facie evidence of the place or country in which the goods were made or produced.

Punishment of accessories.

11. Any person who, being within the United Kingdom, procures, counsels, aids, abets, or is accessory to the commission, without the United Kingdom, of any act, which, if committed in the United Kingdom, would under this Act be a misdemeanour, shall be guilty of that misdemeanour as a principal, and be liable to be indicted, proceeded against, tried, and convicted in any county or place in the United Kingdom in which he may be, as if the misdemeanour had been there committed.

Search warrant.

12. (1)—Where, upon information of an offence against this Act, a justice has issued either a summons requiring the defendant charged by such information to appear to answer to the same, or a warrant for the arrest of such defendant, and either the said justice on or after issuing the summons or warrant, or any other justice, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, such justice may issue a warrant under his hand by virtue of which it shall be lawful for any constable named or referred to in the warrant, to enter such house, premises, or place at any reasonable time by day, and to search there for and seize and take away those goods or things; and any goods or things seized under any such warrant shall be brought before a court of summary jurisdiction for the purpose of its being determined whether the same are or are not liable to forfeiture under this Act.

(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Act, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a court of summary jurisdiction may cause such notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.

(3) Any goods or things forfeited under this section, or under any other provision of this Act, may be destroyed or otherwise disposed of, in such manner as the court by which the same are forfeited may direct, and the court may, out of any proceeds which may be realised by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent

party any loss he may have innocently sustained in dealing with the goods.

Extension of 22 & 23 Vict. c. 17 to offences under this Act.

13. The Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter seventeen, intituled "An Act to prevent vexatious indictments for certain misdemeanours," shall apply to any offence punishable on indictment under this Act, in like manner as if such offence were one of the offences specified in section one of that Act, but this section shall not apply to Scotland.

Costs of defence or prosecution.

14. On any prosecution under this Act the court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

Limitation of prosecution.

15. No prosecution for an offence against this Act shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

Prohibition on importation.

16. Whereas it is expedient to make further provision for prohibiting the importation of

goods which, if sold, would be liable to forfeiture under this Act; be it therefore enacted as follows:—

(1) All such goods, and also all goods of foreign manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into the United Kingdom, and, subject to the provisions of this section, shall be included among goods prohibited to be imported as if they were specified in section forty-two of the Customs Consolidation Act, 1876.

39 & 40 Vict. c. 36.

(2) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the

goods are such as are prohibited by this section to be imported.

(3) The Commissioners of Customs may from time to time make, revoke and vary, regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) Where there is on any goods a name which is identical with or a colourable imitation of the name of a place in the United Kingdom, that name, unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if it were the name of a place in the United Kingdom.

(5) Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such

goods or of offences in relation to such goods.

(6) The Commissioners of Customs, in making and in administering the regulations, and generally in the administration of this section, whether in the exercise of any discretion or opinion, or otherwise, shall act under the control of the Commissioners of Her Majesty's Treasury.

(7) The regulations may provide for the informant reimbursing the Commissioners of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(8) All regulations under this section shall be published in the "London Gazette" and in the "Board of Trade Journal."

(9) This section shall have effect as if it were part of the Customs Consolidation Act, 1876, and shall accordingly apply to the Isle of Man as if it were part of the United Kingdom.

46 & 47 Vict. c. 55.

(10) Section two of the Revenue Act, 1883, shall be repealed as from a day fixed by regulations under this section, not being later

than the first day of January, one thousand eight hundred and eighty-eight, without prejudice to anything done or suffered thereunder.

Implied warranty on sale of marked goods.

17. On the sale or in the contract for the sale of any goods to which a trade mark, or mark, or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

Provisions of Act as to false description not to apply in certain cases.

18. Where, at the passing of this Act, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Act with respect to false trade descriptions shall not apply to such trade description when so applied: Provided that where such trade description includes the name of a place or

country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

Savings.

19.—(1) This Act shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Act, be brought against him.

(2) Nothing in this Act shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Act.

(3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident

in the United Kingdom who bonâ fide acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

False representation as to Royal Warrant.

20. Any person who falsely represents that any goods are made by a person holding a Royal Warrant, or for the service of Her Majesty, or any of the Royal Family, or any Government department, shall be liable, on summary conviction, to a penalty not exceeding twenty pounds.

Application of Act to Scotland.

21. In the application of this Act to Scotland the following modifications shall be made :—

The expression "Summary Jurisdiction Acts" means the Summary Procedure Act, 1864, and any Acts amending the same.

The expression "justice" means sheriff.

The expression "court of summary jurisdiction" means the Sheriff Court, and all jurisdiction necessary for the purpose of this Act is hereby conferred on sheriffs.

Application of Act to Ireland.

22. In the application of this Act to Ireland the following modifications shall be made :—

The expression "Summary Jurisdiction

Acts" means, so far as respects the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace of such district, and as regards the rest of Ireland means the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

14 & 15 Vict. c. 93.

The expression "court of summary jurisdiction" means justices acting under those Acts.

Repeal of 25 & 26 Vict. c. 88.

23. The Merchandise Marks Act, 1862, is hereby repealed, and any unrepealed enactment referring to any enactment so repealed shall be construed to apply to the corresponding provision of this Act; provided that this repeal shall not affect—

(*a*) any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; nor

(*b*) the institution or continuance of any proceeding or other remedy under any enactment so repealed for the recovery of any penalty incurred, or for the punishment of any offence committed, before the commencement of this Act; nor

(*c*) any right, privilege, liability, or obligation acquired, accrued, or incurred under any enactment hereby repealed.

CHAPTER I

TRADE MARKS

By § 2.—(1) Every person who—

(*a*) forges any trade mark; or

(*b*) falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive; or

(*c*) makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade mark; or

(*d*) disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade mark;

shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be guilty of an offence against this Act.

And by—

Subsection (2) every person who sells, or

exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark [or false trade description is applied], or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—

(*a*) that having taken all reasonable precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, [or trade description ;] and

(*b*) that on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things ; or

(*c*) that otherwise he had acted innocently ;

be guilty of an offence against this Act.

Forgery of a trade mark is defined by—

§ 4. A person shall be deemed to forge a trade mark who either—

(*a*) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or

(*b*) falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise;

and any trade mark or mark so made or falsified is in this Act referred to as a forged trade mark.

Provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

Under § 2 of the repealed Merchandise Marks Act of 1862 it was a misdemeanour to forge or counterfeit any trade mark, or falsely apply any such trade mark to any article, or to any wrapper in which any goods were to be sold, with intent to defraud, but it was incumbent on the prosecution to prove the intention to defraud.

In the offences under this section of the Act of 1887 the burden of proof of intention to defraud is shifted on to the defendant.

It will be observed that in subsection (*b*) of § 4 the assent of the proprietor is no defence.

At common law forgery is the making or alteration

of any document, not comprised amongst those specified by statute, by which some person may be injured. A trade mark is not a document within the definition (*R.* v. *Smith*, 27 L.J.M.C. 225). Nor is it forgery where the imitation of a trade mark consisted of a signature (*R.* v. *Closs*, 7 Cox. 494). But, independently of the Merchandise Marks Act, the sale of goods under a spurious mark, spurious to the knowledge of the vendor, has always been held to constitute the offence of obtaining money by false pretences.

Thus in *R.* v. *Dundas* (6 Cox. 380) the prisoner, who alleged that his name was Everett, was convicted of obtaining money by false pretences for selling blacking in bottles labelled "Everett's Premier Blacking" in the almost identical style of a well-known manufacturer of that name.

In *R.* v. *Bryan* (7 Cox. 312) the prisoner was indicted for having obtained money from pawnbrokers by false pretences by fraudulently representing certain spoons as having as much silver in them as Elkington's "A" spoons, and was convicted before the Recorder of London, who reserved the case for the consideration of the Court for Crown Cases Reserved. It was there held by ten out of twelve judges that the conviction must be quashed on the ground that there had been merely a misrepresentation as to the quality, and not as to the substance of the article. The result of the case was to encourage

frauds of a like nature, the fact that there was a very small percentage of silver in the spoons making the escape of the prisoner possible, whereas, had there been none, he would have been convicted.

In *R.* v. *Ardley* (L.R. 1 C.C.R. 301) the prisoner induced the prosecutor to purchase a watch-chain from him by fraudulently representing that it was 15 carat gold, when, in fact, it was only of a quality a trifle better than 6 carats, knowing at the time that he was falsely representing the quality of the chain as 15 carat gold.

The case of *R.* v. *Bryan* (*supra*) was distinguished because in *R.* v. *Ardley* there was a statement as to a specific fact within the actual knowledge of the prisoner, namely, the proportion of pure gold in the chain; and it was held that the statement that the chain was 15 carat gold, not being mere exaggerated praise, nor relating to a matter of opinion, but a statement as to a specific fact within the knowledge of the prisoner, was a sufficient false pretence to sustain an indictment for obtaining money by false pretences.

It will be seen that a distinction is made between mere trade puff as to quality and the deliberate misstatement as to a specific fact with intent to defraud.

Consequently, applying a trade mark, whether forged or genuine, to goods which are not the make of the alleged manufacturer, is equivalent to such a misstatement, and the offence under the Merchandise Marks Act of 1887 (§§ 2 (1) (*b*), 2 (1) (*d*), and 3 (2))

is complete unless the intention to defraud is disproved.

In *R.* v. *Swan & Edgar, Ltd.* (Times, Jan. 27, 1904), the defendants had bought certain brooches from a firm in Aldersgate Street, who had imported them from Germany. They consequently did not bear the English mark. The invoice sent with the goods described them as 9 carat gold, and they were stamped "9 carat." They cost 45s. per dozen, and the defendants alleged that they had no reason to suppose that they did not answer the description given to them, but they did not take the precaution to test the brooches.

They sold two brooches for 5s. each, representing them as 9 carat gold. When one was assayed, it was found, instead of being 9 carats, to work out at 2 carats $1\frac{1}{8}$ grain of gold. The other brooch, when assayed, averaged about $3\frac{1}{2}$ carats. The defendants were summoned for having applied a false trade mark to the two brooches, and convicted.

In *R.* v. *Fairweather* (Times, Oct. 10, 1893) the defendant was committed for trial for forging the trade mark of Messrs. Epps, cocoa manufacturers.

In the General Order of Feb. 26, 1900, 1900, par. 24, issued by the Custom House (see *post*, p. 203), "the forging of a trade mark is the application to goods of any figure, words, or marks, or arrangement or combination thereof, reasonably calculated to lead persons to believe that the goods are the manufacture

or the merchandise of some person other than the person whose manufacture or merchandise they really are; and this includes the name or initials of a person. The figures, words, or marks applied need not be an actual trade mark, or actual name or initials, provided they are a colourable imitation of the mark, name, or initials of a person carrying on business in connexion with goods of the same description, and are used without his authority."

The expression "trade mark" is thus defined by § 3 (1).

For the purposes of this Act—

The expression "trade mark" means a trade mark registered in the register of trade marks kept under the Patents, Designs, and Trade Marks Act, 1883, and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs, and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable.

See the consolidated instructions in the General Order, 1900 (*post*, p. 203).

By § 10 of the Patents, Designs, and Trade Marks

Act, 1883 (51 & 52 Vict. c. 50), the essential particulars of a trade mark are thus described:—

For § 64 of the principal Act (46 & 47 Vict. c. 57) 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 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 13th day of August, 1875, may be registered as a trade mark under this part of this Act.

The mark must be considered as a whole, and must contain at least one of the essential particulars (*Price's Candle Co.*, 27 Ch. D. 681). There is no copyright in a trade mark (*Farina* v. *Silverlock*, 24 L.J. Ch. 632); nor can a trade mark exist or be assigned in gross (*Cotton* v. *Gillard*, 44 L.J. Ch. 90; *Pinto* v. *Badman*, 8 P.C. 181), and the right to sue for using a trade mark registered under the Patents, &c., Act of 1883 is restricted to the particular class of goods in respect of which the trade mark was so registered (*Hart* v. *Colley*, 6 T.L.R. 220).

A trade mark registered under one of the classes given by the rules, but in respect of some particular articles in that class, will be protected under the Patents, &c., Act as to those articles only. A trade mark need not be actually affixed to the article. It is sufficient if the trade mark is on the cover or wrapper in which the article is sold (*Rugby Cement case*, 8 P.C. 240).

The common-law rights of a tradesman using a trade mark are not affected by the registration of

the trade mark, so that, if he has acquired a right to a trade mark as to a certain class of goods, and the trade mark as registered is confined to a part of that class of goods, he will be entitled to protection for the whole class of goods (*Jay* v. *Ladler*, 40 C.D. 649).

For particulars as to the registration of a trade mark, see §§ 62, 64, 75 (as amended by § 17 of the Patents, &c., Act, 1888), 76, 77, 78, 89, and 96 of the Patents, &c., Act, 1883, which is set out at length in the Appendix (pp. 245, 315).

Although unregistered trade marks are not protected by the Act as trade marks, such marks are to a certain extent protected by the provisions of the Merchandise Marks Act, 1887, in § 3 (2) and (3), viz. :—

(2) The provisions of this Act respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3) The provisions of this Act respecting the application of a false trade description to goods,

or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means, as applied to any goods, any name or initials of a person which—

(*a*) are not a trade mark or part of a trade mark, and

(*b*) are identical with, or a colourable imitation of the name or initials of a person carrying on business in connexion with goods of the same description, and not having authorised the use of such name or initials, and

(*c*) are either those of a fictitious person or of some person not bonâ fide carrying on business in connexion with such goods.

The case of *R.* v. *Burgoyne & Co.*, heard on Jan. 9, 1904, and reported in the Times of that date, is interesting as to the application to goods of "any such figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or

merchandise of some person other than the person whose manufacture or merchandise they really are."

In that case the defendants were charged on six summonses before the Lord Mayor of London, for that on Oct. 7 and 21, and on Nov. 13, 1903, they did apply a false trade description to goods called soda crystals, such description relating to the material of which the goods were composed, and on the first date did unlawfully sell, with a false trade description thereto applied, goods called soda crystals, such description relating to the material of which the goods were composed.

The defendants pleaded guilty to the summonses for applying a false trade description to the goods, and for selling the goods to which a false trade description had been applied.

The prosecution did not propose to proceed on the other summonses, alleging that there were applied to the goods in question marks so nearly resembling the trade mark of Messrs. Brunner, Mond & Co., Ltd., as to be calculated to deceive; and these summonses were withdrawn.

The prosecutors were Messrs. Brunner, Mond & Co., Ltd., the well-known alkali and soda manufacturers, and the question was whether certain stuff called soda crystals, but which was not soda crystals, could be honestly sold or not under that description. It had been ascertained that an enormous quantity of this

stuff had been imported into this country and got into a good many hands.

Soda crystals—the washing-soda of commerce—consisted principally of carbonate of soda with the water of crystallization; but in the preparation of soda crystals for the convenience of manufacture, in order to make the crystals less sticky, so that they could be crushed and put into the drying machine more conveniently, a very small percentage, which in honest manufacture was never more than 2 per cent. —in the prosecutor's case 1 per cent.—of sulphate of soda was added.

A practice had grown up of adulterating soda crystals—carbonate of soda—with sulphate of soda; the obvious advantage of that being that, whereas soda crystals cost £4 10*s.* per ton, sulphate of soda cost only £1 16*s.* per ton.

Sulphate of soda was called Glauber's salt, and was useless for washing purposes.

The defendants had been sending out to the trade letters asking for a trial order for their No. 1 quality soda crystals, and stating that the War Office and Admiralty used their soda, and it had passed their tests satisfactorily. A ton of the goods in question were ordered by a Mr. Drake from the defendants, and they were forwarded in bags marked "B.M.C." on their outside. Mr. Drake sent the goods on to the prosecutors, who caused them to be analysed by eminent analytical chemists, and it was found that

instead of containing 98 or 99 per cent. of carbonate of soda, they contained 9 to 10 per cent., and not less than 91 per cent. of Glauber's salt in the form of crystals.

As before stated, the prosecution did not offer any evidence on the summonses relating to the placing on the bags of the letters "B.M.C.," their object having been attained by the defendants' plea of guilty, but they asked for an order for the destruction of 4 tons of goods which were in the possession or under the control of the defendants.

For the defence it was urged that the defendants had only been in the trade since the previous May, and only dealt in these goods to a very small extent. The goods were imported from Belgium, and were bought on a representation from the seller that they contained 80 to 85 per cent. of carbonate of soda. The defendants were themselves deceived. The goods were obviously Glauber's salts, and could be sold as such, and it was a pity to destroy articles of commerce because an offence had been committed inadvertently against an Act of Parliament.

The Lord Mayor, in commenting upon the defence, said that if the defendants had taken the trouble to analyse the material, they would very soon have found out that a fraud had been perpetrated upon them. As the prosecutors did not press for a heavy penalty, he should only impose on the defendants a penalty of £5 on each of six summonses—£30 in all.

He would not make an order for destruction, as he did not see any necessity for it. The prosecutors did not ask for costs.

Other cases as to the use of any "figure, word, or mark" will be found *post*, pp. 57, 58.

Applying trade marks or marks or trade descriptions is defined by § 5, viz. :—

5.—(1) A person shall be deemed to apply a trade mark or mark or trade description to goods who—

(*a*) applies it to the goods themselves; or

(*b*) applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or

(*c*) places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or

(*d*) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connexion with which it

is used are designated or described by that trade mark or mark or trade description.

(2) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression "label" includes any band or ticket.

A trade mark, or mark, or trade description, shall be deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing.

(3) A person shall be deemed to falsely apply to goods a trade mark or mark, who without the assent of the proprietor of a trade mark applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

A trade mark need not be actually affixed to the article. It is sufficient if the trade mark is on the cover or wrapper in which the article is sold, or in circulars or advertisements offering them for sale (*Jay* v. *Ladler*, 40 C.D. 649); or on a slip placed in a package with it, or on a show-card to which the goods are attached (*Chameleon Patents, &c., Co.* v.

Marshalls, 17 R.P.C. 527). There is an infringement of the plaintiff's trade mark if use be made of his labels (*Farina* v. *Silverlock*, 26 L.J. Ch. 11; *Guinness* v. *Ullmer*, 10 L.T. O.S. 127), marked or stamped bottles (*Rose* v. *Henley*, 47 L.J. Ch. 577), casks (*Hennessey* v. *Cooper*, Seb. Dig. 327), or boxes (*Barnett* v. *Leuchars*, 13 L.T. N.S. 405), by the defendant, unless the defendant shews that he is selling the genuine goods of the plaintiff. The question simply is, "Under the circumstances was, what was done by the defendant calculated to deceive?"

In *Rugby Portland Cement Co., Ltd.* v. *Rugby & Newbold Portland Cement Co., Ltd.* (8 P.C. 240), Vaughan-Williams, J., said: "I am for my own part not at all sure that you can prove an infringement of a trade mark without proving that the defendants have imitated the plaintiff's trade mark upon something capable of receiving the impression of the mark. Either the material itself, or the paper which is used, or the sacks, or bags, or boxes, or whatever the material is put into, I should have thought, must have been imitated to constitute an infringement of a trade mark."

See also cases in Chapter II.

The false application must be without the assent of the proprietor.

The proprietor means the registered proprietor (see § 78 of the Patents, &c., Act of 1883), or his

assignee; for when a trade mark has been registered, an assignee of the registered proprietor can bring an action to prevent the use of the trade mark without having registered the assignment (*Ililee* v. *Henshaw*, 31 C.D. 323). It is submitted that this principle will be applied to cases under the Merchandise Marks Acts.

"Proprietor" includes any body of persons corporate or unincorporate (see § 3 (1)).

It was held in *Condy* v. *Taylor* (1887) (56 L.T. N.S. 891) that a manufacturer who sells to a dealer in bulk an article usually sold and used in small quantities, without any restriction as to its disposal, must be taken to authorise the dealer so to sell it as being his (the vendor's) manufacture. The dealer may therefore call the article by the name registered by the manufacturer as his trade mark.

For the special defence of persons employed in the ordinary course of business charged with offences under § 5, see § 6, viz. :—

6. Where a defendant is charged with making any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description,

or causing any of the things in this section mentioned to be done, and proves—

(*a*) that in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for making, or being used in making, trade marks, or as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the United Kingdom, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

(*b*) that he took reasonable precautions against committing the offence charged; and

(*c*) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and

(*d*) that he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or description was applied,

he shall be discharged from the prosecution, but

shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

Cases such as *Wood* v. *Burgess* (59 L.J.M.C. 11) come within this section. In that case a mineral water manufacturer, who had in his possession for sale mineral water to which a false trade description within the meaning of § 3 of the Act was applied, by reason of the bottles containing the mineral water being stamped with the name and initials of another mineral water manufacturer without his authority, was held to be guilty of an offence against § 2 of the Act, although he had placed on the bottles paper labels, and sent out with them invoices bearing his own name, and had no intent to defraud the purchasers, none of these things, however, constituting proof that he had "acted innocently" within the meaning of the section. The magistrate had held that the respondent had no intent to defraud, and therefore must be taken to have "acted innocently." On appeal it was decided that the magistrate was wrong, for the intent to defraud the purchaser was not a necessary ingredient of the offence charged.

By § 3 (1) the expression "trade description" means any description, statement, or other indication, direct or indirect,

(*c*) as to any goods being the subject of any existing patent, privilege, or copyright. . . .

§ 105 of the Patents, &c., Act, 1883, enacts :—

(1) Any person who represents that any article sold by him is a patented article when no patent has been granted for the same, or describes any design or trade mark applied to any article sold by him as registered when it is not so, shall be liable for every offence, on summary conviction, to a fine not exceeding £5.

(2) A person shall be deemed, for the purposes of this enactment, to represent that an article is patented, or a design or a trade mark is registered, if he sells the article with the word "patent," "patented," "registered," or any word or words expressing or implying that a patent or registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to the article.

It will thus be noticed that the improper use of the word "patent" is dealt with by two statutes; but under the Merchandise Marks Act the law is more stringent; for, whereas under § 105 of the Patents, &c., Act of 1883 *no offence is committed* if there has ever been a patent granted which has ceased to exist, under the Merchandise Marks Act there is no such limitation, and an offence is committed against the Act unless a patent is actually in existence, and independently of an intention to defraud.

The Patents, Designs, and Trade Marks Act, 1883, provides generally that a person shall not be entitled to institute any proceedings to prevent or to recover damages for the infringement of a trade mark, unless, in the case of a trade mark capable of being registered under that Act, it has been so registered, or in pursuance of an enactment repealed by that Act, or in the case of any other trade mark in use before the passing of the Act of 1875, registration thereof under that Act or an enactment repealed by that Act has been refused (§ 77). Also that a trade mark must be registered as belonging to particular goods or classes of goods (§ 65); and when registered shall be assigned and transmitted only in connexion with the goodwill of the business concerned in such particular goods or classes of goods, and shall be determinable with such goodwill (§ 70), but, subject as aforesaid, registration of a trade mark shall be deemed to be equivalent to public use of such mark; and that the registration of a person as proprietor of a trade mark shall be primâ facie evidence of his right to the exclusive use of such trade mark, and shall, after the expiration of five years from the date of such registration, be deemed conclusive evidence of his right to the exclusive use of such trade mark, subject to the provisions of the Act as to its connexion with the goodwill of a business (§ 76).

A mark, however, which cannot be the subject of a trade mark, and which, therefore, cannot be properly

registered as such, cannot acquire the character of a trade mark by being registered for five years; and no trade mark of a nature similar to one already registered, or very nearly resembling it, is to be registered in respect of the same goods or class of goods (*re Palmer's Trade Mark*, 24 C.D. 504; *re Wragg's Trade Mark*, 29 C.D. 551).

Dealing with the cases under § 105 of the Patents, &c., Act, 1883, the use of the word "patent" in a trade mark for goods not manufactured under an existing patent has led to much litigation. As Mr. Justice Kekewich pointed out in *Hubbuck* v. *Brown* (17 P.C. 148, 156): "The circumstances under which the word 'patent' was used here was certainly peculiar, but if the question had really called for decision, I do not think that it would have been possible to avoid an examination of the authorities cited, which cannot, it seems to me, be easily reconciled under one general rule."

The nearest approach to a general rule seems to be that each case depends on whether the use of the word "patent" is in fact falsely intended to represent that a patent right exists which in reality does not exist.

In *Cheavin* v. *Walker* (5 C.D. 862, C.A.), where the defendant, who had been in the employment of the plaintiff, issued labels bearing the words "S.C.'s improved patent gold-medal self-cleaning rapid-water

filters, improved and manufactured by Walker & Co.," the said patent filters being also manufactured and sold by the plaintiff, but the patent for them had been allowed to lapse, the Court of Appeal held that the label was not a trade mark, but only a description, and there was nothing in the defendant's label which was calculated to mislead the public.

JESSEL, M.R., said: "No doubt a man may use the word 'patent' so as to deceive no one. It may be used so as to mean that which was a patent, but is not so now. In other words, you may state in so many words, or by implication, that the article is manufactured in accordance with a patent which has expired. But if you suggest that it is protected by an existing patent, you cannot obtain the protection of that representation as a trade mark. Protection only extends to the time allowed by the statute for the patent, and if the court were afterwards to protect the use of the word as a trade mark, it would be in fact extending the time for protection given by the statute. It is, therefore, impossible to allow a man who has once had the protection of a patent to obtain a further protection by using the name of his patent as a trade mark. But, further, no man can claim a trade mark in a falsehood. It is a falsehood to represent that the patent is still subsisting."

In the *Leather Cloth Co.* v. *American Cloth Co.* (11 H.L. Cas. 523), Lord Kingsdown said: "If a

trade mark represents an article as protected by a patent, when in fact it is not so protected, it seems to me that such a statement, primâ facie, amounts to a misrepresentation of an important fact, which would disentitle the owner of the trade mark to relief in a Court of Equity against any one who pirated it."

In *Edelsten* v. *Vick* (11 Hare 78) the plaintiffs, who represented the original patentees of an article, the patent for the manufacture of which had expired, continued to use labels on their goods printed from the original blocks belonging to the patentees, on which labels the goods were described as "patented." The defendants adopted and issued labels closely resembling those of the plaintiffs'. And under such circumstances, although the description of the plaintiffs' goods on their labels as being "patented" had ceased to be strictly true, the court granted an injunction restraining the defendants from using labels bearing an inscription appearing to designate the goods contained therein as being manufactured by the plaintiffs.

But in *Flavell* v. *Harrison* (22 L.J. Ch. 866), on motion by the manufacturer and seller of an unpatented article invented by his father, and called after his own name, and known as "Flavell's Patent Kitchener," the court refused an injunction to restrain a defendant from selling similar articles under the same name and description, but reserved the motion for six months, with liberty for the plaintiff

to bring an action at law. The court also refused to restrain the defendant from using the name of the plaintiff in selling the above articles (not representing them to be of the plaintiff's manufacture) on the ground that the plaintiff had been aware of the fact for four months previously to filing his bill.

It need not be proved that anybody has been deceived; there need be no proof of actual deceit; there need be only proof of acts likely to deceive (*Jay* v. *Ladler*, *supra*, p. 40).

In the case of *Cockrane* v. *McNish* (1896, A.C. 225), where in an action by the appellant, who had registered his English trade mark of "Club Soda" in Jamaica, under law 17 of 1888, it appeared that the respondents persisted in selling their goods under the same name in a way calculated to deceive, it was held that the appellant was not disentitled to relief merely because he had printed on his label the words "Manufactured in Ireland by H.M. Royal Letters Patent." Those words, explained by the evidence to relate to the patented machinery, did not necessarily represent or induce belief contrary to the fact that the ingredients of their article were patented. Although it was held that the words used were not likely to deceive any one, it is hard to understand with what other object the words were used.

There is, however, no offence created by the use

of the word "patent" as a generic term applied to such articles as "patent" leather, "patent" medicines, to denote a particular and well-known kind; for instance, in *Gridley* v. *Swinborne* (5 T.L.R. 71), the facts of which case will be set out in Chapter III., pp. 106–108.

LORD COLERIDGE, C.J., in giving judgment, said: "The next question was whether there was a false description as to an existing patent. There might be circumstances which would point to fraud if an article was said to be a patent substance when it was not, but where the original patentee, carrying on the patent process as before, merely continued his old labels, which gave a description of the goods as being 'patent' goods, there was not any necessary inference of fraud, and the tribunal, whether Lord Mayor or jury, could decide on that fact."

In *Marshall* v. *Ross* (L.R. 8 Eq. 651) the use of the word "patent" as part of the description in a label or trade mark of goods not protected by a patent, was held to be not such a misrepresentation as to deprive the owner of his right to be protected against an infringement of his label, where the goods have, from the usage of many years, acquired the designation, in the trade generally, of "patent." The goods in question were known as "Patent Thread," by which name linen thread of a certain class or description is, and for many years past has been, known by thread manufacturers and the trade as such.

In *Morgan* v. *McAdam* (L.J. 36 Ch. 228), where the plaintiffs purchased from a firm established in the United States knowledge of a secret mode of making crucibles, which had acquired a reputation in America as "Patent Plumbago Crucibles," although the process was never patented, it was held that the plaintiffs could not maintain a bill to restrain others from pirating the designation.

It will thus be seen that the use of the word "patent," as applied to an unpatented article, is only actionable when it is intended thereby to suggest that the article is protected by an existing patent; but if the use of the word is not misleading, as, for instance, if applied to a class of goods, which from the usage of many years have acquired that designation in the trade generally, no action can be taken against such use of the word.

In *R.* v. *Wallis* (3 P.C. 1) the defendant was selling a lamp as a patented article when no patent had been granted for it, although a provisional specification had been filed. On a summons under § 105 it was held that the burden was on the defendant to prove the patent under which he justified the use of the term "patent"; that he was not entitled to use that term because a provisional specification had been filed, and that not having justified his use of the term, a fine must be imposed under the section.

In *R.* v. *Crampton* (3 P.C. 367) the defendant applied for a patent for electric bells, and subsequently,

before the patent had been granted, sold several electric bells stamped with the word "patent." Thirteen summonses were applied for against him by the Patents Investment Company in respect of the sale of such bells, and one was issued. Upon its coming before the magistrate, the other twelve were withdrawn. The magistrate held that the full penalty of £5 ought to be imposed, with £1 3*s.* costs.

In *R.* v. *Townsend* (13 P.C. 265), where a sale of chairs marked with the word "patent" was made, a patent had been applied for, but was not then granted, but a complete specification had been accepted by the Comptroller, the learned magistrate, Mr. Bushby, dismissed the summons on the grounds (1) that § 105 was not aimed at this species of transaction, and (2) that as § 15 of the Act gave the defendant the like privileges and rights as if a patent for the invention had been sealed on the day on which the Comptroller-General had accepted his complete specification, he was entitled to mark with the word "patent" goods made in accordance with that specification.

On the other hand, however, in *R.* v. *Henry Grueber* (Times, Nov. 20, 1894), the defendant sold a disc or medallion on which was marked "Patent," and which contained an advertisement on one side and a calendar on the other. Full specifications of the defendant's article had been accepted at the patent office, but no patent had at that time been granted. The

complainant, a patentee of a similar article, had opposed the defendant's patenting his medallion. In spite of the fact that the full specifications of the defendant's article had been accepted at the patent office, Sir Joseph Savory fined the defendant 20s., and 23s. costs.

In *R.* v. *Vaughan* (Times, Feb. 25, 1888) the defendants were summoned under the Merchandise Marks Act for selling rim-lock furniture stamped "Vaughan's Patent," for which there was no existing patent. For the defence it was alleged that the articles were supplied through the carelessness of a servant of the defendants', who had ceased to falsely describe the furniture. As it was the first case under the Act at Wolverhampton, the defendants were fined 40s. and costs only.

In *R.* v. *Price & Neuschild* (Times, Feb. 1, 1899) the defendants were charged with having unlawfully represented that a certain design or trade mark applied to a piece of china sold by them was a registered design or trade mark contrary to § 105 of the Patents, &c., Act, 1883; also with having used in connexion with their business, without authority from her Majesty, or any of the royal family, or any Government Department, the Royal Arms; also with selling and exposing for sale goods to which a false trade description had been applied. The defendants had sold china ornaments, stamped with the Royal Arms, and bearing the words "Royal Saxon," "Made

in Saxony." For the defence it was attempted to distinguish between real Dresden china and that sold by the defendants, and it was alleged that the defendants had no reason to think that Leichte, where the goods came from, was not in Saxony. A fine of £3 and 2 guineas costs was imposed.

In *R.* v. *Attenborough* (Times, May 5, 1900) the defendant exposed for sale certain china with the forged trade mark of the royal manufactory of porcelain of Saxony (Dresden china). The defence was that before the registration of Dresden trade marks in 1875, crossed swords were often used, and the clock in question was made long before that. The summons was withdrawn on the defendant undertaking to grind out the forged marks.

In *Wright, Crossley & Co.* v. *William Dobbin & Co.* (15 P.C. 21), the defendants, merchants in Belfast, sold a box of baking-powder labelled "Trade Mark—Royal—Registered," and on the obverse side "Manufactured by Royal Baking Powder Company, New York." The trade mark was registered in the United States of America, and had been registered in the United Kingdom, but seven weeks previously to the sale had been expunged from the register in this country. The defendants were prosecuted under § 105 for describing the trade mark as registered, and the magistrates dismissed the summons, but stated a case as to whether the Act had been infringed. It was held that the use of the word

"registered" amounted to a representation that the trade mark was registered in the United Kingdom, which was not affected by the words describing where the article was manufactured, and that the magistrates ought to have convicted the defendants.

McSymons Stores, Ltd. v. *Shuttleworth* (15 P.C. 748) was a similar case of selling a tin or box of "Royal Baking Powder" similar to that which had been sold in *Wright* v. *Dobbin*.

But in *Sen Sen Co.* v. *Britten* (1899, Ch. Div. 692) it was decided that the use by a trader on his goods of the words "trade mark" in connexion with a particular mark which he has used as a trade mark, but for which he has not obtained registration, does not necessarily imply that the trade mark is registered so as to constitute an offence under § 105; and, apart from § 105, is not of itself such a misrepresentation as to disentitle him to relief in an action to restrain the imitation of the get up of his goods.

The law with regard to trade marks and trade names is fully discussed in the recent cases of—

The Grand Hotel Co. of Caledonia Springs, Ltd. v. *Wilson & Others* ("Caledonia Springs")	20 T.L.R. 19.
N. K. Fairbank Co. & Cocos Butter Manufacturing Co. ("Cottolene," "Cocosoline")	20 T.L.R. 53.

Fels v. *Thomas Hedley & Co., Ltd.* ("Naphtha")	20 T.L.R. 69.
In re Burroughs, Wellcome & Co.'s Trade Mark. Burroughs, Wellcome & Co. v. *Thompson & Capper* ("Tabloid")	20 T.L.R. 111.
The same (affirmed on appeal)	20 T.L.R. 415.
Christy v. *Tipper* ("Absorbine")	20 T.L.R. 200.
In re Anglo-Swiss Condensed Milk Co.'s Trade Mark. The Anglo-Swiss Condensed Milk Co. v. *Pearks, Gunston & Tee, Ltd.* ("Milkmaid Brand")	20 T.L.R. 238.
Boord & Son v. *Huddart* (Gin. "Cat Brand")	20 T.L.R. 142.

Section 3 (1) after clause (*c*) goes on to enact that "the use of any figure, word, or mark, which according to the custom of the trade is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Act.

The only matter with which we are concerned in this chapter is clause (*c*), which we have already discussed.

We have also (pp. 35–39) dealt with at length the case of *R.* v. *Burgoyne & Co.* in connexion with § 3

(2) and (3), with reference to the application of goods of any figures, words, or marks, &c.

The word "figure" means a numeral (*cep. Stephens*, 3 Ch. Div. 659).

In *Cameron* v. *Wiggins* (1901, 1 K.B. 1) it was held that any writing or mark, however unintelligible without explanation, may be orally explained by the vendor at the time of sale, independently of any custom of the trade, and may thus constitute a sufficient trade description for the purposes of the Act.

In *Ransome* v. *Graham* (51 L.J. Ch. 897) it was held that combinations of letters may constitute valid and registerable trade marks, notwithstanding that they indicate the quality and pattern of the goods to which they are applied, if, but not unless, they also indicate that the goods have been manufactured by a particular person or firm. The plaintiffs manufactured ploughs and wearing parts of ploughs, and in order to distinguish the various makes, patterns, and sizes, they stamped the different wearing parts with letters or combinations of letters, such as "R.N.D.," "R.N.E.," "R.N.F.," &c., and also with numerals which referred to the sizes and shapes of the several parts, so that a purchaser of one of the plaintiffs' ploughs, who required a new wearing part, could obtain an article of the plaintiffs' manufacture, which would accurately fit his plough, by quoting the letters stamped on it. It was held that the plaintiffs had established their right

to the exclusive use of these combinations of letters, which were valid trade marks, notwithstanding that they were also indicative of the pattern and quality of the goods to which they were applied.

Hence a trade description may be a trade mark.

In *Watson* v. *Dr. Jaeger's Sanitary Woollen System Co.* (13 T.L.R. 150) the respondent was summoned under § 2 (1), charged with unlawfully causing to be applied a false trade description, to wit, a mark purporting to be an English trade mark, to goods of German manufacture. It was proved that the appellant bought a vest from the respondent upon which was imposed a stamp by way of trade mark containing the words, "Dr. Jaeger's Sanitary Woollen System Co., sole concessionaries, pure wool, warranted." The vest was of German manufacture, and the trade mark was stamped on it after its importation into England. Evidence was tendered as to whether, according to the custom of the trade, the imposition of an English trade mark, or a trade mark with English words, indicated, by such custom, that the goods on which it was imposed were made in England. Evidence was also tendered of statements made by the salesman at the time of sale, but the Lord Mayor refused to admit the evidence, and dismissed the information on the ground that the imposition of the respondent's trade mark on the vest was not such a use of a "mark" as defined by § 3 (1) as to constitute its application to such goods a "false trade description" as therein

defined. The Divisional Court remitted the case to the Lord Mayor, Mr. Justice Wright remarking: "This case must go back. It is impossible to say what the Lord Mayor asks us to decide. The case must go back with the direction that the evidence sought to be given is admissible. The trade mark may be a false description, and the appellant may call any evidence he likes to shew that it is so."

In *exp. Nassau, re Horn* (2 T.L.R. 339), it was held that there was no such custom in the furniture trade for goods to be supplied to dealers on "sale or return" as to prevent the operation of the reputed ownership clause (§ 44, subsec. 3) of the Bankruptcy Act, 1883. Such custom must amount to a custom of the trade of so notorious a character that any one making inquiry of persons cognizant of the trade might ascertain it to be a custom.

By the Merchandise Marks Act of 1891, § 1, the Customs entry relating to imported goods shall, for the purposes of the Merchandise Marks Act, 1887, be deemed to be a trade description applied to the goods.

In many instances, goods, often being articles for consumption, and frequently adulterated, are imported bearing no trade description, as defined by §§ 3 and 5 of the Merchandise Marks Act of 1887. Consequently they could not be detained by the Customs authorities under § 3. The amending Act of 1891 has altered this. The Customs entry is made from the bill of lading, which is a memorandum signed by masters

of ships, in their capacity of carriers, acknowledging the receipt of merchants' goods, and is evidence of the title to the goods shipped; and by its endorsement and delivery, the transfer of the property in the goods specified therein is generally effected. The statement made for the purposes of customs as to the name of the place from which the goods came, the number of the packages, and the quantity and description of the goods, is signed by the importer or his agent, and declared by him to be true.

In the recent case of *Bow* v. *Hart* (20 T.L.R. 651) it was held that a trade mark is not a franchise within the meaning of § 56 of the County Courts Act, 1888, and that where the plaintiff brought an action in a County Court for the infringement of a registered trade mark, and the defendant gave notice that he intended to contest the validity of the trade mark, and to apply to the High Court to have it expunged from the register, the County Court had jurisdiction to entertain the action for infringement.

By § 17, on the sale or in the contract for the sale of any goods to which a trade mark, or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of

this Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

The following prosecutions have been brought under the Merchandise Marks Act for applying a false trade mark to goods:—

R. v. *Tweedy* (Times, Oct. 17, 1893). Applying a false trade mark to "Guinness's Extra Stout." It was shewn on analysis that nearly 8 gallons of water had been added to 36 gallons of stout. Fined £24.

R. v. *Besser* (Times, June 28, 1899). Falsely applying to brandy the trade mark of Martell & Co. A bottle labelled "Martell's Three Star Brandy" was bought and emptied, and put on one side by a barmaid. It was afterwards filled up from another brand. A customer asked for a pint of Martell's "Three Star" brandy to take away with him, and was served from the bottle filled up as aforesaid. Committed for trial.

R. v. *Welsh* (Times, Oct. 31, 1899). Infringing the trade mark of Messrs. Hennessy. Martell's "Three Star" brandy was asked for by a customer, and the defendant served him from a bottle bearing Messrs. Hennessy's label—"One Star"—which, when empty, was taken to a tap and filled up. Fined £15, and 10 guineas costs.

R. v. *Brown & French* (Times, March 2, 1901). Infringing the trade mark of Hennessy & Co. The

defendants disposed of bottles sealed and bearing the "Three Star" labels of Messrs. Hennessy, representing them to contain brandy, whereas they contained vinegar and water. One month's hard labour.

R. v. *Horrigan* (Times, Nov. 13, 1901). Causing the trade mark of S. Allsopp & Sons to be applied to three bottles of stout. There were similar charges in respect of the trade marks of four other brewers. It was contended for the defence that no trade mark had been falsely applied, as it was the practice for manufacturers, when serving a customer, to receive from the latter an equal number of empty bottles without regard to what might be stamped on them. Fined £10, and £15 costs.

R. v. *Pratt* (Times, May 29, 1902). Selling in bottles labelled "Old Pale Martell's Cognac Brandy" a raw, young, fiery spirit, doctored up for the purposes of sale, and highly diluted. The manager fined £20, and 10 guineas costs, or three months' imprisonment; and the barman £5, and 2*s.* costs, or one month's imprisonment.

R. v. *Kate Clarke* (Times, May 15, 1889). A barmaid took an empty bottle labelled "Martell's Three Star Brandy" to the defendant, and under her directions filled it with ordinary British brandy and then served customers with it. Fined £10, and £7 16*s.* 6*d.* costs.

CHAPTER II

"SO NEARLY RESEMBLING A TRADE MARK AS TO BE CALCULATED TO DECEIVE"

THESE words are used in § 2 (1) (*b*), and in § 2 (2), and in § 4 (*a*), and in § 5 (3), and in § 6; but in § 3 (2) the words used are "reasonably calculated to lead persons to believe that the goods are," &c., which is but another way of saying the same thing.

The application of this phrase has been the subject of much argument, and, although the question is merely one of fact to be determined by the circumstances of each particular case, the various cases illustrating its application are being repeatedly cited as analogous to the case in dispute.

It is therefore proposed to discuss briefly some of the authorities on the subject—

Where a trade mark is not actually copied, the gist of the offence is the fraudulent imitation of it. The fraudulent intention is presumed against the defendant, on whom is shifted the burden of proving the contrary (*Wotherspoon* v. *Currie*, L.R. 5 H.L. 508).

No trade has a right to use a trade mark so nearly

resembling that of another trader as to be calculated to mislead incautious purchasers. The use of such a trade mark may be restrained by injunction, although no purchaser has actually been misled; for the very life of a trade mark depends on the promptitude with which it is vindicated (*Johnson* v. *Orr-Ewing*, 7 App. Cas. 219).

In *In re The Trade Mark of La Société Anonyme des Verreries de L'Étoile* (1894, 1 Ch. 61; 2 Ch. 26), it was held that if B. & Co. (dealers in London in window glass purchased in Belgium, and shipped to the Colonies), whose registered trade mark was "Star Brand," had been opposing the registration of the respondent's mark, namely, "Red Star Brand," the Comptroller would have been justified in refusing to register it, on the ground that "it so nearly resembled B. & Co.'s mark as to be calculated to deceive."

In *Copley* v. *Kirk* (84 L.T. Jo. 140 (1887)) the defendant was charged under § 2 (1) (*b*) of the Merchandise Marks Act, 1887, with falsely applying, and causing to be applied to certain goods, to wit, pocket-knives, a certain mark so nearly resembling a trade mark of John Copley & Sons "as to be calculated to deceive." The defendant had sent knives marked "K.K."—not a registered mark—to India to the same market as the plaintiffs sent their knives, which were marked "X.X.," which was a registered mark.

For the defence it was urged that—

(1) there was no proof that the mark was ordered to be struck since August 23, 1887 (when the Merchandise Marks Act of 1887 came into operation);

(2) it was not calculated to deceive; and

(3) the defendant acted without intent to defraud.

The stipendiary magistrate at Sheffield held that—

(1) the agency was proved;

(2) the mark was calculated to deceive, because it was likely to deceive Hindoos ignorant of English characters; and

(3) the defendant had been careless, but had not apparently intended to defraud, and dismissed the information without costs.

In *Lever* v. *Goodwin* (36 C.D. 1) (1886) the defendants, soap manufacturers, brought out their soap in packets "so closely resembling" those in which the plaintiffs—also soap manufacturers—had been in the habit of bringing out their soap, "as to be calculated to deceive" purchasers. It was held by Chitty, J., that, although retail dealers, who bought soap from the defendants, would not be deceived, the defendants, by their imitation of the plaintiffs' packets, put into the hands of retail dealers an instrument of fraud, and ought to be restrained. An injunction was granted, and an account directed to be taken of the profits made by the defendants in selling soap in the form in which it was held they were not entitled to sell it. On

appeal it was held that the injunction was rightly granted, and the account directed to be taken was in proper form, and ought not to be limited by excluding from it soap which the retail dealers sold to persons who bought it as the defendants' soap.

In *R.* v. *Ingold* (Times, Jan. 21, 1896) the defendant was indicted for falsely applying, or causing to be applied, a mark "so nearly resembling" the trade mark of the Edison & Swan United Electric Light Co., Ltd., "as to be calculated to deceive." The defendant had imported lampholders made in Germany, and had them marked "Edison & Swan." He was found guilty, and sentenced to nine months' imprisonment without hard labour.

It need not be proved that any one has been deceived; it is sufficient if proof be given of acts likely to deceive (*Jay* v. *Ladler*, 40 C.D. 649).

The same principle applies to the unauthorised use of the Royal Arms (see § 20).

In *R.* v. *Webber* (Times, Feb. 2, 1897) the defendant, a butcher, was charged with assuming in connexion with his business, without the authority of Her Majesty, or any of the Royal Family, or any Government department, the Royal Arms, or arms "so nearly resembling the same as to be calculated to deceive, or to lead persons to believe" that he carried on his trade by or under such authority. The defendant was under the apprehension that, having purchased for £100 in 1888 a bullock that had been

bred at the Royal Farm at Windsor, he was entitled to use the Royal Coat of Arms. An order had been sent to the defendant to forward to Osborne a joint weighing 36 lbs. of the sirloin cut from the animal. It was contended for the defendant that he was entitled to use the Royal Arms, because he had patented certain improved means of hanging carcasses of meat in his shop, and he was then the patentee of that invention, the Patent Office being a Government department, and the document he held bearing the Royal Arms. The defendant was fined £15, and 5 guineas costs.

In *R.* v. *William Edmonson* (Times, May 14, 1903) the defendant—managing director to J. R. Wood & Co., Ltd., coal merchants—was charged with assuming, and using in connexion with their trade, the Royal Arms, or arms "nearly resembling" the same, without the authority, &c. It was contended that, since Messrs. J. R. Wood & Co., Ltd., were contractors to His Majesty's Government, they were entitled to use the Royal Arms, which they had used for 25 years. The defendant was fined £10, and 5 guineas costs.

See also *R.* v. *Glave* (Times, May 8, 1903), and *R.* v. *Price & Newschild* (*supra*, p. 54).

The principle was applied in the cases cited in Chapter I., on pp. 56, 57, and in many other reported cases; but, as before stated, it is in reality a question of fact, and each case must be judged by its own

circumstances. It must be proved, however, in an action to restrain a colourable imitation of the make-up of goods, that beyond all question the goods were so got up "as to be calculated to deceive" (*Payton* v. *Snelling*, 70 L.J. Ch. 644 (1900)). Whether a customer would be likely to be deceived is not a proper question to put to a witness, for it is for the court, and not for the witness, to decide after inspection of the exhibits, and having regard to the evidence, whether a customer would be likely to be deceived by the make-up of the goods (*Payton* v. *Snelling*, *supra*).

The principle that "nobody has any right to represent his goods as the goods of somebody else" (*Reddaway* v. *Barham* (1896), A.C. 199, 204) has no limit as regards name, origin, honesty of manufacture or sale, or otherwise. Thus a trader, whose goods have acquired a reputation under a particular name, can restrain the user of that name in any way whatever by a rival trader in connexion with the latter's own goods, even though that reputation has been acquired by the exertions or enterprise of the rival trader as an importer and vendor on behalf of the plaintiff.

In an action for an injunction to restrain the use of a trade name, if the defendant's goods, on the face of them, and having regard to surrounding circumstances, are "calculated to deceive," evidence to prove the intention to deceive is unnecessary, the rule being that a man must be taken to have intended the

reasonable and natural consequences of his own acts; but if, on the other hand, a mere comparison of the goods, having regard to surrounding circumstances, is not sufficient, then evidence of intention to deceive is admissible, and this evidence may be supplied by admissions, oral or in writing, or by inference from conduct (*Saxlehner* v. *Apollinaris Co.* (1897), 1 Ch. 893).

But in *Cockrane* v. *McNish*, the facts of which case are set out in Chapter I., on p. 50, it was held that the appellant was not disentitled to relief merely because he had printed on his label words possibly equivocal, but capable of explanation.

In *Reddaway* v. *Barlam* (1896, A.C. 199) the plaintiff had for some years made belting and sold it as "Camel Hair Belting," a name which had come to mean in the trade the plaintiff's belting and nothing else. The defendant, who had been in the plaintiff's employment, began to sell belting made of the yarn of camel's hair, and stamped it "Camel's Hair Belting," so as to be likely to mislead purchasers into the belief that it was the plaintiff's belting, endeavouring thus to pass off his goods as the plaintiff's. In its primary meaning the name was a true description of the goods. It was held by the House of Lords that the plaintiff was entitled to an injunction restraining the defendant from using the words "Camel Hair" as description of or in connexion with belting made or sold or offered for sale by him, and not manufactured by the plaintiff, without clearly distinguishing

such belting from the plaintiff's belting. Lord Halsbury, L.C., in giving judgment, said: "My Lords, I believe in this case that the question turns upon a question of fact. The question of law is so constantly mixed up with the various questions of fact which arise on an inquiry of the character in which your Lordships have been engaged, that it is sometimes difficult, when examining former decisions, to disentangle what is decided as fact and what is laid down as a principle of law. For myself, I believe the principle of law may be very plainly stated, and that is, that nobody has any right to represent his goods as the goods of somebody else."

It is no offence to adopt the use of a word merely denoting quality; for instance, in *Raggett* v. *Findlater* (L.R. 17 Eq. 29) an injunction to restrain the use by the defendants upon their trade label of the term "Nourishing Stout" was refused on the ground that "nourishing" was a mere English word denoting quality.

Cf. R. v. *Bryan* (*supra*, p. 28).

For other illustrations of what is "calculated to deceive," see—

Siegert v. *Findlater* (L.R. 7 Ch. D. 801) [Angostura Bitters].

Worthington & Co.'s Trade Mark (14 Ch. D. 8) [Bass & Co.'s Triangle trade mark].

Eno v. *Dunn* (15 App. Cas. 252) [Fruit salt].

Wotherspoon v. *Currie* (5 L.R. H.L. 508) [Glenfield starch].

Cocks v. *Chandler* (11 Eq. 446) [Original Reading sauce].

Ford v. *Foster* (7 Ch. 611) [Eureka shirts].

Slazenger v. *Feltham & Co.* (6 R.P.C. 531) ["Demon" and "Demotic" racquet].

Farina v. *Silverlock* (24 L.J. Ch. 632; 26 L.J. Ch. 11) [Labels on eau de Cologne].

Singer v. *Loog* (8 App. Cas. 15) [Singer sewing machines on the Singer system].

Cheavin v. *Walker* (5 C.D. 850) [Filters labelled "Patent"].

Nassau v. *Thorley's Cattle Food Co.* (14 C.D. 748 [Thorley's food for cattle].

Hendriks v. *Montagu* (17 C.D. 638) [Universal Life Assurance Society].

Jay v. *Ladler* (40 C.D. 649) [The Lady and the Bear trade mark].

Rodgers v. *Rottgen* (5 T.L.R. 678) [Copy of label].

Seixo v. *Provizende* (L.R. 1 Ch. 192) [Brands on casks of wine].

Somerville v. *Schembri* (12 App. Cas. 453) [Kaisar-i-hind cigarettes].

Newman v. *Pinto* (4 P.C. 508, 519) [Pictures on cigar-boxes].

In this connexion it may be mentioned that on the sale of goods by a manufacturer of such goods, who is

not otherwise a dealer in them, there is, in the absence of any usage in the particular trade, or as regards the particular goods, to supply goods of other makers, an implied contract that the goods shall be those of the manufacturer's own make (*Johnson* v. *Raylton*, 7 Q.B.D. 438); and fraud is not necessary to be averred or proved in order to obtain protection for a trade mark (*Singer* v. *Wilson*, L.R. 3 App. Cas. 376).

CHAPTER III

FALSE TRADE DESCRIPTION

By § 2—(1) Every person who—

(*d*) applies any false trade description to goods,

shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be guilty of an offence against this Act.

By subsection (2), every person who sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any [forged trade mark or] false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—

(*a*) that having taken all reasonable precautions against committing an offence against this Act, he had at the time of

the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description ; and

(*b*) that on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things ; or

(*c*) that otherwise he had acted innocently ;

be guilty of an offence against this Act.

"Trade description" and "false trade description" are defined by § 3 (1).

3.—(1) For the purposes of this Act—

The expression "trade description" means any description, statement, or other indication, direct or indirect,

(*a*) as to the number, quantity, measure, gauge, or weight of any goods, or

(*b*) as to the place or country in which any goods were made or produced, or

(*c*) as to the mode of manufacturing or producing any goods, or

(*d*) as to the material of which any goods are composed, or

(*e*) as to any goods being the subject of an existing patent, privilege, or copyright,

and the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Act:

The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Act:

The expression "goods" means anything which is the subject of trade, manufacture, or merchandise.

The rest of this section (§ 3), and § 5 (1) and (2), and § 6, also refer to "trade descriptions" and "false trade descriptions," namely—

§ 3 (2) The provisions of this Act respecting the

application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods, any name or initials of a person which—

(*a*) are not a trade mark or part of a trade mark, and

(*b*) are identical with, or a colourable imitation of the name or initials of a person carrying on business in connexion with goods of the same

description, and not having authorised the use of such name or initials, and

(*c*) are either those of a fictitious person or of some person not bonâ fide carrying on business in connexion with such goods.

5.—(1) A person shall be deemed to apply a trade mark or mark or trade description to goods who—

(*a*) applies it to the goods themselves; or

(*b*) applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or

(*c*) places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or

(*d*) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connexion with which it is used are designated or described by that trade mark or mark or trade description.

(2) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule,

case, frame, or wrapper; and the expression "label" includes any band or ticket.

A trade mark, or mark, or trade description, shall be deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing.

6. Where a defendant is charged with making any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves—

(*a*) that in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for making, or being used in making, trade marks, or as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the United Kingdom, and was not

interested in the goods by way of profit or commission dependent on the sale of such goods; and

(*b*) that he took reasonable precautions against committing the offence charged; and

(*c*) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and

(*d*) that he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or description was applied—

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

As to the provisions whereby a false description is not to apply in certain cases, see § 18, which is discussed in Chapter IX.

In § 3 (2) and § 5 (1)(*d*) the words "calculated to lead persons to believe that," &c., and "calculated to lead to the belief that," &c., respectively are used, whereas in the other parts of the Act the words "calculated to deceive," or "calculated to mislead,"

are made use of. Apparently the Legislature only wished to leave no room for doubt when they defined the particular deception; but there is no obvious advantage in the variation of the term.

This subsection (*d*) of § 2, and the definition of "trade description" in § 3 (1), are in terms very wide, and have formed the basis of most of the litigation in connexion with the Act.

The expression "trade description" means any description, statement, or other indication, direct or indirect,

(*a*) as to the number, quantity, measure, gauge, or weight of any goods.

It extends to a description in an invoice sent with the goods (*Budd* v. *Lucas* (1891), 1 Q.B. 408). In this case the appellant ordered six barrels of beer from the respondent, a brewer. The six barrels of beer were delivered, and with them an invoice, in which the casks were described as "barrels." The term "barrel" in the beer trade means a cask containing 36 gallons. One of the casks delivered was of a considerably less capacity than 36 gallons. The invoice was not physically attached to any of the casks. The appellant summoned the respondent under § 2, subsec. (1) (*d*), for having applied a false trade description—namely, barrel—to a cask of beer, false as to the measure and gauge thereof. It was

held that the description of the cask in the invoice was not the less applied to the cask within the meaning of the Act because the invoice was not physically attached to the cask; and the case came within § 5, subsec. (1) (*d*).

It was held also that evidence as to the previous transactions between the parties should have been admitted, as such evidence is always admitted where a guilty knowledge is an ingredient in the offence.

A very similar set of facts was disclosed in the recent case of *North-Eastern Breweries (Ltd.)* v. *Gibson* (20 T.L.R. 496), where the appellants purported to supply a "kilderkin" of beer in a cask which, owing to coopering, was incapable of containing a "kilderkin," that is, 18 gallons. An invoice sent with the cask of beer described the amount of beer sent to be a "kilderkin." The conviction of the appellants for applying a false trade description to goods was upheld.

It extends also to a description which, although made orally, was added to the invoice at the request of the purchaser of the goods (*Coppen* v. *Moore* (No. 1), 1898, 2 Q.B. 300).

See also *R.* v. *Peel*, *post*, p. 111.

A merely verbal statement does not constitute a false trade description within the Act (*Coppen* v. *Moore*, *supra*). Nevertheless, although upon a sale of goods a purely oral indication of the country of their production will not amount to a trade description

within the meaning of the Act, any writing, or mark, however unintelligible without explanation, will, if orally explained by the vendor at the time of sale to be intended to indicate a particular country as the country in which the goods were produced, constitute a sufficient trade description for the purposes of the Act (*Cameron* v. *Wiggins*, 1901, 1 K.B. 1; *supra*, p. 38). In this case the appellant entered the shop of the respondent, a dealer in foreign meat, and asked for a leg of New Zealand mutton. The respondent handed him a leg of mutton, at the same time stating it was New Zealand meat. The respondent also handed him an invoice in which the meat was described simply as a leg of mutton. The appellant then asked the respondent to mark on the invoice that it was New Zealand meat; whereupon the respondent wrote on it the letters "N.M.," intending thereby to represent that the mutton was New Zealand mutton. No evidence was given that those letters bore that meaning according to any custom of the trade. It was held that under the circumstances, the letters "N.M." amounted to a trade description of the meat within § 3 of the Act, notwithstanding the absence of any trade custom as to their meaning.

In *R.* v. *English Farmers' Association, Ltd.* (Times, April 27, 1899), the defendants were summoned for having sold certain goods to which a false trade description had been applied. The defendants were the

proprietors of certain direct supply stores, which issued a circular stating that the defendant company was established to supply the public direct with meat of the finest quality, so as to save the consumer the "large profits made by butchers." At the back of the circular were "press opinions." They sold New Zealand or Australian mutton as Welsh. They were fined £20 in each case, and £44 costs.

In *R.* v. *Jenkinson* (Times, Jan. 3, 1901) the defendant sold a bicycle, the invoice accompanying it stating "B.S.A. fittings, Dunlop tyres, Westwood rims." As a fact, only part of the fittings, viz. the front and back hub (with chain-wheel attached) and the two cranks, were genuine, the rest being imitation "B.S.A." fittings. The defendant was charged with selling a bicycle with a false trade description, viz. "B.S.A." fittings. The magistrate fined him 40s. and costs, remarking, "'B.S.A.' fittings meant 'B.S.A.' fittings throughout, and not such as the maker of the machine chose to put in."

See also *Upmann* v. *Forester* (24 C.D. 231), where the defendant—a china manufacturer—purchased abroad for his own private use a large number of cigars, which were consigned to him at the docks in cases bearing a spurious brand purporting to be that of the plaintiffs', who are cigar manufacturers. The defendant was not aware that the brands were spurious, nor, except from seeing it on the invoice, was he aware that any such brand was in use.

Although the defendant offered all the relief asked for by the writ, and at the hearing of the motion gave an undertaking in the terms of the writ, he was ordered to pay all the costs of the action.

The application of a false trade description to goods was made an offence by the Merchandise Marks Act of 1862, § 7, from which the provisions in the Act of 1887 are for the most part taken. The Act does not extend to descriptions of quality (see *Ruggett* v. *Findlater*, *supra*, p. 71), but where a merely verbal description as to quality is the subject of complaint, proceedings can be taken under the Sale of Food and Drugs Acts, 1875, 1879, and 1899 (*Coppen* v. *Moore*, *supra*, p. 82).

It is to be regretted, perhaps, that the Merchandise Marks Acts do not take cognizance of verbal descriptions, as frauds can be committed of not sufficient magnitude to invoke the aid of the criminal law, and thus petty deceptions are encouraged.

In *Hooper* v. *Balfour* (62 L.T. 646) the contract was to supply the plaintiffs with 20,000 cases of tinned salmon, "allowances as usual," the cases being marked "one pound cases." The cases were found to be irregular and deficient in weight, although not deficient by more than the alleged customary allowance. It was held that the goods could not be forced on a purchaser, on the ground that the purchaser could not sell them without committing an offence under the Act.

But where a description is applied to goods showing that the weight supplied is less than that for which the customer asks, no offence is committed against § 3 (1) (*a*) (*Langley* v. *Bombay Tea Co., Ltd.* (1900), 2 Q.B. 460).

The facts in *Langley* v. *Bombay Tea Co.* are interesting inasmuch as in a later case (1904) (*Star Tea Co., Ltd.* v. *Whitworth*, 20 T.L.R. 555), upon almost identical facts the appellants were held to have been rightly convicted of having applied a false trade description to goods.

In *Langley* v. *Bombay Tea Co., Ltd.*, the appellant, at the respondents' shop, asked for two half-pounds of tea. The tea was lying on the counter in packets which were stamped on the outside in ink with the words: "The weight of this package, including the wrapper, is half a pound." One of the respondents' salesmen took two packets, wrapped them in paper, and handed them to the appellant, who paid two shillings and sixpence for them. Nothing was said by the salesman, who simply handed over the parcel to the appellant. The latter took it to an inspector of weights and measures. The parcel was then opened, and there were found stamped in ink on each packet the words above set out. Placed under the string securing each packet was a ticket, resembling a railway ticket, upon which was printed: "The Bombay Tea Company (Limited), 50, Bell Street, Birmingham, ½-lb. cheque for tea, coffee, or cocoa."

On presentation of these cheques at the respondents' shop in Newcastle, the appellant would be entitled to receive for each cheque some article as a present, or by way of discount on his purchase. The inspector weighed the packets and their contents. One packet was found to contain 144½ grains, and the other 132 grains less than half a pound. In each case, however, the weight, including the paper wrapper, was more than half a pound by 24 grains in one instance, and 35 grains in the other. Upon these facts an information was laid by the appellant against the Bombay Tea Company, the respondents, for unlawfully selling two half-pounds of tea to which a false trade description, or statement as to the weight of the goods, was applied, contrary to § 2, subsec. 2, of the Merchandise Marks Act, 1887. The Justices for the city and county of Newcastle held that a trade description meant something written, printed, or stamped, and that a description expressed in words, or implied by conduct, was not sufficient to constitute an offence under the Act, and dismissed the information. On appeal to the Divisional Court, the decision of the Justices was upheld.

It does not appear that the point was taken that the ticket placed under the string securing each packet was a false trade description.

In the *Star Tea Co., Ltd.* v. *Whitworth* (20 T.L.R. 539), the respondent, an inspector of weights and measures for the borough of Walsall, went into

the appellants' shop on Jan. 5, 1904, and asked for a quarter of a pound of tea. Having been told that there were two prices, viz. 7½*d.* and 8*d.*, he said he would take a quarter of a pound at 8*d.* The shop assistant thereupon took from a shelf a packet of tea already folded and tied up with string, inserted under the string a small ticket resembling a railway ticket, and, wrapping the whole in brown paper, delivered it to the respondent. The wrapper in which the tea was contained consisted of a piece of lead paper on which was printed, "The Star Tea Co.'s Special Blend," and in small type, "Quarter pound gross weight." On one side of the ticket, inserted under the string, was printed: "Star Tea Co., Limited. Quarter pound 2*s.* 8*d.* Tea Ticket. 22, Park Street, Walsall. 1, 1887." And on the other side: "Star Tea Company (Limited). Motto: Maintain thy honour and enlarge thy fame. To every purchaser of our teas from ¼ lb. and upwards we give a useful article or check. By saving a number of these checks a valuable present is given in exchange fit to adorn a mansion or cottage. Thousands can testify that they get greater value for their money by our system than has even been attempted before." The respondent was not shown the lead wrapping, nor was it handed to him to read before it was wrapped in brown paper and delivered to him, nor was his attention called to the words printed on it. Before asking for the quarter of a pound of tea, however, he had seen in a

different part of the shop a quantity of tea being weighed and placed in wrappers apparently similar to the wrapper given to him, and it was admitted that he knew what was written on the tea wrappers of the appellants, but his attention had not been called by the appellants specially to those words. As a fact, he did not see the words printed on the packet actually delivered to him until the purchase had been completed and he had taken it from the brown-paper wrapping. The respondent weighed the packet of tea which he had purchased, and found that it contained less than a quarter of a pound of tea—to wit, $3\frac{3}{4}$ ozs. only of tea; but, together with the lead-paper wrapper, on which the words, "The Star Tea Co.'s Special Blend. Quarter pound gross weight," were printed, the packet weighed 5 or 6 grains more than a quarter of a pound. The respondent knew that the gross weight included the weight of the lead paper in which the tea was wrapped, and that it was the custom of the majority in the tea trade to weigh the paper with the tea. It was admitted by the appellants that they had distributed handbills describing and illustrating and enumerating the presents given by them to purchasers of not less than a quarter of a pound of tea; and had placed in the window of their shop printed labels attached to the presents given away by them, on which were printed: "Given with ¼ lb. of tea." It was contended on behalf of the respondent that the ticket placed under the string

tied round the packet of tea, as well as the said handbills and label, constituted a false trade description within the meaning of the Merchandise Marks Act, 1887. On behalf of the appellants it was contended that the ticket and the labels and handbills were not a trade description within the meaning of the Act, nor were they applied to the packet of tea within the meaning of the Act, nor were they false, and that, if they were trade descriptions, they must be taken and read with the words, "Quarter pound gross weight," printed on the packet of tea, and in such case there was no false trade description within the meaning of the Act. The magistrates held that the ticket placed under the string did constitute a false trade description within the meaning of the Act, and convicted the appellants.

The appellants relied on *Langley* v. *Bombay Tea Co.* (16 T.L.R. 441 (1900), 2 K.B. 460).

On appeal the Divisional Court (Lord Alverstone C.J., Wills and Kennedy, JJ.) upheld the decision of the magistrates.

There seems to be little doubt that the respondents in *Langley* v. *Bombay Tea Co.* would have been held guilty of applying a false trade description to goods, if summoned in respect of the ticket placed under the string of the packet of tea sold by them under the circumstances already set out.

See also *R.* v. *Lipton*, *post*, p. 100.

In *R.* v. *Manoukian* (Manchester Guardian, May

10, 11, 1898), Mr. John Manoukian, a merchant, trading as P. & J. K. Manoukian, was summoned for having in his possession for the purposes of his trade certain cotton yarn to which a false trade description had been applied, and for being the cause of such false trade description being applied. The yarn in respect of which the charges were made is known as "extra hard twist yarn." It used to be shipped very largely to the East, and, amongst other places, to Bulgaria. The material is sold by the pound, the price being regulated by what are called "the counts." "The count" simply means the number of times 840 yards, which represent a hank, are contained in a pound weight. Thus a pound of sixes contains six times 840 yards. It was alleged that the defendant had made up an inferior or a lower description of yarn to represent higher counts, the specific offence being that he had made up "fours" to represent "sixes," that is to say, that 3360 yards of yarn were made up to represent 5040 yards.

The defendant swore that yarn was always bought by weight, the length being of little consideration to the purchaser, and that the peasants in Bulgaria would often refuse a finer and better yarn in favour of the coarser kind; and that he received no benefit financially. It was contended for the defence that the question was, Was there any intent to defraud? There was no proof that the ultimate purchasers of yarn were in any way defrauded; and no evidence

that the purchasers imagined they were getting hanks of 840 yards; nor was there any instance of any yarn having been returned on account of short reeling. One reason why "fours" should be made into "sixes" was that before the Merchandise Marks Act of 1887 such divisions were usual; and purchasers, if they found a sudden change, would suspect there was something wrong.

The learned magistrate, in giving his decision, said that no doubt there had been a false trade description. It had been shewn that there was one way of making up "fours," and another way of making up "sixes," but the evidence pointed to the fact that the defendant had made up "fours" as "sixes," and therefore that came within the application of a false trade description. The question arose as to whether the natives of places where the goods were sold were deceived. One witness, who had a knowledge of the methods of trade in Bulgaria, through living there, had said the natives were deceived; and therefore there must be a conviction. A fine of 40*s.* on each of four informations was imposed, with costs, and £50 extra costs.

A similar case is reported in the Manchester Guardian of June 28, 29, and July 31, 1889. In that case Mr. Gregorie Ananiadi, an exporter of cotton yarns from Manchester, was charged with having in his possession for sale goods to which a false trade description was applied, and for having caused the

false trade description to be applied to goods. The description referred to the "counts" or fineness of the yarn, and such description could be made in two ways—

(1) by the application to bundles of yarn of actual figures; or,

(2) by the "make-up" of the bundles.

By long-established and undoubted custom a "hank" of yarn means 840 yards of 36 inches. If a bundle containing 10 of these hanks weighs 10 lbs., it is called "tens;" if 20 lbs., it is called "twenties," and so on. Usually, however, the finer yarns ("sixties" and upwards) are packed in 5-lb. bundles, and then each bundle contains only 5 hanks to the pound. In both cases, however, the hank must measure 840 yards.

The defendant was in the habit, before the passing of the Merchandise Marks Act of 1887, of having yarns reeled "forties" as "fifties," "forty-fives" as "sixties," "fifties" as "sixties," and so on.

On April 3, 1888, the defendant gave the following order: "Four hundred bundles, 5 pounds crape, in 300 skeins, 7 leas, must be well twisted, and if there is anything wrong, we shall claim £10 from you."

The witness, to whom that order was given, construed it to mean that "forty-fives" must be worked up as "sixties," that is to say, they had to make up 60 hanks to the pound. Thus a purchaser would be led to think that he was getting "sixties."

The price in 1887 for "forty-fives" was 1*s.* 5½*d.*, and the price for genuine "sixties" was 1*s.* 9*d.*

Between April 4 and July 7, 1888, 600 bundles were delivered to the defendant, of which 358 bundles were "forty-fives" made up as "sixties." The order of April 3 could not be carried through unless there was short reeling. There was evidence also that the "make-up" of the yarn ought to indicate the "counts" of the yarn, and that it would be difficult to carry on business if people could not rely upon that indication, for, although "60" was generally put on the outside of the bundle of "sixties," if the bundle were not stamped, or marked, there was nothing else to indicate what the contents of the bundle were. The learned magistrate, in giving his decision, said that the transactions in which the defendant was engaged before the passing of the Act were intended to be prohibited by it, and there should be no deception either in marking or stamping the goods, or indicating in any way that they were something different to what they really were. He held that the "make-up" of "forty-fives" yarn in such a way as that the appearance of the bundle indicated that it was "sixties" afforded a sufficient indication of the measure of the goods within the definition of "trade description" in § 3 (1) (*a*), and that it was immaterial whether or not the number of the "count" was put on the outside of the bundle; and he convicted the defendant.

(*b*) as to the place or country in which any goods were made or produced.

In this connexion, see §§ 16 and 18 and notes thereon, and the regulations made by the Commissioners of Customs with reference thereto, in Chapter IX. See also Chapter VIII., "Watches," and notes, &c., thereon.

This is a very important subsection.

A difficulty arose in connexion with the application of the section to goods not made wholly in one place or country, but composed of parts made or produced in different countries, and finally manufactured into one finished article in one country, *e.g.* watches. The difficulty, however, is to some extent met by the definition of a "false trade description," which necessitates a trade description being false "in a material respect," thus reducing the question to one of fact.

A case in point is that of *Bischop* v. *Toler* (65 L.J. M.C. 1), where a person had in his possession for sale margarine packed in cardboard boxes marked with the words "French Factory." The margarine consisted of a substance called "Le Dansk," manufactured from animal fat at a factory in Paris, and sent thence to an English factory, where by admixture with Danish butter and English milk it assumed the form in which it was offered for sale. It was held that as the margarine became the finished product

for the first time in England, the words "French Factory" on the boxes were a false trade description within the meaning of the second and third sections of the Act.

Lord Russell, C.J., in giving judgment, said the conviction must be supported on the ground that "Le Dansk" is sold in circumstances in which it is represented to the buyer that the article is in fact of foreign manufacture.

In *R.* v. *Williamson* (Times, Oct. 30, Nov. 13, Nov. 27, Dec. 4, Dec. 11, Dec. 18, 1899; Jan. 26, Jan. 29, March 5, March 26, 1900; and 17 T.L.R. 174 and 424) the defendant was summoned for falsely applying the description "English Lever" to certain watches, and for exposing for sale watches falsely described as having been made in England. The watches were enclosed in cases with an English hall-mark. The prosecution alleged that the majority of the parts in a key-wind watch sold by the defendant company for 25*s.* 6*d.*, and in a keyless watch described as a "Keyless English Lever," and sold by the defendant company for 45*s.*, were of foreign origin.

The defendant contended that the value of the material of foreign origin in the key-wind watch was 1*s.* 10½*d.*, and in the keyless watch 1*s.*, that the material was obtained in the rough from abroad, and had to undergo several processes at Coventry before it was put into the watches, and that therefore the watches were substantially English.

The learned magistrate held that the defendant was guilty of applying a false trade description as to the country in which the watches were made or produced; and that the trade description was false "in a material respect." The "train" was the most essential part of the watch, and the "train" in each of the watches consisted of at least three wheels and four pinions of foreign origin, in addition to several other parts of greater or less importance. It was contended that the "train" was on the same footing as the main-spring and the hair-spring, which were nearly all of foreign origin in what were honestly called English watches. That was not so, because by the custom of the watch trade the main-spring and hair-spring were allowed to be of foreign origin in nearly every watch. It was further contended that those portions of the parts need not be considered, because they were imported in the rough, and had to be polished and fitted in this country. The place of origin was not altered by the fact that more or less work was done on them in this country. It was further contended that the watch was not made or produced till all the parts were put together, as in butterine (in *Bischop* v. *Toler*, *supra*, p. 95). There was a distinction between a mechanical combination, in which all the parts remained unaltered, and a chemical combination, in which the several parts were lost in the whole composition. The onus of proving innocence was on the defendant, and by not calling

the manager, he failed to adduce satisfactory evidence to account for their conduct.

The defendant was fined £20, and £10 costs, and all the watches seized at the London warehouse, except those which were not similar to the watches in question, were ordered to be confiscated.

On appeal (Nov. 14, 1900) the case was remitted to the magistrate to ascertain whether he had held as a matter of law that, because some parts of the watches, other than the main-spring, hair-spring, and screws, were partly manufactured abroad, he was bound to convict the appellants of applying in the term "English Lever" a false description; or whether he had arrived at his conclusion as a determination of fact upon evidence as to the recognised meaning of the epithet "English" as applied to watches in the watch trade.

The learned magistrate said he came to the conclusion as a determination of fact upon evidence produced before him that in the watch trade no watch was called "English" which contained foreign parts of material importance, other than the hair-spring and main-spring or things of comparatively insignificant character, such as screws, and that certain parts of the watches which had been specified were of most material importance, and were imported from abroad in such a condition that they were foreign parts when they arrived in this country, and remained foreign parts after they had been operated

upon, polished, and fitted into the watches by the appellants.

The appeal was dismissed on the ground that the question was one of fact, and no appeal lay.

See also cases cited in Chapter VIII.; and *Cameron* v. *Wiggins* (*supra*, p. 83).

The provisions of § 18 as to false descriptions not applying in certain cases are fully dealt with in paragraphs 4 to 11 of the General Order, 1888 (see *post*, p. 203).

It will be noticed that § 18 only applies where the description is without any doubt not calculated to mislead, such as where a description had become associated with a particular class of goods in a manner which practically precludes any possibility of deception, as "Portland Cement," "Bath Chaps," "Brussels Carpet," "French Polish," "Patent Leather," "Wellington Boots," "American Cloth," "German Silver." Although such descriptions as "Kidderminster Carpets," "Balbriggan" on hosiery or "Shetland" on shawls are primâ facie merely phrases descriptive of the method of manufacture, they may yet be misleading as to the place of origin. If goods made in Germany are marked "John Smith, Sheffield," they must be further marked "Made in Germany" in full. The word "Germany" alone would not be enough to counteract "Sheffield." And if goods are made in and bear the name of a place abroad which is identical with or a colourable imitation of the

name of a place in the United Kingdom, the name of the country in which the place is situated must be added; *e.g.* Boston in Massachusetts should be followed by "U.S.A." or "Mass."

But "Havannah" as applied to cigars is not merely a descriptive name. It is an indication that the cigars are made in Havannah and of tobacco grown in Havannah.

In *R.* v. *Robinson & Barnsdale* (Times, April 2, 1901) the defendants were charged with having sold two boxes of cigars to which a false trade description had been applied, and for applying a false trade description to the same, namely, as to the place or country where the goods were made or produced. On each of the two boxes was the word "Havannah;" on one box the words "La Rosa Santiago de Cuba de Lux;" and on the other, "La Rosa Santiago de Favorita." Very little, if any, Havannah tobacco was in the cigars, which were made in Nottingham or London. On the back of the box were the words "Made in England." The defendants were fined £10 on the first, and £5 on the second summons, and 20 guineas costs.

In *R.* v. *Lipton* (32 L R. Irish C.L. 115), however, where the defendant Lipton, who has a large curing establishment in Chicago, sold at his establishment in Ireland hams with the descriptions, (*a*) "Lipton's prime mild cure," and (*b*) "Finest quality smoked ham—own cure—at Lipton's market," it was held

that in neither case was there a false trade description. The justices and one of the judges, however, were of opinion that such use of the description by an Irish tradesman was likely to be deceptive.

In *Morris* v. *Royle* (31 L.J. (Jo.) 339) a tradesman of Salford sold bacon labelled "Finest Wiltshire Cut." The bacon came from Ireland, but the defendant set up successfully before the justices and the High Court that the description referred, not to the place of origin of the bacon, but to its shape and the mode of cutting.

In *Starey* v. *Chilworth Gunpowder Co.* (L.R. 24 Q.B.D. 90) the respondents, who were manufacturers of gunpowder, had contracted to supply the English Government with gunpowder. Owing to an accident, they were unable to supply gunpowder manufactured by themselves, so bought German gunpowder, and packed it in barrels supplied by the English Government. They put labels upon these barrels bearing their own name and a description indicating that it was gunpowder of their own manufacture. It was not disputed that the gunpowder supplied was as good as that which they had contracted to supply, but no indication was given that it was of German manufacture. They were held to be guilty of applying a false trade description to goods with intent to defraud within the meaning of § 2, subsec. (1) (*d*).

In *R.* v. *Harrod's Stores* (Times, Jan. 28 and Feb. 4 and 10, 1898) the defendants were charged with

exposing for sale, selling, and having in their possession for sale china to which the false trade description of "Dresden" was applied. The defendants had issued a Christmas circular stating that their buyer had made purchases at Berlin, Dresden, Meissen, and Vienna. A purchase was made of china for 15*s.* 6*d.*, invoiced as "Dresden," although it was a common ware known in the trade as "Coburg china." On the original invoice "Dresden" did not occur, but the purchaser asked that it should be inserted in the purchase note, as she was buying it for a friend, and wished it designated as it was in the trade circular. The defence was that "Dresden" was a generic name, such as "Venetian" applied to glass made in London, and was applicable only to the style and decoration. The magistrate could not accept the interpretation that china made or decorated anywhere could be properly sold as "Dresden," and fined the defendants £20, and 20 guineas costs.

See also *Cameron* v. *Wiggins* (*supra*, p. 83), and *R.* v. *English Farmers' Association* (*supra*, p. 83), and the cases cited in Chapter VIII.

By § 10 (2). In any prosecution for an offence against this Act, "In the case of imported goods, evidence of the port of shipment shall be primâ facie evidence of the place or country in which the goods were made or produced." And by the Merchandise Marks Act, 1891, § 1, "The Customs entry relating to imported goods shall, for the purposes of the

Merchandise Marks Act, 1887, be deemed to be a trade description applied to goods."

(*c*) As to the mode of manufacturing or producing any goods.

See *R.* v. *Lipton* (*supra*, p. 100).

In *R.* v. *Bramall* (Times, Dec. 18, 1891), on an information laid by the Secretary of the Filecutters Association, the Board of Trade prosecuted the defendant at Sheffield for marking certain files sold to George Pollard of Liverpool as "hand cut," whereas they were "machine cut." The defendant was fined £10, and 10 guineas costs, and an order was made that the mark should be taken off the files.

In *Kirshenboim* v. *Salmon and Gluckstein* (1898, 2 Q.B.D. 19) the respondents were charged with selling cigarettes to which a false trade description, namely, "guaranteed hand made," was applied. The cigarettes were in fact machine made, but were of equally good quality as hand-made cigarettes. The magistrate held that there was no intention to deceive the buyer, but only to save expense by using up a stock of old labels, and that the description, though untrue in fact, was not a false trade description in any material respect, as regarded the cigarettes sold, within the meaning of § 3, and he dismissed the information.

On a case stated, it was held that the fact that the cigarettes sold as "hand made" were as good in quality as hand-made cigarettes afforded no defence;

that the description was false in a material respect; and that the respondents, by knowingly applying the false description, had not acted innocently, and were guilty of an offence against the Act.

LORD RUSSELL, C.J., in giving judgment, said that the respondents, in utilising an old stock of labels, had acted not innocently, but deliberately.

Similarly, in *R.* v. *Phillips* (Times, Sept. 28, and Dec. 8 and 11, 1900) the defendant was found guilty of applying the term "hand cut" to tobacco not cut by manual labour.

In *R.* v. *Graeger* (Times, Feb. 19 and 20, 1890) the defendant was charged with having in his possession for the purposes of trade a number of bottles of sparkling wine to which a false trade description had been applied. The defendant had been in the habit of importing still wine, and paying thereon the usual still-wine duty; he had never paid the sparkling wine duty of 2*s.* 6*d.* per gallon. He had, however, concealed nothing from the Custom House officers. He converted the still wine into sparkling wine in this country by injecting carbonic acid gas into the bottles.

For the defence it was contended that the method adopted by the defendant of making the still wine into sparkling was rapidly coming into vogue on the Continent, and was much healthier than the other way; that the defendant had brought the machinery over to this country, and had wine from Epernay,

the Mozelle district, the Rhine district, and Burgundy, and having aerated these wines, sold them openly. In these circumstances there was no breach of the law, nothing in fact even equivalent to reprehensible conduct, and the Custom House authorities had treated the defendant harshly in seizing his wine, because they thought he was liable for the additional duty on sparkling wines. There was no evidence that the wine was deteriorated or made unwholesome. It was in fact sparkling wine, and therefore there was no false trade description, and no infringement of the Act. The magistrate, however, held that the defendant had committed a breach of the Act, and fined him £20.

In *R.* v. *Lipton, Ltd.* (Times, June 16, 1899), a prosecution was instituted to test the validity of weighing paper with tea, and including the weight of the paper in the alleged weight of the amount of tea sold. The prosecution alleged that the statements on the packets of tea sold as to the weight of the tea was a description within the meaning of the Act. It was contended on behalf of the defendant that it was the custom of the tea trade to weigh the paper in which the tea sold was wrapped with the tea, and that the packet of tea was sold, and not a certain quantity of tea.

The defendants were charged on three summonses with having sold goods, namely, tea, to which a false trade description as to the weight of the said goods

had been applied contrary to § 2; and on two summonses with having had possession for use for trade (1) of a weight which was not of a denomination of a Board of Trade standard, and (2) of certain weights which were not stamped as required by § 29 of the Weights and Measures Act, 1898.

Evidence of trade custom was rejected. The defendants were fined on the first three summonses £10, and 15 guineas costs, and the other two summonses were withdrawn upon the defendants giving an undertaking and paying 21*s.* costs.

Compare *Langley* v. *Bombay Tea Co.*; and *Star Tea Co.* v. *Whitworth* (*supra*, pp. 86–90).

The provisions of § 18 as to "generic" terms may apply to cases under this subsection.

(*d*) As to the material of which any goods are composed.

In *Gridley* v. *Swinborne* (5 T.L.R. 71) the question was whether "Swinborne's Patent Refined Isinglass" was an improper description of the article sold under that designation within the meaning of the Act. The charges against the defendant were—

(1) that he did apply to certain goods, to wit, gelatine or other substance, a false trade description as to the material of which such goods were composed, by which description the goods were falsely indicated to be isinglass;

(2) that he did unlawfully sell or expose for sale certain goods, to wit, gelatine or other substance, to which had been applied a false trade description as to the material of which such goods were composed, whereby the goods were falsely indicated to be isinglass;

(3) did unlawfully apply a false trade description, whereby the said goods were falsely described to be subject to an existing patent, or to be patent isinglass (see *supra*, Chapter I., p. 45 *et seq.*); and

(4) did unlawfully sell or expose for sale goods to which a false trade description had been applied.

It was proved that twelve packets of what was termed "Swinborne's Patent Refined Isinglass" were on Feb. 6, 1888, purchased at the respondent's place of business. On the packets were the words "Swinborne's Patent Refined Isinglass," and on the back the words "Swinborne's Patent. Warranted pure and free from adulteration." On analysis the contents of the packets were shewn to be, not isinglass, but gelatine. Isinglass is a particular form of gelatine; it is the swimming bladder of the sturgeon and other fishes. Under Swinborne's Patent—which, being dated 1847, had long since expired—gelatinous matter might be made from hides or skins, or from cod sounds, or other fishy matters. Isinglass is a natural product, and cannot be made. Gelatine, if made

from cod sounds (which are the swimming bladders of that fish) comes from a gelatinous substance, and is altered from being isinglass to being gelatine. Isinglass and gelatine are chemically the same when pure, but not physically, isinglass being chemically one of the forms of gelatine. Swinborne's Patent Refined Isinglass had been generally known as an article of commerce, and sold under that description since 1847.

The Lord Mayor dismissed the information on the ground that there was no evidence of an offence under the section, and that the description was not misleading.

Upon a case stated, the Divisional Court upheld the decision of the Lord Mayor. LORD COLERIDGE, C.J., after referring to the evidence of Professor Attfield that in 1854 the word "isinglass" was used as frequently as gelatine to describe gelatinous matter; and of the well-known chemist Brand, who certified that, having compared isinglass proper with the article sold by the respondent's firm, he found that the latter was the more concentrated and perfect form of isinglass, continued, "This was a criminal charge: a mens rea would have to be made out. It was not admitted that isinglass was scientifically not the same as gelatine. But there was quite enough evidence for the Lord Mayor to be justified in holding that there had been no false trade description."

The case of *Chearin* v. *Walker* (*supra*, p. 47), in

which a wrapper containing words in the form on the wrapper sold in this case was held to be a false representation of an existing patent, was held not to govern the facts in *Gridley* v. *Swinborne*, which, after all, simply amounted to a decision of facts, from which no inference could be drawn that the magistrate had decided wrongly in law.

The cases on this subsection are chiefly in relation to textile fabrics; *e.g.*—

R. v. *Whiteley* (Times, Jan. 16, 1895), in which the defendant was charged with selling a certain material under the name of "flannelette," alleged to bear a false trade description within the Act. "Flannelette" was shewn to be all cotton, and to contain no wool at all. The magistrate held that there was no ground of action unless the public were deceived, and that there was no false trade description; and he dismissed the summons, with 20 guineas costs to the defendant.

R. v. *Thomas Henry Downing* (Times, Oct. 17 and 20, 1893). The defendant was charged at Leicester by the Board of Trade, upon the information of the Secretary of the Nottingham Chamber of Commerce, with having applied a false trade description to women's combination dresses and vests, in breach of the Merchandise Marks Act, with intent to defraud. The goods were marked "natural wool" and "natural cashmere," but were composed of half wool and half cotton. The defence was that "natural

wool" was only a trade term. High-priced articles were composed of all wool, and low-priced articles, although described as "natural wool," were known to contain cotton and wool.

The Bench found as a fact that the description used was a false trade description under the Act, and the case did not come within § 18. A fine of £5 and costs was imposed.

R. v. *Jones Bros.* (Times, Jan. 9 and 16, 1899), for selling as linen a material known in the trade as "Union"—that is, a mixture of cotton and linen. Fined £10, and 10 guineas costs.

R. v. *Dr. Deimel Underwear Fabric Co.* (Times, Aug. 22, and Oct. 24, 1903), for applying the false trade description, viz. "Dr. Deimel's Linen Mesh Underwear Reg^{d}," to goods of linen and cotton mixture (known as "Union"). The description was not registered in this country. The "Linen Mesh" was originated by the defendants and used without complaint in America for many years before its introduction by them to England in 1899. It was contended for the defence that in the trade the description is recognised as relating only to the underwear goods manufactured by the defendants; and that the cost of its manufacture with cotton was more than for linen alone, which was unsatisfactory as underwear. It was argued that the description was on the same footing as that of a "cork hat" or "silk hat," which was not composed wholly of cork

or silk respectively. A fine and costs amounting together to £37 8s. was imposed.

R. v. *Levy* (Times, Nov. 26, 1903). The defendant was charged with unlawfully and falsely applying a trade mark to certain goods, viz. a "loofah sock." The sole proprietor of the "Vitalite patent" sock, the retail price of which was 6*d.*, claimed that other loofah socks sold at a much lower price were inferior in quality. The defendant exposed in his shop window for advertising purposes one of these socks, which was two feet in length: he obliterated the words "Vitalite" and "trade mark," leaving untouched the other printed matter, and affixed a label bearing the words "Loofah sock, 3½*d.*" He was fined £10, and 5 guineas costs, and the exhibited sock was ordered to be forfeited.

Meadows v. *Catesby* (L.T. (Jo.) 107, p. 440). The defendant was summoned for unlawfully applying, and causing to be applied, a false trade description to a mattress. The complainant bought a wool mattress for £1 7s. It was invoiced as wool. It was really a mixture of hair, string, jute, calico, &c., 60 or 70 per cent. of jute or hemp, and 30 or 40 per cent. of "carpet wool." Fined £10, and 3 guineas costs.

Other cases within this subsection (*d*) are—

R. v. *Peel* (Times, Jan. 11, 1888). The defendant was charged at Birmingham with having applied a false trade description to jewellery. He supplied a number

of trinkets alleged to be composed of silver to the extent of 800 out of 1000 parts. When tested, they were found to be much below the standard mentioned. The defence was that, allowing for solder used in making up the trinkets, the quality was not materially deficient; further, that the description on the invoice was not a trade description within the Act.

The learned stipendiary magistrate said that the questions which arose were: (1) did the defendant apply a false trade description by sending with the goods in the way mentioned the invoice which described the goods as 800 out of 1000 parts silver? (2) was it a trade description? and (3) was it a false trade description?

He was of opinion that a false trade description was applied, and the defendant, not having proved that he acted without intent to defraud, must be convicted of applying the false trade description; and not having proved that he acted innocently, must be convicted of unlawfully selling the goods.

As this was the first prosecution under the Act, a nominal fine of 20*s.* was imposed in each case.

R. v. *Nicholls* (Times, Dec. 14, 1896). The defendant, a provision dealer, was charged with selling American lard with a false trade description. The prosecution alleged that American lard refined in Belfast was stiffened so as to be merchantable and marketable with about 10 per cent. of ox stearine, and sold as pure lard. There were 44 barrels, each

containing 100 to 120 bladders, and each barrel was stamped "Pure bladdered lard. Produce of the U.S. Refined in Belfast." There was also a representation of a snowdrop, the registered trade mark of one Topping, the consignor to the defendant. Also, each bladder was marked "Guaranteed pure."

Mr. De Rutzen said "the case did not come within the eighteenth section inasmuch as for years before its passing 'refined lard' was generally known as meaning 'compound lard,' and the obvious answer to that line of defence was that the trade description of the barrels sold was not 'refined,' but 'pure bladdered lard.'" The contention of the defendant that the words "pure bladdered lard" must be read with the words "refined in Belfast" involved the misinterpretation of the word "refined," for it could not be strained to mean the mixing together of two perfectly different things. The other contention of the defendant, that he had taken all reasonable precautions against committing an offence, and had no reason to suspect the genuineness of the trade description of the goods sold, failed. The defendant was guilty of negligence in not seeing that the lard was accurately described. Fined 40*s.*, and 30 guineas costs.

R. v. *William Hall* (Times, Jan. 4, 1889). Charged with selling a bottle purporting to contain Condy's fluid, whereas it was found to contain carbolic acid. It was held that the sale was made, not wilfully, but

negligently, and a fine of 20s. and £4 costs was imposed.

3.—(1) For the purposes of this Act—

. . . . .

The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Act.

We have already dealt at length with the question as to what is a "false trade description," and pointed out that practically each case must be decided on its own merits, the question being whether or not the trade description in dispute is false "in a material respect." The courts have most stringently interpreted this section of the Act, as the case of *Starey* v. *Chilworth Gunpowder Co.* (*supra*, p. 101) will shew. There, although the substituted gunpowder was admittedly as good as that contracted to be supplied, and was accepted by the Government, the

defendants were held guilty of applying a false trade description to their goods.

Again, in *Kirshenboim* v. *Salmon and Gluckstein* (*supra*, p. 103), the fact that the goods supplied were as good in quality as what was asked for did not excuse the false description applied to the goods. That the legislature intended the application of the Act to "false trade descriptions" to be stringently interpreted is shewn by the following two subsections, which extends the definition of a "false trade description" given in § 3 (1), namely—

(2) The provisions of this Act respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person,

and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods, any name or initials of a person which—

(*a*) are not a trade mark or part of a trade mark, and

(*b*) are identical with, or a colourable imitation of the name or initials of a person carrying on business in connexion with goods of the same description, and not having authorised the use of such name or initials, and

(*c*) are either those of a fictitious person or of some person not bonâ fide carrying on business in connexion with such goods.

Thus a false trade description not only means a trade description false "in a material respect" as regards the goods to which it is applied, but also includes every alteration of a trade description, where that alteration makes the description false in a material respect; and the application to goods of any such figures, words, or marks, &c., as in subsec. (2); and extends to the application to goods of any false name or initials as provided by subsec. (3).

These extensions of the definition were rendered

necessary by the fact that a trade mark is not a document within the definition of forgery at common law (see *supra*, Chapter I., p. 28), although under § 2 (1) (*a*) forging a trade mark is made an offence.

As to subsec. (2), see *R.* v. *Hersey* (*post*, p. 124); and as to subsec. (3) (*c*), see *R.* v. *Styles* (*post*, p. 130).

In *R.* v. *Lipton* (32 L.R. Irish C.L. 115) (*supra*, p. 100), where to a ham sold by the defendant was applied the description "Tracey's mild cure," and Tracey, whose name was so used, was the foreman curer of Lipton, it was held that Lipton was rightly convicted of an offence under § 3 subsec. (3) (*c*); and further, that subsec. (3) is to be construed disjunctively, and not conjunctively, as regards its subdivisions (*b*) and (*c*), that is to say, from the wording of subsecs. (*b*) and (*c*), in which it will be seen that one subsection refers to a "person carrying on business," and the other subsection to a "person not carrying on business," it is obvious that the word "and" connecting the two subsections should have been "or."

This subsection (3) is also useful as affording the means of stopping the use of "blind names," that is to say, names belonging to no persons or no firm in particular, or to a defunct firm, but made use of to induce people to believe that they represent some bonâ fide firm—such as "John Smith, Sheffield" (see *supra*, p. 99), or foreign-sounding names used with the intention of inducing the belief that the goods

to which they are applied are manufactured in the country to which the assumed dialect belongs, as in *R.* v. *Robinson & Barnsdale* (*supra*, p. 100).

There has been much use made of the names of other firms, whether by the adoption of their names, or a colourable imitation of their names, or the use of their labels.

Amongst other cases may be mentioned the following:—

R. v. *James Butler* (Times, May 31, 1889), for selling mineral waters in bottles of other manufacturers. Although the defendant had gummed his own labels on the bottles, he was convicted and fined.

In *R.* v. *Evans* (Times, Oct. 26, 1888), a similar charge, the objection was taken that the defendant was only the manager, and therefore not responsible. This was overruled, as § 2 made the seller or exposer for sale liable. The defendant was convicted.

In *R.* v. *Barnardo* (Times, Jan. 18, 1889) the defendant was similarly charged, but gave evidence that he had given instructions that no bottles bearing names of other manufacturers were to be filled, and such orders were communicated to the factory. The learned magistrate (Mr. Bushby) said that the defendant could not have taken more care, and the negligence was that of his servants. He dismissed the summons, but declined to grant costs, as the complainants had had their rights infringed.

Other similar cases are—

R. v. *Weedon* (Times, Nov. 25, 1890).
R. v. *Julier* (Times, Dec. 20, 1890).
R. v. *Hickling* (Times, July 28, 1890).
R. v. *Tissell* (Times, April 14, 1892).
R. v. *Lazarus Greenberg* (Standard, June 13, 1904).

In *R.* v. *Egan* (Times, Dec. 24, 1888) the defendants, Jane and Robert Egan, traded as cigar merchants, and the defendant, John Hobbs, was a cigar merchant. They received large quantities of cigars from one Trinchent of Antwerp, with the words "Manufactured in Belgium" upon each box. It was alleged that these words had been effaced by pasting over them certain Spanish labels—"El pavo Real," "Le industria tobaccos legitimos," "Superior Calidad," "Fabrica de Tobaccos de Superior Calidad," "El Felix," &c.—which was equivalent to fraud, as these labels conveyed the impression that the cigars were Spanish cigars. The defence was that the defendants acted in ignorance of anything illegal. The male defendants were fined £5 each and costs, but, as this was the first case under the Act, confiscation was not ordered upon an undertaking being given that no more such labels would be used.

In *R.* v. *Callow* (Times, Jan. 24, 1890) the defendant Callow, a maker of cigar boxes, supplied certain other defendants, cigar merchants, with boxes bearing the brand on the lid, "I. Feunte, Vera Cruz," a firm well known in the tobacco trade. The boxes were filled

by the defendant cigar merchants with cigars made in Shoreditch, and to the boxes were affixed labels—the exact counterpart of those put on at Vera Cruz. The brand was found at the defendant Callow's. Having been committed for trial to the Central Criminal Court, they pleaded guilty to the offences under the Act with which they were charged.

In *R.* v. *Crosse* (Times, Sept. 24, 1891) 24 bottles of the defendant's sauce were purchased, all marked "Yorkshire Relish. Goodall, Backhouse & Co.," but not made by Goodall & Co. It was alleged for the defence that retail tradesmen frequently sold the bottles with the label on, and that no injury was done to the complainants, as their labels were quite different; but Mr. Mead, the learned magistrate, said it was satisfactory to him to believe that what the defendant had done was not with the deliberate intention of misleading the public, and trading on the reputation of the complainants. At the same time he had made use of another man's property, and was open to great censure. Fined 20*s.*, and 23*s.* costs, on each summons.

In *R.* v. *Clarke* (Times, Oct. 26, 1891) the defendant was charged with applying a false trade description to bottles of stout. He had purchased his business twelve months previously, and used labels, of which he had 50,000 in stock, handed over by the trustees of his predecessor. He had stout from another brewer besides Guinness, Son & Co., but having used

up all Guinness's stout, he made use of one of Guinness's labels. He pleaded that he had no intention to defraud, but was convicted and fined.

In *R.* v. *Jeffery* (Times, Oct. 12, 1892) the defendant bought two old rifles by Webley, which were not in an effective condition for shooting, but were "wasters." He sent them to Ellis & Son, Birmingham, with this letter: "We send you to-day two Webley barrel Martini rifles—Webley's name to remain on the barrels, but we would sooner have the barrels marked only 'Webley barrel,' as we don't care to have 'Birmingham' on it, as the next order might go to Webleys." The barrels had been originally marked "P. Webley & Son, Birmingham. Made expressly for P. McGibbon." The original inscription had been filed out, the only words left marked on the barrel being "P. Webley barrel."

For the defence it was urged that there was no evidence that the rifles were to be sold as new; that the defendant wanted to sell the rifles again as second-hand, but it was necessary for the barrels to be repaired, and that no one was likely to be deceived. The defendant was fined £10 and £5 costs, and the two barrels were ordered to be forfeited, and handed to Mr. Webley.

R. v. *Samuel Goff* (Times, Nov. 6, 1899). The defendant, who traded as Goff & Co., at 136, Strand, was summoned for unlawfully causing a certain false trade description, to wit, "J. Mortimer & Sons, New

Bond Street, W.," to be applied to a double-barrelled gun.

There were five other summonses against the defendant charging him with—

(1) imitating the trade mark of J. Mortimer & Sons;

(2) putting a mark on the gun calculated to deceive;

(3) using a false trade description calculated to lead persons to believe that the gun was the manufacture of J. Mortimer & Sons;

(4) applying a certain false trade description, which was a colourable imitation of the name of Mortimer & Sons; and

(5) unlawfully using the name of J. Mortimer & Sons.

There was also a seventh summons against the defendant, charging him with unlawfully being in possession for sale of divers guns, to which a false trade description, to wit, "Jackson, of Wigmore Street," "Parker, Field & Co., of High Holborn," and others, was applied.

The prosecution was undertaken by the Gun Makers Association, and was instituted especially to stop the offence, which was on the increase, of selling guns of inferior manufacture bearing names of well-known makers.

A Mr. Thorne saw a double-barrelled gun at the defendant's shop bearing the name of "J. Mortimer

& Sons, New Bond Street, W.," and marked "Price £6 15s." He entered the shop, and was also shewn guns bearing the names "Jackson," "Parker, Field & Co.," and "Blissett." They were all represented to be second-hand. He purchased the gun marked "J. Mortimer & Sons" for £6 10s.

It turned out to be a new gun of inferior manufacture which, as was proved by invoices found on the premises, was purchased by the defendant for 35s.

As the object of the prosecution was to get at the real offenders, the prosecution applied to the defendant for information as to where he obtained the guns, and who put the false names and descriptions on them. On Oct. 27 defendant's manager called on the solicitors to the prosecutors, and said he was unable to give the information desired, as they got the guns in exchange for other articles, and kept no record of where they came from.

Inspector Pardo entered the defendant's premises at 17 and 18, King Street, Covent Garden, under a search warrant, and found two other guns bearing the name of "Mortimer," one bearing the name of "Jackson," and two bearing the name of "Blissett." He also found another gun without any name at all, but which was exactly similar to, and evidently by the same maker as, the "Mortimer" gun sold to Mr. Thorne.

Mr. Mortimer, of Edinburgh, gave evidence that

the guns marked with his name were not their manufacture, but were in his opinion "utter rubbish," and the cheapest guns it was possible to make.

The defendant pleaded guilty to all the summonses.

In mitigation of punishment, it was urged on behalf of the defendant, that he was an invalid, over eighty years of age, and took no active part in the business, which was left entirely to the manager, who was present in court. It was admitted that the defendant company had marked the names on the guns in question, but had done so quite innocently, as they were not aware that they were infringing the name or trade mark of other persons. The names used were those of persons believed to be non-existent. They would give an undertaking not to be guilty of a repetition of the offence.

The learned magistrate (Mr. Marsham) said it was clear that there was an intention to deceive purchasers, as the guns were represented to be second-hand, whereas they were new. It was a very serious offence, and dealing with two summonses—the one for selling the gun to Mr. Thorne, and the other for having it in possession for sale—he fined the defendant £20 on each summons, and £21 costs.

In *R.* v. *Hersey* (Times, June 14, 1900) the defendant was charged with selling certain cigarettes to which was applied a false trade description, viz. an arrangement or combination of figures, words, and marks calculated to lead to the belief that the goods

were of the manufacture of S. Gourdontis & Co., of Alexandria. The summons was dismissed on the ground of dissimilarity between the complainant's and defendant's labels.

In *R.* v. *Tooth* (Times, May 25, 1891) the defendants, auctioneers, were summoned for having in their possession for sale a pianoforte to which a false trade description had been applied. The defendants published a catalogue of a sale to take place on May 1, in which was an entry of a piano by "C. H. Backstein." On the piano were the words, "C. H. Backstein, Hof Pianoforte Fabrick." The prosecution was undertaken by Messrs. Beckstein, the well-known pianoforte manufacturers.

Evidence was given as to another piano marked "Schiedmayer, Berlin," which was made by Rosenaar of Berlin.

The defence was that the piano was sent in the ordinary way for sale, and was withdrawn immediately the prosecutors complained. The learned magistrate (Mr. Newton) said the defendants had acted negligently, and fined them £10, and 5 guineas costs.

On appeal to Quarter Sessions (Times, Aug. 7, 1891), SIR PETER EDLIN, in the course of his judgment, said: "Fraud was not a necessary ingredient of the offence charged, and it was not suggested that the appellants were cognizant that the mark was false. The mere possession, for sale, of such spurious articles was primâ facie an offence. Every person who had

in his possession for sale any goods to which a false trade description was applied was to be deemed guilty of an offence against the Act, unless he proved (*a*) that, having taken all reasonable precautions, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark or description; (*b*) that on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods; or, (*c*) that otherwise he had acted innocently. It was contended for the appellants that the expression 'reasonable' should be applied with regard to the position of the individual possessed of the goods, and to the nature of his business. But this reading of the word, involving infinite distinctions, would be inconsistent with the context, and contrary to the manifest intention of the Act. The liabilities consequent on any infringement of the Act were the same with respect to 'every person,' and it was difficult to see why fewer precautions should be required from one class of persons than from another. Auctioneers, like other dealers in miscellaneous wares, were not presumably experts in respect of the goods they sold, but their dealings might not be the less extensive in trade-marked articles. It was further contended that the words, 'or that otherwise he had acted innocently,' should be read entirely apart from (*a*) and (*b*). If the word 'innocently' were applied

simply in the sense ordinarily attaching to it, proof by the accused person—a competent and presumably a credible witness in his own behalf—that he was ignorant of the fictitious character of the description would suffice to exonerate him. The practical effect of that construction would be to render the immediately preceding paragraphs in the subsection of no force. In the opinion of the Bench the circumstances did not admit of such defence in either of the present cases, and, upon the construction of this enactment indicated above, both convictions must be upheld. The Bench held that upon the facts the defendants had been guilty of negligence, but accepted it as a fact that they had no suspicion that the descriptions were fictitious. As there was no imputation of bad faith, and orders had been made that the goods should be delivered to the prosecutor in one case, and rightful owner in the other, the penalty would be reduced in each case to 20*s.* and costs."

In *R.* v. *Wythe* (L.J. Newspaper, vol. 30, July 15, 1895) the defendant, a grocer, was summoned by Messrs. Guinness, Son & Co., for selling bottles of stout to which a false trade description had been applied. He had received from the prosecutors stout in bulk, with labels in proportion to attach to the bottles, under an agreement not to sell any other brown stout. The prosecutors' agent visited the defendant's place of business, and saw there stout purporting to have been manufactured by Guinness,

as well as stout of other makers. When asked why he sold other brands of stout, the defendant said that old labels were being used up. It was contended in his defence (1) that the labels were put on by mistake by his shop-boy, and (2) that the loss in specific gravity. which the prosecutors alleged was a proof that certain stout sold by the defendant was not manufactured by the prosecutors, was due to evaporation. The defendant was fined £5, and 10 guineas costs.

The Law Journal pertinently suggests that where the identity of the article sold depends on analysis, it would certainly be fairer to a person accused to follow the procedure of the Sale of Food and Drugs Acts; and it doubts whether the evidence before the magistrate proved more than that Guinness's stout had been diluted or adulterated.

There have been many prosecutions for applying false trade descriptions to goods under various circumstances. Reference is made shortly to the following :—

Miscellaneous.

An anonymous case at Wrexham (Times, Nov. 12, 1889), where a German brace and scissors were sold as Sheffield.

R. v. *Smith* (Times, Sept. 11, 1889). German saws as Sheffield.

R. v. *Watts* (Times, April 7, 1897). Canadian ham,

American cured, as York. Defence: sale made by a shopman without authority.

R. v. *Van Straughton, Loon & Co.* (Times, Jan. 20, 1899). Dutch butter as Danish.

R. v. *Semprini* (Times, Jan. 25, 1899), where the defendant applied a false trade description in certain consignment notes in which the article supplied was consigned as "fresh butter," or "butter," and was summoned under the Margarine Act and the Merchandise Marks Act for forwarding margarine without consigning it as margarine, and for not branding margarine on the packages containing it; and for applying a false trade description to it. Fined £10, and 2 guineas costs.

R. v. *Planner* (Times, Feb. 1, 1899). Adulterated butter.

R. v. *McKnight* (Times, Dec. 12 and 20, 1900, and Jan. 22 and Feb. 9, 1901). Defendant supplied a keg of pure Dutch butter every week to a provision merchant. Upon analysis it was found to contain 8 per cent. of foreign fat. Another analyst deposed to its containing as much as 10 per cent. It was labelled "Dutch Produce—Guaranteed Pure Butter," and an invoice also guaranteed it to be pure butter. The summons was dismissed without costs on the ground that there was no evidence that a false trade description was applied to the keg, the butter in which was analysed, another keg having been delivered to which the analysis referred.

R. v. *Davies Bros.* (Times, May 14, 1903). Supplying margarine to one of the Rowton Houses in boxes marked "French Produce—Guaranteed Pure Butter." Fined £20, and £5 costs on one summons, and 1 guinea on three other summonses.

R. v. *Hermann Rhensius* (C. Muller & Co.) (Times, March 9, 1899). German lamp chimneys as Austrian.

R. v. *Tollhurst* (Times, May 18, 1899). White lead described as "genuine white lead ground in oil," in which 25 per cent. of the pigment was barytes, or ponderous earth. In this case information with respect to the persons from whom he obtained the goods was demanded, under § 2, subsec. (2), clause (*b*), by the prosecutor, and refused by the defendant. Fined £20, and 5 guineas costs on one summons, and a nominal penalty on the others.

R. v. *Johnson* (Times, March 7, 1900), a prosecution under § 5, subsec. (3). The defendant used "Hovis" tins for other flour. Fined £15, and 10 guineas costs.

R. v. *Jonas Jung* (Times, Sept. 26, 1900), a similar case.

R. v. *McCarthy, Buck & Co.* (Times, April 6, 1900). Applying the false trade description of "Richards, London," to a gun, being a colourable imitation of the name of Messrs. Westley, Richards & Co., Ltd., Gunmakers, London. The defence was that the gun was marked at the request of the purchaser, and there was no intention to defraud. Fined in all £30 10s.

R. v. *Styles* (Times, Feb. 6, 1901). Applying three

fictitious names to three guns, viz. "Cox & Co., London," "Hatton & Co., London," and "Allday & Co., London." Fined in all £45 15*s*.

R. v. *Adcock, Easton & Co.* (Times, Oct. 26 and 28, and Nov. 4, 1901), applying the false trade description of "Chloros" to a disinfectant. The defendants and the United Alkali Co. (the only manufacturers of "Chloros") tendered to supply the Southwark Borough Council with "Chloros" at 1*s*. and 1*s*. 3*d*. per gallon respectively. The defendants' tender was accepted, whereupon they bought "Chloros" from the prosecutors (the United Alkali Co.) at 1*s*. 6*d*. per gallon. Consequently—unless they fulfilled their contract at a considerable loss—the article supplied must have been adulterated with considerable quantities of water, or some other liquid, so as to diminish its efficacy as a disinfectant. "Chloros" was described as sodium hypochlorite of not less than 10 per cent. available chlorine. The defendants delivered sodium hypochlorite of less strength. It was argued for the defendants that they contracted to supply sodium hypochlorite, and, if what they supplied was not of the strength stipulated for, it did not follow that they applied a false trade description; that they had committed no offence under § 3, subsec. (1); if any offence had been committed it was under subsec. (2); and the prosecutors had no monopoly in the word "Chloros." They were fined £20, and £25 costs on each of two summonses, or £90 in all.

R. v. *Joseph Tobins* (Times, May 14, 1904) for selling, &c., phonograph records to which a false trade description had been applied. Proceedings taken for the purpose of protecting Mr. Edison's reputation. Fined £5, and 5 guineas costs on one, and 10 guineas, and 5 guineas costs on another summons.

R. v. *Woolf Weisberg & Max Strauss* (Times, June 14 and 24, 1904). Applying a false trade description to 3120 incandescent gas mantles, and having in their possession for the purposes of trade the trade marks "A.U.R." of the Welsbach Incandescent Gas Lighting Co., Ltd., thus falsely applied. The defence was that the prisoners were in the employment of another German who could not be found. They were found guilty at the Central Criminal Court, and Strauss, who had been previously convicted, was sentenced to nine months', and Weisberg to four months' imprisonment.

TOBACCO, ETC.

R. v. *Muriatti* (Times, April 14, and May 3, 1890). False trade description applied to cigarette boxes. Alderman Renals, in giving his decision, said: "I hold that the covers are an indirect indication that the goods were made or produced in Turkey. As to the intention to defraud, I do not think the defendants intended to defraud, but they have not proved to me that they had no intention to defraud, as in *Starey* v.

Chilworth Gunpowder Co." (*supra*, p. 101). Fined 20*s.*, and 5 guineas costs.

R. v. *Cohen, Weenen & Co.* (Times, April 19 and 26, and May 3, 1899). The defendants resorted to a trade expedient by selling machine-cut tobacco as "hand-cut" in order that higher prices might be obtained. For the defence it was urged that the trade description did not come within the Act as defined by § 3. The decision in *Kirshenboim* v. *Salmon & Gluckstein* (*supra*, p. 103) was distinguishable, as cigarettes were a manufactured article. "Bath buns" and "Swiss rolls" are terms denoting a particular class of goods. So "hand-cut" denoted a special kind of dark flake tobacco. The learned magistrate (Mr. Mead) decided that "hand-cut" was a description within the meaning of the Act, and its natural interpretation was that it was tobacco cut with a knife to which the hand was directly applied. No offence was committed with intent to defraud, for "machine-cut" and "hand-cut" tobacco were equally good, but members of the public had been deceived. Fined £4 on the first and £4 on the fourth summons, but no costs were allowed, as the real prosecutors were shrouded in mystery.

R. v. *Drapkin* (Times, June 14, 1900). Cigarettes made in London sold in boxes containing stamps which would give the impression that they were made in Egypt and imported. Fined £20, and 10 guineas costs, and £5, and 2*s.* costs on other summonses.

R. v. *Lazarus* (Times, April 19, and May 17, 1900). Applying "La Firmeza" to boxes of cigars. Committed for trial.

R. v. *Fernmore Jones* (Times, May 12 and 16, 1900). Cigarettes—the false description was "Egyptian." Egyptian cigarettes are made by Greeks, who have a secret way of blending tobacco and making cigarettes. The boxes had on them pictures of the pyramids and the sphinx, with a representation of an Egyptian stamp. A stamp issued by the Turkish Government, when placed on a box of Egyptian cigarettes, was a guarantee that they were genuine. If the cigarettes were made in England, there was a saving of 10*d.* per pound duty. The boxes were marked "Miramaro." The label was designed by Major Drapkin & Co. (see *R.* v. *Drapkin*, *supra*). The defence was that when asked for the cigarettes, they had none, so sent out for them to Drapkins. They paid 31*s.* for them, and sold them for 45*s.* It was held that the defendant had not acted innocently, and a fine of £5, and 5 guineas costs was imposed.

R. v. *Alexander Jones* (Times, May 15, 1900). Packet of cigarettes having upon it "Cigarettes Egyptiennes D. Theocaridi," and a label which, it was alleged, was similar in appearance to the Egyptian Government stamp. Defence: the packages had on them "Made in England." Defendant was formerly in partnership with Mr. Theocaridi, who used to manufacture in Egypt, and send over the cigarettes to

England. He had omitted to do so, hence the "fake." Fined £20, and 10 guineas costs.

R. v. B. Morris & Sons, Ltd. (Times, May 31 and June 15, 1900). Applying to certain cigarettes a false trade description, viz. "Seul Fabricant des Osiris, Commission et exportation, Cigarettes Egyptiennes, Qualité, Specialité, Osiris." The cigarettes were made of Turkish tobacco by Greeks. Fined £10, and 20 guineas costs, and 2s. costs on five other summonses.

China.

R. v. Leon Hopeon (Times, May 10, 1900). Exposed for sale certain china to which the false trade description "Dresden" was applied. It was manufactured in Thuringia, 250 miles from the Dresden manufactory. Fined 40s., and 2 guineas costs.

R. v. Midland Education Co. (Times, Nov. 9, 1901). Defendants had two hundred pieces of pottery marked "Wedgewood." Defence: blunder; apology; flashy imitations made in Germany. Undertaking given that in future such articles should be marked "Made in Germany." Fined £20, and 10 guineas costs above ordinary fees.

R. v. Christie, Manson & Woods (Times, Feb. 21, 1900, and 16 T.L.R. 442). For the facts of this case, see Chapter V. (*post*, p. 146).

CHAPTER IV

MASTER AND SERVANT

THE last clause of § 2 (1) decrees every person, subject to the provisions of the Act, and unless he proves that he acted without intent to defraud, to be guilty of an offence against the Act, who—

(*f*) causes any of the things above in this section to be done.

And by subsec.—

(2) Every person who sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—

(*a*) that having taken all precautions against committing an offence against this Act, he had at the time of the commission of

the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description; and

(*b*) that on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(*c*) that otherwise he had acted innocently;

be guilty of an offence against this Act.

Consequently a master is made criminally liable for acts done by his servant in contravention of this Act, except under the circumstances provided for in clauses (*a*), (*b*), and (*c*).

In *Coppen* v. *Moore* (No. 2) (1898, 2 Q.B.D. 306) the question was reserved for a Special Court, whether under the Merchandise Marks Act, 1887, the employer could be punished for the unauthorised act of his servant; and it was held that the provisions of § 2 subsec. (2), which make it an offence to sell goods to which a forged trade mark or a false trade description is applied, make a master criminally liable for acts done by his servants in contravention of the section, when acting within the general scope of their employment, although contrary to their master's orders, unless the master can shew that he has acted in good faith, and has done all that it was

reasonably possible to do to prevent the commission of offences by his servants.

See the judgment of the court, pp. 175, 176.

It was on the ground that the defendant could not have taken more care, and the negligence was that of his servants, that the magistrate dismissed the summons against Dr. Barnardo (*supra*, p. 118).

By § 19 (3) nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the United Kingdom who bonâ fide acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

A further exemption is thus made in favour of servants acting bonâ fide in obedience to the instructions of their masters.

And by § 6, where a defendant is charged with making any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the

things in this section mentioned to be done, and proves—

(*a*) that in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for making, or being used in making, trade marks, or as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the United Kingdom, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

(*b*) that he took reasonable precautions against committing the offence charged; and

(*c*) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and

(*d*) that he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or description was applied—

he shall be discharged from the prosecution, but

shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

Although these provisions protect the servant under the circumstances therein set out, servants are generally liable for acts done by them in obedience to the instructions of their masters, if such acts are in themselves illegal; thus it was held that an unregistered chemist's assistant, who, in the absence of his master, sells any poison, or preparation containing poison as defined by the Pharmacy Act, 1868, is liable to a penalty under § 15 of that Act, notwithstanding that he effects such sale on behalf of his master, and that his master is duly registered (*Pharmaceutical Society* v. *Wheeldon*, 24 Q.B.D. 683). But a master milk-seller may be convicted under the Sale of Food and Drugs Acts for selling adulterated milk, although the milk was adulterated by his servant without his knowledge or connivance (*Brown* v. *Foot*, 8 T.L.R. 268); but where defendant was summoned for a nuisance caused by smoke, and the nuisance was caused by a stoker employed by him, it was held that he was not criminally responsible for the negligence of his servant, and could not be convicted of the offence (*Chisholm* v. *Doulton*, 22 Q.B.D. 736).

It is always open to servants charged with any of the offences mentioned in § 6 of the Merchandise

Marks Act, 1887, to prove that they acted without intent to defraud.

The clauses (*b*), (*c*), and (*d*) of § 6 are very similar to clauses (*a*) and (*b*) of § 2 (2).

All three subsections of § 2 begin with the words, "Every person." Moreover, the word "person," whether preceded by "every," or "a," or "any," forms the commencement of many of the sections of the Act. It is therefore interesting to consider what meanings attach to the word "person" in the Act.

By § 3 (1) the expressions "person," "manufacturer," "dealer," or "trader," and "proprietor," include any body of persons corporate or unincorporate; and the expression "name" includes any abbreviation of a name.

By § 6 an exception is created of certain persons employed in the ordinary course of business. It is to be observed, however, that this section does not apply to the offences under the clauses (*a*) and (*c*) of § 2 (1), namely, (*a*) forging any trade mark, and (*c*) disposing of or having in his possession any die, block, machine, or other instrument for the purpose of forging a trade mark.

A corporation or partnership or trade society can thus be convicted and fined, and, although a principal is not liable for the acts of his agent which he has not specially authorised, unless it be expressly so provided by statute, it was held in *Coppen* v. *Moore* (No. 2) (*supra*, p. 137) that a master is criminally

liable for acts done by his servants in contravention of this Act.

By the Interpretation Act, 1889 (52 & 53 Vict. c. 63)—

§ (1). In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed before or after the commencement of this Act, the expression "person" shall, unless the contrary intention appears, include a body corporate.

§ (2). Where under any Act passed before or after the commencement of this Act any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved.

As to the circumstances under which a corporation can be indicted, see notes in Chapter VI. (*post*, pp. 151–156).

CHAPTER V

INTENT TO DEFRAUD AND ACTING INNOCENTLY

THE meaning of "fraud" and an "intent to defraud" has been amply considered.

In *Wood* v. *Burgess* (24 Q.B.D. 162; 59 L.J.M.C. 41) it was held that an intent to defraud a particular purchaser was not a necessary ingredient of the offence charged (see *supra*, p. 44).

In *Starey* v. *Chilworth Gunpowder Co.* (*supra*, p. 101), LORD COLERIDGE, C.J., said: "In the present case all further controversy is superfluous when once one has ascertained with certainty what 'fraud' means in the Act. I agree that if the word is used in the sense of putting off a bad article on a customer in order to get money unfairly, there is no evidence here of anything of the kind having been done. On the contrary, it is expressly found that the article supplied was as good as that which was contracted for. But that, I think, is not the correct meaning of the word 'fraud' as used in this Act of Parliament. The Act is directed against the abuse of trade marks, and the putting off on a

purchaser of, not a bad article, but an article different from that which he intends to purchase, and believes he is purchasing. It would apply to cases where a particular article, manufactured by a particular person, had acquired a widespread reputation (as, for instance, happened in the celebrated case of the fish sauce) (*Burgess* v. *Burgess*, 3 De G.M. & G. 896), and some one supplied another, and a different, article under that name, so as to make the purchaser take something which he did not know he was taking. That, I think, is the meaning of the word 'defraud' as used in the Act of Parliament, and in that sense only there was in the present case an intent to defraud."

MATHEW, J., added: "The words 'without intent to defraud' apply to cases where a person uses a particular mark without any intent in so doing to induce a buyer to accept goods which might otherwise be rejected."

In *R.* v. *Tooth* (*supra*, p. 125), SIR PETER EDLIN, in his able judgment, said: "Fraud was not a necessary ingredient of the offence charged, and it was not suggested that the appellants were cognizant that the mark was false. The mere possession, for sale, of such spurious articles was primâ facie an offence."

Upon every person, therefore, who is charged with an offence under § 2 (1) is cast the burden of proving that he acted without intent to defraud; and if charged with any of the offences enumerated in § 2

(2), he will be deemed guilty of an offence against the Act, unless he satisfies the court that he comes within the provisions of clauses (*a*) and (*b*) or (*c*) of that subsection.

Interesting illustrations of the meaning of the "intent to defraud" are to be found in the cases of—

R. v. *Cohen, Weenen & Co.* (*supra*, p. 133); and

R. v. *Muriatti* (*supra*, p. 132).

It would appear from the decision in *Gridley* v. *Swinborne* (*supra*, p. 106) that the prosecutor must prove a "mens rea" on the part of the defendant; but as to the extent of the "mens rea" and its application to corporations, see the interesting judgment of CHANNELL, J., in *Pearks, Gunston & Tee (Ltd.)* v. *Ward* (71 L.J.K.B. 656; (1902) 2 K.B. 1; 87 L.T. 51; 66 J.P. 774; and 18 T.L.R. 538), which is cited in Chapter VI. (*post*, pp. 153–156). At the same time it is immaterial that the purchaser was not deceived (*Kirshenboim* v. *Salmon & Gluckstein*, *supra*, p. 103).

It has been seen that where the person charged is actually and personally engaged in the commission of the various offences set out in subsec. (1) of § 2, and is in fact alleged to be an active participator in the offence, he has to prove that he acted without intent to defraud; but in subsec. (2), where the defendant may become passively the possessor for sale of any goods in respect of which an offence against the Act has been committed, he has to prove that "he acted innocently," that is to say, he must

explain, to the satisfaction of the court, the circumstances under which he came to have the incriminated article in his possession for sale. The same principles apply as in the plea that he acted without intent to defraud.

In *R.* v. *Christie, Manson & Woods* (1900, 2 Q.B. 522) (Times, Feb. 21, 1900) the defendants were charged with selling a white china dish, a pair of oval baskets, and a pair of candlesticks, to which forged trade marks were applied, namely, the trade mark of the proprietors of the Royal Porcelain Factory of Saxony.

The articles were sold in one lot, and were in fact of inferior French manufacture, but bore the Royal Dresden trade mark.

On the lot being reached, the auctioneer said to those present in the sale rooms, "Our attention has been drawn to this lot, and we sell this lot for what it is—you see what it is," at the same time putting his pen through the word "Dresden," as the lot was marked in the catalogue. No attempt was made to shew that the articles were real Dresden china. The magistrate convicted the defendants, but on a case stated, the Queen's Bench Division quashed the conviction, and held that a person who had reason to suspect the genuineness of the trade mark might, nevertheless, have acted innocently in selling goods to which the trade mark was applied, and might, therefore, be exonerated under this subsection. MR. JUSTICE

CHANNELL, in the course of his judgment, said: "It seems to me quite clear that there may be innocence of any intention to infringe the Act, even although there may be suspicion of the genuineness of the article or trade mark. That is what the word 'otherwise' means, I think."

It is difficult to reconcile this decision with that in *R.* v. *Tooth* (*supra*, pp. 125–127). In the latter case the auctioneers received the incriminated article for sale in the ordinary way of business, just as Messrs. Christie & Co. did; but in *R.* v. *Tooth*, immediately the defendants had a complaint as to the articles catalogued for sale, they withdrew them from the sale, whereas Messrs. Christie deliberately sold articles bearing forged trade marks, although they sold them as spurious articles. Yet in the case of *R.* v. *Tooth* the defendants were held to have acted negligently. It is almost impossible to criticise accurately a decision of fact without having been present at the trial. It must therefore be presumed that the respective facts of the two cases justified the decisions thereon.

In *R.* v. *Tooth*, SIR PETER EDLIN said: "If the word 'innocently' were applied simply in the sense ordinarily attaching to it, proof by the accused person that he was ignorant of the fictitious character of the description would suffice to exonerate him. The practical effect of that construction would be to render the immediately preceding pargaraphs in the subsection of no force."

Clause (*c*) must therefore be read in conjunction with clauses (*a*) and (*b*) according to the judgment of Sir Peter Edlin.

It will be noticed that clauses (*a*) and (*b*) are practically one clause, being connected by the conjunction "and," whereas clause (*c*) is immediately preceded by the word "or," and begins "that otherwise." According to MR. JUSTICE CHANNELL, "otherwise" means that innocence may exist in spite of a suspicion of the genuineness of the article, but the position is more fully explained by LORD RUSSELL, C.J., in delivering the judgment of the court in *Coppen* v. *Moore* (No. 2) (14 T.L.R. 416). "It seems clear," he said, "that clauses (*a*) and (*b*) of subsec. 2 apply to cases where goods in question are in the possession of the accused for sale, or are sold with the forged trade mark, or false trade description already stamped upon them or otherwise applied to them, and not to a case like the present, where the false trade description is applied upon the occasion and as part of the terms of sale; and in the latter case the accused must rely for his exculpation upon clause (*c*), namely, by shewing that he had acted innocently."

Illustrations of the application of the principle may be found in—

Kirshenboim v. *Salmon & Gluckstein* (*supra*, p. 103);

R. v. *Phillips* (*supra*, p. 104); and

R. v. *Fenmore Jones* (*supra*, p. 134).

CHAPTER VI

THE PROSECUTION
(INCLUDING FORFEITURE, APPEAL, EVIDENCE, ACCESSORIES, AND COSTS)

By § 2 (3). Every person guilty of an offence against this Act shall be liable—

(i.) on conviction on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and

(ii.) on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding twenty pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding fifty pounds; and

(iii.) in any case, to forfeit to Her Majesty every chattel, article, instrument, or thing by

means of or in relation to which the offence has been committed.

(4) The court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

(5) If any person feels aggrieved by any conviction made by a court of summary jurisdiction, he may appeal therefrom to a court of quarter sessions.

(6) Any offence for which a person is under this Act liable to punishment on summary conviction may be prosecuted, and any articles liable to be forfeited under this Act by a court of summary jurisdiction may be forfeited, in manner provided by the Summary Jurisdiction Acts: Provided that a person charged with an offence under this section before a court of summary jurisdiction shall, on appearing before the court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly.

Whether a person charged with an offence under this Act be dealt with summarily, or on indictment, the same principles are to be applied: *per* LORD COLERIDGE, C.J., in *Gridley* v. *Swinborne* (5 T.L.R. 71).

But it is absolutely necessary that a person charged with an offence to which § 17 of the Summary Jurisdiction Act, 1879, applies, be informed of his right to be tried by a jury, before he pleads to the charge. It is immaterial whether or not he knew of his right to be tried by a jury, or whether or not the court knew before the proceedings commenced that he intended to plead guilty in the course of the case : *R.* v. *Cockshott* (1898, 1 Q.B. 583 ; 67 L.J.Q.B.D. 467).

As a general rule offenders can only be prosecuted in the districts in which their offences were committed. There are, however, several statutory exceptions to this rule.

But where an offence is of such a nature that the offender may be proceeded against either civilly or criminally, there is nothing illegal or improper in a compromise of the criminal proceedings taken against him (*Fisher* v. *Apollinaris Co.*, L.R. 10 Ch. App. 297).

A difficulty may arise in the procedure against a corporation, especially where a corporation elects not to be dealt with summarily, for a corporation can only be indicted for such offences as are capable of punishment by fine alone—as, for example, libel (*Whitfield* v. *S.E.R.*, E.B. & E. 115). In every case, however, the persons actually implicated in the crime—whether they be members, or merely agents, of the corporation—can be indicted and punished : and where the proceedings are civil in substance, as, for instance,

where a corporation is prosecuted for breach of a statutory duty, the corporation is amenable to the criminal law.

As BOWEN, L.J., said in *R.* v. *Tyler* (1891, 2 Q.B. 592): "Where a statute creates a duty upon individual persons, it would be a strange result if the duty could be evaded by those persons forming themselves into a joint stock company." And this doctrine extends to cases of misfeasance as well as nonfeasance (*R.* v. *G.N. England Ry. Co.*, 9 Q.B. 315).

Since the statute 13 Edw. 1. c. 10 applied only to the Supreme Courts, a corporation can neither prosecute nor defend at quarter sessions. At petty sessions there is no such difficulty, as the provisions of the Summary Jurisdiction Act, 1879, expressly extends to corporations (see Adler's Summary of the Law of Corporations). A writ of certiorari has therefore to be obtained for the removal of the indictment into the King's Bench Division of the High Court of Justice, or the criminal side of the assizes.

But a corporation cannot have a "mens rea"—as BRAMWELL, L.J., said in the case of the *Pharmaceutical Society* v. *London and Provincial Supply Association* (L.R. 5 Q.B.D. 310), "Offences of commission are offences of individuals, not of corporations. A corporation cannot have the 'mens rea:' the individual offender must be got at." We therefore have to face the difficulty that whereas a charge under the Merchandise Marks Act is a criminal charge, and a "mens rea"

has to be made out (see judgment of LORD COLERIDGE, C.J., in *Gridley* v. *Swinborne, supra*, p. 109), a corporation being incapable of having a "mens rea" is incapable of prosecution for all offences in which "mens rea" is an element.

However, in the case of *Pearks, Gunston & Tee (Ltd.)* v. *Ward,* and *Hennen* v. *Southern Counties Dairies Co., Ltd.* (71 L.J.K.B. 656; 1902, 2 K.B. 1; 18 T.L.R. 538), it was held that in the circumstances of those cases a corporation can be liable for an offence under § 6 of the Sale of Food and Drugs Act, 1875.

The judgment of CHANNELL, J., affords a solution of the difficulty referred to. He said: "With regard to the other and important question whether a body corporate can be made liable under § 6, I agree with what has been already said, but having regard to the importance of the question, I will add a few words. By the general principles of the common law, if a matter is made a criminal offence, it is essential that there should be something in the nature of a 'mens rea,' and therefore in ordinary cases a corporation cannot be guilty of a criminal offence, nor can a master be liable criminally for an offence committed by his servant. But there are exceptions to this rule in the case of quasi-criminal offences, as they may be termed, that is to say, where certain acts are forbidden by law under a penalty, possibly even under a personal penalty, such as imprisonment, at

any rate in default of a fine; and the reason for this is, that the Legislature has thought it so important to prevent the particular act from being committed that it absolutely forbids it to be done; and if it is done the offender is liable to a penalty, whether he had any 'mens rea' or not, and whether or not he intended to commit a breach of the law. Where the act is of this character, then the master, who, in fact, has done the forbidden thing through his servant, is responsible, and is liable to a penalty. There is no reason why he should not be, because the very object of the Legislature was to forbid the thing absolutely. It seems to me that exactly the same principle applies in the case of a corporation. If it does the act which is forbidden, it is liable. Therefore, when a question arises, as in the present case, one has to consider whether the matter is one which is absolutely forbidden, or whether it is simply a new offence which has been created to which the ordinary principle as to 'mens rea' applies. Applying this to § 6 of the Sale of Food and Drugs Act, 1875, I think the matter is quite clear, for it has already been decided in at least two cases that there is an absolute prohibition of the particular sale mentioned in the section, and, consequently, there is no reason why the section should not apply to a corporation. In other words, the word 'person' in § 6 includes a corporation, because no contrary intention appears. As to § 3 there is a slight difference, because, reading § 3 and

§ 5 together, it seems that 'mens rea' is involved in the offence, though it need not be proved by the prosecution, as it must be in ordinary criminal cases. It is, however, so far an element in the offence that, if the defendant succeeds in proving that he had no 'mens rea,' he is to be acquitted, the burden of proof thus being shifted from the prosecution to the defence. A provision of that kind is enacted where the Legislature desires to prevent the act from being done, though it is recognised that there may be cases in which the act is done innocently, and in which the person ought, therefore, not to be convicted. In those cases the defendant can prove his innocence; but, as it would be difficult for the prosecution to prove 'mens rea,' if the onus were upon them to do so in the ordinary way, the enactment is consequently framed in this particular way. There may, therefore, be more difficulty in applying the rule in those cases to a corporation than there is under § 6. Speaking for myself, I am inclined to think that a corporation would come under § 3 as well as under § 6, but the question is not quite so clear; and possibly it may have to be argued hereafter. I agree with Mr. Ricketts' argument that § 17 of the Act of 1899, which provides for the imprisonment of offenders in certain cases, assists his case, because it requires proof of something more than is necessary under § 6—some personal act or culpable negligence on the part of the defendant—before imprisonment can be inflicted. If

§ 6 had simply provided that imprisonment should follow a breach of the section, there might have been some difficulty in applying the section to a corporation."

An action for malicious prosecution will lie against a corporation (*Cornford* v. *Carlton Bank, Ltd.*) (1889, 1 Q.B. 392).

The procedure is in accordance with the Summary Jurisdiction Acts; and by § 13 the "Vexatious Indictments Act" is to apply to offences under this Act.

By § 9, in any indictment, pleading, proceeding, or document, in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

After the summons to appear, or a warrant for arrest has been issued, a search warrant, as in *R.* v. *Goff* (*supra*, pp. 121–124), may be issued under the provisions of § 12, namely—

12.—(1) Where, upon information of an offence against this Act, a justice has issued either a summons requiring the defendant charged by such information to appear to answer to the

same, or a warrant for the arrest of such defendant, and either the said justice on or after issuing the summons or warrant, or any other justice, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, such justice may issue a warrant under his hand by virtue of which it shall be lawful for any constable named or referred to in the warrant, to enter such house, premises, or place at any reasonable time by day, and to search there for and seize and take away those goods or things; and any goods or things seized under any such warrant shall be brought before a court of summary jurisdiction for the purpose of its being determined whether the same are or are not liable to forfeiture under this Act.

(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Act, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a court of summary jurisdiction

may cause notice to be advertised stating that, unless cause is shewn to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the court, unless the owner or any person on his behalf, or other person interested in the goods or things, shews cause to the contrary, may order such goods or things or any of them to be forfeited.

(3) Any goods or things forfeited under this section, or under any other provision of this Act, may be destroyed or otherwise disposed of, in such manner as the court by which the same are forfeited may direct, and the court may, out of any proceeds which may be realised by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

And by § **15**, no prosecution for an offence against this Act shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

Official prosecutions are provided for by the Merchandise Marks Act of 1891, § 2, namely—

2.—(1) The Board of Trade may, with the concurrence of the Lord Chancellor, make regulations providing that in cases appearing to the Board to affect the general interest of the country, or of a section of the community, or of a trade, the prosecution of offences under the Merchandise Marks Act, 1887, shall be undertaken by the Board of Trade, and prescribing the conditions on which such prosecutions are to be so undertaken. The expenses of prosecutions so undertaken shall be paid out of moneys provided by Parliament.

(2) All regulations made under this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and if Parliament is not then sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act, and shall be published under the authority of Her Majesty's Stationery Office.

(3) Nothing in this Act shall affect the power of any person or authority to undertake prosecutions otherwise than under the said regulations.

And by the Merchandise Marks (Prosecutions) Act, 1894:—

1. The powers exerciseable by the Board of Trade under the Merchandise Marks Act, 1891, with respect to the prosecution of offences under the Merchandise Marks Act, 1887, may in cases which appear to the Board of Agriculture to relate to agricultural or horticultural produce be exercised by that Board, and in such cases the former Act shall apply as if the Board of Agriculture were referred to therein instead of the Board of Trade.

2. This Act shall not extend to Ireland.

3. This Act may be cited as the Merchandise Marks (Prosecutions) Act, 1894, and shall be read with the Merchandise Marks Acts, 1887 and 1891.

By § **19.**—(1) This Act shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Act, be brought against him.

(2) Nothing in this Act shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall

not be admissible in evidence against such person in any prosecution for an offence against this Act.

(3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the United Kingdom who bonâ fide acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

Other special offences are created by §§ 8 and 20.

§ 8 will be dealt with in Chapter VIII.; and cases under § 20 have already been alluded to in Chapter II. (*supra*, pp. 67, 68).

Forfeiture.—Besides the provisions as to forfeiture, and compensation out of the proceeds of forfeited goods to innocent parties in § 12, already alluded to, provision is further made in § 16 as to forfeiture in the case of the importation of goods.

If the marks can be entirely obliterated, the court allows this to be done, instead of ordering the goods to be forfeited and destroyed, as in *Slazenger* v. *Feltham* (*supra*, p. 72), and in *R.* v. *Attenborough* (*supra*, p. 55); and the Court will not order the destruction of goods unnecessarily, as in *R.* v. *Burgoyne & Co.* (*supra*, pp. 35–39), and occasionally when an undertaking is given that no more offending marks

will be used, as in *R.* v. *Egan* (*supra*, p. 119); but in *R.* v. *Jeffery* (*supra*, p. 121) the goods (gun-barrels) and in *R.* v. *Levy* (*supra*, p. 111) (loofah sock), and in *R.* v. *Williamson* (*supra*, p. 96) (watches), were ordered to be forfeited; and in *R.* v. *Tooth* (*supra*, p. 125) one piano was ordered to be delivered up to the prosecutor, and the other to the rightful owner.

It would have been quite easy to have removed the offending marks in the case of either the gun-barrels or the pianos. A distinction seems to have been made between marks on articles clearly the absolute property of the person charged, and goods which are not his property but which he holds as bailee. The decision as to the fate of the incriminated article is left to the discretion of the court, which must decide each case according to its peculiar circumstances.

Appeal.—Appeals are governed by the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49, § 31). See Stone's Justices Manual.

The application to a magistrate for a summons is a criminal proceeding, and therefore the judgment of the High Court is a judgment in a "criminal cause or matter" within § 47 of the Judicature Act, 1873, and no appeal will lie (*R.* v. *Tyler*, 1891, 2 Q.B. 588).

If the magistrates refuse to hear and determine a matter in which they have jurisdiction, they may be compelled to do so by mandamus; and an order made

by them or a conviction without jurisdiction may be quashed upon a certiorari.

Evidence—

By § 10, in any prosecution for an offence against this Act—

(1) A defendant, and his wife or her husband, as the case may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witnesses.

(2) In the case of imported goods, evidence of the port of shipment shall be primâ facie evidence of the place or country in which the goods were made or produced.

In *Watson* v. *Dr. Jaeger's Sanitary Woollen System Co.* (*supra*, Chapter I., p. 59) it was held that evidence whether, according to the custom of the trade, the imposition of an English trade mark, or a trade mark with English words, indicated that the goods on which it was imposed were made in England was admissible; as also were statements made by salesmen at the time of sale.

Whether a customer would be likely to be deceived is not a proper question to put to a witness, for it is for the court, and not for the witness, after inspection

of the exhibits, and having regard to the evidence, to decide whether a customer would be likely to be deceived by the make-up of the goods (*Payton* v. *Snelling*, 70 L.J. Ch. 644).

Evidence as to the previous transactions between the parties is always admitted where a guilty knowledge is an ingredient in the offence (*Budd* v. *Lucas*, *supra*, p. 82).

In *R.* v. *Francis* (L.R. 2 C.C.R. 128), where on the trial of an indictment for endeavouring to obtain an advance from a pawnbroker upon a ring by the false pretence that it was a diamond ring, evidence was admitted that two days before the transaction in question the prisoner had obtained an advance from a pawnbroker upon a chain which he represented to be a gold chain, but it was not so, and endeavoured to obtain from other pawnbrokers advances upon a ring which he represented to be a diamond ring, but which in the opinion of the witnesses was not so, and the ring was not produced, it was held that the evidence was properly admitted.

But in *R.* v. *Holt* (30 L.J.M.C. 11), where the prisoner, a commercial traveller, who was employed by the prosecutors to take orders, but forbidden to receive moneys, obtained a sum of money from a customer by the false pretence that he had authority to receive it, it was held that evidence was not admissible to show that the prisoner, within a week from the time of the offence charged, obtained another

sum of money from another customer by a like false pretence.

In *Budd* v. *Lucas* (1891, 1 Q.B. 408) it was held that evidence as to the previous transactions between the parties should have been admitted (*supra*, p. 82).

In *Charnock* v. *Merchant* (1900, 1 Q.B. 474) the appellant was charged with an offence under the Prevention of Cruelty to Children Act, 1894, and gave evidence on his own behalf, as that Act permits. He was asked in cross-examination whether he had not been previously convicted of a similar offence. The court held that the evidence as to the appellant's previous conviction was not admissible, and quashed the conviction.

In an action for an injunction to restrain the use of a trade mark, if the defendant's goods, on the face of them, and having regard to surrounding circumstances, are calculated to deceive, evidence to prove the intention to deceive is unnecessary; the rule being that a man must be taken to have intended the reasonable and natural consequences of his own acts; but if, on the other hand, a mere comparison of the goods, having regard to surrounding circumstances, is not sufficient, then evidence of intention to deceive is admissible; and this evidence may be supplied by admissions, oral or in writing, or by inference from conduct (*Saxlehner* v. *Apollinaris Co.* (1897, 1 Ch. 893).

By § 19 (2), nothing in this Act shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Act.

Accessories—

By § 11, any person who, being within the United Kingdom, procures, counsels, aids, abets, or is accessory to the commission, without the United Kingdom, of any act, which, if committed in the United Kingdom, would under this Act be a misdemeanour, shall be guilty of that misdemeanour as a principal, and be liable to be indicted, proceeded against, tried, and convicted in any county or place in the United Kingdom in which he may be, as if the misdemeanour had been there committed.

It will be noticed that this section only applies to offences committed without the United Kingdom.

A person should not be charged as a principal as well as an accessory in the same information (*Hamilton* v. *Walker*, 40 W.R. 476).

Costs—

By § 14, on any prosecution under this Act

the court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

This section is subject to the special provisions of § 6, exempting certain persons employed in the ordinary course of business, where the defence provided by that section is set up.

The section gives the court absolute discretion over the costs, which, of course, must be exercised judicially.

In *Upmann* v. *Forester* (24 C.D. 231), where immediately on the plaintiff's issuing a writ, and serving the defendant with notice of motion for an injunction to restrain him from selling cigars bearing a spurious brand purporting to be that of the plaintiff's, the defendant stated that he had no intention of selling any of the cigars, and offered all the relief claimed by the writ, and at the trial of the motion agreed to an undertaking in the terms of the writ, it was held that the defendant must pay all the costs of the action. But in *American Tobacco Co.* v. *Guest* (1892, 1 Ch. 631, App. 101), where a retail trader innocently purchases and deals with a small quantity of goods which turn out to be an infringement of a trade mark, the court said it would not as a matter of course order the defendant to pay the costs of an

action for infringement of a trade mark. The case of *Upmann* v. *Forester* was distinguished because in that case there was a large consignment of 5000 cigars, whereas in this case there were only 500 cigarettes, worth 17*s.* 6*d.*

Under § 12 (3) the court may, out of the proceeds realised by the disposition of any goods forfeited under the section, award to any innocent party any loss he may have innocently sustained in dealing with such goods.

Forms of information, application to state a case, notice of appeal, and indictment will be found in the Appendix.

CHAPTER VII

THE DEFENCE

UNDER § 2 (1) the following various offences are created; namely—

(1) Forging a trade mark.

(2) Falsely applying to goods any trade mark, &c.

(3) Making any die, block, &c.

(4) Applying any false trade description to goods, or other indication, direct or indirect—

(*a*) as to the number, quantity, measure, gauge, or weight of any goods:

(*b*) as to the place or country in which any goods were made or produced:

(*c*) as to the mode of manufacturing or producing any goods:

(*d*) as to the material of which any goods are composed:

(*e*) as to any goods being the subject of an existing patent, privilege, or copyright.

(5) Disposing of or having in possession any die, block, &c.

(6) Causing any of the above things to be done.

These charges become offences unless the defendant proves that he acted without intent to defraud.

Throughout the Act, whenever a person is charged with any offence under it, the burden is cast upon him to disprove the existence of such intent to defraud.

By § 2 subsec. (2), every person who sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—

(*a*) that having taken all reasonable precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description; and

(*b*) that on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(*c*) that otherwise he had acted innocently ; be guilty of an offence against this Act.

Here, as to the offence of selling, or exposing for sale, or having in possession for sale, etc., a special defence is provided by the clauses (*a*), (*b*), and (*c*).

There has been much discussion as to the meaning and application of the terms "intent to defraud" and "*acted innocently*," but such a full exposition of them is given in the able judgment of LORD RUSSELL, C.J., in the case of *Coppen* v. *Moore* (14 T.L.R. 414–416), that that judgment is set out at length :—

The court, having taken time to consider, delivered judgment to-day affirming the conviction.

The LORD CHIEF JUSTICE read the judgment of the Court : "This is a case stated by justices who summarily convicted the appellant of an offence against the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28). The appellant was charged under § 2, subsec. (2), with having sold goods to which a false trade description was applied. The facts were as follows : On Sept. 4, 1897, the respondent, at the London Supply Stores, 42, George Street, Richmond (one of several places of business of the appellant), asked the salesman at the door of the shop for a small English ham. The salesman pointed to a number of hams on a shelf, and said they were Scotch hams. In fact, they were long-cut American hams. The salesman

stated the price, 8½*d.* per pound, and the respondent said he would take one, which was then produced. The salesman then passed the ham selected through the open window to a shop assistant inside, saying, 'Weigh up Scotch ham, 8½*d.*' The respondent, before paying, asked the assistant to make him out an account, and put on it 'Scotch ham,' 'as he had bought it as such.' The assistant at first handed the respondent an invoice without the word 'Scotch' on it. The respondent did not accept it so written, but told the assistant to put in the word 'Scotch,' 'as he had bought it as such.' The assistant then did so, and handed the invoice to the respondent, who then paid the price, 5*s.* 5½*d.* Upon this being done, the respondent asked the assistant whether he still said it was a Scotch ham, when the assistant admitted it was not, but was an American ham. The salesman, in like manner, was asked, and he at once admitted it was an American ham. On the part of the appellant, evidence was given that he had sent a notice to all his branch places of business, including that in question, in the following terms:—

"'Marsham Street, Feb. 25, 1897.

"'*Most important.*

"'Please instruct your assistants most explicitly that the hams described in the list must not be sold under any specific name of place or origin, that is to say, they must not be described as "Bristol,"

"Bath," "Wiltshire," or any such title, but simply as breakfast hams.

"'To Mr. Bedford, Richmond.

"'Please sign and return.

"'H. W. COPPEN."

"The ham in question would come within the category of breakfast hams. Evidence was given that the terms of this notice were communicated to the manager and assistants, and the appellant stated that he had no reason to believe that his instructions were not being carried out. It is now necessary to consider the statute in question and its application to the facts proved. Section 2 is the important section. Subsec. (1) deals with the forging of any trade mark and with the false application to goods of any such mark or of any false trade description, and enacts that, subject to the provisions of the Act, an offence shall have been committed by such forging or application unless the party charged proves that he acted without intent to defraud. Subsec. (2) enacts (omitting words immaterial in this case) that every person who sells any goods to which any false trade description is applied shall be guilty of an offence against the Act unless he proves—(*a*) that having taken all reasonable precautions he had no reason to suspect the genuineness of the trade description; and (*b*) that on demand duly made he gave all information in his power with respect to the persons from whom

he obtained such goods; or (*c*) that otherwise he acted innocently. By § 3 it is enacted that 'trade description' shall mean any description, statement, or other indication, direct or indirect, as to (among other things) the place or country in which any goods were made or produced. Later in such section it is enacted that the expression 'false trade description' shall mean a trade description false in any material respect as regards the goods to which it is applied. By § 5, subsec. (1), it is enacted that a person shall be deemed to have applied a trade description to goods who applies it to the goods themselves or uses a trade description in any manner calculated to lead to the belief that the goods in connexion with which it is used are designated or described by that trade description. In *Budd* v. *Lucas* (1891, 1 Q.B. 408) it was decided that where certain casks of beer were delivered accompanied by an invoice in which the casks were falsely described as 'barrels' (which word had acquired the character of a trade description) it was held that an offence under § 2, subsec. (1), of the Act in question had been committed, although the invoice containing the false trade description was not physically attached to the casks. I think this case was well decided; in other words, I think that it is not necessary to constitute the offence that there shall be any physical connexion between the false trade description and the goods to which it is applied. It was admitted that the

description 'Scotch ham' was a trade description, and it was found that it was applied to the ham sold by the appellant's employés, and it was admittedly false. It was not contended that it was not material. In these circumstances it is clear that an offence against the Act was committed by the salesman and by the assistant of the appellant. But the question which the court is now called upon to decide is whether the appellant also is not personally liable to be convicted. This was the question argued before us. The appellant's contention was that the charge here preferred was a criminal charge, and that the general principle of law applied—'nemo reus est nisi mens sit rea.' There is no doubt that this is the general rule, but it is subject to exceptions, and the question here is whether the present case falls within the rule or within the exception. Apart from statute exceptions have been engrafted upon the rule; for example, in the case of *R.* v. *Stephens* (L.R. 1 Q.B. 702) the defendant was held liable on indictment for obstructing navigation by throwing rubbish into a river from a quarry owned by the defendant but managed by his son, although it was proved that the men employed at the quarry had been by order prohibited from doing the acts complained of. No doubt in that case the fact that the proceedings were only in form criminal was adverted to by the judges who decided it, but the facts remains that the defendant was criminally indicted. But by far the greater

number of exceptions engrafted upon the general rule are cases in which it has been decided that by various statutes criminal responsibility has been put upon masters for the acts of their servants. Amongst such cases are *Mullins* v. *Collins* (L.R. 9 Q.B. 292), where a licensed victualler was convicted of an offence under § 16 of the Licensing Act of 1872 for supplying liquor to a constable on duty, although this was done by his servant without the knowledge of his master. Again, in *Bond* v. *Evans* (21 Q.B.D. 249), where a licensed victualler was convicted of an offence against § 17 of the same Act where gaming had been allowed in the licensed premises by the servant in charge of the premises, although without the knowledge of his master. The decisions in these and in other like cases were based upon the construction of the statutes in question. The court, in fact, came to the conclusion that, having regard to the language, scope, and object of those Acts, the Legislature intended to fix criminal responsibility upon the master for acts done by his servant in the course of his employment, although such acts were not authorised by the master, and may even have been expressly prohibited by him. The question, then, in this case comes to be narrowed to the simple point, whether upon the true construction of the statute here in question the master was intended to be made criminally responsible for acts done by his servant in contravention of the Act, where such acts

were done, as in this case, within the scope or in the course of their employment. In my judgment it was clearly the intention of the Legislature to make the master criminally liable for such acts, unless he was able to rebut the primâ facie presumption of guilt by one or other of the methods pointed out in the Act. Take the facts here and apply the Act to them. To begin with, it cannot be doubted that the appellant sold the ham in question, although the transaction was carried out by his servants. In other words, he was the seller, although not the actual salesman. It is clear also, as already stated, that the ham was sold with a 'false trade description' which was material. If so, there is evidence establishing a primâ facie case of an offence against the Act having been committed by the appellant. But it is only a primâ facie case. The burden of proof is shifted upon the appellant, and he might meet successfully that primâ facie case if he is able, where the charge is under subsec. 1 of § 1, to prove that he acted without intent to defraud; or, where the charge is under subsec. 2 of § 1, if he is able to prove (*a*) that he had taken all reasonable precautions against committing an offence against the Act and had no reason to suspect the genuineness of the trade description in question, and (*b*) that on demand he had given full information, or (*c*) if he is able to prove that otherwise he acted innocently. It seems clear that clauses (*a*) and (*b*) of subsec. 2 apply to cases where goods in question are in the possession

of the accused for sale or are sold with the forged trade mark or false trade description already stamped upon them or otherwise applied to them, and not to a case like the present, where the false trade description is applied upon the occasion and as part of the terms of sale; and in the latter case the accused must rely for his exculpation upon clause (*c*)—namely, by shewing that he had acted innocently. In the present case there was ample evidence to justify the conclusion of the magistrates that the appellant was primâ facie guilty of the offence charged, and that primâ facie case has not been met in the manner required by the Act. The magistrates, indeed, have affirmatively found—in the terms of clause (*a*)—that the appellant had not, in fact, taken all reasonable precautions against committing an offence against the Act, but I have already pointed out that that clause does not directly apply to the facts of this case. This finding is, therefore, not strictly relevant, although it suggests an important element in determining whether the accused is innocent; but what is material to note is that the magistrates do not appear to have been asked to find, and certainly they do not in fact find, that the appellant acted innocently within the meaning of clause (*c*). There was evidence before them that the American hams in question were dressed so as to deceive the public; and this probably explains the reason of the affirmative finding to which I have adverted and the absence of the finding that the

appellant had acted innocently within the meaning of clause (*c*). In answer, then, to the question which alone is put to us—namely, whether, upon the facts stated, the decision of the magistrates convicting the appellant was in point of law correct—my answer is that, in my judgment, it was. When the scope and object of the Act are borne in mind, any other conclusion would, to a large extent, render the Act ineffective for its avowed purposes. The circumstances of the present case afford a convenient illustration of this. The appellant, under the style of the 'London Supply Stores,' carries on an extensive business as grocer and provision dealer, having, it appears, six shops or branch establishments, and having also a wholesale warehouse. It is obvious that, if sales with false trade descriptions could be carried out in these establishments with impunity so far as the principal is concerned, the Act would, to a large extent, be nugatory. I conceive the effect of the Act to be to make the master or principal liable criminally (as he is already by law civilly) for the acts of his agents and servants in all cases within the sections with which we are dealing, where the conduct constituting the offence was pursued by such servants and agents within the scope or in the course of their employment, subject to this—that the master or principal may be relieved from criminal responsibility where he can prove that he had acted in good faith and had done all that it was reasonably possible to

do to prevent the commission by his agents and servants of offences against the Act. The result, therefore, is that the conviction will be affirmed, and with costs. I wish to add that the form in which this case is stated is not satisfactory. It does not throughout clearly distinguish between what was merely evidence and what was proved to the satisfaction of the magistrates. It is important that it should be borne in mind that when a case is submitted to the court it ought to state clearly what the facts proved were, and not merely what the evidence was."

We have already alluded to and commented on the special defences provided by § 19 (3), and § 6 (*supra*, Chapter IV., pp. 140, 141). It will be noticed that again in the provisions of § 6 the burden of proving the assent of the proprietor is cast upon the person charged.

In § 4, in any prosecution for forging a trade mark, the burden of proving the assent of the proprietor shall lie on the defendant, and in § 5 (3) in any prosecution for falsely applying a trade mark or mark to goods, the burden of proving the assent of the proprietor shall lie on the defendant.

After all, it would seem as if the proof by the defendant of the special defences, where provided, simply amounts to a proof of the general defence that he acted without intent to defraud, or that he acted innocently.

By § **13** the Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter seventeen, intituled "An Act to prevent vexatious indictments for certain misdemeanours," shall apply to any offence punishable on indictment under this Act, in like manner as if such offence were one of the offences specified in section one of that Act, but this section shall not apply to Scotland.

And by § **15** no prosecution for an offence against this Act shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

CHAPTER VIII

WATCHES

§ 7. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall primâ facie be deemed to be a description of that country within the meaning of this Act, and the provisions of this Act with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case.

§ 8.—(1) Every person who after the date fixed

by Order in Council sends or brings a watch case, whether imported or not, to any assay office in the United Kingdom for the purpose of being assayed, stamped, or marked, shall make a declaration declaring in what country or place the case was made. If it appears by such declaration that the watch case was made in some country or place out of the United Kingdom, the assay office shall place on the case such a mark (differing from the mark placed by the office on a watch case made in the United Kingdom) and in such a mode as may be from time to time directed by Order in Council.

(2) The declaration may be made before an officer of an assay office, appointed in that behalf by the office (which officer is hereby authorised to administer such a declaration), or before a justice of the peace, or a commissioner having power to administer oaths in a Supreme Court of Judicature in England or Ireland, or in the Court of Session in Scotland, and shall be in such form as may be from time to time directed by Order in Council.

(3) Every person who makes a false declaration for the purposes of this section shall be liable, on conviction on indictment, to the penalties of

perjury, and on summary conviction to a fine not exceeding twenty pounds for each offence.

The special provision as to watches contained in § 7 is that any mark on the case is to be deemed to extend to the watch. If, therefore, a watch case is made in this country with any statement or indication of origin such as a British hall-mark, and having been exported, is returned with a foreign movement, then, in the absence of a counter description on the watch itself, the mark on the case will apply to the watch. (See General Order, 15/1900, on p. 203 *et seq.*)

It would seem from the decision in *R.* v. *Williamson*, the leading case on the subject, which has been extensively referred to previously (pp. 96-99), that by the custom of the watch trade the main-spring, and hair-spring, and certain screws were allowed to be of foreign origin in nearly every watch, properly called English; but that watches which contain foreign parts other than those mentioned, cannot properly be termed English, and that it made no difference if certain foreign parts were imported in the rough and were polished and fitted in this country. The question again seems to resolve itself into one of fact whether the description was false "in a material respect."

The following cases, in addition to *R.* v. *Williamson*, may be referred to as illustrative of the principles involved :—

R. v. *Andrew Campbell* (Times, Feb. 9, 1889). The defendant was charged with having unlawfully sold a watch to which had been applied a false trade description as to the place or country in which it was made. The prosecution was instituted by the London Watch Trade Association and they did not impute that the defendant had himself applied the false description. The defendant exhibited in his shop in Cheapside a silver watch, stamped on the face of it "English Lever Watch Company." It was purchased for £1 18*s.* 6*d.*, and was one of the worst kind of foreign-made watches, worth wholesale 14*s.* It bore a Swiss hall-mark, and was marked inside "Expressly examined," on another part "Patent lever jewelled," and on the works "Chronometer balance."

The words "patent lever" were well understood in the trade, but this watch was not so: the jewels were worthless imitations, and the "chronometer balance" useless.

The defendant, who pleaded guilty, said that these watches were in stock in 1885, before the passing of the Act. As this was the first case of its kind, the defendant was fined £5, and £20 costs.

R. v. *Kendal & Dent* (Times, March 9, 1889). The defendants were similarly charged, and pleaded not guilty.

The defendants sold as an English watch an article which as regarded the principal movements, were of

foreign manufacture. The watch was described in the defendants' catalogues as a "Gent's English lever watch," and the price was £3 15s. On the face of the watch were the words "Kendal and Dent, London." The principal portions of the works were of foreign manufacture (probably Swiss), and the case was of Birmingham manufacture.

For the defence it was urged that there were no representations made as to the origin of the watch. The words "Kendal and Dent, London," denoted the names of the vendors, and no one was injured by the transaction.

The defendant Kendal said he bought the watch from the English Watch Co. at Birmingham in March, 1885. It was supplied as an English lever, and cost £2. They gave with it a five-years' warranty to keep it in repair gratis.

The manager of the English Watch Co. deposed that he was in the habit of importing materials from Switzerland, because it ensured uniformity, and not because of the cost. Fined £20, and £5 costs.

R. v. *John Allpuss* (Times, May 16, 1889). Defendant's traveller induced a purchaser to buy what purported to be an English silver lever watch bearing the Birmingham hall-mark for £4 10s. The watch was worth 35s., and the principal parts were made in Switzerland. It was pleaded that the defendant had no "mens rea," but he was fined 40s., and 2s. costs.

R. v. *Hyland* (Times, Aug. 15, 1890). The defendant exhibited for sale in his window a foreign silver watch, which bore on its face the defendant's name and address, with the addition of "London." It was labelled "London finished three-quarter plate lever, £2 2s.," and it bore the Birmingham hall-mark.

It was not a lever watch at all; the whole of the works were foreign made, the case and face were Swiss, and the defendant's name and address had been painted in recently. Fined £10, and £5 5s. costs, or a month's imprisonment.

R. v. *Bettle & Gent* (Times, Feb. 9, 1891). The defendants had in their possession a watch, upon which a man named Richard Gore had been at work. The dial of the watch bore the name "Campbell & Co., Smithfield, Belfast." Gore said that the pivots, movements, pillar cap, and other parts of the internal fittings were of foreign make, and that the name of an English manufacturer upon the dial would stamp, and be accepted as a guarantee, that the whole watch was of English make. Numerous witnesses also testified to the same effect.

The principal result of using a foreign-made movement was that, the works being "soft," the watch would not be of the same value. The foreign movement would cost 12s., and the difference between that and an English watch was about £3.

For the defence it was said that the steel and brass

of movements of the kind were of Swiss manufacture, and known as "Raymond Brothers," and were exported to Switzerland for use.

The prosecution alleged that "R.B." on the movement had been partially erased for the purpose of concealing the foreign origin of the movement, but the defence alleged that the deliteration was caused by stamping a number on the watch.

The learned magistrate, Mr. Horace Smith, said the third section of the Act meant an article substantially made in England, held that there had been an infringement of the Act, and fined the defendant £10, and £5 costs, for having the watch in his possession for sale.

In *R.* v. *Moss* (Times, Feb. 18, 1904) the defendant was fined £20, and 3 guineas costs, for exposing for sale and having in his possession watches bearing a false trade mark, and further for unlawfully applying the trade description "Waltham" to a watch which was of Swiss and not American manufacture.

See the Orders in Council, 81/1887 and 9/1888, appended to this chapter: and the General Order 15/1900, para. 45, *post*, p. 219.

By the Customs Act, 1876 (39 & 40 Vict. c. 36), § 42, the importation of clocks and watches, or any other article of metal impressed with any mark or stamp representing, or in imitation of, any legal British assay mark or stamp, or purporting by any

mark or appearance to be of the manufacture of the United Kingdom, is prohibited.

§ 42. The goods enumerated and described in the *following table of prohibitions and restrictions inwards* are hereby prohibited to be imported or brought into the United Kingdom, save as thereby excepted, and if any goods so enumerated and described shall be imported or brought into the United Kingdom, contrary to the prohibitions or restrictions contained herein, such goods shall be forfeited, and may be destroyed or otherwise disposed of as the Commissioners of Customs may direct.

[A TABLE OF PROHIBITIONS AND RESTRICTIONS INWARDS.]

Goods prohibited to be imported.

Clocks and watches or any other article of metal impressed with any mark or stamp representing or in imitation of any legal British assay mark or stamp, or purporting by any mark or appearance to be of the manufacture of the United Kingdom.

This section has been since variously amended, and can be said to have been replaced by § 16 of the Merchandise Marks Act, 1887.

There is at the present time (August, 1904) a proposed Act of Parliament under consideration in the House of Lords relating to foreign hall-marks, but it is impossible to foretell its fate. It is

something to be grateful for that the attention of the Legislature has been called to so important a subject. The text of the Act, which has become law, will be found on p. 316.

GENERAL ORDER $\frac{81}{1887}$.

CUSTOM HOUSE, LONDON,
October 20, 1887.

SIR,

Herewith you will receive the usual number of copies of the Merchandise Marks Act, 1887 (50 & 51 Vict. cap. 28).

You are carefully to note the meanings given by the Act to the following, viz. :—

"Goods," section 3.
"Applied," section 5; sub-sections 1 and 2.
"Falsely applied," section 5; sub-section 3.

Section 3.
- "Trade Mark"
- "Trade Description"
- "False Trade Description"
- "Person"
- "Manufacturer"
- "Dealer" or "Trader"
- "Proprietor"
- "Name"
- "Name or Initials"

You will also especially note, as applying to imported goods, the provisions of section 10, sub-section (2), and section 18 of the Act.

You will observe that by section 5 of the Act the word "applies" in connexion with goods is extended to "applying" the name or mark to any "covering, label, reel, or other thing."

You will understand that, in future, as hitherto, this will not be held to extend to "coverings" or other such things, including boxes, bottles, or the like, imported alone and with the intention of using them as auxiliary means of carrying into the market goods really British or goods (such as wine) incapable of being mistaken as British goods, where the description applied to the coverings or such other things does not relate to *them*, but has reference to the goods which they are to cover to carry into the market.

There is, however, on this point one article to be specially noticed, viz. "Watch cases;" and, as to this, your attention is called to section 7 of the Act, which lays down that, in the absence of a counter-description of the watch itself, the description on the watch *case* shall be always held to describe the watch.

Under section 16 of the Act, regulations have been prepared by the Board which are now under the consideration of the Lords of the Treasury.

As soon as these regulations are finally approved, a copy will be sent to you, together with instructions as to the manner in which you are to carry them into effect.

These regulations will come into force on a date to be fixed under them, but not later than the first day of January next.

It is highly desirable, therefore, that in the meanwhile you should make yourself familiar with the general scope of the Act, and especially with the provisions contained in section 16 as to the importation of goods coming within its powers, and with the points to which your attention is now more particularly directed.

I am, Sir,
Your obedient Servant,
E. GOODWYN.

To the Collector.

GENERAL ORDER $\frac{9}{1888}$.

CUSTOM HOUSE, LONDON,
January 18, 1888.

SIR,

In accordance with paragraph 33 of General Order $\frac{99}{1887}$, I now transmit to you the directions of the Board, to enable you to deal with watch cases and watches, under the Merchandise Marks Act; the latter term, watches, meaning as provided by section 7 of the Act, "all that portion of a watch which is not the watch case."

Your attention has already, by G.O. $\frac{81}{1887}$, been called to the position in which watch cases, under this section, stand in relation to watches; and the consequent importance of the assay mark on watch cases, which mark, by virtue of section 3 (1) of the Act, would be deemed a trade description as to place or country of origin.

You will note, in addition, that by section 8 (1) of the Act, provision is made for preventing foreign-made watch cases from obtaining the mark placed on a watch case made in the United Kingdom: and it is enacted that a different mark shall be placed on foreign watch cases of such pattern, and in such mode as directed by Order in Council.

An Order in Council to this effect, dated the 28th of November last, was published in The London Gazette of 9th December last, and a copy of this order, together with sheets 1 and 2 of Appendix to Schedule II. therein referred to, which contain diagrams of the required new marks, are sent to you herewith.

You will carefully study these sheets, and note how the marks apply variously to the different assay offices in the United Kingdom.

The directions to be observed by you in applying this new law will relate to—

(*a*) Watch cases with assay marks imported alone.

(*b*) Like watch cases imported with the watches, that is to say, watches of foreign manufacture in them.

(*a*) *Watch Cases with Assay Marks imported alone.*

If the cases are wholly unmarked, or are duly marked in accordance with the Order in Council, or with a foreign assay mark, and there is not, in addition, any wording on any part of the case proper, or on the dome, indicating make or produce in the United Kingdom, the goods may be delivered. If, on the other hand, there is any such wording, the goods must be detained and the matter referred to the Board.

If the cases are marked with a British hall-mark as placed on watch cases made in the United Kingdom, you will detain the goods unless they are entered as "British goods brought back," in which case they may be admitted under the usual regulations.

(*b*) *Watch Cases imported with the Watches in them.*

If the cases are wholly unmarked, or are marked either
In accordance with the Order in Council, or
With a foreign assay mark, or
With a British assay mark as placed on a watch case made in the United Kingdom, and with an equally conspicuous statement either above or below the assay mark, that the watch is of foreign make;

And if there is no wording either as an addition on the case or dome, or upon the watch itself, whether on the dial or the plate, or any part of the works, indicating make

or produce in the United Kingdom, then the goods may be delivered.

If, on the other hand, there is any such wording, the goods must be detained and the matter referred to the Board.

If the cases are marked with a British assay mark as placed on a watch case made in the United Kingdom, and with no statement of foreign make on the cases as required above, you will detain them as a seizure, unless there is upon the dial of each watch and also on the top "plate" (where the watch is of that construction) or on the bottom "plate" (where the watch is of that construction) visibly, between the "bridges," an indelible and definite indication of the place or country in which the watches were made. Such an indication will be considered definite, if it is, or contains only the name of the place or country of origin; if in addition, it contains the name of a place in, or a part of the United Kingdom, as, for instance, "Geneva and London," or if there is anywhere on the watch an indication by figures, words, or otherwise, that the watch might be the make or produce of the United Kingdom, then, in addition to the name of place or country of origin, there must be a distinct statement that the watches were there made.

I am, Sir,
Your obedient Servant,
E. GOODWYN.

The Collector
at

CHAPTER IX

PROHIBITION ON IMPORTATION

§ 16. Whereas it is expedient to make further provision for prohibiting the importation of goods which, if sold, would be liable to forfeiture under this Act; be it therefore enacted as follows:—

(1) All such goods, and also all goods of foreign manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into the United Kingdom, and, subject to the provisions of this section, shall be included among goods prohibited to be imported as if they were specified in section forty-two of the Customs Consolidation Act, 1876.

(2) Before detaining any such goods, or taking

any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the goods are such as are prohibited by this section to be imported.

(3) The Commissioners of Customs may from time to time make, revoke and vary, regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) Where there is on any goods a name which is identical with or a colourable imitation of the name of a place in the United Kingdom, that name, unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if

it were the name of a place in the United Kingdom.

(5) Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(6) The Commissioners of Customs, in making and in administering the regulations, and generally in the administration of this section, whether in the exercise of any discretion or opinion, or otherwise, shall act under the control of the Commissioners of Her Majesty's Treasury.

(7) The regulations may provide for the informant reimbursing the Commissioners of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(8) All regulations under this section shall be published in the "London Gazette" and in the "Board of Trade Journal."

(9) This section shall have effect as if it were part of the Customs Consolidation Act, 1876, and shall accordingly apply to the Isle of Man as if it were part of the United Kingdom.

(10) Section two of the Revenue Act, 1883, shall be repealed as from a day fixed by regulations under this section, not being later than the first day of January, one thousand eight hundred and eighty-eight, without prejudice to anything done or suffered thereunder.

This important section applies only to goods which actually bear marks which bring them within its terms. Goods imported into the United Kingdom which bear no marks whatever are not subject in any way to the Act; and therefore need not bear any statement or indication of origin such as "Made abroad," or "Made in Germany," &c. The goods liable to forfeiture under this section are those as to which an offence against the Act has been committed. Although the goods might bear a forged trade mark or a false trade description, yet the owners might be able to clear themselves of having committed an offence under subsecs. (1) or (2) of § 2. In such a case the goods, although improperly marked, would not be liable to seizure under this section. It would seem as if the words "or a mark so nearly resembling it as to be calculated to deceive," which occur in § 4 (*a*) and § 5 (3), are here unintentionally omitted.

What is a "definite indication of the country in which the goods were made or produced" is fully discussed in the General Order, 15/1900, which is set out in full at the end of this chapter.

The terms of the section are not difficult to understand, but they are made more readily intelligible if the General Order appended to this chapter be studied in conjunction with them.

The "definite indication of origin" required by this section is enlarged in § 18, which section must be considered with § 16.

The two sections, however, are more concerned with the procedure of the Custom House officers under the Act than with the law as to merchandise marks, and the General Order, Feb. 26, 1900 (15/1900), forms perhaps a sufficient code of regulations on the subject.

Any proceedings taken against the Custom House authorities or their officers in respect of anything done, or left undone, in the execution of their duties under the Act, fall within the Public Authorities Act of 1893 (56 & 57 Vict. c. 61). Such proceedings, therefore, must be commenced within six months.

The Public Authorities Act provides, § 1 (*b*), that, "wherever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client," and it was held in *Bostock* v. *Ramsey Urban District Council* (1900, 1 Q.B. 357) that, where upon the trial of an action brought again a person for an act or default in the execution of a statutory or other public duty, the discretionary power which is given to a judge by Order LXV., r. 1, to deprive the defendant of his

costs is not taken away by § 1 (*b*) aforesaid: but this provision does not apply to appeals. *Fielden* v. *Mayor of Morley* (1900, A.C. 133).

In *Jacobson* v. *Blake* (7 Scott. N.R. 772), where the Custom House officers had taken possession of goods imported by the plaintiff, acting under the bonâ fide belief that the goods were liable to forfeiture; but, having discovered that they were mistaken, returned the said goods to the plaintiff, without ever having actually seized them; it was held in an action for trespass by the owner of the goods against the Custom House officers, that such an action would not lie, as the goods had never been actually seized, but had merely been detained for examination.

By **§ 18**, where, at the passing of this Act, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Act with respect to false trade descriptions shall not apply to such trade description when so applied: Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or

produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

This section has already been briefly discussed in Chapter III. (*supra*, pp. 99, 100), and illustrations of its application, or attempted application, have been given in the following cases:—

R. v. *Harrod's Stores* (*supra*, p. 101).

R. v. *Nicholls* (*supra*, p. 112).

Gridley v. *Swinborne* (*supra*, p. 51).

R. v. *Downing* (*supra*, p. 109).

R. v. *Cohen, Weenen & Co.* (*supra*, p. 133).

Marshall v. *Ross* (*supra*, p. 51).

In *R.* v. *Cam Portland Cement Co.* (Times, March 21, 1901), the defendants were charged with applying a false trade description to certain lime. The question was whether the defendants were entitled to use the term "blue lias" for the hydraulic lime manufactured in Cambridgeshire. It was contended that the "blue lias" formation was not known in Cambridgeshire, but only in the Midlands. The learned magistrate, (Mr. Horace Smith) held that "blue lias" was a

generic term accepted by merchants, architects, and engineers; that there was no fraudulent application of the name of a particular locality to the article sold by the defendants, but if the defendants had called their lime "Warwickshire Hydraulic Lime," a conviction might have followed. The summons was dismissed without costs.

A study of the General Order, 15/1900, appended to this chapter, in addition to the cases cited above, will be sufficient instruction for the thorough appreciation of this section.

The only remaining section requiring notice is § 20, namely—

20. Any person who falsely represents that any goods are made by a person holding a Royal Warrant, or for the service of Her Majesty, or any of the Royal Family, or any Government department, shall be liable, on summary conviction, to a penalty not exceeding twenty pounds.

Which has already been referred to in Chapter II. (*supra*, pp. 67, 68).

GENERAL ORDER $\frac{15}{1900.}$

CUSTOM HOUSE, LONDON,
26th February, 1900.

MERCHANDISE MARKS ACT, 1887. CONSOLIDATED INSTRUCTIONS.

The following consolidation of the General Orders and other instructions on the subject of the Merchandise Marks Act of 1887 is issued for the information and guidance of the Officers.

1. The Regulations made by the Board under section 16 of the Merchandise Marks Act, 1887, will be found on pages *222 et seq.*

Goods without marks.

2. Goods imported into the United Kingdom which do not bear any marks whatever, either on the goods themselves or on the coverings containing them, are not subject in any way to the Act, and therefore need not bear any statement or indication, such as "Made abroad," "Made in Germany," &c.

3. Although the Act draws no special distinction, except as regards the requirement of qualification in certain cases under section 16, between goods prohibited on account of marks suggesting British origin and goods prohibited on other grounds, for the purposes of Customs administration it is convenient to deal with them separately. The goods, therefore, prohibited under the Act to which the attention of Officers is called may be classed under two heads—

(A) Goods with marks which suggest British origin and require, in order to legalize their importation, some counteracting qualification (paragraph 4).

(B) Goods with marks prohibited on other grounds (paragraph 19).

It is to be noted that by section 1 of the Merchandise Marks Act, 1891 (54 Vict. c. 15), the Customs entry relating to imported goods shall for the purposes of the Merchandise Marks Act, 1887, be deemed to be a trade description applied to the goods.

(A) Goods with Marks suggesting British Origin.

4. Goods falling under (A) may be again subdivided—

(*a*) Goods, whether manufactured or raw, having applied to them any description, figures, words, or marks, or arrangement or combination thereof, which by being or including, either expressly or by reference, the name of a place in or a part of the United Kingdom (*e.g.* "Irish" = "of Ireland"), or in any other way, constitute a statement or other indication, direct or indirect, that the goods were made or produced in the United Kingdom.

(*b*) Goods of foreign manufacture bearing any name or mark which is, or purports to be, the name or trade mark of a manufacturer, dealer, or trader in the United Kingdom.

(*c*) Goods, whether manufactured or raw, having applied to them a generally used trade description, which in indicating a particular class of goods or method of manufacture, includes expressly the name of a place in, or a part of, the United Kingdom, and is thereby calculated to mislead as to the place

of the manufacture or production of the goods. This class, though in fact only a case of (*a*), is dealt with specially by the Act (section 18).

5. (A) (*b*) relates to manufactured goods, and not to entirely raw goods, and the word "purports" is to be understood as referring to any name or names reasonably suggesting a British manufacturer, dealer, or trader, whether the name is or is not known to the Officer; or as referring to a trade mark, not being merely matter of decoration or ornament, which reasonably suggests itself as British by containing English wording, or other representation specially designed to convey, and, in fact, conveying, an impression of British manufacture.

Places indicating method of manufacture.

6. As to (*c*) that the words "trade description which in indicating a particular class of goods or method of manufacture, includes the name of a place in or a part of the United Kingdom, and is thereby calculated to mislead" (*see* 4 (*c*)) mean such terms as Kidderminster Carpets, "Balbriggan" on hosiery, or "Shetland" on shawls, and the like, which, although they might be held to be merely phrases descriptive of method of manufacture, are yet calculated to mislead as to place of origin. Where, however, such a description has become associated with a particular class of goods in a manner practically to preclude any probability of deception, as "Portland Cement" and "Bath Chaps," the description need not be accompanied by a statement of the country of actual production. This applies also to the case of Colonial names describing, for instance, classes of wool, &c., where although the names are British, the circumstances preclude mistake.

7. All such goods as above specified are to be detained and reported to the Board unless they are qualified as follows:—

As to (*a*), by a definite indication of make or production out of the United Kingdom.

As to (*b*), by a definite indication of the country in which the goods were made.

As to (*c*), by the name of the country in which the goods were actually made or produced, with a statement that they were made or produced there.

When "made in" not required.

8. With regard to (*a*), "Made abroad" will be generally sufficient. With regard to (*b*), the name of the country is a sufficient indication, without the words "made in," if the name or trade mark only appears. Where there is an address, as "John Smith, Sheffield," then the qualification must be "Made in Germany," or similar wording; "Germany" alone would not counteract "Sheffield." (*c*) requires the full statement "Made in Germany."

Actual place of origin.

9. Officers are not expected to decide whether goods were actually made or produced in the country from which in the qualification they are stated to come; the name of *some* foreign country, or of some place in a foreign country is sufficient.

Place-name alike in United Kingdom and abroad.

10. If the goods bear the name of a place identical with, or a colourable imitation of, the name of a place in the United Kingdom, the name should be accompanied by the name of the country in which the place is situated. Thus Boston, in Massachusetts, should be accompanied by the name "United States," or by the initials "U.S.A.," or even by the abridgment Mass.

English language on goods.

11. The use of the English language applied as a description to goods imported from non-English speaking countries is not, simply *as* language and where not involving the name of any place in, or part of, the United Kingdom, a "direct," and, as a rule, is not to be regarded as an "indirect," indication of British origin. Where, however, there is good ground for considering

that the use of the language was specially designed to convey, and does in fact convey, an impression of such origin, then the language will be a description within (*a*) of paragraph 4.

Initials.

Initials.

12. "Initials" under the Act, though not treated as names generally, are to be so treated in certain cases, of which the following are all to which the Officers need take cognizance :—

(i.) Where the initials are followed by affixes distinctly suggesting a British firm as "& Co." from countries where that affix is not used, which includes all the Continental countries except Germany, and "Brothers" or "Bros." or the like, which applies to all non-English speaking countries. This holds as to all goods whether manufactured or raw ; but in respect of baskets and the like, holding raw fruit, eggs, &c., and sent to and from the Continent, the rule, when the baskets, &c., will not meet the eyes of retail buyers, is not strictly applied.

(ii.) Where, in respect of manufactured goods, the name or mark of a manufacturer, dealer, or trader in the United Kingdom is prohibited, on foreign goods, even his own property, without a definite qualification, the initials will fall within the prohibition if they are easily recognisable as those of persons or firms so well-known as to make the initials practically equivalent to the name itself ; and also, where they are the initials of known consignees of the goods who will bring them into consumption in the same "coverings."

Where the consignees are not known, and no special fact calls attention to the goods, they may, as regards initials, be passed.

Packing Cases and Coverings.

Cases and coverings.

13. Goods will not be liable to detention when the name of a port or place of destination is applied to mere packing cases or outer wrappers in which goods are clearly not intended to be sold or exposed for sale, or if exposed for sale, then in an expert market. Address marks, when they are merely and manifestly such, for purposes of carriage only, are not marks within the Act.

14. "Coverings" such as boxes, capsules, bottles, &c., are to be judged with discrimination as to whether the marks, if any, on them, refer to them, or to the goods they are to cover. If the mark on them refer, as is rarely the case, distinctly to the coverings, the case should be reserved for the Board. If the marks, such as Royal Arms, or the like, refer to the goods to be covered, and it is shown to the satisfaction of the Officer that they will be British goods, or goods as to which British marks are not objectionable, and do not refer to the coverings themselves, then the coverings may be regarded as not contrary to the Act.

15. This principle will apply to coverings (such as ornamental boxes for tobacco, tea, or confectionery), with names on them of firms who have ordered the coverings for their own goods, or where such firms, though not having actually ordered the coverings themselves, consent in writing to their importation for such goods.

Grain Sacks.

Grain sacks.

16. The name and address of a merchant in this country upon grain sacks are to be regarded as an

indication that the grain is of British origin, and will require the addition of a statement of the country of production. In the case of grain imported in bulk and transferred *after due entry and clearance* into sacks on board the importing ship, such marking of the sacks need not be qualified with a statement of the foreign origin of the grain.

Samples, &c.

17. Samples or patterns, readily distinguished as such, and valueless in themselves, are not to be treated as under the Act so far as British origin is concerned. Samples.

Goods not produced in United Kingdom.

18. Goods not produced in the United Kingdom, such as wine, tea, and other produce not grown in this country, such as linseed, rapeseed, &c., are also treated as not under the Act, so far as British origin is concerned. Non-products of United Kingdom.

This is applied further to some special forms of manufacture which, by shape, make, or colour, cannot be mistaken for the manufacture here of the same article, as, for instance, Dutch cheese of the kind well-known to be made in Holland, bearing the initials of British dealers.

(B) Goods prohibited on Other Grounds.

19. Good prohibited on grounds other than marking suggestive of British origin are those which, whether manufactured or raw, have applied to them a false trade description—

(*a*) as to the place or country in which they were made or produced ;

(*b*) as to trade marks or names so as to constitute forgery ;

(*c*) as to number, quantity, measure, gauge or weight, and mode of manufacture or material;

(*d*) as to being the subject of any existing patent, privilege, or copyright.

Marks as between foreign countries.

20. As to (*a*), this relates, of course (British origin having been dealt with above), to questions between two foreign countries; that is to say, to goods with marks indicating make or production in a place or country which is not that in which the goods were made or produced. The Act does not specify particularly what is to be the qualification here; but if the mark indicates, expressly, or by reference, a place or country not that, in reality, of the make or production of the goods, there must be a definite qualification to the effect that the goods were not made or produced in the place or country indicated; *or*, a definite indication of the place or country in which the goods were made or produced.

Mark including place-name.

21. A mark which, though not naming, *includes* the name of a place or country, is to be held as naming such place or country. For instance, a wine, the produce of Germany, and described as "Port" or "Sherry" (which words include the names of the places Oporto and Xeres), should have that description accompanied by the statement "produced in Germany," or should be described as "German Port" or "Australian Sherry," &c. Such a mark as "Lancashire Swedish" on Swedish iron, where the qualifying word follows the misleading name, may be admitted. As in marks suggesting British origin, exception to this rule is made in cases where the name of a place in a trade description is indicative merely of the character of the goods, and is not calculated to mislead as to the country of origin. The description "Brussels Carpet" is an exception of this kind.

Port of shipment

22. For judging between two foreign countries the

Act provides that, in the absence of proof to the contrary, the port of shipment of goods shall be prima facie evidence of the place or country in which the goods were made or produced; and this rule the Officers can, generally, act upon. Where, however, the port of shipment is merely an ordinary trading route from some inland country, as Rotterdam or Antwerp with respect to Germany, or Hamburg with respect to Austria, the Officers may, if they have no reason to doubt the good faith of the importer, accept the statement that the goods are the make or produce of the inland country. Evidence of origin.

23. The use of language of one foreign country on goods of another must not be viewed more strictly than its use in cases indicating British origin, dealt with in paragraph 11. The use of a certain language is allowed freely to *all* countries when, by custom, that language is usually applied to such goods; *e.g.*, Spanish on tobacco and cigars, when the recognised words are applied only to colour, shape, size, and the like; or French on sardines, when confined to the words "Sardines à l'huile," without any additional French description. Foreign language not of country of origin.

24. The forging of a trade mark (paragraph 19 (*b*)) is the application to goods of any figure, words, or marks, or arrangement or combination thereof, reasonably calculated to lead persons to believe that the goods are the manufacture or the merchandise of some person other than the person whose manufacture or merchandise they really are; and this includes the name or initials of a person. The figures, words, or marks applied need not be an actual trade mark, or actual name or initials, provided they are a colourable imitation of the mark, name, or initials of a person carrying on business in connexion with goods of the same description, and are used without his authority. Forging trade mark.

Registration.

Registration.

25. As to goods under all the three heads, (*b*), (*c*), and (*d*), of paragraph 19, the difficulty of detection by Officers, without special information, and more particular examination than is ordinarily bestowed for revenue purposes, is greater than in the case of goods falling under (*a*), but as regards the forging of trade marks (*b*), as above explained, while it would not be possible for Officers to enter into the examination of all names and marks so as to detect fraud of this kind, the Board have, nevertheless, felt that a manufacturer, dealer, or trader who has reason to believe that his name or trade mark is one not unlikely to be imitated, so as to constitute a forgery, is entitled to ask that, without the requirement of information beforehand, goods so marked shall be stopped; and to meet this the Board have established the following system.

Detention on account of registration.

26. They have established a system of registration of name or marks so that a manufacturer, dealer, or trader may register his name or mark at such port or ports as he desires. In respect of names or marks so registered, it will be the duty of the Officers, at the particular port or ports, to prevent the delivery of goods to which such names or marks or imitations of them as above explained may be applied, unless the delivery is authorised by the registered proprietor.

27. When goods are thus detained on account of names or marks which have been registered in this Department, care is to be taken in every case that, in addition to the usual notice of seizure required under section 207 of the Customs Consolidation Act, information of the detention, and of the cause of such detention, shall be at once given in writing to the person who has so registered his name or mark, or to the representative

appointed by him to authorise delivery of the goods, who is to be informed that unless immediate attention is given to the matter the goods will be released. If, at the end of forty-eight hours, the Collector (or other Principal Officer concerned) does not receive a reply he will release the goods; but Collectors will observe that the limit to the time of detention here laid down does not apply in cases where the marks are such as to render the goods liable to detention irrespective of the question of registration. In any case of detention under this system of registration the Board, if they see fit, may order security to be given if prolongation of the detention is requested, and the matter is, at all, one of doubt.

Registering foreign marks; and agency.

28. Any manufacturer, dealer, or trader, whether British or Foreign, may register his name or mark; but Officers may refuse registration to any name or mark which they consider to be of a character too indefinite or indistinct to recognise, referring to the Board in any case of doubt. An applicant for registration must prove his proprietorship of the name or mark by declaration (see Form C. in the Appendix); and if, in order to avoid delay, he desires to do so, he may appoint an agent to give authority for delivery of his goods.

Registered marks on goods imported by owner.

29. It must, however, be distinctly understood that the use by any manufacturer, dealer, or trader in the United Kingdom of even his *own* name on foreign goods, and the use by any manufacturer, dealer, or trader, on like goods, of words, figures, or marks of any kind stating or indicating, directly or indirectly, make or production in the United Kingdom, are prohibited unless such goods are properly qualified by the required definite indication of origin. It must, therefore, be clearly explained to every person registering a name or mark which involves any such statement or indication, as will probably often be the case, that, while the name or mark

will be guarded by such registration, it will not be rendered admissible unless duly qualified, as the law may require, in every case.

Release when qualified.

30. Goods bearing a mark registered in this Department may be delivered by the Officers without reference to the Board on receipt by them of the authority of the proprietor of the mark, or of his duly appointed agent, provided the mark be properly qualified, as in this Order shown.

GENERAL.

British Returned Goods.

British returned goods.

31. British goods returned bearing the name, brand, or mark of any British manufacturer may be admitted upon proof of their origin being furnished. This may be done by Bill of Store; or by a declaration by the importer that the goods are, to his knowledge, British goods returned, and were originally manufactured in this country; or by and with the consent in writing of the proprietor of such name, brand, or mark, or his legal representative (42 & 43 Vict. c. 21, s. 6).

32. The declaration by the importer as to the British origin of the goods may be in the usual form as an ordinary Customs document, but if the Officer sees reason to doubt it, he should refer the papers to the Board; and he should, in no case, require a statutory declaration, under the Act as to such declarations, without the Board's order.

33. On any other point British goods returned will not be dealt with except on information.

Goods for Private Use.

Private use.

34. *Dutiable.*—Tobacco, including cigars, not exceeding 20 lbs., wine not exceeding twelve gallons, and spirits

not exceeding one-half that quantity, in any one consignment, may be admitted free of the Act, on the Officer being satisfied that the goods are for private use.

35. *Non-dutiable.*—Such goods sent as presents, or for personal use, and not in any process of sale or purchase, are similarly free of the Act, and this especially includes articles not new, and which are manifestly private property, such as clothing, or other personal effects, and old, used, and damaged articles sent for repairs, imported by, or consigned to, persons whose names are on them. This applies also to presents to corporate bodies or public institutions.

Goods in Transit.

Transhipment goods.

36. Under the Transhipment Regulations, transhipment and transit goods are not to be specially examined for the purpose of scrutinising marks *in the absence of information* (General Order $\frac{45}{1898}$); nor are such goods to be detained under the Merchandise Marks Act unless they infringe its provisions in one or other of the following ways:—

(*a*) By reason of their bearing marks which raise a clear and direct claim to British origin; or

(*b*) By reason of their bearing the name or trade mark of a manufacturer, dealer, or trader in the United Kingdom, without qualification; or

(*c*) By reason of their bearing a trade mark specially registered at the Customs.

When the mark on a package, or on goods found therein, contravene the Merchandise Marks Act, all the packages of the same mark on the entry are to be examined, the packages with other marks being treated as if on a separate entry.

This direction also applies to goods entered for home consumption, but intended to be forthwith re-shipped for exportation, on production of satisfactory evidence (such as bills of lading, invoices, &c.) of the final destination abroad of the goods; but they are subject to examination under General Order $\frac{41}{1898}$, as laid down in General Order $\frac{41}{1899}$, paragraph (8).

Marks not Descriptions but Part of the Goods.

Marks where part of goods.

37. Wording or marking, whatever may be its character, if it is not a description "applied" to goods, but part of the goods themselves, as, for instance, the regulating words on a thermometer, the titles of books, christian names on handkerchiefs, such words as "a present from Margate" on china, and the like, are not amenable to the Act.

Goods imported for advertising purposes only, and not for sale, although bearing the name, or name and address of a British trader, provided he is not a maker of, or dealer in, such articles, may be delivered upon a written statement to that effect from the person whose name is on the goods.

Reports of Detention.

Detained goods to be reported at once; monthly and quarterly.

38. Report (on Form 294) is to be made immediately of all cases of detention of goods, stating briefly the number of packages detained, the port from which they come, the marks and numbers of the packages, the description and value of the goods, and the objectionable marking, whether by means of labels or on the goods themselves, on account of which they are detained Reference should be made to any previous cases of the

importation of illegally marked goods consigned to the same merchants or coming from the same consignor.

A monthly return is to continue to be made to the Board, being forwarded to the solicitor on Forms 401 and 402.

A quarterly return is to be made to the Board (Division IV.) on Form No. 398, for which purposes the present form of record at the various stations is to be maintained.

When report dispensed with.

39. Immediate reports of detentions of goods may be dispensed with when such detentions are made in consequence of the absence of evidence that the marks on the goods are correct, provided that the Officers have reason to believe that such evidence will be forthcoming within a reasonable time. On production of the evidence, the Officers, if satisfied therewith, will deliver the goods. This direction will include British returned goods bearing marks which would be open to objection on goods of foreign origin; also goods bearing marks indicative of origin in some country other than that from which the goods are imported, when such marks are believed to be authentic.

All marks to be reported.

40. The whole of the marks found on the detained goods should be reported, including the marks on cartons, cases, &c., containing the goods and not merely the actual mark for which the detention has been made.

Qualifying Words to be conspicuous, &c.

Qualification to be conspicuous.

41. The Officers are to take care that, in all cases where the Board allow qualifying words to be added before the delivery of goods, such words are applied in characters clear, conspicuous, and as indelible as the marks requiring qualification, and in close proximity to those marks.

Seizures and Unclaimed Goods.

Seizures. Full examination.

42. In all cases in which goods are ordered to be retained as seizures, a *full examination* of the contents of all the packages should be made as soon as the order for seizure is given, and any discrepancy between the marks originally reported and those found on the goods should be communicated to the Board forthwith.

But if an importer should express a wish not to have *all* his packages opened, Officers may forego this upon a consent in writing from him, or his agents, that the whole consignment shall be taken as having marks applied to them similar to those on the goods in the packages already opened.

Goods in London not claimed within two months.

43. Goods which have been placed under detention on account of illegal marks, and in respect of which no applications have been made by the importers for, or no steps taken to carry out the conditions imposed by the Board on their release, are to be removed to the Queen's warehouse, within two months from the date of the Board's order for their detention, without special directions in each case, if the Officers see no circumstances which call for exceptional treatment. They are to be entered in the monthly seizure account.

Patent or Copyright on Goods.

Goods for sale: patent or copyright.

44. In order that there may be no risk of goods protected by patent or copyright in the United Kingdom being offered for sale by this Department, in submitting accounts of seizures under the Act, particular attention should be called in column 8 to any goods included for disposal marked "patent," or "copyright," or which the Officers have any reason to suppose are patented, or the subject of copyright, in this country.

Watch Cases and Watches.

45. A special provision as to watch cases and watches is made by section 7 of the Act. It provides that, as regards watches, any mark on the case is to be deemed to extend to the watch. If, therefore, a watch case is made in this country, with any statement or indication of origin such as, for instance, a British hall-mark, and, having been exported, is returned with a foreign movement, then, in the absence of a counter description on the watch itself, the mark on the case will apply to the watch. **Watch cases and watches.**

General Order $\frac{9}{1888}$, which goes fully into this subject, is not affected by this Consolidating Order.

Procedure on Information.

46. It must be borne in mind that information, in itself, even though given, is not a mandate to the Crown to detain; and no detention should on account of it be made where it is clear that the law would be against it. Officers may sometimes see at once that a consignment to which the information points does not infringe the law, and they will then not detain the goods. But they are authorised to make, when necessary, a fuller examination than ordinarily takes place. **Detentions on information.**

47. In any other case the Officer will detain the goods, and require (if it is not already given) immediate security, as in Regulation 4 (p. 227). The sufficiency of the sureties named in the notice of information must be tested in the usual way. Regulation 7 (p. 228) shows when the security will be delivered up. **Deposit or bond.**

Whenever security is not duly given, there will be no further detention. **No security, no detention.**

Information as to origin.

48. Information will not generally touch the point of origin. Whenever it does do so, and affects the interests of "British possession" or "foreign states," if the name complained of is found to be applied to the goods, and is the name of a country, or of a place in a country, not the country of the port of shipment, the Officer may, in the absence of proof of make or produce at the place or in the country named on them, be satisfied that the alleged infringement clearly exists. This is in accordance with the principle in paragraph 22.

Forged marks in certain states and British possessions.

49. Wherever an information relates to a forged trade mark alleged to be one recognised in a British possession or foreign state, information will not be good unless it relates to a possession or state to which section 103 of the Patents, Designs, and Trade Marks Act, 1883, has been applied by Orders in Council, viz.:—

BRITISH POSSESSIONS.

New Zealand.	Tasmania.
Queensland.	Western Australia.

FOREIGN STATES IN EUROPE.

Belgium.	Portugal, including Azores and Madeira.
Denmark, including Faröe Islands.	Roumania.
France.	Servia.
Greece.	Spain.
Italy.	Sweden.
The Netherlands.	Switzerland.
Norway.	

IN N. AND S. AMERICA AND THE W. INDIES.

Brazil.	San Domingo.
Ecuador.	Surinam and Curaçoa.
Mexico.	The United States of America.
Paraguay.	Uruguay.

IN AFRICA.

Tunis.

IN ASIA.

Japan.	Colonies.
Netherlands East India	

Definitions.

50. The Officers will note the meanings given by the Act to the following expressions, viz. :— Definitions.

SECTION 3, AND *54 VICT. C. 15, S. 1.

"Goods"	"Manufacturer"
"Trade mark"	"Dealer" or "trader"
"Trade description"	"Proprietor"
"False trade description"	"Name"
"Person"	"Name or initials"

SECTION 5, (1), (2), AND (3).

"Applied"	"Coverings"
"Falsely applied"	

51. The following General Orders are hereby cancelled :—

Nos. 81 and 99 of 1887.	Nos. 50 and 68 of 1893.
Nos. 10, 14, 26, 33, 39, 44, 121, 122, 125 and 147 of 1888.	No. 4 of 1894.
	Nos. 4, 28, 34, and 82 of 1895.
	Nos. 4 and 9 of 1896.
No. 7 of 1889.	No. 63 of 1897.
Nos. 1 and 8 of 1890.	

The following Circular Letters are also cancelled :—

Nos. 1, 4, 5, 8, 33 and 36 of 1889.	Nos. 9 and 20 of 1891.
	No. 13 of 1892.
No. 6 of 1890.	

The following London Port Orders are also cancelled :—

Nos. 9, 18, 21, 61, 70, 72, 74 and 76 of 1888.	Nos. 12 and 58 of 1893.
	No. 19 of 1894.
Nos. 23, 48 and 52 of 1889.	No. 13 of 1895.
Nos. 2 and 6 of 1890.	No. 4 of 1898.

The following General Orders on the subject are not affected, viz. :—

$\frac{9}{1888}$, $\frac{36}{1888}$ (with directions as to examining, London Port Order No. $\frac{73}{1888}$), and $\frac{43}{1891}$.

By Order of the Board,

JOHN COURROUX.

REGULATIONS MADE BY THE COMMISSIONERS OF CUSTOMS UNDER SECTION 16 OF THE MERCHANDISE MARKS ACT, 1887.

WHEREAS by the Merchandise Marks Act, 1887 (hereinafter called "the Act"),

After various provisions against the sale, or exposure for sale, or possession for sale, trade, or manufacture, of goods with forged trade marks or false trade descriptions, or trade marks falsely applied to them ;

And after defining (amongst other things) the expression "trade mark" in manner therein set forth, with reference to "The Patents, Designs, and Trade Marks Acts, 1883," and the law of indicated British possessions and foreign states.

And after defining the expression "trade description" as any description, statement, or other indication, direct or indirect, as to number, quantity, measure, gauge, or weight, of goods, as to place or country in which any goods were made or produced, as to the mode of manufacturing or producing any goods, or as to the material of which any goods are composed, or as to any goods being the subject of any existing patent, privilege, or copyright ;

And after defining the expressions "false trade description," and "goods," "apply," and "falsely apply" ;

It is provided by section 16 that—

(i.) All such goods as above mentioned, and

(ii.) All goods of foreign manufacture, bearing any name or trade mark, being or purporting to be the name or trade mark of any

manufacturer, dealer, or trader in the United Kingdom, unless such name or mark be accompanied by definite indication of the country in which such goods were made or produced,

shall be prohibited to be imported, and, subject to the provisions of the said section, shall be included among goods prohibited to be imported, as if they were specified in section 42 of "The Customs Consolidation Act, 1876."

And whereas by section 18 of the Act, after authorising the continued use of trade descriptions lawfully and generally applied to goods of the particular class, or manufactured by a particular method, to indicate such class or method, it is provided that, where such trade description includes the name of a place or country calculated to mislead as to where the goods were actually made or produced, such goods not having been actually made or produced there, the said reciting section should not apply (and, consequently, goods so marked would be prohibited), unless there be added to the trade description, immediately before or after the name of the place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

And whereas it is also provided by the said section 16 that the Commissioners of Customs (hereinafter called "the Commissioners") may from time to time make, revoke, and vary regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited as hereinbefore mentioned, and the

conditions, if any, to be fulfilled before such detention and forfeiture, and may by such Regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of the said section, and the mode of verification of such evidence.

And it is further provided by the said last-mentioned section—

That before detaining goods or taking proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners may require that such Regulations as aforesaid shall be complied with, and satisfy themselves as to the liability of the goods to forfeiture.

That such Regulations may apply to all goods the importation of which is prohibited by the said section, or different Regulations may be made respecting different classes of such goods.

And also that the Regulations may provide for the informant reimbursing the Commissioners all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

And it is also provided, by the said section, that section 2 of the Revenue Act, 1883, shall be repealed from a day to be fixed by regulations under the said reciting section, such day not being later than the 1st day of January, 1888, without prejudice to anything done or suffered thereunder.

And whereas section 2 of the Revenue Act, 1883, is the law under, and by virtue of which, goods of foreign manufacture infringing the proprietary rights of British subjects in names, addresses, and trade marks, or bearing or having upon them,

under certain conditions, the name of a place in or a part of the United Kingdom, are, at the present time, detected and stopped by Officers of Customs acting on their own observation and responsibility, under directions laid down by the Commissioners, and without the requirement of previous information, security, or other conditions.

Now, therefore, the Commissioners under and by virtue of the hereinbefore recited power in that behalf, hereby make and require to be complied with the following Regulations, viz. :—

1. Goods prohibited to be imported as hereinbefore recited, having applied to them forged trade marks, false trade descriptions, or marks, names, or descriptions otherwise illegal, which upon examination are detected by the Officers of Customs, are to be detained by them without the requirement of previous information.

2. In giving information with a view to detention an informant must fulfil the following conditions, viz. :—

(i.) He must give to the Collector or Superintendent, or the Chief Officer of Customs of the Port (or Sub-port) of expected importation, notice in writing, stating—

the number of packages expected, as far as he is able to state the same :

the description of the goods by marks or other particulars sufficient for their identification ;

the name or other sufficient indication of the importing ship ;

the manner in which the goods infringe the Act ;

the expected day of the arrival of the ship.

(ii.) He must deposit with the Collector or other

Officer as aforesaid a sum sufficient, in the opinion of that Officer, to cover any additional expense which may be incurred in the examination required by reason of his notice.

3. If, upon arrival and examination of the goods, the Officer of Customs is satisfied that there is no ground for their detention, they will be delivered. If he is not so satisfied, he will decide either to detain the goods, as in a case of detention upon ordinary examination, or to require security from the informant for reimbursing the Commissioners or their officers all expenses and damages incurred in respect of the detention made on his information and of any proceedings consequent thereon.

4. The security thus required must be an immediate ad valorem deposit of ten pounds per cent. on the value of the goods, as fixed by the officer from the quantities or value shown by the entry; and, also, subsequently a bond to be completed within four days in double the value of the goods, with two approved sureties. The ad valorem deposit will be returned upon completion of the bond, and will not be required if, as an alternative where time permits, the informant prefers to give a like bond before examination upon estimated value of the goods declared to by him under statutory declaration. If the security is not duly given as above required, there will be no further detention of the goods.

5. In the above regulations the words "Officer of Customs" mean an officer acting under general or special direction of the Commissioners, and the words "value of the goods" mean value irrespective of duty.

6. The "Notice" and "Bond" required as above shall be in the forms contained in the schedule to these Regulations, or in such other forms as the Commissioners may from to time order and direct.

7. The security taken under these Regulations will be given up at the times following, that is to say :—

Where given before examination, and if no detention, forthwith.

Where given on detention :

If the forfeiture is completed, either by lapse of time or ultimate condemnation by a Court of Justice, then on such completion of forfeiture.

If the forfeiture is not completed, then—

If the goods are released by the Commissioners, and no action or suit has been commenced against them, or any of their officers, in respect of the detention, then at the expiration of three months from the time of detention ; or, if the goods are released for failure of proceedings taken for the forfeiture and condemnation thereof upon information under section 207 of "The Customs Consolidation Act, 1876," and no action or suit has been commenced against the Commissioners, or any of their officers, in respect of the detention, then at the expiration of three months from the trial of such information.

If within such periods as aforesaid any such action or suit as aforesaid has been commenced, then upon the ultimate conclusion of such action or suit, and the fulfilment of the purpose for which the security was given.

8. These Regulations apply to transhipment and transit goods as well as to goods landed to be warehoused, or for home consumption.

9. The 1st day of January, 1888, is, by these "Regulations," fixed as the day from which section 2 of the "Revenue Act, 1883," shall be repealed, subject to the

terms of the recited Act; and these Regulations will take effect from the date of such appeal.

CHARLES DU CANE
H. MURRAY
HORACE SEYMOUR
} Commissioners of H.M. Customs.

Custom House, London,
December 1, 1887.

A.

SCHEDULE.

(*Notice.*)

THE MERCHANDISE MARKS ACT, 1887.

To the Collector, Superintendent,
or Chief Officer of Customs at
the *Port of

* Or Sub-port.

I hereby give you notice that the under-mentioned goods, that is to say,[1]

[1] Describe the goods, number of packages, marks used, and any other particulars necessary for their identification.

are about to be imported into your port on or about the day of next in the [2]
from

[2] Describe the ship, and give name or indication.

That such goods are liable to detention and forfeiture, being [3]

[3] State how the goods infringe the Act, and if the infringement is one as to a forged trade mark protected in a British Possession or Foreign State, state the Possession or State, or if

That
Mr. of

and Mr. of
are prepared to become my sureties in such bond as may be required upon detention of the goods.

And I request that the said goods may be detained and dealt with accordingly.

Dated this day of , 188 .

A.B.
(or Agent for)

the infringement is one as to place or country of origin, state the name of the place or country falsely used.

NOTE.—Mr. refers to his Bankers (or) Solicitors, and Mr. to his Bankers (or) Solicitors, as to his sufficiency for the penalty of the Bond.

B.

(*Bond.*)

THE MERCHANDISE MARKS ACT, 1887.

KNOW ALL MEN BY THESE PRESENTS, THAT WE
A.B. and
are held and firmly bound unto our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, in the sum of

Pounds to be paid to our said Lady the Queen, her heirs or successors. For which payment well and truly to be made we bind ourselves, jointly and severally, our heirs, executors, and administrators, firmly by these presents. Sealed with our Seals. Dated this day of , in the year of our Lord, one thousand eight hundred and

WHEREAS the above-named A.B. has by a notice dated the day of , informed the Collector of Customs at that the undermentioned goods, that is to say,

were about to be imported into the port of contrary to section 16 of The Merchandise Marks Act, 1887, and requested that the said goods should be detained and dealt with accordingly. And whereas the said goods duly arrived in the said port on the day of last, and are now detained pursuant to the said notice. Now the condition of this obligation is such that if the said A.B. his executors or administrators, shall well and effectually indemnify, save harmless, and keep indemnified Her Majesty, her heirs and successors, and all her and their officers of Customs, and their executors or administrators, from and against all loss or damage, payment or payments, and all costs and expenses which Her said Majesty, her heirs or successors, and her and their officers of Customs, their executors or administrators, shall or may sustain or incur by reason or on account of any detention of the said goods following upon the information contained in such notice and any proceedings consequent upon such detention, then this obligation shall be void, or otherwise shall be and remain in full force and virtue.

Signed, sealed, and delivered.

C

MERCHANDISE MARKS ACT, 1887.

(50 & 51 Vict. c. 28.)

DECLARATION ON REGISTRATION UNDER PARA. 28 OF GENERAL ORDER .

Port of

I [1]

hereby declare that [2]

[3] the Proprietor , of [4]

viz.

which [5] expect to be applied to goods imported, from time to time, at this port; and that [6] have appointed Mr.[7] of to be [8] agent, to give authority for the delivery of such goods.

I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Statutory Declaration Act, 1835.

Signed

Declared this day of , 188 .

At

Before me

A Commissioner to Administer Oaths, &c.

N.B.—Registration in pursuance of this declaration is subject to the provisions of the Act which forbid the importation, by a registered proprietor, even of his own goods which bear, in name or mark, any statement or indication, direct or indirect, of make or produce in the United Kingdom unless qualified as the Act requires.

[1] Full name and address of declarant.

[2] "I" or "I and my partners, trading as Messrs. " or, "such and such a company, of which I am the representative official," or "so and so of such and such a place abroad whom I represent in this country."

[3] "is" or "are."

[4] "the following name as a trade description" or "the following trade mark," or "the following name as a trade description and trade mark."

[5] "I" or "we."

[6] "I" or "we."

[7] This portion as to appointment of agent may be erased, where such appointment is not desired.

[8] "my" or "our."

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APPENDIX

FORM OF INFORMATION FOR AN OFFENCE AGAINST THE MERCHANDISE MARKS ACT, 1887.

In the county of , Petty Sessional Division of .

The information of C.D. (address and description), taken this day of , 190 , who, upon oath, states that A.B. (address and description) on the day of did (here state the offence).

Taken before me, , J.P., Justice of the Peace for the county of , aforesaid.

NOTE.—The information must be for one offence only. Summary Jurisdiction Act, 1848, § 10.

FORM OF NOTICE OF DEFENCE UNDER SECTION 6.

In the matter of the Merchandise Marks Acts, 1887 and 1891, and in the matter of a certain charge being one of those enumerated in section 6 of the said Act and made against A.B.,

Take notice, that on the hearing of the said charge in which you are the prosecutor, I intend to rely on, and to prove as a defence thereto, the following facts, that is to say:—

1. That in the ordinary course of my business I am

employed on behalf of other persons to make dies, blocks, machines, or other instruments for making, or being used in making, trade marks (*or, if the case so be*, to apply marks or description to goods), and that in the case which is the subject of the charge, I was so employed by C.D., a person resident in the United Kingdom, and I was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

2. That I took reasonable precautions against committing the offence charged; and

3. That I had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark (mark or trade description, *as the case may be*); and

4. That I gave to the prosecutor all the information in my power with respect to the persons on whose behalf the trade mark (mark or trade description, *as the case may be*) was applied.

(Signed) A.B.,
of
Dated day of , 189 .

To
Of
The Prosecutor.

FORM OF APPLICATION TO JUSTICES TO STATE A CASE.

20 & 21 Vict. c. 43, s. 2.

(THE FOLLOWING NOTICE MUST BE GIVEN WITHIN THREE DAYS OF THE DECISION.)

In the matter of an information and complaint wherein A.B. was the prosecutor and C.D. the defendant, heard

and determined by you at on the day of , 189 .

I, the undersigned, being (the said prosecutor or defendant, as the case may be) dissatisfied with your said determination upon the hearing of the said information and complaint as being erroneous in point of law, do hereby apply, pursuant to section 2 of the 20 & 21 Vict. c. 43, to you to state and sign a case setting forth the facts and the grounds of your said determination for the opinion thereon of the Queen's Bench Division of the High Court of Justice.

Dated day of , 189 .

(Signed)

of (address and description)

To and

Esquires, [two] of Her Majesty's Justices of the Peace for the (state the jurisdiction).

FORM OF APPLICATION TO JUSTICES TO STATE A CASE BY "A PERSON AGGRIEVED."

Under 42 & 43 Vict. c. 39, s. 33 (1).

(THE FOLLOWING APPLICATION SHOULD BE MADE AND A COPY LEFT WITH THE CLERK OF THE COURT WITHIN SEVEN DAYS OF THE PROCEEDING QUESTIONED.)

In the matter of an information and complaint wherein A.B. was the prosecutor and C.D. the defendant, heard and determined by you at on the day of , 189 .

I, the undersigned, being a person aggrieved by the said determination and desirous of questioning the said

determination on the ground that it is erroneous in point of law [and on the ground that it is in excess of jurisdiction], do hereby apply, pursuant to section 33 of 42 & 43 Vict. c. 49, to you to state a special case setting forth the facts of the case, and the grounds on which the proceeding is questioned, for the opinion thereon of the Queen's Bench Division of the High Court of Justice.

Dated day of , 189 .

(Signed)
of (address and description)

To and Esquires,
Justices of the Peace for the

FORM OF NOTICE OF APPEAL TO QUARTER SESSIONS.

(TO BE SERVED ON ".OTHER PARTY" AND ON THE CLERK OF THE COURT OF SUMMARY JURISDICTION.)

42 & 43 Vict. c. 49, s. 31.

NOTICE OF APPEAL.

[1] To wit } Take notice that I, the undersigned (Christian and surname), of (address of appellant) (description) being a person who feels aggrieved by a certain hereinafter mentioned conviction made by a Court of Summary Jurisdiction, do intend at the next [2] practicable Court of Quarter Sessions of the Peace to be holden at , and having jurisdiction in the said ([1]), in and for the said ([1]), to appeal against a certain conviction bearing date on or about the day of , 189 , and made by (set out names of the Magistrate or Justices who adjudicated) Esquire [one] of Her Majesty's Justices of the Peace for the said ([1]) whereby (I or one

A.B.) was convicted of having as therein and thereby alleged [on the day of , &c., stating the offence following the conviction]; and further, take notice that the grounds of the said appeal are first that [I am or the said A.B.] is not guilty of the said offence, and that [add any other grounds there may be] of all which premises you and each and every one of you are hereby desired to take notice.

Dated day of , 189 .

To (the other party, 42 & 43 Vict. c. 49, s. 31;[2] as to who that other party is where the appeal is by a person aggrieved, see *Price* v. *James*, 61 L.J. M.C. 203).

And to (Justices or Clerk of Court of Summary Jurisdiction, *ib.* s. 31,[2] and *R.* v. *Essex Justices*, 56 J.P. 375, and 61 L.J.M.C. 120).

[1] Insert county, city, borough, or other jurisdiction.

[2] This must be not less than fifteen days after the day of the decision, 42 & 43 Vict. c. 49, s. 31.

FORMS OF OFFENCES

In the various cases cited throughout this work, examples are often given of the charge made.

The following, however, may be of use :—

At , in the county of

(1) Unlawfully, and with intent to defraud, did apply to certain goods, to wit, [describing them], on the day of , sold by the said A.B. to , a false trade description as to [the number, or quantity, or measure, or gauge, or weight of which such goods were composed ; or, the place or country in which such goods were made or produced ; or the mode of manufacturing or producing such goods ; or the material of which such goods were composed ;] by which description the said goods were falsely indicated to be contrary to the provisions of the Merchandise Marks Act, 1887.

(2) Unlawfully, and with intent to defraud, did apply a false trade description to certain goods, to wit [describing them], whereby the said goods were falsely described to be subject to an existing patent, contrary, &c.

(3) Unlawfully, and with intent to defraud, did sell [or expose for sale] certain goods, to wit [describing them]. on the day of , sold by the said A.B. to , to which had been applied a false trade description as to [as in (1)], whereby the said goods were falsely indicated to be , contrary, &c.

(4) Unlawfully, and with intent to defraud, did apply (or cause to be applied) a fa'se trade description, to wit [describing it], to certain goods [describing them], contrary, &c.

(5) Unlawfully did sell (or expose for sale) certain goods, to wit [describing them], to which a false trade description had been applied, contrary, &c.

(6) Unlawfully, and with intent to defraud, did forge a certain trade mark duly registered in the United Kingdom in the register kept under the Patent, Designs, and Trade Marks Act, 1883, and therein numbered , of which trade mark C.D. was then proprietor, within the meaning of the Merchandise Marks Act, 1887, and contrary to the provisions of the said Act.

(7) Unlawfully, and with intent to defraud, did falsely apply to certain goods, to wit [describing them], a certain trade mark duly registered [&c. as in (6)], of which said trade mark C.D. was then proprietor [&c. as in (6)].

FORMS OF INDICTMENT

The following forms of the material parts of an indictment are taken from "Saunders on Indictments."

(1) *Forging a trade mark.*

For that he, the said A.B., on the day of , at the parish of in the said county, with intent to defraud [or to enable one E.F. to defraud] C.D., unlawfully did forge [or counterfeit] [or cause or procure to be forged or counterfeited] a certain trade mark, to wit, , contrary to the statute.

(2) *Falsely applying forged or other trade mark to articles.*

did apply (or cause or procure to be applied) a certain [forged or counterfeited] trade mark, to wit, , of one E.F., to a certain chattel (or article), to wit, a , not being the manufacture, workmanship, production, or merchandise of the said E.F., denoted or intended to be denoted by the said [forged or counterfeited] trade mark;

[or, not being the particular or peculiar description of manufacture, workmanship, production, or merchandise denoted or intended to be denoted by the said [forged or counterfeited] trade mark, contrary to the statute.

(3) *Applying forged trade mark to case, wrapper, &c., on article.*

did apply (or cause or procure to be applied) a certain (forged or counterfeited) trade mark to a certain

cask (or bottle, or stopper, or vessel, or case, or cover, or wrapper, or band, or reel, or ticket, or label, or), in (or "on," or "with") which a certain chattel (or article), to wit, a , was intended to be sold ;
[or, was then sold, or uttered or exposed for sale, or intended for the purpose of trade or manufacture]
[or did enclose or place, or cause or procure a certain chattel or article, to wit, a , to be enclosed or placed, in or upon, or under, or with a certain cask or bottle, &c., to which a certain trade mark has been falsely applied, or to which a certain forged or counterfeited trade mark had been applied]
[or did apply, or attach, or cause or procure to be applied or attached, to a certain chattel or article, to wit, , a certain case, or cover, or reel, or ticket, or label, or , to which a certain trade mark had been falsely applied, or to which a certain forged or counterfeited trade mark had been applied]
[or did enclose, or place, or attach a certain chattel or article, to wit, , or cause or procure a certain chattel or article, to wit, , to be enclosed, or placed, or attached in, or upon, or under, or with, or to any cask or bottle, &c., having thereon the trade mark of another person, to wit of E.F.] contrary to the statute, &c.

(4) *Aiding commission of offences in forms supra.*

For that he, the said A.B., on , &c., at , &c., unlawfully did aid, abet, counsel, and procure the commission of a certain offence which is by the Merchandise Marks Act, 1862, made a misdemeanour, that is to say [here describe the offence], contrary to the statute, &c.

MERCHANDISE MARKS ACT, 1891.

CHAPTER XV.

An Act to amend the Merchandise Marks Act, 1887.

[11th May, 1891.]

BE it 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 :—

Customs entry to be trade description. 50 & 51 Vict. c. 28.

1. The customs entry relating to imported goods shall, for the purposes of the Merchandise Marks Act, 1887, be deemed to be a trade description applied to the goods.

Official prosecutions.

2.—(1) The Board of Trade may, with the concurrence of the Lord Chancellor, make regulations providing that in cases appearing to the Board to affect the general interests of the country, or of a section of the community, or of a trade, the prosecution of offences under the Merchandise Marks Act, 1887, shall be undertaken by the Board of Trade, and prescribing the conditions on which such prosecutions are to be so undertaken. The expenses of prosecutions so undertaken shall be paid out of moneys provided by Parliament.

(2) All regulations made under this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and if Parliament is not then sitting, within three weeks after the beginning

of the next session of Parliament, and shall be judicially noticed, and shall have effected as if enacted by this Act, and shall be published under the authority of her Majesty's Stationery Office.

(3) Nothing in this Act shall affect the power of any person or authority to undertake prosecutions otherwise than under the said regulations.

Short title.

3. This Act may be cited as the Merchandise Marks Act, 1891, and the Merchandise Marks Act, 1887, and this Act may be cited together as the Merchandise Marks Acts, 1887 and 1891

MERCHANDISE MARKS (PROSECUTIONS) ACT, 1894.

CHAPTER XIX.

An Act for enabling the Board of Agriculture to undertake prosecutions in certain cases under the Merchandise Marks Act, 1887. [20th July, 1894.]

BE it 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 :—

Power of Board of Agriculture to prosecute in certain cases. 54 & 55 Vict. c. 15. 50 & 51 Vict. c. 28.

1. The powers exercisable by the Board of Trade under the Merchandise Marks Act, 1891, with respect to the prosecution of offences under the Merchandise Marks Act, 1887, may in cases which appear to the Board of Agriculture to relate to agricultural or horticultural produce be exercised by that Board, and in such cases the former Act shall apply as if the Board of Agriculture were referred to therein instead of the Board of Trade.

Extent of Act.

2. This Act shall not extend to Ireland.

Short title.

3. This Act may be cited as the Merchandise Marks (Prosecutions) Act, 1894, and shall be read with the Merchandise Marks Acts, 1887 and 1891.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

(46 & 47 Vict. c. 57.)

ARRANGEMENT OF SECTIONS.

PART I.

PRELIMINARY.

Section.

1. Short title.
2. Divisions of Act into parts.
3. Commencement of Act.

PART II.

PATENTS.

Application for and Grant of Patent.

4. Persons entitled to apply for patent.
5. Application and specification.
6. Reference of application to examiner.
7. Power for comptroller to refuse application or require amendment.
8. Time for leaving complete specification.
9. Comparison of provisional and complete specification.
10. Advertisement on acceptance of complete specification.

Section.
11. Opposition to grant of patent.
12. Sealing of patent.
13. Date of patent.

Provisional Protection.

14. Provisional protection.

Protection by Complete Specification.

15. Effect of acceptance of complete specification.

Patent.

16. Extent of patent.
17. Term of patent.

Amendment of Specification.

18. Amendment of specification.
19. Power to disclaim part of invention during action, &c.
20. Restriction on recovery of damages.
21. Advertisement of amendment.

Compulsory Licences.

22. Power for Board to order grant of licences.

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CHAPTER LVII.

An Act to amend and consolidate the Law relating to Patents for Inventions, Registration of Designs, and of Trade Marks. [25th August, 1883.]

BE it 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 :—

PART I.

PRELIMINARY.

Short title. **1.** This Act may be cited as the Patents, Designs, and Trade Marks Act, 1883.

2. This Act is divided into parts, as follows :— Division of Act into parts.

Part I.—PRELIMINARY.
Part II.—PATENTS.
Part III.—DESIGNS.
Part IV.—TRADE MARKS.
Part V.—GENERAL.

3. This Act, except where it is otherwise expressed, shall commence from and immediately after the thirty-first day of December one thousand eight hundred and eighty-three. Commencement of Act.

PART II.

PATENTS.

Application for and Grant of Patent.

4. (1) Any person, whether a British subject or not, may make an application for a patent. Persons entitled to apply for patent.

(2) Two or more persons may make a joint application for a patent, and a patent may be granted to them jointly.

5. (1) An application for a patent must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed ; and must be left at, or sent by post to, the patent office in the prescribed manner. Application and specification.

(2) An application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application, one or more of the applicants, claims or claim to be the true and first inventor or inventors, and for which he or they desires or desire to obtain a patent ; and must be accompanied by either a provisional or complete specification.

(3) A provisional specification must describe the nature

of the invention, and be accompanied by drawings, if required.

(4) A complete specification, whether left on application or subsequently, must particularly describe and ascertain the nature of the invention, and in what manner it is to be performed, and must be accompanied by drawings, if required.

(5) A specification, whether provisional or complete, must commence with the title, and in the case of a complete specification must end with a distinct statement of the invention claimed.

Reference of application to examiner.

6. The comptroller shall refer every application to an examiner, who shall ascertain and report to the comptroller whether the nature of the invention has been fairly described, and the application, specification, and drawings (if any) have been prepared in the prescribed manner, and the title sufficiently indicates the subject-matter of the invention.

Power for comptroller to refuse application or require amendment.

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 require that the application, specification, or drawings be amended before he proceeds with the application.

(2) Where the comptroller 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 has been made, but before a patent has been sealed, an application is made, accompanied by a specification bearing the same or a similar title, it shall be the duty of the examiner to report to the comptroller whether the specification appears to him to comprise the same invention; and, if he reports in the affirmative, the comptroller shall give notice to the applicants that he has so reported.

(6) Where the examiner reports in the affirmative, the comptroller may determine, subject to an appeal to the law officer, whether the invention comprised in both applications is the same, and if so he may refuse to seal a patent on the application of the second applicant.

Time for leaving complete specification.

8. (1) If the applicant does not leave a complete specification with his application, he may leave it at any subsequent time within nine months from the date of application.

(2) Unless a complete specification is left within that time, the application shall be deemed to be abandoned.

Comparison of provisional and complete specification.

9. (1) Where a complete specification is left after a provisional specification, the comptroller shall refer both specifications to an examiner for the purpose of ascertaining whether the complete specification has been prepared in the prescribed manner, and whether the invention particularly described in the complete specification is substantially the same as that which is described in the provisional specification.

(2) If the examiner reports that the conditions hereinbefore contained have not been complied with, the comptroller may refuse to accept the complete specification unless and until the same shall have been amended to his satisfaction; but any such refusal shall be subject to appeal 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 complete specification shall be accepted.

(4) Unless a complete specification is accepted within twelve months from the date of application, then (save in the case of an appeal having been lodged against the refusal to accept) the application shall, at the expiration of those twelve months, become void.

(5) Reports of examiners shall not in any case be published or be open to public inspection, and shall not be liable to production or inspection in any legal proceeding, other than an appeal to the law officer under this Act, unless the court or officer having power to order discovery in such legal proceeding shall certify that such production or inspection is desirable in the interests of justice, and ought to be allowed.

Advertisement on acceptance of complete specification.

10. On the acceptance of the complete specification the comptroller shall advertise the acceptance; and the application and specification or specifications with the drawings (if any) shall be open to public inspection.

Opposition to grant of patent.

11. (1) Any person may at any time within two months from the date of the advertisement of the acceptance of a complete specification give notice at the patent office of opposition to the grant of the patent on the ground of the applicant having obtained the invention from him, or from a person of whom he is the legal representative, or on the ground that the invention has been patented in this country on an application of prior date, or on the ground of an examiner having reported to the comptroller that the specification appears to him to comprise the same invention as is comprised in a specification bearing the same or a similar title and accompanying a previous application, but on no other ground.

(2) Where such notice is given the comptroller shall give notice of the opposition to the applicant, and shall, on the expiration of those two months, after

hearing the applicant and the person so giving notice, if desirous of being heard, decide on the case, but subject to appeal to the law officer.

(3) The law officer shall, if required, hear the applicant and any person so giving notice and being, in the opinion of the law officer, entitled to be heard in opposition to the grant, and shall determine whether the grant ought or ought not to be made.

(4) The law officer may, if he thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the law officer, with the consent of the Treasury, shall appoint.

Sealing of patent.

12. (1) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, the comptroller shall cause a patent to be sealed with the seal of the patent office.

(2) A patent so sealed shall have the same effect as if it were sealed with the Great Seal of the United Kingdom.

(3) A patent shall be sealed as soon as may be, and not after the expiration of fifteen months from the date of application, except in the cases hereinafter mentioned, that is to say—

(*a*) Where the sealing is delayed by an appeal to the law officer, or by opposition to the grant of the patent, the patent may be sealed at such time as the law officer may direct.

(*b*) If the person making the application dies before the expiration of the fifteen months aforesaid, the patent may be granted to his legal representative and sealed at any time within twelve months after the death of the applicant.

Date of patent.

13. Every patent shall be dated and sealed as of the day of the application: Provided that no proceedings

shall be taken in respect of an infringement committed before the publication of the complete specification: Provided also, that in case of more than one application for a patent for the same invention, the sealing of a patent on one of those applications shall not prevent the sealing of a patent on an earlier application.

Provisional Protection.

Provisional protection.

14. Where an application for a patent in respect of an invention has been accepted, the invention may during the period between the date of the application and the date of sealing such patent be used and published without prejudice to the patent to be granted for the same; and such protection from the consequences of use and publication is in this Act referred to as provisional protection.

Protection by Complete Specification.

Effect of acceptance of complete specification.

15. After the acceptance of a complete specification and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification: Provided that an applicant shall not be entitled to institute any proceeding for infringement unless and until a patent for the invention has been granted to him.

Patent.

Extent of patent.

16. Every patent when sealed shall have effect throughout the United Kingdom and Isle of Man.

Term of patent.

17. (1) The term limited in every patent for the duration thereof shall be fourteen years from its date.

(2) But every patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to make the prescribed payments within the prescribed times.

(3) If, nevertheless, in any case, by accident, mistake, or inadvertence, a patentee fails to make any prescribed payment within the prescribed time, he may apply to the comptroller for an enlargement of the time for making that payment.

(4) Thereupon the comptroller shall, if satisfied that the failure has arisen from any of the above-mentioned causes, on receipt of the prescribed fee for enlargement, not exceeding ten pounds, enlarge the time accordingly, subject to the following conditions :—

(*a*) The time for making any payment shall not in any case be enlarged for more than three months.

(*b*) If any proceeding shall be taken in respect of an infringement of the patent committed after a failure to make any payment within the prescribed time, and before the enlargement thereof, the court before which the proceeding is proposed to be taken may, if it shall think fit, refuse to award or give any damages in respect of such infringement.

Amendment of Specification.

Amendment of specification.

18. (1) An applicant or a patentee may, from time to time, by request in writing left at the Patent Office, seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of such amendment and his reasons for the same.

(2) The request and the nature of such proposed amendment shall be advertised in the prescribed manner,

and at any time within one month from its first advertisement any person may give note at the Patent Office of opposition to the amendment.

(3) Where such notice is given the comptroller shall give notice of the opposition to the person making the request, and shall hear and decide the case subject to an appeal to the law officer.

(4) The law officer shall, if required, hear the person making the request and the person so giving notice, and being in the opinion of the law officer entitled to be heard in opposition to the request, and shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(5) Where no notice of opposition is given, or the person so giving notice does not appear, the comptroller shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6) When leave to amend is refused by the comptroller, the person making the request may appeal from his decision to the law officer.

(7) The law officer shall, if required, hear the person making the request and the comptroller, and may make an order determining whether and subject to what conditions, if any, the amendment ought to be allowed.

(8) No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before amendment.

(9) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall in all courts and for all purposes be deemed to form part of the specification.

(10) The foregoing provisions of this section do not

apply when and so long as any action for infringement or other legal proceeding in relation to a patent is pending.

Power to disclaim part of invention during action, &c.

19. (1) In an action for infringement of a patent, and in a proceeding for revocation of a patent, the court or a judge may at any time order that the patentee shall, subject to such terms as to costs and otherwise as the court or a judge may impose, be at liberty to apply at the Patent Office for leave to amend his specification by way of disclaimer, and may direct that in the mean time the trial or hearing of the action shall be postponed.

Restriction on recovery of damages.

20. Where an amendment by way of disclaimer, correction, or explanation has been allowed under this Act, no damages shall be given in any action in respect of the use of the invention before the disclaimer, correction, or explanation, 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.

Advertisement of amendment.

21. Every amendment of a specification shall be advertised in the prescribed manner.

Compulsory Licences.

Power for Board to order grant of licences.

22. If on the petition of any person interested it is proved to the Board of Trade that by reason of the default of a patentee to grant licences on reasonable terms—

(*a*) The patent is not being worked in the United Kingdom; or

(*b*) The reasonable requirements of the public with respect to the invention cannot be supplied; or

(*c*) Any person is prevented from working or using to the best advantage an invention of which he is possessed;

the Board may order the patentee to grant licences on such terms as to the amount of royalties, security for payment, or otherwise, as the Board, having regard to the nature of the invention and the circumstances of the case, may deem just, and any such order may be enforced by mandamus.

Register of Patents.

Register of patents.

23. (1) There shall be kept at the patent office a book called the Register of Patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licences under patents, and of amendments, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may from time to time be prescribed.

(2) The register of patents shall be primâ facie evidence of any matters by this Act directed or authorised to be inserted therein.

(3) Copies of deeds, licences, and any other documents affecting the proprietorship in any letters patent or in any licence thereunder, must be supplied to the comptroller in the prescribed manner for filing in the patent office.

Fees.

Fee in schedule.

24. (1) There shall be paid in respect of the several instruments described in the Second Schedule to this Act, the fees in that schedule mentioned, and there shall likewise be paid, in respect of other matters under this part of the Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury may from time to time direct.

(2) The Board of Trade may from time to time, if they think fit, with the consent of the Treasury, reduce any of those fees.

Extension of Term of Patent.

Extension of term of patent on petition to Queen in Council.

25. (1) A patentee may, after advertising in manner directed by any rules made under this section his intention to do so, present a petition to Her Majesty in Council, praying that his patent may be extended for a further term; but such petition must be presented at least six months before the time limited for the expiration of the patent.

(2) Any person may enter a caveat, addressed to the Registrar of the Council at the Council Office, against the extension.

(3) If Her Majesty shall be pleased to refer any such petition to the Judicial Committee of the Privy Council, the said Committee shall proceed to consider the same, and the petitioner and any person who has entered a caveat shall be entitled to be heard by himself or by counsel on the petition.

(4) The Judicial Committee shall, in considering their decision, have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(5) If the Judicial Committee report that the patentee has been inadequately remunerated by his patent, it shall be lawful for Her Majesty in Council to extend the term of the patent for a further term not exceeding seven, or in exceptional cases fourteen, years; or to order the grant of a new patent for the term therein mentioned, and containing any restrictions, conditions, and provisions that the Judicial Committee may think fit.

(6) It shall be lawful for Her Majesty in Council to make, from time to time, rules of procedure and practice for regulating proceedings on such petitions, and subject thereto such proceedings shall be regulated according to the existing procedure and practice in patent matters of the Judicial Committee.

(7) The costs of all parties of and incident to such proceedings shall be in the discretion of the Judicial Committee; and the orders of the Committee respecting costs shall be enforceable as if they were orders of a division of the High Court of Justice.

Revocation.

Revocation of patent.

26. (1) The proceeding by scire facias to repeal a patent is hereby abolished.

(2) Revocation of a patent may be obtained on petition to the court.

(3) Every ground on which a patent might, at the commencement of this Act, be repealed by scire facias shall be available by way of defence to an action of infringement and shall also be a ground of revocation.

(4) A petition for revocation of a patent may be presented by—

(*a*) The Attorney-General in England or Ireland, or the Lord Advocate in Scotland:

(*b*) Any person authorised by the Attorney-General in England or Ireland, or the Lord Advocate in Scotland:

(*c*) Any person alleging that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims:

(*d*) Any person alleging that he, or any person under or through whom he claims, was the true inventor of any invention included in the claim of the patentee:

(*e*) Any person alleging 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, within this realm, before the date of the patent, anything claimed by the patentee as his invention.

(5) The plaintiff must deliver with his petition particulars of the objections on which he means to rely, and no evidence shall, except by leave of the court or a judge, be admitted in proof of any objection of which particulars are not so delivered.

(6) Particulars delivered may be from time to time amended by leave of the court or a judge.

(7) The defendant shall be entitled to begin, and give evidence in support of the patent, and if the plaintiff gives evidence impeaching the validity of the patent the defendant shall be entitled to reply.

(8) Where a patent has been revoked on the ground of fraud, the comptroller may, on the application of the true inventor made in accordance with the provisions of this Act, grant to him a patent in lieu of and bearing the same date as the date of revocation of the patent so revoked, but the patent so granted shall cease on the expiration of the term for which the revoked patent was granted.

Crown.

Patent to bind Crown.

27. (1) A patent shall have to all intents the like effect as against Her Majesty the Queen, her heirs and successors, as it has against a subject.

(2) But the officers or authorities administering any department of the service of the Crown may, by themselves, their agents, contractors, or others, at any time after the application, use the invention for the services

of the Crown on terms to be before or after the use thereof agreed on, with the approval of the Treasury, between those officers or authorities and the patentee, or, in default of such agreement, on such terms as may be settled by the Treasury after hearing all parties interested.

Legal Proceedings.

Hearing with assessor.

28. (1) In an action or proceeding for infringement or revocation of a patent, the court may, if it thinks fit, and shall, on the request of either of the parties to the proceeding, call in the aid of an assessor specially qualified, and try and hear the case wholly or partially with his assistance; the action shall be tried without a jury unless the court shall otherwise direct.

(2) The Court of Appeal or the Judicial Committee of the Privy Council may, if they see fit, in any proceeding before them respectively, 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 Appeal or Judicial Committee, as the case may be, and be paid in the same manner as the other expenses of the execution of this Act.

Delivery of particulars.

29. (1) In an action for infringement of a patent the plaintiff must deliver with his statement of claim, or by order of the court or the judge, at any subsequent time, particulars of the breaches complained of.

(2) The defendant must deliver with his statement of defence, or, by order of the court or a judge, at any subsequent time, particulars of any objections on which he relies in support thereof.

(3) If the defendant disputes the validity of the patent, the particulars delivered by him must state on what grounds he disputes it, and if one of those grounds

is want of novelty, must state the time and place of the previous publication or user alleged by him.

(4) At the hearing no evidence shall, except by leave of the court or a judge, be admitted in proof of any alleged infringement or objection of which particulars are not so delivered.

(5) Particulars delivered may be from time to time amended, by leave of the court or a judge.

(6) On taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant; and they respectively shall not be allowed any costs in respect of any particular delivered by them unless the same is certified by the court or a judge to have been proven or to have been reasonable and proper, without regard to the general costs of the case.

Order for inspection, &c., in action.

30. In an action for infringement of a patent, the court or a judge may on the application of either party make such order for an injunction, inspection, or account, and impose such terms and give such directions respecting the same and the proceedings thereon as the court or a judge may see fit.

Certificate of validity questioned and costs thereon.

31. In an action for infringement of a patent, the court or a judge may certify that the validity of the patent 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 for judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless the court or judge trying the action certifies that he ought not to have the same.

Remedy in case of groundless threats of legal proceedings.

32. Where any person claiming to be the patentee of an invention, by circulars, advertisements, or otherwise threatens any other person with any legal proceedings or liability in respect of any alleged manufacture, use, sale, or purchase of the invention, any person or persons

aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as may have been sustained thereby, if the alleged manufacture, use, sale, or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats: Provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.

Miscellaneous.

Patent for one invention only.

33. Every patent may be in the form in the first schedule to this Act, and shall be granted for one invention only, but may contain more than one claim; but it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it comprises more than one invention.

Patent on application of representative of deceased inventor.

34. (1) If a person possessed of an invention dies without making application for a patent for the invention, application may be made by, and a patent for the invention granted to, his legal representative.

(2) Every such application must be made within six months of the decease of such person, and must contain a declaration by the legal representative that he believes such person to be the true and first inventor of the invention.

Patent to first inventor not invalidated by application in fraud of him.

35. A patent granted to the true and first inventor shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection.

Assignment for particular places.

36. A patentee may assign his patent for any place in or part of the United Kingdom, or Isle of Man, as effectually as if the patent were originally granted to extend to that place or part only.

Loss or destruction of patent.

37. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the comptroller, the comptroller may at any time cause a duplicate thereof to be sealed.

Proceedings and costs before law officer.

38. The law officers may examine witnesses on oath and administer oaths for that purpose under this part of this Act, and may from time to time make, alter, and rescind rules regulating references and appeals to the law officers and the practice and procedure before them under this part of this Act; and in any proceeding before either of the law officers under this part of this Act, the law officer may order costs to be paid by either party, and any such order may be made a rule of the Court.

Exhibition at industrial or international exhibition not to prejudice patent rights.

39. The exhibition of an invention at an industrial or international exhibition, certified as such by the Board of Trade, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor or his legal personal representative to apply for and obtain provisional protection and a patent in respect of the invention or the validity of any patent granted on the application, provided that both the following conditions are complied with, namely,—

(*a*) The exhibitor must, before exhibiting the invention, give the comptroller the prescribed notice of his intention to do so; and

(*b*) The application for a patent must be made before or within six months from the date of the opening of the exhibition.

Publication of illustrated journal, indexes, &c.

40. (1) The comptroller shall cause to be issued periodically an illustrated journal of patented inventions, as well as reports of patent cases decided by courts of law, and any other information that the comptroller may deem generally useful or important.

(2) Provision shall be made by the comptroller for keeping on sale copies of such journal, and also of all complete specifications of patents for the time being in force, with their accompanying drawings, if any.

(3) The comptroller shall continue, in such form as he may deem expedient, the indexes and abridgments of specifications hitherto published, and shall from time to time prepare and publish such other indexes, abridgments of specifications, catalogues, and other works relating to inventions, as he may see fit.

Patent Museum.

41. The control and management of the existing Patent Museum, and its contents shall from and after the commencement of this Act, be transferred to and vested in the Department of Science and Art, subject to such directions as Her Majesty in Council may see fit to give.

Power to require models on payment.

42. The Department of Science and Art may at any time require a patentee to furnish them with a model of his invention on payment to the patentee of the cost of the manufacture of the model; the amount to be settled, in case of dispute, by the Board of Trade.

Foreign vessels in British waters.

43. (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 any of Her Majesty's Courts in the United Kingdom, or Isle of Man, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connexion with the manufacture or preparation of anything intended

to be sold in or exported from the United Kingdom or Isle of Man.

(2) But this section shall not extend to vessels of any foreign state of which the laws authorise subjects of such foreign state, having patents or like privileges for the exclusive use or exercise of inventions within its territories, to prevent or interfere with the use of such inventions in British vessels while in the ports of such foreign state, or in the waters within the jurisdiction of its courts, where such inventions are not so used for the manufacture or preparation of anything intended to be sold in or exported from the territories of such foreign state.

Assignment to Secretary for War of certain inventions.

44. (1) The inventor of any improvement in instruments or munitions of war, his executors, administrators, or assigns (who are in this section comprised in the expression the inventor) may (either for or without valuable consideration) assign to Her Majesty's Principal Secretary of State for the War Department (hereinafter referred to as the Secretary of State), on behalf of Her Majesty, all the benefit of the invention and of any patent obtained or to be obtained for the same; and the Secretary of State may be a party to the assignment.

(2) The assignment shall effectually vest the benefit of the invention and patent in the Secretary of State for the time being on behalf of Her Majesty, and all covenants and agreements therein contained 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 for the time being.

(3) Where any such assignment has been made to the Secretary of State, he may at any time before the application for a patent for the invention, or before publication of the specification or specifications, certify to the comptroller his opinion that, in the interest of the public

service, the particulars of the invention and of the manner in which it is to be performed should be kept secret.

(4) If the Secretary of State so certifies, the application and specification or specifications with the drawings (if any), and any amendment of the specification or specifications, and any copies of such documents and drawings, shall, instead of being left in the ordinary manner at the Patent Office, be delivered to the comptroller in a packet sealed by authority of the Secretary of State.

(5) Such packet shall until the expiration of the term or extended term during which a patent for the invention may be in force, be kept sealed by the comptroller, and shall not be opened save under the authority of an order of the Secretary of State, or of the law officers.

(6) Such sealed packet shall be delivered at any time during the continuance of the patent to any person authorised by writing under the hand of the Secretary of State to receive the same, and shall if returned to the comptroller be again kept sealed by him.

(7) On the expiration of the term or extended term of the patent, such sealed packet shall be delivered to any person authorised by writing under the hand of the Secretary of State to receive it.

(8) Where the Secretary of State certifies as aforesaid, after an application for a patent has been left at the Patent Office, but before the publication of the specification or specifications, the application specification or specifications, with the drawings (if any), shall be forthwith placed in a packet sealed by authority of the comptroller, and such packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the Secretary of State.

(9) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in

relation to which the Secretary of State has certified as aforesaid.

(10) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but save as in this section otherwise directed, the provisions of this part of this Act shall apply in respect of any such invention and patent as aforesaid.

(11) The Secretary of State may, at any time, by writing under his hand, waive the benefit of this section with respect to any particular invention, and the specifications, documents, and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12) The communication of any invention for any improvement in instruments or munitions of war to the Secretary of State, or to any person or persons authorised by him to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

Existing Patents.

Provisions respecting existing patents.

45. (1) The provisions of this Act relating to applications for patents and proceedings thereon shall have effect in respect only of applications made after the commencement of this Act.

(2) Every patent granted before the commencement of this Act, or on an application then pending, shall remain unaffected by the provisions of this Act relating to patents binding the Crown, and to compulsory licences.

(3) In all other respects (including the amount and time of payment of fees) this Act shall extend to all

patents granted before the commencement of this Act, or on applications then pending, in substitution for such enactments as would have applied thereto if this Act had not been passed.

(4) All instruments relating to patents granted before the commencement of this Act required to be left or filed in the Great Seal Patent Office shall be deemed to be so left or filed if left or filed before or after the commencement of this Act in the patent office.

Definitions.

Definitions of patent, patentee, and invention.

46. In and for the purposes of this Act—

"Patent" means letters patent for an invention:

"Patentee" means the person for the time being entitled to the benefit of a patent.

"Invention" means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies (that is, the Act of the twenty-first year of the reign of King James the First, chapter three, intituled "An Act concerning monopolies and dispensations with penal laws and the forfeiture thereof"), and includes an alleged invention.

In Scotland "injunction" means "interdict."

PART III.

DESIGNS.

Registration of Designs.

Application for registration of designs.

47. (1) The comptroller may, on application by or on behalf of any person claiming to be the proprietor of any new or original design not previously published in the United Kingdom, register the design under this part of this Act.

(2) The application must be made in the form set forth in the First Schedule of this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the Patent Office in the prescribed manner.

(3) The application must contain a statement of the nature of the design, and the class or classes of goods in which the applicant desires that the design be registered.

(4) The same design may be registered in more than one class.

(5) In case of doubt as to the class in which a design ought to be registered, the comptroller may decide the question.

(6) The comptroller may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal therefrom to the Board of Trade.

(7) The Board of Trade shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

Drawings, &c., to be furnished on application.

48. (1) On application for registration of a design the applicant shall furnish to the comptroller the prescribed number of copies of drawings, photographs, or tracings of the design sufficient, in the opinion of the comptroller, for enabling him to identify the design; or the applicant may, instead of such copies, furnish exact representations or specimens of the design.

(2) The comptroller may, if he thinks fit, refuse any drawing, photograph, tracing, representation, or specimen which is not, in his opinion, suitable for the official records.

Certificate of registration.

49. (1) The comptroller shall grant a certificate of registration to the proprietor of the design when registered.

(2) The comptroller may, in case of loss of the original

certificate, or in any other case in which he deems it expedient, grant a copy or copies of the certificate.

Copyright in registered Designs.

Copyright on registration.

50. (1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.

(2) Before delivery on sale of any articles to which a registered design has been applied, the proprietor must (if exact representations or specimens were not furnished on the application for registration) furnish to the comptroller the prescribed number of exact representations or specimens of the design; and if he fails to do so the comptroller may erase his name from the register, and thereupon his copyright in the design shall cease.

Marking registered designs.

51. Before delivery on sale of any articles to which a registered design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark, or with the prescribed word or words or figures, denoting that the design is registered; and if he fails to do so the copyright in the design shall cease, unless the proprietor shews that he took all proper steps to ensure the marking of the article.

Inspection of registered designs.

52. (1) During the existence of copyright in a design, the design shall not be open to inspection except by the proprietor, or a person authorised in writing by the proprietor, or a person authorised by the comptroller or by the court, and furnishing such information as may enable the comptroller to identify the design, nor except in the presence of the comptroller, or of an officer acting under him, nor except on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof.

(2) When the copyright in a design has ceased, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

Information as to existence of copyright.

53. On the request of any person producing a particular design, together with its mark of registration, or producing only its mark of registration, or furnishing such information as may enable the comptroller to identify the design, and on payment of the prescribed fee, it shall be the duty of the comptroller to inform such person whether the registration still exists in respect of such design, and if so, in respect of what class or classes of goods, and stating also the date of registration, and the name and address of the registered proprietor.

Cesser of copyright in certain events.

54. If a registered design is used in manufacture in any foreign country and is not used in this country within six months of its registration in this country, the copyright in the design shall cease.

Register of Designs.

Register designs.

55. (1) There shall be kept at the Patent Office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may from time to time be prescribed.

(2) The register of designs shall be primâ facie evidence of any matters by this Act directed or authorised to be entered therein.

Fees.

Fees on registration, &c.

56. There shall be paid in respect of applications and registration and other matters under this part of this Act such fees as may be from time to time, with the sanction

of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury shall from time to time direct.

Industrial and International Exhibitions.

Exhibition at industrial or international exhibition not to prevent or invalidate registration.

57. The exhibition at an industrial or international exhibition certified as such by the Board of Trade, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design shall not prevent the design from being registered, or invalidate the registration thereof, provided that both the following conditions are complied with; namely,—

(*a*) The exhibitor must, before exhibiting the design or article, or publishing a description of the design, give the comptroller the prescribed notice of his intention to do so; and

(*b*) The application for registration must be made before or within six months from the date of the opening of the exhibition.

Legal Proceedings.

Penalty on piracy of registered design.

58. During the existence of copyright in any design—

(*a*) It shall not be lawful for any person without the licence or written consent of the registered proprietor to apply such design or any fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered, for purposes of sale to any article of manufacture or to any substance artificial

or natural or partly artificial and partly natural; and

(*b*) It shall not be lawful for any person to publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, knowing that the same has been so applied without the consent of the registered proprietor:

Any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding fifty pounds to the registered proprietor of the design, who may recover such sum as a simple contract debt by action in any court of competent jurisdiction.

Action for damages.

59. Notwithstanding the remedy given by this Act for the recovery of such penalty as aforesaid, the registered proprietor of any design may (if he elects to do so) bring an action for the recovery of any damages arising from the application of any such design, or of any fraudulent or obvious imitation thereof for the purpose of sale, to any article of manufacture or substance, or from the publication, sale, or exposure for sale by any person of any article or substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, such person knowing that the proprietor had not given his consent to such application.

Definitions.

Definition of "design," "copyright."

60. In and for the purposes of this Act—

"Design" means any design applicable to any article of manufacture, or to any substance artificial or natural, or partly artificial and partly natural, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more

of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined, not being a design for a sculpture, or other thing within the protection of the Sculpture Copyright Act of the year 1814 (fifty-fourth George the Third, chapter fifty-six).

"Copyright" means the exclusive right to apply a design to any article of manufacture or to any such substance as aforesaid in the class or classes in which the design is registered.

Definition of proprietor.

61. The author of any new and original design shall be considered the proprietor thereof, unless he executed the work on behalf of another person for a good or valuable consideration, in which case such person shall be considered the proprietor, and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to any such article or substance as aforesaid, either exclusively of any other person or otherwise, and also every person on whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise.

PART IV.

TRADE MARKS.

Registration of Trade Marks.

Application for registration.

62. (1) The comptroller may, on application by or on behalf of any person claiming to be the proprietor of a trade mark, register the trade mark.

(2) The application must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the Patent Office in the prescribed manner.

(3) The application must be accompanied by the prescribed number of representations of the trade mark, and must state the particular goods or classes of goods in connexion with which the applicant desires the trade mark to be registered.

(4) The comptroller may, if he thinks fit, refuse to register a trade mark, but any such refusal shall be subject to appeal to the Board of Trade, who shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(5) 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.

Limit of time for proceeding with application.

63. Where registration of a trade mark has not been or shall not be completed within twelve months from the date of the application, by reason of default on the part of the applicant, the application shall be deemed to be abandoned.

Conditions of registration of trade mark.

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,

ticket, or fancy word or words not in common use.

(2) There may be added to any one or more of these particulars any letters, words, or figures, or combination of letters, words, or figures, or of any of them.

(3) Provided that 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.

Connexion of trade mark with goods.

65. A trade mark must be registered for particular goods or classes of goods.

Registration of a series of marks.

66. When a person claiming to be the proprietor of several trade marks which, while resembling each other in the material particulars thereof, yet differ in respect of (*a*) the statement of the goods for which they are respectively used or proposed to be used, or (*b*) statements of numbers, or (*c*) statements of price, or (*d*) statements of quality, or (*e*) statements of names of places, seeks to register such trade marks, they may be registered as a series in one registration. A series of trade marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade marks composing a series shall be deemed and treated as registered separately.

Trade marks may be registered in any colour.

67. A trade mark may be registered in any colour, and such registration shall (subject to the provisions of this Act) confer on the registered owner the exclusive right to use the same in that or any other colour.

Advertisement of application.

68. Every application for registration of a trade mark under this part of this Act shall as soon as may be after its receipt be advertised by the comptroller.

Opposition to registration.

69. (1) Any person may within two months of the first advertisement of the application, give notice in duplicate at the Patent Office of opposition to registration

of the trade mark, and the comptroller shall send one copy of such notice to the applicant.

(2) Within two months after receipt of such notice or such further time as the comptroller may allow, the applicant may send to the comptroller a counter statement in duplicate of the grounds on which he relies for his application, and if he does not do so, shall be deemed to have abandoned his application.

(3) If the applicant sends such counter statement, the comptroller shall furnish a copy thereof to the person who gave notice of opposition, and shall require him to give security in such manner and to such amount as the comptroller may require for such costs as may be awarded in respect of such opposition; and if such security is not given within fourteen days after such requirement was made or such further time as the comptroller may allow, the opposition shall be deemed to be withdrawn.

(4) If the person who gave notice of opposition duly gives such security as aforesaid, the comptroller shall inform the applicant thereof in writing, and thereupon the case shall be deemed to stand for the determination of the court.

Assignment and transmission of trade mark.

70. A trade mark, when registered, shall be assigned and transmitted only in connexion with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.

Conflicting claims to registration.

71. Where each of several persons claims to be registered as proprietor of the same trade mark, the comptroller may refuse to register any of them until their rights have been determined according to law, and the comptroller may himself submit or require the claimants to submit their rights to the court.

Restrictions

72. (1) Except where the court has decided that two or more persons are entitled to be registered as

On registration.

proprietors of the same trade mark, the comptroller shall not register in respect of the same goods or description of goods a trade mark identical with one already on the register with respect to such goods or description of goods.

(2) The comptroller shall not register with respect to the same goods or description of goods a trade mark so nearly resembling a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive.

Further restriction on registration.

73. It shall not be lawful to register as part of or in combination with a trade mark any words the exclusive use of which would, by reason of their being calculated to deceive or otherwise, be deemed disentitled to protection in a court of justice, or any scandalous design.

Saving for power to provide for entry on register of common marks as additions to trade marks.

74. (1) Nothing in this Act shall be construed to prevent the comptroller entering on the register, in the prescribed manner, and subject to the prescribed conditions, as an addition to any trade mark—

(*a*) In the case of an application for registration of a trade mark used before the thirteenth day of August one thousand eight hundred and seventy-five—

Any distinctive device, mark, brand, heading, label, ticket, letter, word, or figure, or combination of letters, words, or figures, though the same is common to the trade in the goods with respect to which the application is made;

(*b*) In the case of an application for registration of a trade mark not used before the thirteenth day of August one thousand eight hundred and seventy-five—

Any distinctive word or combination of

words, though the same is common to the trade in the goods with respect to which the application is made.

(2) The applicant for entry of any such common particular or particulars must, however, disclaim in his application any right to the exclusive use of the same, and a copy of the disclaimer shall be entered on the register.

(3) Any device, mark, brand, heading, label, ticket, letter, word, figure, or combination of letters, words, or figures, which was or were, before the thirteenth day of August one thousand eight hundred and seventy-five, publicly used by more than three persons on the same or a similar description of goods shall, for the purposes of this section, be deemed common to the trade in such goods.

Effect of Registration.

Registration equivalent to public use.

75. Registration of a trade mark shall be deemed to be equivalent to public use of the trade mark.

Right of first proprietor to exclusive use of trade mark.

76. The registration of a person as proprietor of a trade mark shall be primâ facie evidence of his right to the exclusive use of the trade mark, and shall, after the expiration of five years from the date of the registration, be conclusive evidence of his right to the exclusive use of the trade mark, subject to the provisions of this Act.

Restrictions on actions for infringement, and on defence to action in certain cases.

77. A person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of a trade mark unless, in the case of a trade mark capable of being registered under this Act, it has been registered in pursuance of this Act, or of an enactment repealed by this Act, or, in the case of any other trade mark in use before the thirteenth day

of August one thousand eight hundred and seventy-five, registration thereof under this part of this Act, or of an enactment repealed by this Act, has been refused. The comptroller may, on request, and on payment of the prescribed fee, grant a certificate that such registration has been refused.

Register of Trade Marks.

Register of trade marks.

78. There shall be kept at the Patent Office a book called the Register of Trade Marks, wherein shall be entered the names and addresses of proprietors of registered trade marks, notifications of assignments and of transmissions of trade marks, and such other matters as may be from time to time prescribed.

Removal of trade mark after fourteen years unless fee paid.

79. (1) At a time not being less than two months nor more than three months before the expiration of fourteen years from the date of the registration of a trade mark, the comptroller shall send notice to the registered proprietor that the trade mark will be removed from the register unless the proprietor pays to the comptroller before the expiration of such fourteen years (naming the date at which the same will expire) the prescribed fee; and if such fee be not previously paid, he shall at the expiration of one month from the date of the giving of the first notice send a second notice to the same effect.

(2) If such fee be not paid before the expiration of such fourteen years the comptroller may after the end of three months from the expiration of such fourteen years remove the mark from the register, and so from time to time at the expiration of every period of fourteen years.

(3) If before the expiration of the said three months the registered proprietor pays the said fee together with the additional prescribed fee, the comptroller may without

removing such trade mark from the register accept the said fee as if it had been paid before the expiration of the said fourteen years.

(4) Where after the said three months a trade mark has been removed from the register for nonpayment of the prescribed fee, the comptroller may, if satisfied that it is just so to do, restore such trade mark to the register on payment of the prescribed additional fee.

(5) Where a trade mark has been removed from the register for nonpayment of the fee or otherwise, such trade mark shall nevertheless for the purpose of any application for registration during the five years next after the date of such removal, be deemed to be a trade mark which is already registered.

Fees.

Fees for registration, &c.

80. There shall be paid in respect of applications and registration and other matters under this part of this Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury may from time to time direct.

Sheffield Marks.

Registration by Cutlers' Company of Sheffield marks.

81. With respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire, in the county of York (in this Act called the Cutlers' Company) and the marks or devices (in this Act called Sheffield marks) assigned or registered by the master, wardens, searchers, and assistants of that company, the following provisions shall have effect:—

(1) The Cutlers' Company shall establish and keep

at Sheffield a new register of trade marks (in this Act called the Sheffield register):

(2) The Cutlers' Company shall enter in the Sheffield register, in respect of cutlery, edge tools, or raw steel and the goods mentioned in the next subsection all the trade marks entered before the commencement of this Act in respect of cutlery, edge tools, or raw steel and such goods in the register established under the Trade Marks Registration Act, 1875, belonging to persons carrying on business in Hallamshire, or within six miles thereof, and shall also enter in such register, in respect of the same goods, all the trade marks which shall have been assigned by the Cutlers' Company and actually used before the commencement of this Act, but which have not been entered in the register established under the Trade Marks Registration Act, 1875:

(3) An application for registration of a trade mark used 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, if made after the commencement of this Act by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers' Company:

(4) Every application so made to the Cutlers' Company shall be notified to the comptroller in the prescribed manner, and unless the comptroller within the prescribed time gives notice to the Cutlers' Company that he objects to the acceptance of the application, it shall be

proceeded with by the Cutlers' Company in the prescribed manner :

(5) If the comptroller gives notice of objection as aforesaid, the application shall not be proceeded with by the Cutlers' Company, but any person aggrieved may appeal to the court :

(6) Upon the registration of a trade mark in the Sheffield register the Cutlers' Company shall give notice thereof to the comptroller, who shall thereupon enter the mark in the register of trade marks ; and such registration shall bear date as of the day of application to the Cutlers' Company, and have the same effect as if the application had been made to the comptroller on that day :

(7) The provisions of this Act, and of any general rules made under this Act, with respect to application for registration in the register of trade marks, the effect of such registration, and the assignment and transmission of rights in a registered trade mark shall apply in the case of applications and registration in the Sheffield register ; and notice of every entry made in the Sheffield register must be given to the comptroller by the Cutlers' Company, save and except that the provisions of this subsection shall not prejudice or 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 :

(8) Where the comptroller receives from any person not carrying on business in Hallamshire or

within six miles thereof an application for registration of a trade mark used 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, he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company :

(9) At the expiration of five years from the commencement of this Act the Cutlers' Company shall close the Cutlers' register of corporate trade marks, and thereupon all marks entered therein shall, unless entered in the Sheffield register, be deemed to have been abandoned :

(10) A person may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of two or more trade marks :

(11) A body of persons, corporate or not corporate, may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of a trade mark or trade marks :

(12) Any person aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted under this Act may, in the prescribed manner, appeal to the comptroller, who shall have power to confirm, reverse, or modify the decision, but the decision of the comptroller shall be subject to a further appeal to the court :

(13) So much of the Cutlers' Company's Acts as applies to the summary punishment of persons counterfeiting Sheffield corporate marks, that is to say, the fifth section of the Cutlers'

Company's Act of 1814, and the provisions in relation to the recovery and application of the penalty imposed by such last-mentioned section contained in the Cutlers' Company's Act of 1791, shall apply to any mark entered in the Sheffield register.

PART V.

GENERAL.

Patent Office and Proceedings thereat.

82. (1) The Treasury may provide for the purposes of this Act an office with all requisite buildings and conveniences, which shall be called, and is in this Act referred to as, the Patent Office. Patent Office.

(2) Until a new Patent Office is provided, the officers of the Commissioners of Patents for inventions and for the registration of designs and trade marks existing at the commencement of this Act shall be the patent office within the meaning of this Act.

(3) The Patent Office shall be under the immediate control of an officer called the comptroller-general of patents, designs, and trade marks, who shall act under the superintendence and direction of the Board of Trade.

(4) Any act or thing directed to be done by or to the comptroller may, in his absence, be done by or to any officer for the time being in that behalf authorised by the Board of Trade.

83. (1) The Board of Trade may at any time after the passing of this Act, and from time to time, subject to the approval of the Treasury, appoint the comptroller-general of patents, designs, and trade marks, and so many examiners and other officers and clerks, with such Officers and clerks.

designations and duties as the Board of Trade think fit, and may from time to time remove any of those officers and clerks.

(2) The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and the same and the other expenses of the execution of this Act shall be paid out of money provided by Parliament.

Seal of patent office.

84. There shall be a seal for the patent office, and impressions thereof shall be judicially noticed and admitted in evidence.

Trust not to be entered in registers.

85. There shall not be entered in any register kept under this Act, or be receivable by the comptroller, any notice of any trust expressed, implied, or constructive.

Refusal to grant patent, &c., in certain cases.

86. The comptroller may refuse to grant a patent for an invention, or to register a design or trade mark, of which the use would, in his opinion, be contrary to law or morality.

Entry of assignments and transmissions in registers.

87. Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, or to a registered trade mark, the comptroller shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade mark, in the register of patents, designs, or trade marks, as the case may be. The person for the time being entered in the register of patents, designs, or trade marks as proprietor of a patent, copyright in a design or trade mark as the case may be, shall, subject to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the same and to give effectual receipts for any consideration for such assignment, licence, or dealing. Provided that any equities in respect of such patent,

design, or trade mark may be enforced in like manner as in respect of any other personal property.

Inspection of and extracts from registers.

88. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Sealed copies to be received in evidence.

89. Printed or written copies or extracts, purporting to be certified by the comptroller and sealed with the seal of the Patent Office, of or from patents, specifications, disclaimers, and other documents in the patent office, and of or from registers and other books kept there, shall be admitted in evidence in all courts in Her Majesty's dominions, and in all proceedings, without further proof or production of the originals.

Rectification of registers by court.

90. (1) The court may on the application of any person aggrieved by the omission without sufficient cause of the name of any person from any register kept under this Act, or by any entry made without sufficient cause in any such register, make such order for making, expunging, or varying the entry, as the court thinks fit; or the court may refuse the application; and in either case may make such order with respect to the costs of the proceedings as the court thinks fit.

(2) The court may in any proceeding under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3) Any order of the court rectifying a register shall direct that due notice of the rectification be given to the comptroller.

Power for comptroller to correct clerical errors.

91. The comptroller may, on request in writing accompanied by the prescribed fee,—

(*a*) Correct any clerical error in or in connexion with an application for a patent, or for registration of a design or trade mark; or

(*b*) Correct any clerical error in the name, style, or address of the registered proprietor of a patent, design, or trade mark.

(*c*) Cancel the entry or part of the entry of a trade mark on the register: Provided that the applicant accompanies his request by a statutory declaration made by himself, stating his name, address, and calling, and that he is the person whose name appears on the register as the proprietor of the said trade mark.

Alteration of registered mark.

92. (1) The registered proprietor of any registered trade mark may apply to the court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Act, and the court may refuse or grant leave on such terms as it may think fit.

(2) Notice of any intended application to the Court under this section shall be given to the comptroller by the applicant; and the comptroller shall be entitled to be heard on the application.

(3) If the court grants leave, the comptroller shall, on proof thereof and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

Falsification of entries in registers.

93. If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such 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, he shall be guilty of a misdemeanor.

Exercise of discretionary power by comptroller.

94. Where any discretionary power is by this Act given to the comptroller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a trade mark or design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.

Power of comptroller to take directions of law officers.

95. The comptroller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to either of the law officers for directions in the matter.

Certificate of comptroller to be evidence.

96. A certificate purporting to be under the hand of the comptroller as to any entry, matter, or thing which he is authorised by this Act, or any general rules made thereunder, to make or do, shall be primâ facie evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Applications and notices by post.

97. (1) Any application, notice, or other document authorised or required to be left, made, or given at the patent office or to the comptroller, or to any other person under this Act, may be sent by a prepaid letter through the post; and if so sent shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

Provision as to days for leaving documents at office.

(2) In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

98. Whenever the last day fixed by this Act, or by any rule for the time being in force, for leaving any document or paying any fee at the patent office shall fall on Christmas Day, Good Friday, or on a Saturday or Sunday, or

any day observed as a holiday at the Bank of England, or any day observed as a day of public fast or thanksgiving, herein referred to as excluded days, it shall be lawful to leave such document or to pay such fee on the day next following such excluded day, or days if two or more of them occur consecutively.

Declamation by infant, lunatic, &c.

99. If any person is, by reason of infancy, lunacy, or other inability, incapable of making any declaration or doing anything required or permitted by this Act or by any rules made under the authority of this Act, then the guardian or committee (if any) of such incapable person, or if there be none, any person appointed by any court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted.

Transmission of certified printed copies of specifications, &c.

100. Copies of all specifications, drawings, and amendments left at the Patent Office after the commencement of this Act, printed for and sealed with the seal of the Patent Office, shall be transmitted to the Edinburgh Museum of Science and Art, and to the Enrolments Office of the Chancery Division in Ireland, and to the Rolls Office in the Isle of Man, within twenty-one days after the same shall respectively have been accepted or allowed at the Patent Office; and certified copies of or extracts from any such documents shall be given to any person requiring the same on payment of the prescribed fee; and any such copy or extract shall be admitted in evidence in all courts in Scotland and Ireland and in the

Isle of Man without further proof or production of the originals.

Power for Board of Trade to make general rules for classifying goods and regulating business of patent office.

101. (1) The Board of Trade may from time to time make such general rules and do such things as they think expedient, subject to the provisions of this Act—

(*a*) For regulating the practice of registration under this Act :

(*b*) For classifying goods for the purposes of designs and trade marks :

(*c*) For making or requiring duplicates of specifications, amendments, drawings, and other documents :

(*d*) For securing and regulating the publishing and selling of copies, at such prices and in such manner as the Board of Trade think fit, of specifications, drawings, amendments, and other documents :

(*e*) For securing and regulating the making, printing, publishing, and selling of indexes to, and abridgments of, specifications and other documents in the Patent Office ; and providing for the inspection of indexes and abridgments and other documents :

(*f*) For regulating (with the approval of the Treasury) the presentation of copies of patent office publications to patentees and to public authorities, bodies, and institutions at home and abroad :

(*g*) Generally for regulating the business of the Patent Office, and all things by this Act placed under the direction or control of the comptroller, or of the Board of Trade.

(2) Any of the forms in the First Schedule to this Act may be altered or amended by rules made by the Board as aforesaid.

(3) General rules may be made under this section at any time after the passing of this Act, but not so as to take effect before the commencement of this Act, and shall (subject as herein-after mentioned) be of the same effect as if they were contained in this Act, and shall be judicially noticed.

(4) Any rules made in pursuance of this section shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or, if not, then as soon as practicable after the beginning of the then next session of Parliament, and they shall also be advertised twice in the official journal to be issued by the comptroller.

(5) If either House of Parliament, within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the mean time under such rules or rule or to the making of any new rules or rule.

Annual reports of comptroller.

102. The comptroller shall, before the first day of June in every year, cause a report respecting the execution by or under him of this Act to be laid before both Houses of Parliament, and therein shall include for the year to which each report relates all general rules made in that year under or for the purposes of this Act, and an account of all fees, salaries, and allowances, and other money received and paid under this Act.

International and Colonial Arrangements.

International arrangements for protection

103. (1) If Her Majesty is pleased to make any arrangement with the government or governments of any foreign state or states for mutual protection of inventions, designs, and trade marks, or any of them, then any person

who has applied for protection for any invention, design, or trade mark in any such state shall be entitled to a patent for his invention or to registration of his design or trade mark (as the case may be) under this Act, in priority to other applicants; and such patent or registration shall have the same date as the date of the protection obtained in such foreign state. of inventions, designs, and trade marks.

Provided that his application is made, in the case of a patent within seven months, and in the case of a design or trade mark within four months, from his applying for protection in the foreign state with which the arrangement is in force.

Provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade mark in this country, as the case may be.

(2) The publication in the United Kingdom, or the Isle of Man during the respective periods aforesaid of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during such periods of the trade mark, shall not invalidate the patent which may be granted for the invention, or the registration of the design or trade mark.

(3) The application for the grant of a patent, or the registration of a design, or the registration of a trade mark under this section, must be made in the same manner as an ordinary application under this Act: Provided that, in the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Act.

(4) The provisions of this section shall apply only in the case of those foreign states with respect to which Her Majesty shall from time to time by Order in Council declare them to be applicable, and so long only in the case of each state as the Order in Council shall continue in force with respect to that state.

Provision for colonies and India.

104. (1) Where it is made to appear to Her Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks, patented or registered in this country, it shall be lawful for Her Majesty from time to time, by Order in Council, to apply the provisions of the last preceding section, with such variations or additions, if any, as to Her Majesty in Council may seem fit, to such British possession.

(2) An Order in Council under this Act shall, from a date to be mentioned for the purpose in the Order, take effect as if its provisions had been contained in this Act; but it shall be lawful for Her Majesty in Council to revoke any Order in Council made under this Act.

Offences.

Penalty on falsely representing articles to be patented.

105. (1) Any person who represents that any article sold by him is a patented article, when no patent has been granted for the same, or describes any design or trade mark applied to any article sold by him as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding five pounds.

(2) A person shall be deemed, for the purposes of this enactment, to represent that an article is patented or a design or a trade mark is registered, if he sells the article with the word "patent," "patented," "registered," or any word or words expressing or implying that a patent or registration has been obtained for the article stamped,

engraved, or impressed on, or otherwise applied to the article.

Penalty on unauthorised assumption of Royal arms.

106. Any person who, without the authority of Her Majesty, or any of the Royal Family, or of any Government Department, assumes or uses in connexion with any trade, business, calling, or profession, the Royal Arms, or arms so nearly resembling the same as to be calculated to deceive, in such a manner as to be calculated to lead other persons to believe that he is carrying on his trade, business, calling, or profession by or under such authority as aforesaid, shall be liable on summary conviction to a fine not exceeding twenty pounds.

Scotland, Ireland, &c.

Saving for courts in Scotland.

107. In any action for infringement of a patent in Scotland the provisions of this Act, with respect to calling in the aid of an assessor, shall apply, and the action shall be tried without a jury, unless the court shall otherwise direct, but otherwise nothing shall affect the jurisdiction and forms of process of the courts in Scotland in such an action or in any action or proceeding respecting a patent hitherto competent to those courts.

For the purposes of this section "Court of Appeal" shall mean any court to which such action is appealed.

Summary proceedings in Scotland.

108. In Scotland any offence under this Act declared to be punishable on summary conviction may be prosecuted in the sheriff court.

Proceedings for revocation of patent in Scotland.

109. (1) Proceedings in Scotland for revocation of a patent shall be in the form of an action of reduction at the instance of the Lord Advocate, or at the instance of a party having interest with his concurrence, which concurrence may be given on just cause shown only.

Reservation of remedies in Ireland.

(2) Service of all writs and summonses in that action shall be made according to the forms and practice existing at the commencement of this Act.

General saving for jurisdiction of courts.

110. All parties shall, notwithstanding anything in this Act, have in Ireland their remedies under or in respect of a patent as if the same had been granted to extend to Ireland only.

111. (1) The provisions of this Act conferring a special jurisdiction on the court as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Scotland or Ireland in any proceedings relating to patents or to designs or to trade marks; and with reference to any such proceedings in Scotland, the term "the Court" shall mean any Lord Ordinary of the Court of Session, and the term "Court of Appeal" shall mean either Division of the said Court; and with reference to any such proceedings in Ireland, the terms "the Court" and "the Court of Appeal" respectively mean the High Court of Justice in Ireland and Her Majesty's Court of Appeal in Ireland.

(2) If any rectification of a register under this Act is required in pursuance of any proceeding in a court in Scotland or Ireland, a copy of the order, decree, or other authority for the rectification, shall be served on the comptroller, and he shall rectify the register accordingly.

Isle of Man.

112. This Act shall extend to the Isle of Man, and—

(1) Nothing in this Act shall affect the jurisdiction of the courts in the Isle of Man, in proceedings for infringement or in any action or proceeding respecting a patent, design, or trade mark competent to those courts;

(2) The punishment for a misdemeanor under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour, and with or without

a fine not exceeding one hundred pounds, at the discretion of the court;

(3) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

Repeal; Transitional Provisions; Savings.

Repeal and saving for past operation of repealed enactments, &c

113. The enactments described in the Third Schedule to this Act are hereby repealed. But this repeal of enactments shall not—

(*a*) Affect the past operation of any of those enactments, or any patent or copyright or right to use a trade mark granted or acquired, or application pending, or appointment made, or compensation granted, or order or direction made or given, or right, privilege, obligation, or liability acquired, accrued, or incurred, or anything duly done or suffered under or by any of those enactments before or at the commencement of this Act; or

(*b*) Interfere with the institution or prosecution of any action or proceeding, civil or criminal, in respect thereof, and any such proceeding may be carried on as if this Act had not been passed; or

(*c*) Take away or abridge any protection or benefit in relation to any such action or proceeding.

Former registers to

114. (1) The registers of patents and of proprietors kept under any enactment repealed by this Act shall

be deemed continued.

respectively be deemed parts of the same book as the register of patents kept under this Act.

(2) The registers of designs and of trade marks kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of designs and the register of trade marks kept under this Act.

Saving for existing rules.

115. All general rules made by the Lord Chancellor or by any other authority under any enactment repealed by this Act, and in force at the commencement of this Act, may at any time after the passing of this Act be repealed, altered, or amended by the Board of Trade, as if they had been made by the Board under this Act, but so that no such repeal, alteration, or amendment shall take effect before the commencement of this Act; and, subject as aforesaid, such general rules shall, so far as they are consistent with and are not superseded by this Act, continue in force as if they had been made by the Board of Trade under this Act.

Saving for prerogative.

116. Nothing in this Act 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.

General Definitions.

General definitions.

117. (1) In and for the purposes of this Act, unless the context otherwise requires,—

"Person" includes a body corporate:

"The Court" means (subject to the provisions for Scotland, Ireland, and the Isle of Man) Her Majesty's High Court of Justice in England:

"Law Officer" means Her Majesty's Attorney-General or Solicitor-General for England:

"The Treasury" means the Commissioners of Her Majesty's Treasury:

"Comptroller" means the Comptroller-General of Patents, Designs, and Trade Marks:

"Prescribed" means prescribed by any of the Schedules to this Act, or by general rules under or within the meaning of this Act:

"British possession" means any territory or place situate within Her Majesty's dominions, and not being or forming part of the United Kingdom, or of the Channel Islands, or of the Isle of Man; and all territories and places under one legislature, as herein-after defined, are deemed to be one British possession for the purposes of this Act:

"Legislature" includes any person or persons who exercise legislative authority in the British possession; and where there are local legislatures as well as a central legislature, means the central legislature only.

In the application of this Act to Ireland, "summary conviction" means a conviction under the Summary Jurisdiction Acts, that is to say, with reference to the Dublin Metropolitan Police District the Acts regulating the duties of justices of the peace and of the police for such district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending it.

SCHEDULES.

THE FIRST SCHEDULE.

Forms of Application, &c.

Section 5.

£1 Stamp.

FORM A.

FORM OF APPLICATION FOR PATENT

I, (a) *John Smith*, of *29, Perry Street, Birmingham*, in the county of *Warwick*, *Engineer*, do solemnly and sincerely declare that I am in possession of an invention for (b) "*Improvements in Sewing Machines*;" that I am the true and first inventor thereof; and that the same is not in use by any other person or persons to the best of my knowledge and belief; and I humbly pray that a patent may be granted to me for the said invention.

(a) Here insert name, address, and calling of inventor.

(b) Here insert title of invention.

And I make the above solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

(c) *John Smith*.

(c) Signature of inventor.

Declared at *Birmingham*, in the county of *Warwick*, this day of *18* .

Before me,

(d) *James Adams*,

Justice of the Peace.

(d) Signature and title of the officer before whom the declaration is made.

NOTE.—Where the above declaration is made out of the United Kingdom, the words "and by virtue of the Statutory Declarations Act, 1835," must be omitted; and the declaration must be made before a British consular officer, or where it is not reasonably practicable to make it before such officer, then before a public officer duly authorised in that behalf.

FORM B.

FORM OF PROVISIONAL SPECIFICATION.

Improvements in Sewing Machines. (*a*)

I, (*b*) *John Smith*, of *29*, *Perry Street*, *Birmingham*, in the county of *Warwick*, *Engineer*, do hereby declare the nature of my invention for "*Improvements in Sewing Machines*" to be as follows (*c*) :—

* * * * *

(*d*) *John Smith.*

Dated this day of *18* .

NOTE.—No stamp is required on this document.

(*a*) Here insert title as in declaration.
(*b*) Here insert name, address, and calling of inventor as in declaration.
(*c*) Here insert short description of invention.
(*d*) Signature of inventor.

FORM C.

£3 Stamp.

FORM OF COMPLETE SPECIFICATION.

Improvements in Sewing Machines. (*a*)

I, (*b*) *John Smith*, of *29*, *Perry Street*, *Birmingham*, in the county of *Warwick*, *Engineer*, do hereby declare the nature of my invention for "*Improvements in Sewing Machines*," and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement (*c*) :—

* * * * *

Having now particularly described and ascertained the nature of my said invention and in what manner the same is to be performed, I declare that what I claim is (*d*).

1.
2.
3. &c.

(*e*) *John Smith.*

Dated this day of *18*

(*a*) Here insert title, as in declaration.
(*b*) Here insert name, address, and calling of inventor, as in declaration.
(*c*) Here insert full description of invention.
(*d*) Here state distinctly the features of novelty claimed.
(*e*) Signature of inventor.

Section 33.

FORM D.

Form of Patent.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith: To all to whom these presents shall come greeting:

Whereas *John Smith*, of 29, *Perry Street*, *Birmingham*, in the county of *Warwick*, *Engineer*, hath by his solemn declaration, represented unto us that he is in possession of an invention for "*Improvements in Sewing Machines*," that he is the true and first inventor thereof, and that the same is not in use by any other person to the best of his knowledge and belief:

And whereas the said inventor hath humbly prayed that we would be graciously pleased to grant unto him (herein-after together with his executors, administrators, and assigns, or any of them, referred to as the said patentee) our Royal Letters Patent for the sole use and advantage of his said invention:

And whereas the said inventor hath by and in his complete specification particularly described the nature of his invention:

And whereas we being willing to encourage all inventions which may be for the public good, are graciously pleased to condescend to his request:

Know ye, therefore, that We, of our especial grace, certain knowledge, and mere motion do by these presents, for us, our heirs and successors, give and grant unto the said patentee our especial licence, full power, sole privilege, and authority, that the said patentee by himself, his agents, or licensees, and no others, may at all times hereafter during the term of years herein mentioned, make, use, exercise, and vend the said invention within our United Kingdom of Great Britain and Ireland, and Isle of Man, 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, during the term of

fourteen years from the date hereunder written of these presents: And to the end that the said patentee may have and enjoy the sole use and exercise and the full benefit of the said invention, We do by these presents for us, our heirs and successors, strictly command all our subjects whatsoever within our United Kingdom of Great Britain and Ireland, and the Isle of Man, that they do not at any time during the continuance of the said term of fourteen years either directly or indirectly make use of or put in practice the said invention, or any part of the same, nor in anywise imitate the same, nor make or cause to be made any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof, without the consent, licence, or agreement of the said patentee in writing under his hand and seal, on pain of incurring such penalties as may be justly inflicted on such offenders for their contempt of this our Royal command, and of being answerable to the patentee according to law for his damages thereby occasioned: Provided that these our letters patent are on this condition, that, if at any time during the said term it be made to appear to us, our heirs, or successors, or any six or more of our Privy Council, that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof within our United Kingdom of Great Britain and Ireland, and Isle of Man, or that the said patentee is not the first and true inventor thereof within this realm as aforesaid, these our letters patent shall forthwith determine, and be void to all intents and purposes, notwithstanding anything herein-before contained: Provided also, that if the said patentee shall not pay all fees by law required to be paid in respect of these letters patent, or in respect of any matter relating thereto at the time or times, and in manner for the time being by law provided; and also if the said patentee shall not supply or cause to be supplied, for our service all such articles of the said invention as may be required by the officers or commissioners administering any department of our service in such manner, at such times, and at and upon

such reasonable prices and terms as shall be settled in manner for the time being by law provided, then, and in any of the said cases, these our letters patent, and all privileges and advantages whatever hereby granted shall determine and become void notwithstanding anything herein-before contained: Provided also that nothing herein contained shall prevent the granting of licences in such manner and for such considerations as they may by law be granted: And lastly, we do by these presents for us, our heirs and successors, grant unto the said patentee that these our letters patent shall be construed in the most beneficial sense for the advantage of the said patentee. In witness whereof we have caused these our letters to be made patent this one thousand eight hundred and and to be sealed as of the one thousand eight hundred and

Seal of Patent Office.

FORM E.

Section 47.

FORM OF APPLICATION FOR REGISTRATION OF DESIGN.

_____ day of _____ 18 .

You are hereby requested to register the accompanying _____ Design, in Class _____ in the name of (*a*)

of

who claims to be the Proprietor thereof, and to return the same to

(*a*) Here insert legibly the name and address of the individual or firm.

Statement of nature of Design _____

Registration Fees enclosed £ ,, s.

To the Comptroller,

Patent Office, 25, *Southampton Buildings, Chancery Lane, W.C.*

(Signed) _____

FORM F.

Section 62.

FORM OF APPLICATION FOR REGISTRATION OF TRADE MARK.

(One representation to be fixed within this square, and two others on separate sheets of foolscap of same size.)

(Representations of a larger size may be folded, but must be mounted upon linen and affixed hereto.)

You are hereby requested to register the accompanying trade mark, [*In Class—Iron in bars, sheets, and plates; in Class—Steam engines and boilers; and in Class—Warming apparatus*], in the name of (*a*) , who claims to be the proprietor thereof.

(*a*) Here insert legibly the name, address, and business of the individual or firm.

Registration Fees enclosed £ „ *s.*

To the Comptroller,

Patent Office, 25, *Southampton Buildings, Chancery Lane, W.C.*

(Signed)_____

NOTE.—If the trade mark has been in use before August 13, 1875, state length of user.

Section 24.

THE SECOND SCHEDULE.

Fees on instruments for obtaining Patents, and Renewal.

(a) Up to sealing.

	£	s.	d.	£	s.	d.
On application for provisional protection	1	0	0			
On filing complete specification	3	0	0			
				4	0	0

or

On filing complete specification with first application				4	0	0

(b) Further before end of four years from date of patent.

On certificate of renewal				50	0	0

(c) Further before end of seven years, or in the case of patents granted after the commencement of this Act, before the end of eight years from date of patent.

On certificate of renewal				100	0	0

Or in lieu of the fees of £50 *and* £100 *the following annual fees :—*

Before the expiration of the fourth year from the date of the patent				10	0	0
Before the expiration of the fifth year from the date of the patent				10	0	0
Before the expiration of the sixth year from the date of the patent				10	0	0
Before the expiration of the seventh year from the date of the patent				10	0	0

	£	s.	d.
Before the expiration of the eighth year from the date of the patent	15	0	0
Before the expiration of the ninth year from the date of the patent	15	0	0
Before the expiration of the tenth year from the date of the patent	20	0	0
Before the expiration of the eleventh year from the date of the patent	20	0	0
Before the expiration of the twelfth year from the date of the patent	20	0	0
Before the expiration of the thirteenth year from the date of the patent	20	0	0

THE THIRD SCHEDULE.

Section 113.

Enactments repealed.

21 James I. c. 3. [1623.]	The Statute of Monopolies. In part; namely,— Sections ten, eleven, and twelve.
5 & 6 Will. 4. c. 62. [1835.] In part.	The Statutory Declarations Act, 1835. In part; namely,— Section eleven.
5 & 6 Will. 4. c. 83. [1835.]	An Act to amend the law touching letters patent for inventions.
2 & 3 Vict. c. 67. [1839.]	An Act to amend an Act of the fifth and sixth years of the reign of King William the Fourth, intituled "An Act to amend the law touching letters patent for inventions."
5 & 6 Vict. c. 100. [1842.]	An Act to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
6 & 7 Vict. c. 65. [1843.]	An Act to amend the laws relating to the copyright of designs.

7 & 8 Vict. c. 69 (*a*) [1844.] In part.	An Act for amending an Act passed in the fourth year of the reign of His late Majesty, intituled "An Act for the better administration of justice in His Majesty's Privy Council, and to extend its jurisdiction and powers." In part; namely,— Sections two to five, both included.
13 & 14 Vict. c. 104. [1850.]	An Act to extend and amend the Acts relating to the copyright of designs.
15 & 16 Vict. c. 83. [1852.]	The Patent Law Amendment Act, 1852.
16 & 17 Vict. c. 5. [1853.]	An Act to substitute stamp duties for fees on passing letters patent for inventions, and to provide for the purchase for the public use of certain indexes of specifications.
16 & 17 Vict. c. 115. [1853.]	An Act to amend certain provisions of the Patent Law Amendment Act, 1852, in respect of the transmission of certified copies of letters patent and specifications to certain offices in Edinburgh and Dublin, and otherwise to amend the said Act.
21 & 22 Vict. c. 70. [1858.]	An Act to amend the Act of the fifth and sixth years of Her present Majesty, to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
22 Vict. c. 13. [1859.]	An Act to amend the Law concerning patents for inventions with respect to inventions for improvements in instruments and munitions of war.
24 & 25 Vict. c. 73. [1861.]	An Act to amend the law relating to the copyright of designs.
28 & 29 Vict. c. 3. [1865.]	The Industrial Exhibitions Act, 1865.
33 & 34 Vict. c. 27. [1870.]	The Protection of Inventions Act, 1870.

(*a*) NOTE.—Sections six and seven of this Act repealed by the Statute Law Revision (No. 2) Act, 1874.

33 & 34 Vict. c. 97. [1870.]	The Stamp Act, 1870. In part; namely,— Section sixty-five, and in the Schedule the words and figures: "Certificate of the registration of a design, £5. And see section 65."
38 & 39 Vict. c. 91. [1875.]	The Trade Marks Registration Act, 1875.
38 & 39 Vict. c. 93. [1875.]	The Copyright of Designs Act, 1875.
39 & 40 Vict. c. 33. [1876.]	The Trade Marks Registration Amendment Act, 1876.
40 & 41 Vict. c. 37. [1877.]	The Trade Marks Registration Extension Act, 1877.
43 & 44 Vict. c. 10. [1880.]	The Great Seal Act, 1880. In part; namely,— Section five.
45 & 46 Vict. c. 72. [1882.]	The Revenue, Friendly Societies, and National Debt Act, 1882. In part; namely,— Section sixteen.

HALL-MARKING OF FOREIGN PLATE ACT, 1904.

CHAPTER VI.

An Act to amend the Law with respect to the Hall-marking of Foreign Plate. [22nd July, 1904.]

BE it enacted by the King'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:

Marks to be placed on foreign plate.

5 & 6 Vict. c. 47.

46 & 47 Vict. c. 55.

1.—(1) Where, for the purpose of complying with sections fifty-nine and sixty of the Customs Act, 1842, or section ten of the Revenue Act, 1883, any plate has to be assayed, stamped, and marked, or where for any other purpose any plate or article imported from a foreign part is brought to an assay office in the United Kingdom to be assayed, stamped, or marked, the plate or article shall be marked in such manner as His Majesty may determine by Order in Council so as readily to distinguish whether the plate or other article was wrought or made in England, Scotland, or Ireland, or was imported from foreign parts, and such mark or marks shall be deemed to be a compliance with the said Acts.

(2) Any person, who, after a date fixed by His Majesty by Order in Council, brings or causes to be brought any plate or other article to be assayed, stamped, and marked

at an assay office, shall state in writing, in manner provided by His Majesty by Order in Council, whether the plate or article was wrought or made in England, Scotland, or Ireland, or was imported from foreign parts, but it shall not be necessary to make such statement in writing where any plate or other article is brought to an assay office in charge of an officer of customs under the provisions of the Revenue Act, 1883, for the purpose of being assayed, stamped, or marked as having been imported from foreign parts.

(3) Where any person, who, after the date fixed as aforesaid, brings or causes to be brought any plate or other article to be assayed, stamped, and marked at an assay office, does not know, and is not able to state, whether the plate or other article was wrought or made in England, Scotland, or Ireland, or was imported from foreign parts, such person shall make a statement in writing to that effect in the manner prescribed in this section, and the plate or other article referred to in the said statement shall be stamped and marked as if it were imported from foreign parts.

(4) If any person knowingly makes a false statement under this section he shall be liable, on summary conviction, under the Summary Jurisdiction Acts, to a fine not exceeding five pounds for every article in respect of which the false statement is made.

(5) The Customs Act, 1842, shall apply as if a reference to the mode of marking required under this Act were substituted for a reference to the mode of marking under that Act.

(6) His Majesty may, by Order in Council, revoke, vary, or add to any Order in Council made under this Act.

Application to Scotland.

2. In Scotland all offences which are punishable under this Act on summary conviction shall be prosecuted

before the sheriff in manner provided by the Summary Jurisdiction (Scotland) Acts.

Commencement of Act.

3. This Act shall come into force on the first day of November, one thousand nine hundred and four.

Short title and repeal.

4.—(1) Section two of the Customs Tariff Act, 1876. is hereby repealed.

(2) This Act may be cited as the Hall-marking of Foreign Plate Act, 1904.

39 & 40 Vict. c. 35.

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