

13. FARINA v. SILVERLOCK, 1 K. & J. 509.

Printing Forged Labels—Injunction.

Injunction restraining the defendant, &c., "from printing or selling, or exposing for sale, or procuring to be printed or sold, any labels similar to those in use by the plaintiff, as in the bill in this cause mentioned, or containing copies of the signature, or address, or flourish, seal, or stamp, or other marks invented and used by the plaintiff as therein mentioned, or any signature, address, flourish, seal, stamp, or other mark merely colourably differing therefrom, or any other papers or labels so printed or contrived as, by colourable imitation or otherwise, to represent or lead to the belief that Eau de Cologne prepared by other parties was Eau de Cologne prepared by the plaintiff" (a).

14. LEVER v. GOODWIN, 4 P. R. 503.

Order—Action Dismissed as to Trade Mark—Injunction as to get-up of Goods—Account—Costs.

Order "that this action so far as the same claims protection in respect of the Trade Mark No. , stand dismissed out of court. Order that the defendants Goodwin Bros., their agents and servants, be restrained from selling, offering for sale, or disposing of any soap not being manufactured for or by the plaintiffs in the wrapper or of the form of any one of the three exhibits admitted in this action to have been issued by the defendants, and marked A, B, and C, or in any wrapper or in any form calculated or intended to pass off, or to enable others to pass off, such soap as or for the goods of the plaintiffs. Order that the following account be taken: that is to say, an account of the profits made by the defendants in selling or disposing of soap made by or for the defendants in any wrapper such as that contained in the exhibits marked A, B, and C, and in the form of those exhibits. Order that the defendants Goodwin Bros. do, within fourteen days after the date of the chief clerk's certificate to be made pursuant to this order, pay to the plaintiffs Lever & Co. the amount which upon taking such account shall be certified to be payable by the defendants to the plaintiffs. Order that it be referred to the taxing master to tax the costs of the plaintiffs of this action up to and including the trial, except so far as the same have been incurred by their claim for protection in respect of the trade mark aforesaid. Order that it be referred to the taxing master to tax the costs of the defendants of this action so far as the same have been incurred by the plaintiffs setting up the said claim for protection in respect of the said trade mark, and the costs of the plaintiffs when so

(a) Wood, V.-C.

taxed are to be set off against the said costs of the defendants when taxed, and the taxing master is to certify to whom, after such set-off, the balance is due: Order that the party from whom such balance shall be certified to be due do pay the amount thereof to the other party. And the question of the costs of this action incurred subsequent to the trial are reserved, and either of the parties are to be at liberty to apply as they may be advised" (a).

15. CLEMENT v. MADDICK, 1 Giff. 98—101.

Name of Newspaper—Injunction.

Injunction restraining the defendants, &c., "from printing, publishing, or continuing to print or publish, any newspaper or other periodical paper with or under the name or style of 'The Penny Bell's Life and Sporting News,' or with or under any name or style of which the name, style, or words of 'Bell's Life' shall form a part, or in any way occur [therein]; and from using the said name, style, or title of 'Bell's Life' by way of name, style, or title to any newspaper or periodical without the licence or consent of the plaintiff" (b).

16. INGRAM v. STIFF, 5 Jur. N. S. 947.

Name of Newspaper—Injuring Plaintiff's Paper—Injunction.

Injunction restraining the defendant, &c., "from printing, publishing, or selling any newspaper or other periodical under the name of 'The Daily London Journal,' or under any other name or style of which the words 'London Journal' form part, and from doing or committing any act or default which may tend to lessen or diminish the sale or circulation of the plaintiff's periodical, called 'The London Journal'" (c).

17. WALTER v. HEAD, 25 Sol. J. 757.

Name of Newspaper—Injunction.

Injunction restraining the defendant, &c., "from printing or publishing any newspaper or other publication in the form of a newspaper with or under the name or title of 'The Times,' and from doing any other act

(a) Chitty, J., affirmed by C. A.
 (b) Stuart, V.-C. And see *Edmonds*
v. Benbow, Seton, 3rd ed. 905; *Corns v.*

Griffiths, Pemberton, 4th ed. 489; *Mack*
v. Petter, 41 L. J. Ch. 782.
 (c) Wood, V.-C.

in invasion or infringement of the plaintiff's right or interest in the name or title of 'The Times'" (a).

18. *PROWETT v. MORTIMER*, 2 Jur. N. S. 414.

Name of Newspaper—Soliciting Customers—Injunction.

Injunction restraining the defendant, &c., "from printing, or publishing, or exposing for sale, or procuring to be printed or sold, the newspaper publication called 'The True Britannia,' or any other newspaper or publication, as a continuation of the plaintiff's newspaper 'The Britannia,' in the bill mentioned, and from soliciting custom in the name of the plaintiff's trade and business as for 'The Britannia' newspaper" (b).

19. *HOGG v. KIRBY*, 8 Ves. 215—226.

Publication of a Magazine as a Continuation of Plaintiff's Magazine—Injunction.

Injunction restraining the defendant, &c., "from publishing or exposing for sale any copy or copies of the defendant's said work, and from printing, publishing, or exposing for sale, any other work or publication as or being a continuation of the plaintiff's work, or of the defendant's work which has been so published as such continuation as aforesaid; and from printing all or any part or parts of the plaintiff's said work;" and Ordered "that the injunction shall be continued as to any letters, &c., admitted by the Answer to have been received from correspondents by the defendant, while publishing for the plaintiff" (c).

20. *AINSWORTH v. BENTLEY*, 14 W. R. 630.

Publication of Magazine in Breach of Contract—Order—Injunction.

Ordered, "That the defendant, &c., be restrained from carrying on, &c., the said 'Temple Bar Magazine,' but the order to be without prejudice to the publication of the said magazine until the hearing of the cause, so as the name of Bentley do not appear either in the title-page, or in any other part of the said publication, or in any advertisement of the said publication, and this order to be without prejudice to the right (if any) of the plaintiff to damages or profits in respect of any publication of the work" (d).

(a) Court of Appeal. (b) Stuart, V.-C. (c) Lord Eldon, C. (d) Wood, V.-C.

21. PRINCE ALBERT *v.* STRANGE, 2 De G. & Sm. 652—717.*Etchings Improperly Obtained and Published—Catalogues Improperly Published—Decree—Delivery up—Injunction.*

Decree, by which—"Declared that the plaintiff is entitled to have delivered to him the impressions (by the Answer of defendant J. admitted to be in his possession) of such of the several etchings in the pleadings mentioned as in the catalogue and in the pleadings are stated to have been etched by the plaintiff; that is to say (description by reference to Nos. in the catalogue); Ordered, that J. shall, within four days after the service of the decree, deliver up the impressions above specified on oath, and leave them with the Clerk of Records and Writs at the Record Office. Ordered, that the defendant S. shall, within four days after the service of the decree, deliver to the Clerk of Records and Writs, at the said Office, the twenty-five copies of the catalogue, being the same as are mentioned in the decree in the other suit of even date. Similar directions as to six copies of the catalogue admitted by J. to be in his possession. Ordered, that the Clerk of Records and Writs shall destroy those copies of the catalogue, giving notice to the solicitors of the several parties of the time and place at which he intends to do so. Injunction restraining the defendants, &c., from making or permitting to be made any engraving or copy of such etchings, or any of them, and from publishing the same; and from parting with or disposing of them or any of them, except in obedience to the decree; and from selling or in any manner publishing the catalogue, or any work being or purporting to be a catalogue of the etchings made by the plaintiff. Provision made for costs. Liberty to apply reserved" (a).

22. CHAPPELL *v.* SHEARD, 2 K. & J. 117—122.*Name and Title-page of Song—Injunction.*

Injunction restraining the defendants, &c., "from printing, publishing, selling, exposing for sale, or otherwise disposing of the song 'Minnie Dale,' or any copy or copies thereof, or any other publication containing a colourable imitation of the name, title, or title-page of the plaintiff's said song" (b).

(a) Knight-Bruce, V.-C.

(b) Wood, V.-C. And see *Emperor of Austria v. Day* (V.-C. Stuart, 2 Giff. 628-31; Court of Appeal, 3 De G. F.

& J. 217-19), for injunction against printing spurious Hungarian notes, and order for delivery up of plates used in such printing.

23. MORISON *v.* MOAT, 9 Hare, 241—267.*Name of Patent Medicine—Secret Recipe—Injunction.*

Injunction restraining the defendant, &c., “from selling, or causing or procuring to be sold, under the title or designation of ‘Morison’s Universal Medicine,’ or ‘Morison’s Vegetable Universal Medicine,’ any medicine made or manufactured by the defendant, or by or under his order or direction;” and restraining the defendant, &c., “from making or compounding any medicines according to the secret in, &c., and from in any manner using the secret of compounding the said medicines, or any part thereof” (a).

24. ESTCOURT *v.* ESTCOURT HOP ESSENCE Co., 31 L. T. N. S. 567.*Hop Essence—Secret Recipe—Trade Name—Representation of Succession in Business—Manufacturing Contrary to Agreement—Injunction.*

Injunction restraining the defendants C. Estcourt and the Estcourt Hop Essence Co., &c., “from manufacturing, or selling, or advertising for sale, an article called ‘Hop Essence,’ or any other substance identical with, or only colourably differing from the ‘Hop Supplement’ manufactured and sold by the plaintiffs, and from using or disclosing to any persons the secret of compounding the said ‘Hop Supplement’; and also restraining the defendant company from trading under the name of ‘The Estcourt Hop Essence Co., Limited,’ and from using any designation, either of the vendors or of the substance offered for sale, calculated to lead purchasers into the belief that such substance is the ‘Hop Supplement’ manufactured by the plaintiffs, or equivalent or substantially equivalent thereto, or that they, such defendants, or any of them, are the successors in business of the plaintiffs’ firm, or the original firm who manufactured and sold the said article; and also restraining the defendant C. Estcourt from carrying on or being connected with the business of manufacturing or selling any substance intended to be used as a substitute for hops in brewing” (b).

25. FRANKS *v.* WEAVER, 8 L. T. (Old Series), 510.*Fraudulently using Another’s Testimonials—Injunction.*

Injunction restraining the defendant, &c., “from making, vending, or offering for sale, or in any manner disposing of any preparation, mixture, compound, or nostrum, having around, or upon, or in

(a) Turner, V.-C. And see *Ansell v. Gaubert*, Seton, 4th ed. 235; *Weston v. Hemmons*, 2 Vict. L. R. Eq. 121.

(b) Malins, V.-C. The injunction was

afterwards rescinded, but on grounds independent of the form of it. L. R. 10 Ch. 276.

connection with the same, or the bottles or other vessels containing the same, any cover, wrapper, envelope, label, bill, circular, notice advertisement, or other formula, in the terms or to the purport or effect of the cover, wrapper, envelope, label, bill, circular, notice, advertisement, or other formula, in the plaintiff's bill stated to have been used by the said defendant, or any other cover, &c., containing any testimonial in favour of the plaintiff's medicine or medical preparation in the said bill described as 'Franks' Specific Solution of Copaiba,' or in which any statement or representation is made or contained indicating, or implying, or tending to induce the public or purchasers to suppose that such preparation, mixture, compound, or nostrum is the same as 'Franks' Specific Solution of Copaiba,' or referred to in connection with any preparation, mixture, compound, or nostrum, made, vended, or disposed of by the said defendant, or in which any use is made of the character and reputation of the plaintiff, or his said specific solution of copaiba, and from publishing or circulating, or causing to be published or circulated, or in any manner using such cover, &c., as aforesaid" (a).

26. *KNOTT v. MORGAN*, 2 Keen, 213—219.

Imitating a Rival Line of Omnibuses—Injunction.

Injunction restraining the defendant, &c., "from running, or in any manner using, or causing to be used, for the conveyance of passengers, his omnibus in the bill mentioned, or any other omnibus, having painted, stamped, printed, or written thereon the words or names 'London Conveyance' or 'Original Conveyance Company,' or any other names, words, or devices painted, stamped, printed, or written thereon, in such manner as to form or to be a colourable imitation of the names, words, and devices painted, stamped, printed, or written on the omnibuses of the plaintiff" (b).

27. *GLENNY v. SMITH*, 2 Dr. & Sm. 476.

Trade Name—Injunction.

Injunction restraining the defendant, &c., "from continuing to use, or from exhibiting or using the words 'Thresher and Glenny,' or the name of the plaintiffs' said firm in any form in or about his said shop in such a way as to deceive the public, or to lead to the belief that his shop is a shop of the plaintiffs, or that the business carried on there

(a) Lord Langdale, M. R.
 (b) Lord Langdale, M. R. The M. R.
 altered the form so as not to restrain all

use of the words "London Conveyance
 Company"

is carried on by the plaintiffs, or is in any way connected with the business of the plaintiffs" (a).

28. M. MELACHRINO & Co. v. R. MELACHRINO & Co., May 27th, 1888.

Name of Firm—"Original"—Injunction.

Injunction restraining the defendants, &c., "from carrying on business as dealers in cigarettes under the name of 'R. Melachrino & Co,' or under any other name containing the name 'Melachrino' so arranged or contrived as to represent or lead to the belief that the business so carried on is the business carried on by the plaintiffs, or is in any way connected with the business of the plaintiffs, and from using the name 'Melachrino' in any other manner calculated to represent or lead to such belief; and from selling or offering or exposing for sale, or procuring to be sold, any cigarettes not of the manufacture or merchandise of the plaintiffs, with statements that such cigarettes are 'Original Melachrino Cigarettes,' and from in any other manner selling or passing off their cigarettes as or for 'Original Melachrino Cigarettes,' or cigarettes of the manufacture or merchandise of the plaintiffs" (b).

29. HENDRIKS v. MONTAGU, 17 Ch. D. 638-3-947.

Name of Company—Registration—User—Advertisement, &c.—Injunction.

Injunction restraining the defendants "from applying to the Registrar of Joint Stock Companies in England for registration under the Companies Acts of any company to be incorporated under the name of 'The Universe Life Assurance Association,' or any other name likely to mislead or deceive the public into the belief that the company, being incorporated as aforesaid, is the same as 'The Universal Life Assurance Society'; from issuing or publishing advertisements, circulars, or prospectuses representing that a company is to be incorporated pursuant to the Companies Act, 1862, under the name of 'The Universe Life Assurance Association, Limited,' or any such other name as aforesaid; and from carrying on or commencing any business under the name of 'The Universe Life Assurance Association, Limited,' or any such other name as aforesaid" (c).

(a) Kindersley, V.-C. And see *Hudson v. Osborne*, 39 L. J. Ch. 79; *Hookham v. Pottage*, L. R. 8 Ch. 92; *James v. James*, Seton, 4th ed. 237; *Montague v. Moore*,

ib. 238; *Cave v. Myers*, *ib.* 238; *Fullwood v. Fullwood*, 38 L. T. N. S. 381.

(b) Chitty, J.

(c) Court of Appeal.

30. LEE *v.* HALEY, L. R. 5 Ch. 155.*Name of Company—Injunction against User within a certain Locality.*

Injunction restraining the defendant, &c., "from continuing to use, and from exhibiting or using the words 'The Pall Mall Guinea Coal Company,' in Pall Mall, or any other name or style so framed as to be a colourable imitation of the name or style in which the plaintiffs' branch business mentioned in the bill is carried on, or so as to deceive the public, or to lead to the belief that the business carried on by the defendant is the same as the business carried on by the plaintiffs under the name or style of 'The Guinea Coal Company,' or is in any way connected therewith" (a).

31. WHEELER *v.* JOHNSTON, 3 L. R. Ir. 284.*Name of Mineral Springs—Injunction.*

Injunction restraining the defendant, &c., "from using the words 'Cromac Springs' in connection with his trade or business as a manufacturer or seller of mineral waters, so as to represent that his said waters are so manufactured or sold by the plaintiffs at their works in the bill mentioned, called 'The Cromac Springs,' and from using the words 'Cromac Springs' as the name of the defendant's place of business so as to represent as aforesaid" (b).

32. BRAHAM *v.* BEACHAM, 7 Ch. D. 848—857.*Name of Collieries—Injunction until certain events.*

Injunction restraining the defendants, "unless and until they shall acquire a colliery or coal mine within the parish of Radstock, from trading under or using the name or style of 'The Radstock Colliery Proprietors,' or any other name or style signifying that the defendants, or either of them, are proprietors of any colliery or collieries at Radstock"; and restraining the defendants, "unless and until they shall become authorised to sell or supply any coals raised or gotten from any colliery or coal mine within the parish of Radstock, from using any style or name signifying or implying that the defendants are selling or supplying, or are authorised to sell or supply, any coal raised or gotten from any colliery or coal mine within the parish of Radstock" (c).

(a) Malins, V.-C.

(b) Chatterton, V.-C. of I.

(c) Fry, J.

33. SCOTT v. SCOTT, 16 L. T. N. S. 143.

False Representation of Continuation of Business—Injunction.

Injunction restraining the defendants, &c., "from allowing or permitting the brass plate affixed by the defendants to the door of the premises in Regent Street to remain affixed, with any inscription thereon representing or holding out to the customers of the late partnership of 'R. & W. Scott,' or to any other persons whatsoever, that they are carrying on business in continuation of, or in succession to, the business carried on by the late firm of 'R. & W. Scott'" (a).

34. BUAROWS v. FOSTER, 1 N. R. 156.

False Representation of Continuation of Business—Soliciting former Customers—Injunction.

Injunction restraining the defendant, &c., "from issuing or sending, and from causing or procuring to be issued or sent, to any person or persons any further copies or copy of the circular or letter bearing date the _____, in the plaintiffs' bill mentioned, or any other circular or letter signifying or importing that the business carried on by him the said defendant is, and from in any manner representing such business to be a continuation of the business formerly carried on by the firms of Foster, Lacy & Co., and Bashall, Lacy & Co., in the plaintiffs' bill mentioned, or by either of such firms, and from in any manner soliciting or inviting any person or persons who, at the date of the indenture of the _____, in the plaintiffs' bill mentioned, was or were a customer or correspondent, customers or correspondents, of the firms of Foster, Lacy & Co., and Bashall, Lacy & Co., or of either of such firms, and from causing or procuring any such person or persons to be solicited or invited to become or be a customer or correspondent or customers or correspondents of, or to employ him the said defendant in the business carried on by him, or to cease from employing or not to employ the said plaintiffs in the business formerly carried on by the said firms of Foster, Lacy & Co., and Bashall, Lacy & Co., or either of them" (b).

35. MASSAM v. THORLEY'S CATTLE FOOD CO., 14 Ch. D. 748—762.

False Representation of Continuation of Business—Trade Name—Labels—Advertisements—Circulars—Injunction.

Injunction restraining the defendants, &c., "from selling, shipping, or exporting, or causing or procuring or allowing to be sold, shipped, or

(a) Wood, V.-C. And see *Hoffman* *ib.* 257; *England v. Curling*, 8 Beav. 129
v. Duncan, Seton, 4th ed. 256; *Witt v.* (b) *Turner*, L. J.
Corcoran, *ib.* 257; *Graveley v. Winchester*,

exported, and from in any manner representing, or causing or procuring to be represented, any goods manufactured by the defendant company as the manufacture or goods of the late Joseph Thorley, or of the plaintiffs, his trustees and successors in business; and also from in any manner representing, or causing or procuring to be represented, or doing anything which shall lead to the belief that the defendant company have been or are carrying on the business of the late Joseph Thorley; and also from affixing, or permitting or causing to be affixed to any goods or articles manufactured, or bought, or procured, or sold, or shipped, or exported by the defendant company, or otherwise using or employing, or permitting to be used or employed, any labels, wrappers, or marks used by the late Joseph Thorley and the plaintiffs, his trustees and successors in business, or so contrived and prepared as to represent or lead to the belief that the goods or articles manufactured, or sold, or shipped, or exported by the defendant company, are the goods or manufacture of the late Joseph Thorley or of the plaintiffs; and also from employing, using, or circulating, or causing to be employed, used, or circulated, any circulars, pamphlets, notices, or advertisements of the late Joseph Thorley or of the plaintiffs, or which shall in any manner represent or lead to the belief that the defendant company have been or are carrying on the business of the late Joseph Thorley, or that they are his successors in business" (a).

36. LABOUCHERE *v.* DAWSON, L. R. 13 Eq. 322—327.

Soliciting former Customers, after Sale of Business—Injunction.

Injunction restraining the defendant, &c., "from applying to any person who was a customer of the firm of B. Dawson & Co. prior to the _____, privately by letter, personally, or by a traveller, asking such customer to continue to deal with the defendant, or not to deal with the plaintiffs, the Kirkstall Brewery Co., Limited" (b).

37. WHEELER & WILSON MANUFACTURING Co. *v.* SHAKESPEAR, 39 L. J. Ch. 36—38—41.

False Representation of Agency—Injunction.

Injunction restraining the defendant, &c., "from, in manner aforesaid, or in any other manner, calling, or describing, or representing, his said shop or place of business, No. 32, Union Street, Birmingham, or

(a) James, L. J.

(b) Lord Romilly, M. R. After *Pearson v. Pearson*, 27 Ch. D. 145, this form is only applicable where there is a breach of an actual stipulation. See also *Leggott v. Barrett*, 15 Ch. D. 306; and *Selby v.*

Anchor Tube Co., W. N. 1877, p. 191. As to opening letters containing orders intended for another firm, see *Scheile v. Brakell*, 11 W. R. 796; and Seton, 4th ed. 253; *Witt v. Corcoran*, Seton, 4th ed. 257; *England v. Curling*, 8 Beav. 129.

any other shop, warehouse, or place, not belonging to the plaintiffs, as 'The Original Wheeler & Wilson Sewing Machine Depôt,' or 'Wheeler & Wilson Sewing Machine Depôt, established in 1860,' or as a place of business of the plaintiffs, or of 'Wheeler & Wilson,' manufacturers of sewing machines; and from in manner aforesaid, or in any other manner, calling, or describing, or representing, himself or his said firm of T. Shakespear & Co., as the agent or agents for the American 'Wheeler & Wilson' sewing machines, in the same manner in which he has been since 1860, or as the agent of the 'Wheeler & Wilson' sewing machines; and from in any other manner representing himself as the agent of the plaintiffs, and from permitting the names 'Wheeler & Wilson' to remain over the door of his shop or business premises, at 32, Union Street, Birmingham, or on the brass plate under the window, or on the brass plate on the door jamb, or on any other part of his said shop or place of business, or on any placard in his said shop, or on the door, or in the window thereof; and from causing the names 'Wheeler & Wilson' to be inserted in any railway time-table, or directory, or other book or publication, under the head of, or described as sewing machine manufacturers, as residing or carrying on business at No. 32, Union Street, Birmingham, or as in any other manner connected with that or any other shop or place of business of the said defendant, and from doing any other act, matter, or thing representing, or whereby the trade or the public may be led to believe that the defendant has any connection whatever in business with the plaintiffs" (a).

38. JAMES v. JAMES, 41 L. J. Ch. 358.

*Fraudulent Disuse of Christian Name—Claim to be the "Only Genuine"
—Injunction.*

Injunction restraining the defendant, &c., "from using the name of 'Robert James' singly, instead of 'Robert Joseph James,' or 'R. J. James'; also from stating or inserting in his advertisement or circular any words or expressions asserting or suggesting that the ointment manufactured and sold by the plaintiffs is spurious and not genuine" (b).

39. LIEBIG'S EXTRACT OF MEAT CO. v. ANDERSON, 55 L. T. N. S. 209.

Claim to be the only Genuine—Injunction.

Injunction restraining the defendant, &c., "from using the wrappers or making the advertisements complained of containing the words 'This is the only genuine' with reference to the Liebig's Extract of Meat sold or offered for sale by the defendant, and from using any other wrapper or making any other advertisement with reference to such extract sold or

(a) James, V.-C.

(b) Lord Romilly, M.R.

offered for sale by the defendant, representing that such extract as the defendant's brand of such extract is the only genuine" (a).

40. THORLEY'S CATTLE FOOD CO. v. MASSAM, 14 Ch. D. 763—781.

Trade Libel—Representation that the Plaintiffs' Goods are Spurious—Injunction.

Injunction restraining the defendants, &c., "from advertising, or representing, or suggesting in their advertisements or circulars that they are alone possessed of the secret for compounding the condiment known as 'Thorley's Food for Cattle,' and from representing, or suggesting, or doing anything calculated to represent or suggest, that the cattle food manufactured and sold by the plaintiffs is spurious or not genuine" (b).

41. THOMAS v. WILLIAMS, 14 Ch. D. 864—875.

Trade Libel—Representation that the Plaintiff's Goods are Spurious—Injunction.

Injunction restraining the defendants, &c., "from issuing or permitting the issue of the circular dated the _____, and from in any manner representing or suggesting that the goods now made or sold by the plaintiff are imitations of the goods made or sold by J. Thomas & Sons, or Edmund Holyoake" (c).

42. ROUTH v. WEBSTER, 10 Beav. 561—563.

Unauthorised and Injurious Use of a Person's Name—Injunction.

Injunction restraining the defendants, &c., "from printing, publishing, or circulating, any prospectus or other document of, or relating to, a certain company called 'The Economic Conveyance Company,' mentioned and referred to in the plaintiff's bill in this cause, with the plaintiff's name thereto, and from in any manner using the name of the plaintiff so as to identify him as a party interested in, or associated with, the said company" (d).

(a) Chitty, J.

(b) Malins, V.-C., affirmed by C. A.

(c) Fry, J.

(d) Lord Langdale, M. R.

APPENDIX C.

INTERNATIONAL ARRANGEMENTS.

(See *Patents, &c., Acts, 1883-8, § 103, supra.*)

I.

INTERNATIONAL CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY.

Signed at Paris, March 20th, 1883.

[*Ratifications exchanged at Paris, June 6th, 1884.*]

(Official Translation.)

His Majesty the King of the Belgians, His Majesty the Emperor of Brazil, His Majesty the King of Spain, the President of the French Republic, the President of the Republic of Guatemala, His Majesty the King of Italy, His Majesty the King of the Netherlands, His Majesty the King of Portugal and the Algarves, the President of the Republic of Salvador, His Majesty the King of Servia, and the Federal Council of the Swiss Confederation,

Being equally animated with the desire to secure by mutual agreement, complete and effectual protection for the industry and commerce of their respective subjects and citizens, and to provide a guarantee for the rights of inventors, and for the loyalty of commercial transactions, have resolved to conclude a convention to that effect, and have named as their plenipotentiaries, that is to say:—

(Here follow the appointments of the plenipotentiaries.)

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

The Governments of Belgium, Brazil, Spain, France, Guatemala, Italy, Holland, Portugal, Salvador, Servia, and Switzerland constitute themselves into a union for the protection of industrial property.

ARTICLE II.

The subjects or citizens of each of the contracting states shall, in all the other states of the union, as regards patents, industrial designs or models, trade marks and trade names, enjoy the advantages that their respective laws now grant, or shall hereafter grant, to their own subjects or citizens.

Consequently they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided they observe the formalities and conditions imposed on subjects or citizens by the internal legislation of each state.

ARTICLE III.

Subjects or citizens of states not forming part of the union, who are domiciled or have industrial or commercial establishments in the territory of any of the states of the union, shall be assimilated to the subjects or citizens of the contracting states.

ARTICLE IV.

Any person who has duly applied for a patent, industrial design or model, or trade mark in one of the contracting states, shall enjoy, as regards registration in the other states, and reserving the rights of third parties, a right of priority during the periods hereinafter stated.

Consequently, subsequent registration in any of the other states of the union before expiry of these periods shall not be invalidated through any acts accomplished in the interval: either, for instance, by another registration, by publication of the invention, or by the working of it by a third party, by the sale of copies of the design or model, or by use of the trade mark.

The above-mentioned terms of priority shall be six months for patents, and three months for industrial designs and models and trade marks. A month longer is allowed for countries beyond sea.

ARTICLE V.

(Relates only to Patents.)

ARTICLE VI.

Every trade mark duly registered in the country of origin shall be admitted for registration, and protected in the form originally registered in all the other countries of the union (a).

That country shall be deemed the country of origin where the applicant has his chief seat of business.

If this chief seat of business is not situated in one of the countries of the union, the country to which the applicant belongs shall be deemed the country of origin.

Registration may be refused if the object for which it is solicited is considered contrary to morality or public order.

ARTICLE VII.

The nature of the goods on which the trade mark is to be used can, in no case, be an obstacle to the registration of the trade mark.

ARTICLE VIII.

A trade name shall be protected in all the countries of the union, without necessity of registration, whether it form part or not of a trade mark.

ARTICLE IX.

All goods illegally bearing a trade mark or trade name may be seized on importation into those states of the union where this mark or name has a right to legal protection.

The seizure shall be effected at the request of either the proper public department or of the interested party, pursuant to the internal legislation of each country.

ARTICLE X.

The provisions of the preceding Article shall apply to all goods falsely bearing the name of any locality as indication of the place of origin, when such indication is associated with a trade name of a fictitious character or assumed with a fraudulent intention.

Any manufacturer of, or trader in, such goods, established in the locality falsely designated as the place of origin, shall be deemed an interested party.

(a) No effect can be given to this or any other article of the convention by the Courts of the United Kingdom, except so far as it is embodied in § 102 of the Patents Act, 1883: *In re Californian Fig Syrup Co.*, 40 Ch. D. 620. And similarly in the United States legislation is necessary to enable effect to be given to it. See opinion of the Attorney-General of the United States, 47 U. S. Pat. Gaz. 397.

ARTICLE XI.

The high contracting parties agree to grant temporary protection to patentable inventions, to industrial designs or models, and trade marks, for articles exhibited at official or officially recognised international exhibitions.

ARTICLE XII.

Each of the high contracting parties agrees to establish a special Government Department for industrial property, and a central office for communication to the public of patents, industrial designs or models, and trade marks.

ARTICLE XIII.

An international office shall be organised under the name of "Bureau International de l'Union pour la Protection de la Propriété Industrielle" (International Office of the Union for the Protection of Industrial Property).

This office, the expense of which shall be defrayed by the Governments of all the contracting states, shall be placed under the high authority of the Central Administration of the Swiss Confederation, and shall work under its supervision. Its functions shall be determined by agreement between the states of the union.

ARTICLE XIV.

The present convention shall be submitted to periodical revisions, with a view to introducing improvements calculated to perfect the system of the union.

To this end conferences shall be successively held in one of the contracting states by delegates of the said states. The next meeting shall take place in 1885 at Rome.

ARTICLE XV.

It is agreed that the high contracting parties respectively reserve to themselves the right to make separately, as between themselves, special arrangements for the protection of industrial property, in so far as such arrangements do not contravene the provisions of the present convention.

ARTICLE XVI.

States which have not taken part in the present convention shall be permitted to adhere to it at their request.

Such adhesion shall be notified officially through the diplomatic channel to the Government of the Swiss Confederation,

and by the latter to all the others. It shall imply complete accession to all the clauses and admission to all the advantages stipulated by the present convention.

ARTICLE XVII.

The execution of the reciprocal engagements contained in the present convention is subordinated, in so far as necessary, to the observance of the formalities and rules established by the constitutional laws of those of the high contracting parties who are bound to procure the application of the same, which they engage to do with as little delay as possible.

ARTICLE XVIII.

The present convention shall come into operation one month after the exchange of ratifications, and shall remain in force for an unlimited time, till the expiry of one year from the date of its denunciation. This denunciation shall be addressed to the Government commissioned to receive adhesions. It shall only affect the denouncing state, the convention remaining in operation as regards the other contracting parties.

ARTICLE XIX.

The present convention shall be ratified, and the ratifications exchanged in Paris, within one year at the latest.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto their seals.

Dated at Paris the 20th March, 1883.

(Signed by the Plenipotentiaries.)

II.

FINAL PROTOCOL.

(Official Translation.)

On proceeding to the signature of the convention concluded this day between the Governments of Belgium, Brazil, Spain, France, Guatemala, Italy, the Netherlands, Portugal, Salvador, Servia, and Switzerland, for the protection of industrial property, the undersigned plenipotentiaries have agreed as follows:

1. The words "industrial property" are to be understood in their broadest sense; they are not to apply simply to industrial products properly so called, but also to agricultural products (wines, corn, fruits, cattle, &c.), and to mineral products employed in commerce (mineral waters, &c.).

2. (Relates only to Patents.)

3. The last paragraph of Article II. does not affect the legislation of each of the contracting states as regards the procedure to be followed before the tribunals, and the competence of those tribunals.

4. Paragraph 1 of Article VI. is to be understood as meaning that no trade mark shall be excluded from protection in any state of the union, from the fact alone that it does not satisfy, in regard to the signs composing it, the conditions of the legislation of that state; provided that on this point it comply with the legislation of the country of origin, and that it had been properly registered in said country of origin. With this exception, which relates only to the form of the mark, and under reserve of the provisions of the other articles of the convention, the internal legislation of each state remains in force.

To avoid misconception, it is agreed that the use of public armorial bearings and decorations may be considered as being contrary to public order in the sense of the last paragraph of Article VI.

5. The organisation of the special department for industrial property mentioned in Article XII. shall comprise, so far as possible, the publication in each state of a periodical official paper.

6. (After providing for the common expenses of the international office, continues:—)

The Swiss Government will superintend the expenses of the international office, advance the necessary funds, and render an annual account, which will be communicated to all the other administrations.

The international office will centralise information of every kind relating to the protection of industrial property, and will bring it together in the form of a general statistical statement which will be distributed to all the administrations. It will interest itself in all matters of common utility to the union, and will edit, with the help of the documents supplied to it by the various administrations, a periodical paper in the French language dealing with questions regarding the object of the union.

The numbers of this paper, as well as all the documents published by the international office, will be circulated among the administrations of the states of the union in the proportion of the number of contributing units as mentioned above. Such further copies as may be desired either by the said administrations, or by societies or private persons, will be paid for separately.

The international office shall at all times hold itself at the

service of members of the union, in order to supply them with any special information they may need on questions relating to the international system of industrial property.

The administration of the country in which the next conference is to be held will make preparation for the transactions of that conference, with the assistance of the international office.

The director of the international office will be present at the meetings of the conferences, and will take part in the discussions, but without the privilege of voting.

He will furnish an annual report upon his administration of the office, which shall be communicated to all the members of the union.

The official language of the international office will be French.

7. The present final protocol, which shall be ratified together with the convention concluded this day, shall be considered as forming an integral part of, and shall have the same force, validity, and duration as the said convention.

In witness whereof the undersigned plenipotentiaries have drawn up the present protocol.

(Signed by the Plenipotentiaries.)

III.

ACCESSION OF HER MAJESTY'S GOVERNMENT TO THE CONVENTION.

The undersigned, ambassador extraordinary and plenipotentiary of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland to the French Republic, declares that her Britannic Majesty, having had the International Convention for the Protection of Industrial Property, concluded at Paris on the 20th March, 1883, and the protocol relating thereto, signed on the same date, laid before her, and availing herself of the right reserved by Article XVI. of that convention to States not parties to the original convention, accedes, on behalf of the United Kingdom of Great Britain and Ireland, to the said international convention for the protection of industrial property, and to the said protocol, which are to be considered as inserted word for word in the present declaration, and formally engages, as far as regards the President of the French Republic and the other high contracting parties, to co-operate on her part in the execution of the stipulations contained in the convention and protocol aforesaid.

The undersigned makes this declaration on the part of Her Britannic Majesty, with the express understanding that power

is reserved to Her Britannic Majesty to accede to the Convention on behalf of the Isle of Man and the Channel Islands, and any of Her Majesty's possessions, on due notice to that effect being given through Her Majesty's Government.

In witness whereof the undersigned, duly authorised, has signed the present declaration of accession, and has affixed thereto the seal of his arms.

Done at Paris, on the 17th day of March, 1884.

(L.S.) (Signed) LYONS.

IV.

DECLARATION OF ACCEPTANCE OF ACCESSION.

(Official Translation.)

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, having acceded to the International Convention relative to the protection of industrial property, concluded at Paris, March 20th, 1883, together with a protocol dated the same day, by the declaration of accession delivered by Her Ambassador Extraordinary and Plenipotentiary to the Government of the French Republic; the text of which declaration is word for word as follows:—

(Here is inserted the text of No. III. in English.)

The President of the French Republic has authorised the undersigned, President of the Council, Minister for Foreign Affairs, to formally accept the said accession, together with the reserves which are contained in it concerning the Isle of Man, the Channel Islands, and all other possessions of Her Britannic Majesty, engaging as well in his own name as in that of the other high contracting parties to assist in the accomplishment of the obligations stipulated in the convention and the protocol thereto annexed, which may concern the United Kingdom of Great Britain and Ireland.

In witness whereof the undersigned, duly authorised, has drawn up the present Declaration of Acceptance and has affixed thereto his seal.

Done at Paris, the 2nd April, 1884.

(L.S.) (Signed) JULES FERRY.

V.

ORDER IN COUNCIL.

(The Patents Act, 1883.)

At the Court at Windsor, the 26th of June, 1884. Present, the Queen's Most Excellent Majesty in Council.

Whereas by the provisions of the Patents, Designs, and Trade Marks Act, 1883, it is, amongst other things, provided:—

That 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, subject to the conditions further provided and set forth in the said Act, be entitled to a patent for his invention, or to registration of his design or trade mark (as the case may be) under the said 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:

And whereas it has pleased Her Majesty to make an arrangement of the nature contemplated by the said Act by and in virtue of a declaration signed and sealed by Her Majesty's Ambassador at Paris on the 17th of March, 1884, duly conveying the accession of Great Britain to the International Convention and Protocol for the Protection of Industrial Property, signed by representatives of certain powers on the 20th of March, 1883, and duly ratified on the 6th of June, 1884, power being reserved to Her Majesty to hereafter accede to the provisions of the said convention and protocol on behalf of the Isle of Man, the Channel Islands, and any of Her Majesty's possessions, which declaration of accession was duly accepted by the French Government on behalf of the signatory powers by and in virtue of a declaration dated the 2nd of April, 1884:

Now, therefore, Her Majesty, by and with the advice and consent of her Privy Council, and by virtue of the authority committed to her by the said Act, doth declare, and it is hereby declared, that the provisions of the said Act hereinbefore specified shall apply to the following countries, viz.:—Belgium, Brazil, France, Guatemala, Italy, Netherlands, Portugal, Salvador, Servia, Spain, Switzerland, Ecuador,* and Tunis.*

And it is hereby further ordered and declared that this order shall take effect from the 7th of July, 1884.

C. L. PEEL.

* These States had acceded to the Convention and Protocol.

VI.

SUBSEQUENT ORDERS IN COUNCIL.

Orders in Council making § 103 applicable.

	DATE OF ORDER.	TO TAKE EFFECT FROM	"LONDON GAZETTE."
Santo Domingo	. Jan. 27th, 1885.	. Jan. 27th, 1885	. 1885, p. 418.
Sweden & Norway	. July 9th, 1885.	. July 1st, 1885	. 1885, p. 3173.
Paraguay & Uruguay	Sept. 24th, 1886.	Sept. 24th, 1886	. 1886, p. 4725.
United States of America	. July 12th, 1887	. July 12th, 1887	. 1887, p. 3827.
Netherlands East Indies	. Nov. 17th, 1888	. March 17th, 1889	. 1888, p. 6412.
Mexico	. May 28th, 1889	. Sept. 28th, 1889	. 1889, p. 2954.

Orders in Council making § 103 cease to be applicable.

Ecuador	. April 16th, 1886	. Dec. 26th, 1886	. 1886, p. 1894.
Salvador	. Sept. 24th, 1886	. Aug. 17th, 1887	. 1886, p. 4726.
Santo Domingo	. May 28th, 1889	. May 28th, 1889	. 1889, p. 3035.

Orders in Council making § 104 applicable.

Queensland	. Sept. 17th, 1885	. Sept. 17th, 1885	. 1885, p. 4429.
New Zealand	. Feb. 8th, 1890	. June 8th, 1890	. 1890, p. 727.

APPENDIX D.

THE TRADE MARKS REGISTRATION ACTS, 1875-7, WITH THE ORDERS IN COUNCIL THEREUNDER, AND THE COTTON MARKS RULES.

All Repealed.

THE TRADE MARKS REGISTRATION ACT, 1875.

38 & 39 VICT. c. 91 (a).

An Act to establish a Register of Trade Marks.

[13th August, 1875.]

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. *A register of trade marks as defined by this Act, and of the proprietors thereof, shall be established under the superintendence of the Commissioners of Patents, and from and after the first day of July one thousand eight hundred and seventy-six a person shall not be entitled to institute any proceeding to prevent the infringement of any trade mark as defined by this Act until and unless such trade mark is registered in pursuance of this Act.*

Registration of trade marks.

2. *A trade mark must be registered as belonging to particular goods, or classes of goods ; and when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in such particular goods or classes of goods, and shall be determinable with such goodwill ; but subject as aforesaid, registration of a trade mark shall be deemed to be equivalent to public use of such mark.*

Characteristics of registered trade mark.

3. *The registration of a person as first proprietor of a trade mark shall be prima-facie evidence of his right to the exclusive use of such trade mark, and shall, after the expiration of five*

Title of first proprietor of trade mark.

(a) It is frequently necessary to refer to these Acts, though repealed, and they are consequently printed here, for facility of reference.

years from the date of such registration, be conclusive evidence of his right to the exclusive use of such trade mark, subject to the provisions of this Act as to its connection with the goodwill of a business.

Title of proprietor claiming by transmitted proprietorship.

Rectification of register.

4. Every proprietor registered in respect to a trade mark subsequently to the first registered proprietor shall, as respects his title to that trade mark, stand in the same position as if his title were a continuation of the title of the first registered proprietor.

5. If the name of any person who is not for the time being entitled to the exclusive use of a trade mark in accordance with this Act, or otherwise in accordance with law, is entered on the register of trade marks as a proprietor of such trade mark, or if the registrar refuses to enter on the register as proprietor of a trade mark the name of any person who is for the time being entitled to the exclusive use of such trade mark in accordance with this Act, or otherwise in accordance with law, or if any mark is registered as a trade mark which is not authorised to be so registered under this Act, any person aggrieved may apply in the prescribed manner for an order of the Court that the register may be rectified; and the Court may either refuse such application, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may award damages to the party aggrieved.

Where each of several persons claims to be registered as proprietor of the same trade mark, the registrar may refuse to comply with the claims of any of such persons until their rights have been determined by the Court, and the registrar may himself submit or require the claimants to submit in the prescribed manner their rights to the Court.

The Court may, in any proceeding under this section, decide any question as to whether a mark is or is not such a trade mark as is authorised to be registered under this Act, also any question relating to the right of any person who is party to such proceeding to have his name entered on the register of trade marks, or to have the name of some other person removed from such register, also any other question that it may be necessary or expedient to decide for the rectification of the register.

The Court may direct an issue to be tried for the decision of any question of fact which may require to be decided for the purposes of this section.

Whenever any order has been made rectifying the register the Court shall by its order direct that due notice of such rectification be given to the registrar.

Restrictions on registry of trade marks.

6. The registrar shall not, without the special leave of the Court, to be given in the prescribed manner, register in respect of the same goods or classes of goods a trade mark identical with

one which is already registered with respect to such goods or classes of goods, and the registrar shall not register with respect to the same goods or classes of goods a trade mark so nearly resembling a trade mark already on the register with respect to such goods or classes of goods as to be calculated to deceive.

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 not, by reason of their being calculated to deceive or otherwise, be deemed entitled to protection in a court of equity; or any scandalous designs.

7. Subject as aforesaid, a register office shall be established from and after such time (not being later than the first day of January one thousand eight hundred and seventy-six), in such manner, and with such officers, and at such salaries, to be paid out of moneys provided by Parliament, as the Lord Chancellor may, with the consent of the Treasury, direct; and the Lord Chancellor may, from time to time, with the assent of the Treasury as to fees, make, and when made, alter, annul, or vary, such general rules as to the registry of trade marks, and as to notices to be given by advertisement before the registration of trade marks, and as to the classification of goods for the purposes of this Act, and as to the registration of first and subsequent proprietors of trade marks, and as to the fees to be charged for registration, and also for the continuance of a trade mark on the register or otherwise, and as to the removal from the register of any trade mark, as to notices, and as to the persons entitled to inspect the register, and as to any proceedings to be taken to obtain the judgment or leave of the Court in any matter in which the judgment or leave of the Court is required to be obtained under this Act, and generally for the purpose of carrying into effect this Act, as he may deem expedient.

Establishment
of registry and
general rules.

Any rules made in pursuance of this section shall be laid before both Houses of Parliament if Parliament be then sitting, or if not then sitting, then within ten days from the then next assembling of Parliament, and shall be of the same validity as if they had been enacted by Parliament; provided that if either House of Parliament resolve, within one month after such rules have been laid before such House, that any of such rules ought not to continue in force, any rule in respect of which such resolution has been passed shall, after the date of such resolution, cease to be of any force, without prejudice, nevertheless, to the making of any other rule in its place, or to anything done in pursuance of any such rules before the date of such resolution.

8. The certificate of the registrar as to any entry, matter, or thing which he is authorised by this Act, or any general rules

Certificate of
registrar to
be evidence.

made thereunder, to make or do, shall be evidence of such entry having been made, and of the contents thereof, and of such matters and things having been done or left undone.

Provision as
to Cutlers
Company
and Sheffield
corporate
marks.

9. *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 corporate marks") assigned or to be assigned by the master, wardens, searchers, and assistants of that company, be it enacted as follows:*

- (1.) *Within the prescribed time and in the prescribed manner the Cutlers Company shall at their own expense deliver to the registrar under this Act copies of all Sheffield corporate marks in force at the time of such delivery:*
- (2.) *When any person, after the passing of this Act, applies to the said master, wardens, searchers, and assistants to assign to him any mark or device, notice of such application, with a copy of such mark or device, shall, within the prescribed time and in the prescribed manner, be delivered to the registrar under this Act; and such mark or device shall not be assigned until after the expiration of the prescribed period from the giving of such notice. In like manner, when any person applies for the registration under this Act of a trade mark as belonging to any goods or class of goods specified in § 2 of the Cutlers Company's Act of 1860, notice of such application, with a copy of such trade mark, shall, within the prescribed time and in the prescribed manner, be delivered to the Cutlers Company; and such trade mark shall not be registered until after the expiration of the prescribed period from the giving of the last-mentioned notice:*
- (3.) *Upon the assigning of any such mark or device, or the registration of any such trade mark as aforesaid, notice of the assignment or registration shall, within the prescribed time and in the prescribed manner, be given to the registrar under this Act, or to the Cutlers Company, as the case may be:*
- (4.) *The registrar under this Act, without the special leave of the Court, to be given only in cases where the applicant proves his right, shall not in respect of any goods or classes of goods with respect to which a Sheffield corporate mark shall have been assigned and actually used, and of which mark a copy or description or notice of the assigning thereof shall have been delivered or given to the registrar as aforesaid, register a trade*

mark identical with such Sheffield corporate mark, or so nearly resembling the same as to be calculated to deceive :

- (5.) *The master, wardens, searchers, and assistants of the Cutlers Company shall not assign to any person a mark or device identical with any trade mark registered under this Act, and notice of the registration whereof shall have been given to the Cutlers Company as aforesaid, or so nearly resembling the same as to be calculated to deceive :*
- (6.) *Any person to whom a Sheffield corporate mark legally belongs shall be entitled to have the same mark registered also as a trade mark under this Act, in respect of any particular goods or classes of goods, in the same manner and upon the same terms and conditions in and upon which he might have registered the same if it were not a Sheffield corporate mark :*
- (7.) *Nothing in this Act shall prejudice or affect the rights and privileges of the Cutlers Company, nor, save as is otherwise in this Act expressly provided, shall any of the provisions of this Act apply to or in the case of any Sheffield corporate mark.*

10. *For the purposes of this Act :*

Definitions.

A trade mark consists of one or more of the following essential particulars ; that is to say :

A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner ; or

A written signature or copy of a written signature of an individual or firm ; or

A distinctive device, mark, heading, label, or ticket ;

and there may be added to any one or more of the said particulars any letters, words, or figures, or combination of letters, words, or figures ; also

Any special and distinctive word or words or combination of figures or letters used as a trade mark before the passing of this Act may be registered as such under this Act.

“Prescribed” means prescribed by general rules made in pursuance of this Act ; and

“Court” means any of Her Majesty’s superior courts of law or equity at Westminster, or any court to which the jurisdiction of such courts may be transferred, or any one or more of such courts which may be declared to be the court for the purposes of this Act by such general rules as aforesaid ; but the provisions of this Act conferring a special jurisdiction on the court as above defined shall not, excepting so far as such jurisdiction extends, affect the

jurisdiction of any court in Scotland or Ireland in causes, actions, suits, or proceedings relating to trade marks; and if the register requires to be rectified in consequence of any proceedings in any such court in Scotland or Ireland, due notice of such requirements shall be given to the registrar, and he shall rectify the register accordingly.

Short title of Act.

11. *This Act may be cited for all purposes as the Trade Marks Registration Act, 1875.*

THE TRADE MARKS REGISTRATION AMENDMENT ACT, 1876.

39 & 40 VICT. c. 33.

An Act for the Amendment of the Trade Marks Registration Act, 1875. [24th July, 1876.]

Whereas by the Trade Marks Registration Act, 1875, in this Act referred to as the principal Act, it is provided that from and after the first day of July one thousand eight hundred and seventy-six, a person shall not be entitled to prevent the infringement of any trade mark as defined by the principal Act until and unless such trade mark is registered in pursuance of that Act:

And whereas by reason of the number of trade marks, and especially by reason of the difficulties attending the registration of trade marks in relation to textile fabrics, it has been found impossible to complete the registration of existing trade marks within the time specified by the said section; and it is therefore expedient to prolong the time for the completion of such registration as aforesaid, and otherwise to amend the principal Act:

Be it therefore 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:

Amendment of § 1 of the principal Act.

1. *There shall be repealed so much of § 1 of the principal Act as provides that from and after the first day of July one thousand eight hundred and seventy-six, a person shall not be entitled to institute any proceeding to prevent the infringement of any trade mark as defined by that Act until and unless such trade mark is registered in pursuance of that Act; and in place thereof be it enacted that—*

From and after the first day of July one thousand eight hundred and seventy-seven, a person shall not be entitled to institute any proceeding to prevent or to recover damages for the

infringement of any trade mark as defined by the principal Act, until and unless such trade mark is registered in pursuance of that Act, or until and unless, with respect to any device, mark, name, combination of words, or other matter or thing in use as a trade mark before the passing of the principal Act, registration thereof as a trade mark under the principal Act shall have been refused as hereinafter is mentioned.

2. *When an application by any person to register as a trade mark a device, mark, name, word, combination of words, or other matter or thing proposed for registration as a trade mark, which has been in use as a trade mark before the passing of the recited Act, has been refused, it shall be the duty of the registrar, on request, and on payment of the prescribed fee, to give to the applicant a certificate of such refusal, and a certificate so granted shall be conclusive evidence of such refusal.*

Saving of marks and devices not capable of being registered under Act.

3. *This Act may be cited for all purposes as the Trade Marks Registration Amendment Act, 1876.*

Short title.

THE TRADE MARKS REGISTRATION EXTENSION ACT, 1877.

40 & 41 VICT. C. 37.

An Act for extending the Time for the Registration of Trade Marks, in so far as relates to Trade Marks used in Textile Industries.

[6th August, 1877.]

Whereas by § 1 of the Trade Marks Registration Amendment Act, 1876, it is provided that from and after the first day of July one thousand eight hundred and seventy-seven, a person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of any trade mark as defined by the Trade Marks Registration Act, 1875 (referred to in such Amendment Act and in this Act as the principal Act), until and unless such trade mark is registered in pursuance of the principal Act, or until and unless, with respect to any device, mark, name, combination of words, or other matter or thing in use as a trade mark before the passing of the principal Act, registration thereof as a trade mark under the principal Act shall have been refused, as is in the said Act thereafter mentioned:

39 & 40 Vict. c. 33.

38 & 39 Vict. c. 91.

And whereas by reason of the difficulties attending the registration of trade marks used in the textile industries it has been found impossible to complete the registration of such trade marks within the time specified by the said section, and it is therefore expedient to prolong such time as aforesaid:

Be it therefore 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 :

Extension of time for registration of trade marks used in textile industries.

1. *In so far as relates to the registration of trade marks used in the textile industries, but not further or otherwise, § 1 of the Trade Marks Registration Amendment Act, 1876, shall be construed as if for the words "from and after the first day of July one thousand eight hundred and seventy-seven" there were substituted the words "from and after the first day of January one thousand eight hundred and seventy-eight, or such further time as Her Majesty may by Order in Council determine."*

Definition of "trade marks used in the textile industries."

2. *The expression in this Act "Trade marks used in the textile industries" means the trade marks relating to goods comprised in Classes 23 to 35, both inclusive, of the First Schedule to the Rules under the Trade Marks Registration Acts, 1875-6, dated September 1876.*

Short title of Act.

3. *This Act may be cited for all purposes as the Trade Marks Registration Extension Act, 1877 ; and this Act and the Trade Marks Registration Amendment Act, 1876, and the Trade Marks Registration Act, 1875, may be cited together as the Trade Marks Registration Acts, 1875-7.*

ORDERS IN COUNCIL

EXTENDING THE TIME FOR REGISTRATION.

Dec. 12th, 1877	extension till	June 30th, 1878	(a).
June 29th, 1878	"	Dec. 31st, 1878	(a).
Nov. 27th, 1878	"	May 31st, 1879	(b).
May 17th, 1879	"	July 31st, 1879	(b).

(a) These orders related only to trade marks used in the textile industries.

(b) These orders related only to trade marks used for cotton piece goods.

RULES OF AUGUST, 1876, WITH RESPECT TO COTTON MARKS.*

Cotton Goods.

Establishment of office for exhibition of

57. *For the purpose of facilitating the granting of trade marks in respect of cotton goods in Classes 23, 24 and 25, there*

* These rules, though repealed, are given here in order that the position of cotton marks dealt with by the late Manchester Committee of Experts may be comprehended. Where it is not otherwise stated, the rules were included in the set of Rules issued in August, 1876. Various additions were made from time to time, and in March 1883,

after the Committee of Experts had completed their labours, an entirely new set was substituted (see p. 549, *infra*). Those rules were, in their turn, repealed, and the rules now in force place cotton marks on the same footing as other trade marks, and this would seem to be the case even with B list marks.

shall be established by the Commissioners of Patents (a), and subject to their control, an office at Manchester (b) for the exhibition of all devices, marks, headings, labels, tickets, letters, words, or figures, or combinations of letters, words, or figures used in the cotton trade, and in these Rules included under the expression "cotton marks" (c). cotton trade marks at Manchester.

(a) Previous to the coming into operation of the Patents Act, 1883, on January 1st, 1884, the registration of trade marks was under the control of the Commissioners of Patents, now no longer in existence.

(b) This was opened and is still maintained at No. 48, Royal Exchange, Manchester. See Instructions, par. 34.

(c) All cotton marks are treated as exceptional, and advertised and registered by deposit. See *In re Robinson*, 29 W. R. 31.

58 (a). Every person who at the date of the passing of the Act used any cotton mark shall, if resident in the United Kingdom, on or before the first day of January one thousand eight hundred and seventy-seven, and if resident elsewhere, on or before the first day of March, one thousand eight hundred and seventy-seven, send to the Manchester office three representations of such cotton mark, in such form and with such a description as may be from time to time required by the Commissioners of Patents. Representations of cotton marks to be sent by owners resident in the United Kingdom on or before Jan. 1, 1877; by owners resident abroad on or before March 1, 1877.

(a) This Rule was made on Dec. 1st, 1876, in substitution for the previous Rule 58, by which representations of old cotton marks were to be sent in at Manchester on or before Dec. 1st, 1876.

58a (a). Every person who at the date of the passing of the Trade Marks Registration Act, 1875, used any "combination stamp" (b) for cotton piece goods, shall on or before the first day of February, one thousand eight hundred and seventy-nine, send to the Manchester Branch of the Trade Marks Registry Office four representations of such "combination stamp," in such form and with such a description as may be from time to time required by the Commissioners of Patents. Extended time for sending representations of combination stamps for cotton piece goods.

(a) This rule was made on Dec. 28th, 1878.

(b) Combination stamps are combinations of several different trade marks which dealers in cotton goods habitually use on such goods, treating the combination as equivalent to a single trade mark. See *Robinson v. Finlay*, 9 Ch. D. 487, for an example of such a combination.

59. A committee (a) of persons versed in the usages of the cotton trade shall be appointed by the Commissioners of Patents, consisting of such number of persons as may from time to time be determined by them; and it shall be the duty of such committee, on or before a time to be named by the Commissioners of Patents, to divide the cotton marks, representations of which have been so sent in to the Manchester office, into two classes, Committee of experts to be appointed, and to divide cotton marks into two classes.

the first class consisting of such of the said cotton marks as are, in the opinion of the committee, trade marks within the meaning of the Act, and the second class consisting of such of the said cotton marks as are not, in the opinion of the committee, trade marks within the meaning of the Act (b).

(a) A list of the Committee of Experts appointed under this Rule will be found in the Instructions issued during the existence of the committee.

(b) The committee were instructed by the Commissioners of Patents in a letter, dated April 4th, 1877, to act on the following principles in dividing the cotton marks into two classes, viz. : (i) To decide only from the evidence before them whether, in their opinion, a mark belonged to the first or second class of cotton marks ; (ii) in case of further information being required, the keeper of the Manchester office was authorised to obtain such information for the use of the committee ; (iii) in case of a difference of opinion among the committee as to the nature of marks applied for, their decision should be given according to the opinion of the majority, the chairman presiding at each meeting having a casting vote ; (iv) single letters were not trade marks within the meaning of the Act ; (v) in all cases where more than three persons applied for registration of the same mark for the same description of goods, such mark must be considered as a trade mark not within the meaning of the Act, and must consequently be placed in the second class. By supplementary directions, the committee were instructed that Rule (v) extended to marks so similar, or so nearly resembling each other, as to be substantially the same marks, or calculated to deceive, and was not to be confined to identical marks. And they were also instructed that, in dealing with individual cases, they should bring to bear upon them the knowledge which the members of the committee might have of the state of things in the trade, and to decide with reference to that knowledge, and not merely upon such evidence as might be formally brought before them in the individual cases. Also that borders of marks should not be treated as parts of the marks. See *In re Brook*, 26 W. R. 791.

Acting on the principles thus laid down, the committee divided the marks submitted to them into two classes, known as the A list and the B list, of which the former contained registrable, and the latter non-registrable, cotton marks.

By Rule 62, *infra*, the marks placed in the B list were not to be registered except in pursuance of an order of the Court, and in *In re Orr-Ewing & Co.*, 8 Ch. D. 794, the question was raised how far the decision of the committee was a binding decision. Hall, V.-C., decided that the marks there in question, which had been placed in the B list, were good and valid trade marks, and that they ought to be registered ; but the Court of Appeal reversed his decision, holding that the decision of the committee should not be interfered with except under special circumstances, James, L. J., saying that the Court should not interfere, unless satisfied that the committee had proceeded upon some wrong principle or in some improper manner. When, however, the case was brought before the House of Lords (4 App. Cas. 479), the decision of Hall, V.-C., was restored, with the modification that only the essential particulars of the marks were admitted to registration, and the Lord Chancellor (Lord Cairns) said that "the Rules appear to provide a rough but useful way of separating, by means of the technical knowledge and judgment of the committee, the cotton trade marks into two classes. The first class is to consist of those marks which the committee is of opinion are trade marks within the Act ; and proprietors in this class are to have the benefit, arising from this opinion, of being able at once to apply to be registered in respect of those marks. But in doing this they must satisfy

the registrar that they are the proprietors, and comply with the conditions of registration as any other applicants would do. With regard to the second class, there is no decision pronounced against them, but the proprietors cannot apply for registration as a matter of course. They must come to the court, and it must be for the Court to say whether the registrar shall proceed on their application to register, or not. In deciding this the Court will have before it the circumstance that the opinion of the committee was adverse to the claim of a trade mark; but this would be an opinion only, and not a decision arrived at after hearing both sides, or rendered in any judicial proceeding:” *Orr-Ewing v. Registrar of Trade Marks*, 4 App. Cas. 483. and see per Lords O’Hagan and Blackburn. See also, *Orr-Ewing & Co. v. Johnston & Co.*, 13 Ch. D. 434; 7 App. Cas. 219; and the cases noted under Rule 62, *infra*.

The function of the committee was solely to decide on the question of registrability or non-registrability, and where they had assumed to decide a question of title, it was held by Jessel, M. R., that the registrar must proceed with the application, leaving it to the owners of other marks to oppose the registration: *Ex parte Ede Bros. & Co.*, 28 W. R. 436.

60. *The said committee shall form a list of the cotton marks sent to the Manchester office in each of the aforesaid classes (a), and shall transmit such lists to the Commissioners of Patents, accompanied by two representations of each of the marks specified in the second class in such list.* Committee to form list of marks sent in to Manchester office.

The third representation of each of the marks in the second class in such list shall be retained for reference in the Manchester office.

(a) *I.e.*, the A list and the B list.

61. *The Commissioners of Patents may from time to time add to the aforesaid list any cotton marks as they may think just, and such addition shall be deemed to be part of the original list.* Marks may be added to list.

62. *Any proprietor of a cotton mark not specified in the second class in such list may apply to be registered as proprietor of such cotton mark in manner and subject to the conditions in which he may apply to be registered as proprietor of any other trade mark (a), but it shall not be lawful for the registrar to register (b) any person as proprietor of any cotton mark in the second class of the aforesaid list except in pursuance of an order of the Court (c).* Any person claiming to be the proprietor of a cotton mark in class 1 may apply to be registered.

(a) After being passed by the committee, the marks in the A list had to be advertised, so that an opportunity for opposition might be afforded. In *In re Robinson*, 29 W. R. 31, an A list cotton mark was opposed, but without success.

(b) But he might grant a certificate of refusal to register, thus preserving any previous rights.

(c) For an order of the Court to be obtained for the registration of a B list mark, such a case had to be made out as, in the opinion of the Court, was sufficient to outweigh the opinion of the Committee of Experts: per Lord Blackburn in *Orr-Ewing v. Registrar of Trade Marks*, 4 App. Cas. 501. It is, however, believed that an application to the Court by an owner

of a B list mark has never been unsuccessful. Such applications were granted in *Ex parte Ede Bros. & Co.*, 28 W. R. 436; *In re Dugdale*, 49 L. J. Ch. 303; *In re J. Hoyle & Sons, Limited* (1), V.-C. H., May 8th, 1880; S. C. (2) Chitty J., Nov. 30th, 1883; *In re Dickinson, Ackroyd & Co.*, V.-C. H., July 8th, 1880; *In re Jones Bros. & Co.*, V.-C. H., July 10th, 1880; *In re Ward, Sturt & Sharp*, 50 L. J. Ch. 347; *In re Sykes*, 43 L. T. N. S. 626; *In re T. Ashton & Sons*, V.-C. H., Feb. 26th, 1881; *In re Framjee, Sands & Co.*, V.-C. B., Nov. 30th, 1883. In *In re Brook*, 26 W. R. 791, which was decided against the applicants on the authority of the decision of the Court of Appeal in *In re Orr-Ewing*, 8 Ch. D. 794, an arrangement satisfactory to the applicants was afterwards arrived at.

"The Court" being the Chancery Division (now the High Court of Justice), the order of the House of Lords was made an order of the Chancery Division in *In re Orr-Ewing* (2), 28 W. R. 412. The comptroller will now register a B list mark in a proper case, without requiring the applicant to go to the Court.

Advertisement of cotton marks.

62a (a). *As soon as may be after the receipt of an application, made as provided by the Trade Marks Rules, for the registration of a mark in Classes 23, 24, 25 aforesaid, or in any one or more of such classes, the registrar shall insert in the official paper an advertisement of such application, showing the name and address of the applicant, the class in which he applies, the number given to the mark by the registrar, the places in London and Manchester respectively where a specimen of such mark is deposited for exhibition, and distinguishing whether the mark has or has not been used prior to the thirteenth day of August, one thousand eight hundred and seventy-five.*

(a) This and the following Rule were made on Feb. 26th, 1877, in substitution, so far as related to cotton marks, for Rules 13, 15 and 17 of the General Rules of August, 1876, as to advertisement.

Time of registration of cotton marks.

62b (a). *On the expiration of three weeks from the date of the first appearance of the advertisement of a mark in Classes 23, 24, 25, or in any one or more of such classes, in the official paper, the registrar may, if he is satisfied that the applicant is entitled to registration, register such mark in respect of the description of goods for which he may be entitled to be registered, and the applicant as the proprietor thereof, on payment of the prescribed fee.*

(a) See note to previous Rule.

Cotton mark not to be registered except in manner herein prescribed.

63. *A cotton mark shall not be registered except in manner and subject to the conditions prescribed by these Rules with respect to the registry of cotton marks.*

Applications for registration of new

63a (a). *The Rules numbered 57 to 63 as aforesaid do not apply to such trade marks in respect of cotton goods in Classes 23, 24 and 25 as are not cotton marks which were in use at the date of the passing of the Trade Marks Registration Act, 1875; and applications for the registration of trade marks in respect of*

goods in Classes 23, 24 or 25, and which marks were not cotton trade marks in use at the date of the passing of the Trade Marks Registration Act, 1875, shall be made in manner and subject to the conditions in and subject to which applications for trade marks other than cotton marks may be made in conformity with the Rules in that behalf for the time being in force.

for cotton goods (classes 23, 24, and 25) to be made in the same manner as for all other classes of goods.

Provided that where application is made for the registration as a trade mark in respect of any goods in Classes 23, 24 or 25 of any mark being a cotton mark contained in the second class of the list mentioned in Rule 59 aforesaid, such registration shall not take place except in pursuance of an order of the Court.

(a) This Rule was made on Oct. 21st, 1879.

RULES OF MARCH, 1883, WITH RESPECT TO COTTON MARKS.*

57. [This Rule is identical with Rule 57, *suprà*.]

58 (a). The Commissioners of Patents may from time to time add to the first and second class lists of cotton marks formed by the late Manchester Committee of Experts any cotton marks as they may think just, and such addition shall be deemed to be part of the original lists.

(a) This is taken from the old Rule 61.

59 (a). Any proprietor of a cotton mark in the first class may apply to be registered as proprietor of such cotton mark in manner and subject to the conditions in which he may apply to be registered as proprietor of any other trade mark, but it shall not be lawful for the registrar to register any person as proprietor of any cotton mark in the second class aforesaid, except in pursuance of an order of the Court.

(a) This is taken from the old Rule 62.

60. [This Rule is identical with Rule 62a, *suprà*.]

61. [This Rule is identical with Rule 62b, *suprà*.]

Establishment of office for exhibition of cotton trade marks at Manchester. Marks may be added to the first and second class lists of cotton marks.

Any person claiming to be the proprietor of a cotton mark in first class may apply to be registered.

Advertisement of cotton marks.

Time of registration of cotton marks.

* See note, p. 544, *suprà*.

APPENDIX E.

THE MERCHANDISE MARKS ACT, 1887, AND THE STATUTES, REGULATIONS AND ORDERS CON- NECTED THEREWITH.

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 :

Short title.

1. This Act may be cited as the Merchandise Marks Act,
1887 (a).

(a) It was held that it was not against the policy of the law for
proceedings taken under the Merchandise Marks Act, 1862, now replaced
by this Act, to be compromised: *Fisher v. Apollinaris Co.*, L. R. 10 Ch.
297.

Offences as to
trade marks
and trade
descriptions.

2.—(1.) Every person (a) who—

(a.) forges (b) any trade mark (c); or

(b.) falsely applies (d) to goods (e) any trade mark (c) 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 (f) for
the purpose of forging (b), or of being used for
forging (b), a trade mark (c); or

(d.) applies any false trade description (g) to goods (e); or

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

42 & 43 Vict.
c. 49.

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.

(a) Person includes any body of persons : see § 3 (1).

(b) Forgery of a trade mark is defined by § 4.

(c) Trade mark is defined by § 3 (1).

(d) Application and false application of a trade mark are defined by § 5 ; and see § 6.

(e) " Goods " is defined by § 3 (1).

(f) As to making dies and blocks, see § 6.

(g) Trade description and false trade description are defined by § 3 (1), and see also § 3 (2) and (3), also § 6. Compare § 18.

(h) In *Gridley v. Swinborne*, 5 Times L. R. 71, the Court appears to have entertained the view that the burden was on the prosecutor to prove a *mens rea* on the part of the defendant ; but an intent to defraud a purchaser is not a necessary ingredient in the offence : *Wood v. Burgess*, 24 Q. B. D. 162, and in *Starey v. Chilworth Gunpowder Co.*, 24 Q. B. D. 90, it was held, in proceedings taken by a trade society, that though the article supplied was of the quality contracted to be supplied, and had been accepted by the purchaser without objection, and no pecuniary loss or injury of any kind had been suffered by the purchaser, yet, inasmuch as the vendors were known as manufacturers only, and not as dealers, and they had placed their own name on the goods, without any notification that the goods had been obtained by them from elsewhere, they were not entitled to say that there was no intent to defraud.

(i) Under the present statute a person in possession of wrongfully marked goods for sale, &c., has to give information with respect to the persons from whom he obtained the goods, if he wishes to escape the penalties of the Act. By § 6 of the repealed Merchandise Marks Act, 1862, he was compellable to give the information under a special penalty.

(k) Whether a person charged with an offence under this Act is dealt with summarily or on indictment, the principles to be applied are the same : Per Lord Coleridge, C. J., in *Gridley v. Swinborne*, 5 Times L. R. 71.

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 § 103 of the Patents, Designs, and Trade Marks Act, 1883, are, under Order in Council (a), for the time being applicable :

The expression " trade description " means any description, statement, or any other indication, direct or indirect (b).

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

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

- (c.) as to the mode of manufacturing or producing any goods, or
- (d.) as to the material of which any goods are composed (e), or
- (e.) as to any goods being the subject of an existing patent (f), 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 (g), 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 unincorporate:

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 connection with goods of the same description, and not having authorised the use of such name or initials (*h*), and
- (c.) are either those of a fictitious person or of some person not *bonâ fide* carrying on business in connection with such goods.

(a) See Table of Orders in Council in Appendix C.

(b) See § 18.

(c) See *Hooper v. Balfour*, W. N. 1890, p. 61.

(d) See *Starey v. Chilworth Gunpowder Co.*, 24 Q. B. D. 90. Also § 7 as to watches.

(e) In *Gridley v. Swinborne*, 5 Times L. R. 71, it was held by the Q. B. D. that it was not a false trade description to apply the term "isinglass" to a material which, though not in the most strictly scientific sense isinglass, was yet very similar to it and was frequently called by that name.

(f) See § 105 of the Patents Act, 1883. The difference between that section and this appears to be that under that section no offence is committed if there has ever been a patent, while under this an offence is committed if there is not a patent still actually in existence. In *Gridley v. Swinborne*, 5 Times L. Rep. 71, an article had been sold for upwards of forty years as "Swinborne's Patent Refined Isinglass," there having originally been a patent granted in 1847; and it was held that to continue to use the word "Patent," as had so long been done, was not to apply to the article a false trade description. It was held that a person who himself wrongfully inserted or retained the word "Patent" in his trade mark could not avail himself of the Merchandise Marks Act, 1862: *Morgan v. McAdam*, 36 L. J. Ch. 228.

(g) There is nothing to show what is meant by "in a material respect," but it would appear that a trade description which is inaccurate is not false in a material respect unless the inaccuracy would have some effect on the mind of a purchaser. *Starey v. Chilworth Gunpowder Co.*, 24 Q. B. D. 90, seems to show that a very stringent interpretation will be placed on the Act. In that case a firm of English gunpowder manufacturers, who usually sold gunpowder of their own make only, had entered into a contract with the Government for the supply of a quantity of powder, the contract containing no stipulation that the powder was to be of their own or of English manufacture. They were unable, in consequence of an accident, to supply the powder of their own make, and they consequently supplied German powder in barrels marked with their name, but without any statement where or by whom the powder was made; and it was held that although the quality was correctly stated, and the powder was as good as if it had been made by them, and the Government had accepted it without objection, yet, inasmuch as the expectation would be that a firm known only as manufacturers and not as dealers would supply only gunpowder of their own make, the use of their name, without a statement as to the foreign origin of the powder, was an application to the goods of a false trade description.

(h) See *Wood v. Burgess*, 24 Q. B. D. 162.

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.

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

- (a.) applies it to the goods themselves ; or
- (b.) applies it to any covering (a), 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 connection 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) For definition of "covering," see subs. (2) of this section.

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 Exemption of certain persons employed in

ordinary
course of
business.

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 *prima 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 (a).

(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 the 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 (a).

(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.

(a) See Order in Council of Nov. 28th, 1887, p. 564, *infra*.

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. Trade mark,
how described
in pleading.

10. In any prosecution for an offence against this Act,— Rules as to
evidence.
(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.

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. Punishment
of accessories.

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 Search
warrant.

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 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 such 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 § 1 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.

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. Limitation of prosecution.

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: Prohibition on importation.

- (1.) All such goods (*a*), 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 (*b*), unless such name or trade mark is accompanied by a definite indication (*c*) 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 § 42 of the Customs Consolidation Act, 1876 (*d*). 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 (*e*) 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 (*e*), 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 (*f*), that name, unless accompanied by the name of the country in which such place is situate (*g*), 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 2 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 (*h*), without prejudice to anything done or suffered thereunder.

46 & 47 Vict.
c. 55.

(a) The only goods which are prohibited by this section to be imported are, in addition to foreign goods bearing a real or spurious British name or trade mark, goods which, if sold, would be liable to forfeiture under this Act. The goods liable to forfeiture are the goods in relation to which an offence against the Act has been committed (§ 2 (3) (iii.)). Except, therefore, in the case of foreign goods with British marks, for goods to be seized it ought to be proved that an offence against the Act has been committed. But such an offence is not necessarily committed whenever the goods have on them a forged trade mark or a false trade description, and it would therefore appear that before goods bearing a forged trade mark or a false trade description are absolutely seized, it ought to be ascertained whether the owners can clear themselves of having committed an offence against the Act, under the provisions either of § 2 (1) or of § 2 (2), as may be applicable, since if they can do so, the goods are not seizable, even though they are improperly marked. See also § 12 (2) as to forfeiture.

(b) See 46 & 47 Vict. c. 55, § 2 (1) (a), also 39 & 40 Vict. c. 36, § 42, and 16 & 17 Vict. c. 107, § 44.

(c) See § 18.

(d) See p. 563. When goods have been wrongfully seized for an alleged

offence, the owner's remedy is to bring an action against the officer who seized the goods. Such actions are now controlled by 39 & 40 Vict. c. 36, §§ 268-74 and 40 Vict. c. 13, §§ 4, 5. By §§ 268-9 of the earlier Act one month's notice in writing is to be given before the action is commenced, and by § 270 the officer may tender amends within the month. By § 272 an action against an officer is to be commenced within one month (enlarged by 40 Vict. c. 13, § 4 to two months) after the day of seizure. After that time the only remedy appears to be to apply to the Commissioners of Customs or to the Treasury, under subs. (6) of this section. In *Jacobsohn v. Blake*, 7 Scott, N. R. 772, the defendants, who were custom-house officers, took possession of and detained goods imported by the plaintiff, believing them to be subject to forfeiture; but the goods were never actually seized, and ultimately it turned out that the goods were not liable to forfeiture, and they were delivered over to the plaintiff. The latter thereupon commenced an action for trespass; but it was held that, the goods never having been actually seized, but having been only detained for examination, the action would not lie.

(e) See these Regulations at p. 566.

(f) See 46 & 47 Vict. c. 55, § 2 (1) (b), also 39 & 40 Vict. c. 36, § 42, and 35 & 36 Vict. c. 20, § 4.

(g) See 46 & 47 Vict. c. 55, § 2 (3), also 39 & 40 Vict. c. 36, § 42, and 35 & 36 Vict. c. 20, § 4.

(h) This is the date fixed by the Regulations, p. 570, *infra*.

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. Implied warranty on sale of marked goods.

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 (a), 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. Provisions of Act as to false description not to apply in certain cases.

(a) See *Marshall v. Ross*, L. R. 8 Eq. 651, "patent thread." In *Gridley v.*

Swinborne, 5 Times L. R. 71, it was held that the defendant had a good defence under this section.

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 (a).

(a) See § 106 of the Patents Act, 1883, as to unauthorised use of the Royal Arms.

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.

The expression “court of summary jurisdiction” means justices acting under these Acts.

14 & 15 Vict.
c. 93.

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.

CUSTOMS ACTS.

The Customs Consolidation Act, 1876 — 39 & 40 Vict. c. 36.

§ 42 (a). 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 therein, such goods shall be forfeited, and may be destroyed or otherwise disposed of as the Commissioners of Customs may direct.

Table of prohibitions and restrictions.

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 (b).

* * * * *

§ 153. If any articles of foreign manufacture, and any packages of such articles, bearing any names, brands, or marks being or purporting to be the names, brands, or marks of manufacturers resident in the United Kingdom, shall be imported into any of the British possessions abroad, the same shall be forfeited (c).

Foreign manufactures with British marks.

(a) This section was amended by 46 & 47 Vict. c. 55, now replaced by § 16 of the Merchandise Marks Act, 1887.

(b) This is re-enacted from 16 & 17 Vict. c. 107, § 44.

(c) This is re-enacted from 16 & 17 Vict. c. 107, § 161.

The Customs and Inland Revenue Act, 1879—42 & 43 Vict. c. 21.

PART I.—CUSTOMS.

Entry of
British goods
returned.

§ 6. * * * Provided also, that if any British goods brought into the United Kingdom bear the name, brand, or mark of any British manufacturer, the same shall, either by bill of store, or by and with the consent in writing of the proprietor of such name, brand, or mark, or his legal representative, or on proof to the satisfaction of the Commissioners of Customs, by declaration of the importer, that such goods are of British manufacture, be admitted to entry as British (a).

(a) This is re-enacted from 30 & 31 Vict. c. 82, § 6, and 39 & 40 Vict. c. 36, § 63.

ORDER IN COUNCIL UNDER § 8 OF THE MERCHANDISE
MARKS ACT, 1887.

At the Court at Windsor, the 28th day of November, 1887.

PRESENT,

The QUEEN'S Most Excellent Majesty in Council.

WHEREAS by the Merchandise Marks Act, 1887, 50 & 51 Vict. c. 28, it is amongst other things, provided that—

- (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 the 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.

Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and in exercise of the powers vested in Her by the above-recited provisions of the said Act, is pleased to order and declare, and doth hereby order and declare, that where it appears by such declaration that such watch-cases have been made in some country or place out of the United Kingdom, then the following Authorities, that is to say:—

The Wardens and Commonalty of the Mystery of Goldsmiths of the City of London ;

The Guardians of the Standard of Wrought Plate, Birmingham ;

The Company of Goldsmiths of the City of Chester ;

The Guardians of the Standard of Wrought Plate, Sheffield ;

The Incorporation of Goldsmiths of the City of Edinburgh ;

The Goldsmiths' Company of the City of Glasgow ;

The Fraternity or Company of Goldsmiths of the City of Dublin ;

shall respectively cause to be placed on such watch-cases the marks more particularly described and delineated in Schedule II. hereunto annexed, and no other mark or marks, and such marks are hereby authorised accordingly.

And it is hereby further ordered and declared that the declaration to be made shall be in the form set forth in Schedule I. hereunto annexed.

This order shall come into operation on the first day of January, one thousand eight hundred and eighty-eight.

C. L. PEEL.

SCHEDULE I.

Form of Declaration.

I (a) do hereby declare that the
 [watch-case] or [watch-cases] [brought] or
 [sent] by me this day to the Assay Office at
 in number and in a parcel marked
 [was] [were] made in

(b)

(a) Here insert name and address of declarant.

(b) Signature of declarant.

Declared at _____ this _____ day of
18 .

Before me

(c)

Officer of the aforesaid Assay Office appointed in that
behalf _____, or, Justice of the Peace for _____,
or, Commissioner having power to administer oaths in the
Supreme Court of Judicature in England.

[Supreme Court of Judicature in Ireland].

[Court of Session in Scotland].

(c) Signature and title of person before whom the declaration is made.

SCHEDULE II. (a).

On a foreign gold case:—

Within a shield of the form of a Cross, and of the size
shown in Figure I. of the Appendix hereto, the word
“Foreign,” over which a hall mark particular to each
office shown in Figure III. and the carat value of the
gold, and under which the decimal equivalent of the
carat value of the gold together with the variable
annual date letter.

On a foreign silver case:—

Within a shield of the form of a regular octagon and of
the size shown in Figure II. of the Appendix hereto,
the word “Foreign,” over which a hall mark particular
to each office shown in Figure III. and under which
the variable annual date letter.

The particular hall mark above referred to for each of the
seven assay offices at which foreign cases may be stamped is
shown in Figure V. of the Appendix hereto.

(a) See a table of the marks prescribed by this Schedule in Appendix G,
infra.

REGULATIONS MADE BY THE COMMISSIONERS OF CUSTOMS UNDER § 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 descriptions, or
trade marks falsely applied to them:

And after defining (amongst other things), the expression
“trade mark” in manner therein set forth, with refer-
ence to “The Patents, Designs, and Trade Marks Act,

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 § 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 § 42 of " The Customs Consolidation Act, 1876 " :

And whereas by § 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 § 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 § 2 of the Revenue Act, 1883, shall be repealed from a day to be fixed by Regulations under the said reciting sections, such day not being later than the first day of January 1888, without prejudice to anything done or suffered thereunder :

And whereas § 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 of 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 the 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 time 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 the 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 § 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 transshipment 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 § 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 repeal.

CHARLES DU CANE	} Commissioners of H. M. Customs.
H. MURRAY	
HORACE SEYMOUR	

Custom House, London,
1st December, 1887.

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 undermentioned goods,
that is to say, (a)

(a) 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 (b)
from

(b) Describe the ship, and give name or indication.

That such goods are liable to detention and forfeiture being (c)

(c) 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 the infringement is one as to place or country of origin, state the name of the place or country falsely used.

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 , 18 .

A. B.
(or Agent for)

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.

(Bond.)

THE MERCHANDISE MARKS ACT, 1887.

KNOW ALL MEN BY THESE PRESENTS, THAT WE A.B.
and

are 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 § 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 {

GENERAL ORDERS MADE BY THE COMMISSIONERS OF CUSTOMS
FOR CARRYING INTO EFFECT THE MERCHANDISE MARKS
ACT, 1887.

General Order $\frac{81}{1887}$.

CUSTOM HOUSE, LONDON,

20th October, 1887.

SIR,

Herewith you will receive the usual number of copies of the
Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28).

You are carefully to note the meanings given by the Act to
the following expressions, viz. :—

- | | | |
|------------------------------------|---|------|
| “ Goods,” § 3. | } | § 3. |
| “ Applied,” § 5 ; subs. 1 & 2. | | |
| “ Falsely applied,” § 5 ; subs. 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 § 10, subs. (2), and § 18 of the Act.

You will observe that by § 5 of the Act the word “ applies ”
in connection 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, in-
cluding 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 § 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 § 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 § 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 $\frac{99}{1887}$.

CUSTOM HOUSE, LONDON,

22nd December, 1887.

SIR,

1. As a sequel to G.O. $\frac{81}{1887}$ you will receive herewith a copy of the Regulations made by the Board under § 16 of the Merchandise Marks Act, 1887, published in the *London Gazette* of the 2nd of December, 1887, and in the *Board of Trade Journal* for the present month.

Twofold object
of Regulations.

2. You will observe that the Regulations do two things:

(i.) They direct that goods prohibited by the Act which are detected by the officers upon examination (that is to say, upon ordinary examination for revenue purposes), are to be detained without previous information.

(ii.) They provide what is to be done in cases where prohibited importation, and the ground of such prohibition, are matters not of detection, in the ordinary way, but of information by an informant.

General points
on which

3. You will require guidance as to what goods, in the opinion of the Board, the officers ought to detect as mentioned in

sub-paragraph (i.); and as to the action to be taken by officers, after information, as mentioned in sub-paragraph (ii). guidance is necessary.

4. The Act extends so largely the area of prohibited goods, for the benefit not only of British subjects, but also of the subjects and citizens of foreign states, that as to a considerable proportion of goods liable to prohibition on importation, the officers cannot be expected to act without some guidance by information. It must not be, however, held or worked so as in any way to diminish the care at present taken by the officers in respect to "British Marks," involving names of British places, or indications of British manufacture, and to this extent, at least, the officers must continue to act without previous information. As to the scope of the Act with reference to "British Marks."

5. You will observe that names or trade marks of British manufacturers, dealers, or traders on imported foreign goods (§ 16, sentence beginning "all goods of foreign manufacture") are to be only admissible if distinctly qualified, not merely, as heretofore, by words showing manufacture abroad, but by a definite indication of the country in which the goods were made or produced; and this same principle is contained, even more emphatically, in § 18 of the Act, as regards lawful and general "trade descriptions," which include the name of a place or country. Reference to particular provisions as to place or country of origin.

6. The goods, therefore, which the Board distinctly expect the officers themselves to detect upon ordinary examination, and without previous information, will be as follows, viz. :— Classification of goods specially indicated for detection without information.

Class (a). Goods of foreign manufacture, by whomsoever imported, having applied to them, either,

A name or trade mark which is or purports to be the name or trade mark of a manufacturer, dealer, or trader in the United Kingdom; or a trade description which indicates particular class or method of manufacture, and includes 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 goods which have not been manufactured or produced in the United Kingdom;

unless such name, mark, or description is accompanied by a definite indication of the place or country in which the goods were made or produced, that is to say, an addition immediately before or after the said name, mark or description, in an equally conspicuous manner therewith, of the name of the place or country in which the goods were actually made or produced, with, in the case of a trade description including name of place, a statement that they were made or produced there.

Class (b). Goods of foreign manufacture, by whomsoever imported, having applied to them any description, figures, words, or marks, or arrangement or combination thereof, so as to constitute, by being or including, either expressly or by reference, the name of a place in or a part of the United Kingdom, or in any other way, a statement or other indication, direct or indirect, that the goods were made or produced in the United Kingdom.

7. On the above classification you will note this paragraph and the paragraphs to 10 inclusive.

As to the requirement of a definite indication of place or country of origin.

It will obviously not be in the power of the officers, nor are they expected, to decide whether goods falling within class (a) were actually made or produced in the country from which they come; but, in practice, it will be sufficient if the officers satisfy themselves that the name of *some* foreign country, or of some place in a foreign country, is applied to the goods in a manner equally indelible or irremovable, and as equally conspicuous, as the name or trade mark itself, and in close proximity to it.

As to the meaning of the word "purports."

8. The word "purports," also in (a), is to be understood as referring to any name or names reasonably suggesting a British manufacturer, dealer, or trader, without regard to the fact of 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 national devices or figures distinctly indicating British manufacture.

As to "trade description," including name of place calculated to mislead.

9. The words "a trade description which indicates a particular class or method of manufacture, and includes the name of a place in or a part of the United Kingdom, and is thereby calculated to mislead" mean such terms as Kidderminster Carpets, Windsor Soap, "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.

As to other, less definite, inscriptions indicating in any way make or production in the United Kingdom.

10. Class (b) refers to and includes such inscriptions as "present from such and such a place," and the like; or, even without a name, any phrases, words, language or devices, which state or indicate, directly or indirectly, make or production in the United Kingdom; and the words "by reference" mean that "Irish," for instance, is equivalent to "of Ireland." Any goods bearing such marks will be detained, and you will refer the matter to the Board.

Classification, generally, of goods prohibited by the Act.

11. Passing from the goods thus specially mentioned, those generally prohibited by the Act to be imported may be summarised as follows:—

(Head i.). Goods, whether of foreign manufacture or British goods brought back, having a false trade description as to name or initials, or a forged trade mark applied to them.

(Head ii.). Like goods having applied to them a false trade description as to the place or country in which they were made or produced; or as to number, quantity, measure, gauge or weight, mode of manufacture or production, or material of which composed; or as to the goods being the subjects of any existing patent, privilege, or copyright.

A false trade description is a description or indication, whether original or by addition, effacement or otherwise, and whether by figures, words, or marks, or any arrangement or combination thereof, directly or indirectly false in a material respect.

12. With regard to Head (i.). This is the protection of a manufacturer, dealer, or trader against the fraudulent or unfair use of his name or trade mark by any other person. It would not be possible for officers to enter into examination of all names and marks in respect to their use as between various importers. At the same time, 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 false trade description, or forged trade mark, is entitled to ask that, without the requirement of special information, such description or mark may, upon any importation, be stopped.

13. For this purpose the Board sanction the system of registration of names or marks in a way *similar* to that which has hitherto existed; and 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 are applied, unless the delivery is authorised by the registered proprietor. Apart from names or marks as to which such registration exists, the officers are not expected to examine goods with reference to Head (i.).

Registration for this purpose.

14. Any manufacturer, dealer, or trader, whether British or foreign, may register his name or mark; but you may refuse registration to any name or mark which you consider to be of a character too indefinite or indistinct for officers 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; and if, in order to avoid delay, he desires to do so, he may appoint an agent to give authority for delivery of

Who may register, and on what terms.

See paragraph 32.

his goods, and prove (also by declaration) the appointment of such agent.

Registration to be subject to provisions mentioned in paragraph 6.

15. You must understand, very distinctly, that the use by the British manufacturer, dealer, or trader 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 the qualifying conditions specified in paragraph 6 are complied with. You must, therefore, clearly explain 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. The register at your port under the law now expiring will cease to be operative with the expiry of that law.

Notwithstanding classification in paragraph 6, any other infringement detected is to be followed by detention.

16. As regards Head (ii.) ; if (apart from the goods specially mentioned in paragraph 6, and notwithstanding that classification) the officers should in any case upon that ordinary examination for revenue purposes, detect anything constituting an infringement of any of the prohibitions of the Act as thus set forth, you will detain such goods and refer the matter to the Board.

Indication as to where such detection may happen.

17. Such detection by officers may happen, for instance, as to number, quantity, measure, gauge, or weight ; while, on the other hand, as to mode or material of manufacture, as to any patent, privilege, or copyright,* or foreign trade marks, the officers, upon ordinary examination, may probably, in the absence of special knowledge, fail in detecting false descriptions or forged trade marks.

Directions as to question of place or country of origin.

18. False descriptions as to place of origin affecting the interests of "British Possessions" or "Foreign States" are matters which, unaided by information, officers will not generally be expected to trace ; but wherever they observe goods conspicuously known as the usual product of a particular place or country, and marked with that name, shipped from a port in another country altogether—as, for instance, Wine marked "Xeres" or "Spanish" from Belgium, or Cigars marked "Havana" from Germany—such goods may, in the absence of proof of make or produce at the place or in the country named on them, be properly detained.

Action upon information—two stages of such action.

19. Some directions (beyond what is shown in the Regulations) are desirable as to your action upon "information ;" and you will observe that there are two stages of procedure in this :

* As to copyright, this instruction in no way affects the practice under §§ 42 and 44 of "The Customs Consolidation Act, 1876."

viz., one up to and including the arrival and examination or identification of the goods; and the other after the examination or identification.

20. With regard to the first stage—the two points for consideration are, whether any, and if so what, special examination of the goods should be made, and what deposit should be taken to cover the expense of such examination, if it is made.

As to special examination of goods in such case.

21. The character and extent of examination will require careful discretion on your part, and will depend on the manner in which the goods are alleged in the notice to infringe the Act. An indication has been given you above as to what the Board consider that officers can detect and what they cannot, upon ordinary examination; and this will furnish you with a guide as to what they may be able to trace upon fuller examination after information.

On what it will depend.

22. Wherever, in accordance with such indication, you are of opinion that the officers could not, even on fuller examination, discover whether the goods infringe the Act, you need not order a special examination, and consequently you will not require any deposit in respect of such examination, but you may at once order detention of the goods as if the officers had seen cause to detain them, and proceed to require security, in conformity with directions given in paragraph 29 of this Order.

Course where such examination would not be serviceable.

23. Wherever, on the other hand, you are of opinion that a fuller examination than that ordinarily directed for revenue purposes may reasonably enable the officers to discover whether or not there is the infringement alleged—as, for instance, by careful weighing, measuring, counting, or gauging—you will direct that such an examination shall take place, examining as to free goods, for this purpose, not less than twice the usual number of packages, and in the case of goods imported in bulk, such as machinery and the like, treating each piece imported as a package.

Course where such examination would be serviceable.

24. Assuming examination to be ordered by you in accordance with the lines above indicated, you will take, as a deposit to cover the additional expense of this examination, such sum as you may think necessary, having regard to the nature of the goods, and to the number of packages which, according to the informant's knowledge, will have been stated in the notice.

Deposit to cover such examination.

25. The case of false description as to place of origin affecting the interests of "British Possessions" or "Foreign States" is here again one for special mention. As above stated, it is one which, as a rule, officers cannot be expected to detect without information; but, for an officer examining upon information, the following rules may be laid down: viz., if it is ascertained that the name of place or country complained of is not applied

Special rules in such examination in regard to place or country of origin as affecting

British Possessions or foreign states.

to the goods at all, or, if applied, is accompanied by a definite indication or addition, as contemplated by the Act, of make or production elsewhere, the officer may be satisfied that there is no ground existing to justify the notice received; but 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 a port or 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.

As to British Possessions and foreign states to which the provisions in relation to forged trade marks apply.

26. In the case of a notice alleging the application of a forged trade mark where the mark is one protected in a British Possession or foreign state, such a notice will only be good, and need only be accepted by you, if it relates to possessions or states included in the definition of trade marks.

Up to the present time the British Possessions and foreign states so included are :

- | | |
|--|---|
| BRITISH POSSESSION ... | Queensland. |
| FOREIGN STATES IN EUROPE | Belgium.
France.
Italy.
The Netherlands.
Norway.
Portugal.
Servia.
Spain.
Sweden.
Switzerland. |
| IN N. AND S. AMERICA AND THE W. INDIES | Brazil.
Guatemala.
Paraguay.
San Domingo.
The United States of America.
Uruguay. |
| IN AFRICA | Tunis. |

Transshipment and transit.

27. As to transshipment and transit goods; where information and "notice" relate to these goods you will deal with them exactly as if they were goods for home use. Apart from information you will not, as regards the ordinary examination of such goods for revenue purposes, examine more packages than at present; but the Board, in addition to the existing rules as to transshipment and transit goods, direct that, as to all such goods, no marks of any kind or description shall be allowed to be applied to them in this country, and you will see that this is strictly carried out in your port.

Rules as to special

28. As to goods examined upon information generally, you

will be guided by the following rules. If upon examination the officer is satisfied that there is no ground existing to justify the notice received, he will pass the goods; if he is satisfied that the alleged infringement clearly exists, he will detain the goods as in a case of detention upon ordinary examination; but in cases where the officer is not so satisfied, and in cases where you may have considered that official examination cannot test the point, you will order the detention of the goods at the risk of the informant, and thus arrive at the second stage of the procedure upon information—viz., the taking of security.

29. You will observe that (except in cases where the informant prefers to give a bond, and where time allows such a step to be taken before the goods arrive and are examined), there are two things to be done in taking security: first, to take an *ad valorem* money deposit to cover the possibility of the bond not being completed; and secondly, to see that the bond is completed, after which you will return the deposit. The amount of both the deposit and the bond will depend on the value of the goods.

As to security where detention ordered.

30. The form of Notice given in the Schedule to the Regulations requires a statement of the names of persons proposed as sureties. As to the sufficiency of these you will make inquiries in the usual way, and have the bond completed as in other transactions.

Inquiries as to sufficiency of sureties.

31. The security having once been taken, the goods will, without further special examination, remain in charge; and the Regulations contain definite provisions as to when, in the various contingencies that may arise, the security will be delivered up.

As to goods after security taken, and as to delivery up of security.

32. A form is annexed of the declaration mentioned in paragraph 14; and also of a Bond, when it is preferred to give one before examination, as mentioned in paragraph 29. Supplies of these forms, and of those given in the Schedule to the Regulations, can be obtained in the usual way.

Supply of forms.

33. A General Order as to Watch-cases and Watches will shortly be issued; and further directions will be given, from time to time, as decisions are arrived at, under paragraphs 9 and 10, and paragraphs 16, 17, and 18 of this Order.

I am,

Sir,

Your obedient Servant,

E. GOODWYN.

The Collector
at



MERCHANDISE MARKS ACT, 1887.

50 & 51 VICT. CH. 28.

*Declaration on Registration under Paragraph 13 of General
Order $\frac{99}{1887}$.*

(a) Full name
and address of
declarant:

Port of

(b) "I" or "I
and my
partners,
trading as
Messrs. "

I (a)

or "such and
such a Com-
pany, of which
I am the re-
presentative
official," or "so
and so of such
and such a
place abroad,
whom I repre-
sent in this
country.

hereby declare that (b)

(c) "is" or
"are."

(d) "the follow-
ing name as a
trade descrip-
tion," or "the
following
trade mark,"
or "the follow-
ing name as a
trade descrip-
tion and trade
mark."

(c) the proprietor , of (d)

viz.

(e) "I" or
"we."

(f) "I" or
"we."

(g) This por-
tion as to ap-
pointment of
agent may be
erased, where
such appoint-
ment is not
desired.

which (e) expect to be applied to goods imported, from

(h) "my" or
"our."

time to time, at this Port; and that (f) have appointed

Mr. (g)

of

to be (h)
goods.

agent, to give authority for the delivery of such

I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act, 1835.

Signed

Declared this day of . 18 .

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.

Know all Men by these Presents that we

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 has by a notice dated the day of informed the Collector of Customs at that the undermentioned goods, that is to say,

are about to be imported into the port of contrary to § 16 of the Merchandise Marks Act, 1887, and has requested that the said goods shall be detained and dealt with accordingly. Now the condition of this obligation is such that if the said , 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 or Their Officers of Customs, their executors and administrators, shall or may sustain or incur by reason or on account of any detention or delay in the delivery of the said goods, following upon the information contained in such notice and any proceedings consequent upon such detention or delay, then this obligation shall be void, otherwise shall be and remain in full force and virtue.

Signed, sealed and delivered }
}

General Order $\frac{9}{1888}$.

CUSTOM HOUSE, LONDON.

18th January, 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 § 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 § 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 § 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 November

last (a), 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

(a) See p. 554, *suprà*.

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

General Order $\frac{14}{1888}$.

CUSTOM HOUSE, LONDON.

4th February, 1888.

SIR,

With reference to paragraph (b) of § 5 of the Merchandise Marks Act, 1887, I am desired to acquaint you that a name of a port or place of destination applied to mere packing-cases, in which goods are clearly not intended to be sold, or exposed for sale, either wholesale or retail, will not render the goods liable to detention; but, where a package containing goods is not of this description, the port or place of destination should be accompanied by a definite indication of the country of origin.

I am, Sir,

Your obedient Servant,

E. GOODWYN.

To the Collector.

General Order $\frac{26}{1888}$.

CUSTOM HOUSE, LONDON.

10th March, 1888.

SIR,

I am desired to acquaint you, for the information and guidance of yourself and of the officers under your survey, that, with reference to paragraph 6 (b) and to paragraph 10 of General Order $\frac{99}{1887}$, the Board are of opinion that inscriptions applied to goods by means of labels or tickets, or applied to boxes, cartons, parcels, or other ultimate packages containing goods, manifestly only for the purpose of distinguishing the goods for the convenience of dealers and shopkeepers, and not specially intended to attract the eye of the consumer, should not be practically treated as trade descriptions, whenever the inscription consists simply of the bare name of the goods or indication of number, quantity, size, and the like.

For instance,—

on Hosiery,

“Hose”

“White Cotton—size 10”;

on Textile Fabrics,

“No.—Qual.—Colour—Dess.—Yards,”

or

“No.—Size—Quality—Shade”;

on Goloshes,

“1 Doz. pairs—Men’s 2nd Quality—No. 7.”

Goods bearing labels, tickets, &c., of this character only are not to be detained, whatever may be the language in which the inscriptions are printed or written.

You are to cause these directions to be carried into effect accordingly.

It is to be understood that this order does not apply to wording on the goods themselves, nor to any wording which includes the name of a place or country, the name of any trader, manufacturer or dealer, or a trade mark.

I am further to acquaint you that the last clause of General Order $\frac{14}{1888}$ is not to be read as applying to the names of ports

of unshipment, used for the mere purpose of indicating where the goods are to be unladen, as required frequently in bills of lading, whatever may be the description of package used.

The officers are to exercise their discretion in distinguishing whether those names are used solely for the purpose specified above.

I am, Sir,

Your obedient Servant,

R. T. PROWSE.

To the Collector.

General Order $\frac{33}{1888}$.

CUSTOM HOUSE, LONDON.

24th March, 1888.

SIR,

With reference to paragraph 33 of the General Order $\frac{99}{1887}$

I am desired to acquaint you that Swedish iron bearing the words "Lancashire Swedish," or the abbreviation thereof, "Lancash. Swedish," is to be admitted into this country without question so far as the provisions of the Merchandise Marks Act, 1887, are concerned.

This arrangement is sanctioned upon the understanding that the words of the Mark shall not be inverted, and that under no circumstances will Swedish iron marked "Lancashire" alone be admitted into this country.

I am, Sir,

Your obedient Servant,

R. T. PROWSE.

To the Collector.

General Order $\frac{44}{1888}$.

CUSTOM HOUSE, LONDON.

23d April, 1888.

SIR,

With reference to § 33 of the General Order $\frac{99}{1887}$

I am desired to acquaint you that packages used for the importation from any place of natural flowers, fresh fruit, vegetables and potatoes, and bearing upon them marks which the officers are satisfied are merely address marks, such as "Wm. Evans, Leeds," "Thos. Jones, London," are to be treated

as packing cases to which the provisions of the General Orders 14 and 26 1888 apply, and are not to be detained under the Merchandise Marks Act on account of such marks only.

Moreover, packages of the above description coming from the Channel Islands, Malta, Gozo, and Gibraltar, and bearing on them, in addition to address marks, any words in the English language describing the goods contained in the packages, are not to be detained on this account, provided such words do not constitute a trade mark, nor include the name of a place in the United Kingdom to which the General Orders quoted above do not apply.

I am, Sir,
Your obedient Servant,
R. T. PROWSE.

To the Collector.

General Order $\frac{7}{1889}$.

CUSTOM HOUSE, LONDON.

1st February, 1889.

MERCHANDISE MARKS ACT, 1887.

Certain Discretionary Powers given to Officers.

The importation sections of the Merchandise Marks Act, 1887, having now been in force for over twelve months, and its provisions having become familiar both to importers of goods and to the officers of customs, the Board have considered whether some discretionary power may not be given to the collectors, surveyors, or other superior officers in releasing goods which, although at first sight they appear to be liable to detention, yet on further explanation from the importer may properly be released, so far as the Merchandise Marks Act is concerned—such, for instance, as genuinely marked British returned goods, or private property in actual use.

The Board accordingly give to the collectors and surveyors at the Outports, and to the inspectors and surveyors in London, a discretionary power to deliver goods without a special order when they are satisfied that they come under any one of the following heads:—

(1.) Articles not dutiable, however marked, sent over to one individual as presents or for personal use, and not in any process of sale or purchase, on the officers satisfying themselves that the importer's statement in this respect is correct. (1.) Articles for private use.

(2.) Used articles either private property or sent for repairs.

(2.) Articles which are not new and which are manifestly private property, such as clothing or other personal effects, and old, used, and damaged articles sent to this country for repairs and imported by or consigned to the persons whose names are on the goods. Under this head, however, such goods as old lace, old china, or old violins, and similar articles sent by dealers for sale as antiquities, are not included; goods of this kind are strictly merchandise. Wherever age, apparent or real, adds to the value of the goods, they are not to be delivered under this paragraph, unless they are private property, not in any process of sale or purchase, but the directions of the Board must be obtained.

(3.) British samples returned.

(3.) Samples of *no value*, made by competing firms in the United Kingdom, and sent to manufacturers in this country for the purposes of trade, may be delivered on a statement being made in writing by the importer that the articles are samples of no value, and that they are imported for trade purposes, as samples, and not for sale or use, provided the officers are satisfied that they are of British manufacture.

(4.) Foreign samples.

(4.) Foreign samples *not* bearing the names or trade marks of manufacturers or dealers in the United Kingdom, but bearing trade descriptions which are misleading in language as to the country from which they come, may be also admitted upon being duly qualified, and on the officers being satisfied that they are imported for purposes of manufacture or comparison in this country. Foreign samples, however, bearing the names or trade marks of British manufacturers or dealers, or indirect indications of British manufacture, without qualification, sent for the purpose of soliciting orders for sale in this country, are to be placed under detention, and not delivered without the Board's sanction.

(5.) British returned goods.

(5.) British returned goods, not dutiable, or in respect to which no drawback can have been received, may be released under § 6 of the Act 42 & 43 Vict. c. 21, without a special order of the Board, so far as the marks are concerned, either by a Bill of Store, or by declaration of the importer that the goods are within his knowledge British returned, so long as the collector or surveyor sees no reason to doubt its truth.

Should, however, the goods be admitted to entry as British under the second alternative allowed by the section, viz.: "by and with the consent in writing of the proprietor of such name, brand, or mark, or his legal representative," such consent in each case must be accompanied by a statement from the persons whose names appear upon the goods that the articles have been manufactured by them in this country.

Should the officer who examines the goods have any doubt as to the truth of the statement, the matter is to be reported to the Board.

The officers will not call for Statutory Declarations made under the Statutory Declarations Act, 1835, without the Board's sanction in each case.

(6.) In London, 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 or no steps taken to carry out the conditions imposed by the Board on their release, within two months from the date of the Board's order for their detention, are to be removed to the Queen's Warehouse, without special directions in each case, should the officers see no circumstances which call for exceptional treatment.

(7.) 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.

BY ORDER,
E. GOODWYN.

To the Collector.

APPENDIX F.

STATUTORY ENACTMENTS WITH RESPECT TO MARKS ON GOODS, &c.

WEIGHTS AND MEASURES.

41 & 42 Vict. c. 49. (*The Weights and Measures Act, 1878.*)

PART I.—LAW OF WEIGHTS AND MEASURES.

Stamping and Verification of Weights and Measures.

Stamping of
weights and
measures with
denomination.

§ 28. Every weight, except where the small size of the weight renders it impracticable, shall have the denomination of such weight stamped on the top or side thereof in legible figures and letters.

Every measure of capacity shall have the denomination thereof stamped on the outside of such measure in legible figures and letters.

A weight or measure not in conformity with this section shall not be stamped with such stamp of verification under this Act as is hereinafter mentioned.

Stamping of
verification on
measures and
weights.

§ 29. Every measure and weight whatsoever used for trade shall be verified and stamped by an inspector with a stamp of verification under this Act.

Every person who uses or has in his possession for use for trade any measure or weight not stamped as required by this section, shall be liable to a fine not exceeding five pounds, or in the case of a second offence ten pounds, and shall be liable to forfeit the said measure or weight; and any contract, bargain, sale, or dealing made by such measure or weight shall be void.

Lead or pew-
ter weights.

§ 30. A weight made of lead or pewter, or of any mixture thereof, shall not be stamped with a stamp of verification or used for trade, unless it be wholly and substantially cased with brass, copper, or iron, and legibly stamped or marked "cased:"

Provided that nothing in this section shall prevent the

insertion into a weight of such a plug of lead or pewter as is *bonâ fide* necessary for the purpose of adjusting it and of affixing thereon the stamp of verification.

A person guilty of any offence against or disobedience to the provisions of this section, shall be liable to a penalty not exceeding five pounds, or in case of a second offence ten pounds.

§ 31. Every coin weight, not less in weight than the weight of the lightest coin for the time being current, shall be verified and stamped by the Board of Trade with a mark of verification under this Act, and otherwise shall not be deemed a just weight for determining the weight of gold and silver coin of the realm.

Stamping of verification on weights for coin.

Every person who uses any weight declared by this section not to be a just weight shall be liable to a fine not exceeding fifty pounds.

§ 32. If any person forges or counterfeits any stamp used for the stamping under this Act of any measure or weight, or used before the commencement of this Act for the stamping of any measure or weight, under any enactment repealed by this Act, or wilfully increases or diminishes a weight so stamped, he shall be liable to a fine not exceeding fifty pounds.

Forgery, &c., of stamps on measures or weights.

Any person who knowingly uses, sells, utters, disposes of, or exposes for sale any measure or weight with such forged or counterfeit stamp thereon, or a weight so increased or diminished, shall be liable to a fine not exceeding ten pounds.

All measures and weights with any such forged or counterfeit stamp shall be forfeited.

50 & 51 *Vict. c. 58.* (*The Coal Mines Regulation Act, 1887.*)

§ 15.—(1.) The Weights and Measures Act, 1878, shall apply to all weights, balances, scales, steelyards, and weighing machines used at any mine for determining the wages payable to any person employed in the mine according to the weight of the mineral gotten by him, in like manner as it applies to weights, balances, scales, steelyards, and weighing machines used for trade.

Application of 41 & 42 *Vict. c. 49* to weights, &c., used in mines.

52 & 53 *Vict. c. 21.* (*The Weights and Measures Act, 1889.*)

§ 1.—(1.) Every weighing instrument used for trade shall be verified and stamped by an inspector of weights and measures with a stamp of verification under this Act.

Verification of weighing instruments.

(2.) Every person who, after the expiration of twelve months from the commencement of this Act, uses or has in his possession for use, for trade any weighing instrument not stamped as

required by this Act, shall be liable to a fine not exceeding two pounds, or in the case of a second offence five pounds.

(4.) Section 32 of the principal Act (a) shall apply to weighing instruments in like manner as it applies to weights and measures.

25 & 26 Vict. c. 76. (*The Weights and Measures (Ireland) Amendment Act, 1862*) (b).

PART III.

Prevention of Frauds.

Penalty on
counterfeiting
brand.

§ 14. If any person commit any of the following offences, he shall for each offence be liable to a penalty not exceeding five pounds :

- (1.) If he, with intent to defraud, counterfeit or procure to be counterfeited any brand or stamp used by or under the authority of the owner or lessee of a market or fair, or of any person having by law the control of a market or fair, to denote the weight, measure, or quality of any article sold in the market or fair, or within the prescribed limits, during the holding of the market or fair, or of any cask, firkin, or other vessel, covering, or thing in which such article is sold, or the impression of any such brand or stamp :
- (2.) Or, with the like intent, use or procure to be used any such counterfeit brand, or stamp, or impression :
- (3.) Or, with the like intent, alter an impression of any such genuine brand or stamp :
- (4.) Or, with the like intent, have in his possession anything having thereon an impression of any such counterfeit brand or stamp, or a fraudulently altered impression of any such genuine brand or stamp :
- (5.) Or, with the like intent, transfer or apply any cask, firkin, or other vessel, covering, or thing, having thereon an impression of any such genuine brand or stamp, to any article other than that for denoting the weight, measure, or quality whereof such impression was made on such cask, firkin, or other vessel, covering, or thing, or in any other manner alter the *bond-fide* application of an impression of any such genuine brand or stamp :

(a) The principal Act is the Weights and Measures Act, 1878.

(b) This Act was repealed in part by 41 & 42 Vict. c. 49.

- (6.) Or knowingly weigh or caused to be weighed, contrary to the provisions of this Act, or act or assist in committing or connive at any fraud respecting the weighing or the weight or measure of any such article as in Part II. of this Act is mentioned (a):
- (7.) Or, with intent to defraud, alter any ticket specifying the weight of any such article:
- (8.) Or, with intent to defraud, make or use, or be privy to the making or using of any such ticket, falsely stating the weight of any such article, or of any covering, cart, or load:
- (9.) Or shall dispose of, sell, or cause to be sold any weight or measure having a false or counterfeit stamp, or a stamp purporting to resemble a genuine stamp.

§ 15. If any person shall wilfully pack up or mix, or cause to be packed up or mixed, with or in any butter contained in any firkin or cask, any salt pickle, or other substance, with intent to increase the weight of such butter, and shall bring or send any butter so packed or mixed to any market for sale, he shall be liable to pay a fine not exceeding forty shillings, or be imprisoned for any period not exceeding one month, as the justice or justices shall determine. Penalty for fraudulently increasing weight of butter in casks.

§ 16. If any person shall wind or cause to be wound in any fleece any wool not being sufficiently rivered or washed, or wind or cause to be wound within any fleeces any deceitful locks, cots, skin, or lamb's wool, or any substance, matter, or thing, whereby the fleece may be rendered more weighty, to the deceit and loss of the buyer, such person shall be liable to a penalty of two shillings for every fleece so fraudulently made up. Penalty for fraudulently increasing weight of fleeces.

THE EXHIBITION MEDALS ACT, 1863—26 & 27 Vict. c. 119.

§ 1. If any trader commits any of the offences following; Penalty on false representations.
that is to say:

- (1.) Falsely represents that he has obtained a medal or certificate from the Exhibition Commissioners (b) in respect of any article or process for which a medal or certificate has been awarded by the Commissioners: As to having obtained medals.
- (2.) Falsely represents (knowing such representation to be false) that any other trader has obtained a medal or certificate from the Exhibition Commissioners:
- (3.) Falsely represents (knowing such representation to be false) that any article sold or exposed for sale has

(a) *I.e.*, every article sold by weight.

(b) Of 1851 or 1862. See § 2.

been made by, or by any process invented by, a person who has obtained in respect of such article or process a medal or certificate from the Exhibition Commissioners :

He shall incur the following penalties, that is to say :

- (1.) For the first offence he shall forfeit to Her Majesty a sum not exceeding five pounds :
- (2.) For any subsequent offence he shall forfeit to Her Majesty a sum not exceeding twenty pounds, or be imprisoned for a period not exceeding six months.

By § 2, in proceedings under this Act, it is not necessary to prove that any person has sustained damage by the false representations.

By § 5 no provision of this Act is to affect any right or civil remedy.

REGISTERED DESIGNS.

THE PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

46 & 47 Vict. c. 57.

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 shows that he took all proper steps to ensure the marking of the article (a).

(a) Under the old Copyright of Designs Acts it was held that the copyright was lost by the sale of pattern pieces of wall paper containing the whole of the registered design, unmarked (*Heywood v. Potter*, 1 E. & B. 439); by the sale in France of lace bearing the design, unmarked (*Sarazin v. Hamel*, 32 Beav. 151); by the sale of a small number of articles bearing the design, unmarked (*Pierce v. Worth*, 18 L. T. N.S. 710); by the sale of one such article unmarked (*Hunt v. Stevens*, W. N. 1878, p. 79). But it was held that the copyright was not lost by the sale of a book containing patterns of registered designs, the book being unmarked (*De la Branchardière v. Elvery*, 4 Ex. 380); nor by the sale of a butter-dish with a cover, the dish being marked but the cover not (*Pielling v. Hawley*, 48 L. T. N. S. 639). And it seems that if the design were applied, but obscured in the process of manufacture, the same would have been the result (*ib.*).

Under the present Act it has been held that where a manufacturer was instructed by his principal to place the right mark on the goods, but by mistake placed on them an old and incorrect mark, the proprietor's right

THE DESIGNS RULES, 1883.

32. Before the delivery on sale of any article to which a registered design has been applied, the proprietor of such design shall, if such article is included in any of the classes 1 to 12 in the Third Schedule hereto, cause each such article to be marked with the abbreviation "RD." and the number appearing on the certificate of registration, and shall, if such article is included in the classes 13 or 14 in the Third Schedule hereto, cause each such article to be marked with the abbreviation "REGD." Registration
mark.

Class 13 includes "Printed or woven designs on textile piece goods."

Class 14 includes "Printed or woven designs on handkerchiefs and shawls."

The first twelve classes include all other goods.

was saved by the proviso in the section, especially as each mark bore the abbreviation "R^d" (*Wittman v. Oppenheim*, 27 Ch. D. 260). Also that where a narrow trimming was sold in lengths round each of which was placed a paper band bearing the proper mark, the marking was sufficient (*Blank v. Footman*, 39 Ch. D. 678).

APPENDIX G.

STATUTORY ENACTMENTS WITH RESPECT TO MARKS ON SPECIAL CLASSES OF GOODS (a).

CUTLERY.

59 *Geo. III. c. 7* (1819). "An Act to regulate the Cutlery Trade in England."

§ 1. Manufacturers may mark with the figure of a hammer articles of cutlery made by them by means of the hammer.

§ 3. No person is to mark articles of cutlery not made by means of the hammer with the figure of a hammer, or to possess for the purpose of sale, or offer for sale such articles so marked, under penalty of forfeiture of the articles so marked, together with a fine of 5*l.* a dozen.

§ 4. No person is to mark articles of cutlery, or possess for the purpose of sale, or offer for sale articles marked with any words indicative of a quality other than the true one, under similar penalties.

§ 5. No person is to mark articles, or possess, &c., articles marked with the words "London" or "London made," unless such articles were made within the City of London, or twenty miles distance therefrom, under the penalty of forfeiture, together with a fine of 10*l.* a dozen.

§ 14. Articles of cutlery subject to forfeiture by virtue of the Act may be seized and destroyed, &c., by order of justices.

The remaining provisions refer chiefly to forms of procedure, recovery of penalties, &c.

The Cutlers' Company of Hallamshire.

21 *Jac. I. c. 31* (1623).

§ 1 (b). The cutlers living in Hallamshire, or within six miles distance therefrom, are incorporated under the corporate name of "The Master, Wardens, Searchers, Assistants and Commonalty of the Company of Cutlers in Hallamshire in the county of York."

(a) The Acts abstracted in the text are in force at present.

(b) The remainder of this Act is repealed by 81 *Geo. III. c. 58*.

31 *Geo. III. c. 58* (1791) (a).

§ 1. The company to consist of the trades hereinafter mentioned, and of none other.

§ 3 enumerates "the arts or trades of makers of knives, sickles, shears, scissors, razors, files and forks."

§ 7. Apprentices who have served for seven years are to have, at twenty-one years of age, their freedom of the company and a mark to be assigned them.

§ 17. Members of the company counterfeiting marks assigned to others are for every offence to pay a penalty not exceeding 20*l.* nor less than 4*l.*

§ 26. Penalties may be sued for by the company, or by the party aggrieved, in the Courts at Westminster.

§ 27. One or more justice or justices of the peace for the West Riding of the county of York, or for the county of Derby, shall, upon information of an offence for which a penalty is imposed, summon the parties and witnesses, and hear and determine the matter in a summary way, and give judgment with costs, and issue a warrant for levying the penalties by distress, and if the goods are insufficient, then shall commit the offender to the House of Correction for one month. Costs may be given to a person wrongly accused.

§ 28 contains a form of conviction.

§ 29. An appeal is given to the Court of Quarter Sessions at Sheffield, Rotherham, Barnsley, Wakefield, or Pontefract.

§ 31. The penalties which come to the company are to be distributed among the poor of the company.

The Act contains other provisions with respect to the constitution of the company, procedure, &c.

41 *Geo. III. c. 97* (1801), (Local).

§ 2. A freeman of the company is empowered to give his mark by will to any person or persons, in the same manner as his other personalty, subject to the life estate therein which his widow is to have during her widowhood or any future coverture, and which she may sell, though on her death the provisions of the husband's will take effect.

§ 3. In default of a will, the mark is to pass in the same manner as its owner's other personalty, subject to the widow's life estate (b).

§ 5. Parish apprentices who shall prove to the satisfaction of a justice that they have regularly served a freeman for seven years shall be entitled to their freedom and a mark.

54 *Geo. III. c. 119* (1814), (Local).

This Act repeals several of the provisions of the Act of 1791, in favour of free trade.

(a) Considerable portions of this Act have been repealed by the Acts which follow.

(b) And see § 6 of the Act of 1814.

§ 3. Any person carrying on any of the specified trades within the specified limits has a right to have a mark assigned to him by the company on application, which mark is not to be one that is the property of another, nor a surname (a); and for such mark he is to pay forty shillings, and if the mark be one previously assigned but surrendered, 3*l.* in addition, besides, in either case, any stamp duty imposed by Act of Parliament (b).

§ 4. No mark is to be assigned by the company if they have notice that it is in common use, or in the use of any person within the district (c).

§ 5. Members of the company, or any other persons carrying on any of the specified trades within the specified limits, who shall use a mark assigned by the company to another person, with intent to counterfeit, shall for every offence forfeit and pay a sum not exceeding 20*l.*, half of the fine to go to the injured person, the other half to the company. The fine is to be recovered and applied as under the Act of 1791.

§ 6. The provisions made by § 2 of the Act of 1801, for the devolution of marks on the deaths of their owners, are to apply to marks assigned under the present Act (d), but not more than one person of the family shall be entitled to use the mark at the same time.

23 *Vict. c. xliii.* (1860), (Local).

§ 1. The provisions of the previous Acts are extended to "the arts or trades of manufacturers of steel and makers of saws and edge-tools and other articles of steel, or of steel and iron combined, having a cutting edge."

§ 2. Any person exercising any of the trades formerly or now specified, within the specified limits, may and shall, on application to the company and payment of 20*l.* in addition to any other fees payable, become a freeman of the company and have a mark assigned to him.

§ 3. The former and present Acts may be cited as "The Cutlers' Company's Acts, 1623, 1791, 1801, 1814, 1860," respectively.

(a) The similar provision in § 24 of the Act of 1791 (repealed by the present Act), with respect to non-freemen, provided that, on a non-freeman having a mark assigned to him, he should become a freeman of the company. This is not repeated here.

(b) A mark assigned to a non-freeman is assignable by him. See *Bury v. Bedford*, 4 *Do G. J. & S.* 352. But where a person to whom a Sheffield mark had been assigned had assigned it to another, and had not gone through the process of surrendering it to the company for re-assignment to his assignee, the latter was not recognised by the company as the

proprietor of the mark, nor admitted to registration under the Trade Marks Registration Act, 1875, until he had perfected his title: *In re Rabone*, Dig. 643.

(c) By the Trade Marks Registration Act, 1875, § 9, no mark was to be assigned by the company which had been registered under the Trade Marks Registration Acts, notice of the registration having been given to the Cutlers' Company. And see the Patents, &c., Acts, 1883-8, § 81.

(d) Thus including non-freemen in possession of company's marks.

The rights of the Cutlers' Company were expressly reserved by the Merchandise Marks Act, 1862 (a), § 25, and also by the Trade Marks Registration Act, 1875, § 9.

See also the special provisions in regard to the Cutlers' Company contained in the Trade Marks Registration Act, 1875, § 9, and in 46-56 of the Rules under that Act, now repealed; the effect of which was that the registrar of trade marks was to be supplied with copies of all Sheffield corporate marks, and the Cutlers' Company with copies of all trade marks registered for goods or classes of goods within § 2 of the Cutlers' Company's Act, 1860; that notice of applications for assignment or registration of such marks, and of such assignment or registration, when complete, was to be given by the Cutlers' Company to the registrar and *vice versa*; that marks identical with or similar to marks already assigned or registered, were not to be registered or assigned respectively (except, in the former case, with the special leave of the Court), and that Sheffield marks might be registered under the Trade Marks Registration Acts.

By § 81 of the Patents, &c., Act, 1883, and Rules 53-56 of the Trade Marks Rules, 1883, the Sheffield Cutlers' Register was reorganised. A new "Sheffield Register" was established, in which are to be entered all trade marks for Cutlery, edge-tools, raw steel, or goods made of steel, or of steel and iron combined, whether with or without a cutting edge, belonging to persons carrying on business in Hallamshire, or within six miles thereof, and registered under the Act of 1875, or assigned by the Cutlers' Company and actually used before the commencement of the Act of 1883. All applications for marks for similar goods are, when made by persons trading within the specified limits, to be made to the company. Notice of such applications is to be given by the company to the comptroller, who may give notice of objection; and notice of applications by persons trading outside the specified limits for marks for similar goods is to be given by the comptroller to the company. Notice of registrations in the Sheffield Register is to be given to the comptroller, who is to enter the marks in the general register; and notice of all other entries is also to be given to him. The practice at Sheffield is to follow generally that at London, and an appeal is given from the company's decisions to the comptroller, and from him to the Court. The provisions of the company's Acts for the summary punishment of persons counterfeiting Sheffield corporate marks are to apply to marks entered in the new Sheffield Register. The old Cutlers' register of corporate marks was closed after five years from the commencement of the Act (*i.e.*, after five years from December 31st, 1883). The net result is to make the Sheffield Register an exact duplicate of the general register, so far as that relates to marks used for the specified goods within the specified limits.

The provisions of § 81 were altered to some extent by § 20 of the Act

(a) 25 & 26 *Vict. c.* 88.

of 1888, the principal alteration being the enlargement of the class of goods to which the section is made applicable. Such goods are now described by the term "metal goods," which is defined as meaning "all metals, whether wrought, unwrought, or partly wrought, and all goods composed wholly or partly of any metal." The Sheffield Register is now governed by § 81 of the Act of 1883, as amended by the Act of 1888, and the Trade Mark Rules 56-59 of 1890.

GOLD AND SILVER PLATE.

ENGLAND.

2 *Hen. VI. c. 17* (in Ruffhead's ed. c. 14) (1423) (*a*).

No goldsmith or silversmith in the city of London to sell wrought silver of less than sterling fineness. No harness of silver to be offered for sale in that city, until touched with the touch of the leopard's head, if it may reasonably bear the same, and also with the workman's mark, under penalty of forfeiture of double value. The mark of every goldsmith to be known to the wardens of the same craft. In the cities of York, Newcastle-upon-Tyne, Lincoln, Norwich, Bristol, Salisbury, and Coventry, to be divers touches. In other places, where no touch is ordained, silver not to be worked of less than sterling fineness, nor to be offered for sale without the worker's mark. Penalty of double value (*b*).

18 *Eliz. c. 15* (1576) (*c*).

If plate marked by the Goldsmiths' Company be found deceitful, the Company to forfeit the value.

8 & 9 *Wm. III. c. 8* (1697).

§ 8 (in Ruffhead's ed. § 9) (*d*). No silver plate to be made of less fineness than 11 oz. 10 dwt. in the lb. troy (*e*), nor offered for sale until marked (*f*).

If plate marked by the Goldsmiths' Company be found deceitful, the Company to forfeit the value, half to the Crown, half to the informer.

(*a*) The earliest statute on the subject was 28 *Edw. I. c. 20* (1300), by which it was provided, among other things, that no vessel of silver should pass out of the worker's hands until assayed by the wardens of the craft, and marked with the leopard's head, and that no worse gold should be worked than that of the touch of Paris. This Act was repealed, saving the King's prerogative, by 19 & 20 *Vict. c. 64*.

(*b*) 4 *Hen. VII. c. 2* (1487) (repealed by 19 & 20 *Vict. c. 64*) required finers of gold and silver to put their marks upon the metal.

(*c*) It was provided by the earlier part

of this Act (repealed by the Statute Law Revision Act, 1863) that gold should not be made or sold under 22 carats in fineness, nor silver under 11 oz. 2 dwt.; and that no silver plate should be sold without the worker's mark, under penalty of forfeiting the value.

(*d*) The remainder of the Act was repealed by the Statute Law Revision Act, 1867.

(*e*) The standard was thus raised from that fixed by the preceding Act (11 oz. 2 dwt.), but by 6 *Geo. I. c. 11*, both standards were established. See *infra*.

(*f*) The following marks are appointed by this Act:—

12 & 13 *Wm. III. c. 4* (1700), "An Act for appointing wardens and assay masters for assaying wrought plate in the cities of York, Exeter, Bristol, Chester, and Norwich" (*a*).

§ 2. Goldsmiths, &c., of the cities of York, Exeter, Bristol, Chester, and Norwich, incorporated into respective companies, to be called respectively "The Company of Goldsmiths of——"

§ 3. No goldsmith, &c., in those cities to make silver plate of less fineness than the standard for the time being, nor sell it until marked with—

The worker's mark, to be expressed with the two first letters of his surname.

The lion's head erased and the figure of Britannia.

The arms of that one of the above cities in which the plate is assayed and marked.

A distinct variable mark or letter in Roman character to denote the year (*b*).

Penalty—Forfeiture of the plate or value, half to the Crown, half to the informer.

The Act also contains provisions with respect to the appointment of wardens and assayers, procedure, &c.

1 *Anne, c. 3* (1 Anne, stat. 1, c. 9, in Ruffhead's ed.) (1701).

The provisions of the last Act extended to Newcastle-upon Tyne, and "The Company of Goldsmiths of Newcastle-upon-Tyne" incorporated.

6 *Geo. I. c. 11* (1719) (*c*).

§ 1. The old silver standard of 11 oz. 2 dwt. restored.

§ 3. No goldsmith, &c., to work silver plate of less fineness than 11 oz. 2 dwt., nor to sell it, &c., until touched, assayed and marked, under the former penalties.

§ 41. Two standards of silver, 11 oz. 10 dwt. and 11 oz. 2 dwt., continued (*d*).

The worker's mark, to be expressed by the two first letters of his surname.

The mark of the mystery or craft of the goldsmiths, which, instead of the leopard's head and the lion, shall for this plate be the figure of a lion's head erased, and the figure of a woman commonly called Britannia.

A distinct variable mark to denote the year of manufacture of the plate.

Penalty—Forfeiture of the plate or its value, half to the Crown, half to the informer. See 12 *Geo. II. c. 26*, § 5.

(*a*) Bristol never exercised the powers hereby conferred. York and Norwich have discontinued doing so.

(*b*) See 12 *Geo. II. c. 26*, § 5.

(*c*) The whole of this Act but §§ 1-3

and § 41 repealed by Statute Law Revision Act, 1870.

(*d*) Silver plate of 11 oz. 10 dwt. to be marked with—

The workman's mark.

The mark of the wardens of the Goldsmiths' Company.

The figure of the lion's head erased.

The figure of Britannia.

Silver plate of 11 oz. 2 dwt. to be marked with—

The workman's mark.

The mark of the wardens of the Goldsmiths' Company.

The figure of a lion passant.

The figure of a leopard's head.

See 12 *Geo. II. c. 26*, § 5.

12 *Geo. II. c. 26* (1739) (a).

§ 1. Gold plate not to be made under 22 carats in fineness, nor silver plate under 11 oz. 2 dwt. Penalty, 10%.

§ 5. Gold and silver plate not to be sold or exported until marked as follows:—

Gold plate of 22 carats fine and silver plate of 11 oz. 2 dwt., with—
The worker's mark, which shall be the first letters of his Christian and surname.

These marks of the Company of Goldsmiths in London, viz., the leopard's head, the lion passant (b), and a distinct variable mark or letter to denote the year. Or,

The worker's mark, and

The marks appointed to be used by the assayers at York, Exeter, Bristol, Chester, Norwich, or Newcastle-upon-Tyne.

Silver plate of 11 oz. 10 dwt., with—

The worker's mark as before.

These marks of the said Company, viz., the lion's head erased, the figure of Britannia, and the mark or letter to denote the year. Or,

The worker's mark, and

The mark of one of the said cities or towns.

Penalty—10% fine, or, in default, hard labour not exceeding six months (c).

§ 21. All goldsmiths, &c., to enter their new marks, names, and places of abode in one of the assay offices at London, York, Exeter, Bristol, Chester, Norwich, or Newcastle-upon-Tyne. Such new marks to be of a character or alphabet different from their old marks; all old marks to be broken. Penalty—10% fine, and 10% more for using any other mark; in default, hard labour not exceeding six months.

13 *Geo. III. c. 52* (1772), "An Act for appointing wardens and assay-masters for assaying wrought plate in the towns of Sheffield and Birmingham" (d).

§ 2. Incorporation of "The Guardians of the Standard of Wrought Plate for Birmingham" (e).

§ 4. No silversmith or plate worker in either of these towns, or within twenty miles thereof, to sell or export silver plate made in these towns and the specified limits until marked as follows:—

Silver plate of 11 oz. 2 dwt., with—

The mark of the worker or maker, which shall be the first letters of his Christian and surname.

The lion passant.

(a) Repealed in part, 30 *Geo. III. c. 31*, § 1; Statute Law Revision Act, 1867.

(b) By 38 *Geo. III. c. 69*, § 2, gold plate of 18 carats fine is to be marked with a crown and 18, instead of the lion passant, and by 7 & 8 *Vict. c. 22*, § 15, gold of 22 carats with a crown and 22.

(c) See *Robinson v. Currey*, 6 Q. B. D. 21; 7 *ib.* 465.

(d) Repealed as to Birmingham, by 5 *Geo. IV. c. lii.* (local). As to Sheffield, see 24 *Geo. III. sess. 2, c. 20*. The present Act only deals with silver.

(e) Or "Sheffield."

The mark of the company in whose assay office the plate was assayed and marked.

A distinct variable mark or letter to denote the year.

Silver plate of 11 oz. 10 dwt., with—

The worker's mark.

The figure of Britannia.

The mark of the Company, and

The mark or letter to denote the year.

Penalty—Forfeiture of the plate or value, half to the Crown, half to the informer.

§ 5. The peculiar mark of the Birmingham company to be an anchor, of the Sheffield company a crown.

The Act also contains provisions for the election of wardens and assayers, the process of assaying, punishment of counterfeiting, &c.

24 *Geo. III. sess. 2, c. 20* (1784), relates to Sheffield.

§ 2. Manufacturers of goods plated with silver, within Sheffield or 100 miles thereof, may strike upon such goods their surname or the name of their firm, together with some other mark, figure, or device.

§ 3. Names to be in legible characters and struck with only one punch, and marks to be approved and registered by the Guardians for Sheffield.

24 *Geo. III. sess. 2, c. 53* (1784) (a).

§ 5. The assaying officer to mark with an additional new mark, of the King's head, all gold and silver plate sent to be touched, marked and assayed, but to ask and receive duty before touching, marking, or assaying.

§ 8. Gold and silver plate not to be sold or exported until marked with the King's head. Penalty—50%, or, in default, hard labour of not more than one year, nor less than six months. Also, forfeiture of the unmarked plate, half to the Crown, half to the informer.

30 *Geo. III. c. 31* (1790).

This Act regulates the exemptions from marking.

38 *Geo. III. c. 69* (1798).

§ 1. Gold plate may be manufactured down to 18 carats fine.

§ 2. Such gold plate not to be sold or exported until marked with a crown and the figures 18, instead of the lion passant. Penalty—10%.

§ 3. Gold plate of 18 carats fine may be marked by the various goldsmiths' companies, &c., as before, with the exception of the alteration of this mark.

§ 4. Gold plate of 22 carats may still be made, sold, exported, &c.

§ 5. This Act not to authorise the application of the mark used before the Act to gold plate of less than 22 carats fine.

§ 6. Penalty of 50% for selling, exporting, &c., gold plate not marked with one of the marks.

(a) Repealed in part 25 *Geo. III. c. 64, § 2*; 30 *Geo. III. c. 31, § 1*; Statute Law Revision Acts, 1861-71

§ 8 (a). Previous regulations for gold of 22 carats, except as to the mark of the lion passant, to apply to gold of 18 carats.

55 *Geo. III. c. 185* (1815),

§ 7 (b). Penalties for forging duty marks on plate, or selling or exporting plate so marked, or possessing dies, &c.

5 *Geo. IV. c. lii.* (1824) (Local—Birmingham and thirty miles round).

§ 1. 13 *Geo. III. c. 52*, repealed, so far as relates to Birmingham.

§ 4. Re-incorporation of "The Guardians of the Standard of Wrought Plate in Birmingham," with authority within a radius of thirty miles.

§ 20. No goldsmith, silversmith, &c., within Birmingham or thirty miles thereof, to sell or export gold or silver plate made within the specified limits until marked as follows:—

Gold of 22 carats fine with the lion passant (c).

" 18 " " crown and 18.

Silver of 11 oz. 2 dwt. fine with the lion passant.

" 11 oz. 10 dwt. " Britannia.

And all gold and silver alike with the following additional marks:—

The worker's mark (the first letters of his Christian and surname, or in case of any partnership, the initials of the name or firm of such partnership).

The company's mark (an anchor).

A distinct variable mark or letter, to denote the year.

Penalty—Forfeiture of the plate or its value, half to the Crown, half to the informer.

§ 21. Goldsmiths, silversmiths, &c., within Birmingham and thirty miles, to enter their names, marks, and places of abode with the company.

Penalty—100%, half to the informer, half to the purposes of the Act.

§ 22. Penalties of counterfeiting, &c.

The Act also contains numerous provisions with respect to the constitution of the company, the election of its officers, its procedure, &c.

7 & 8 *Vict. c. 22* (1844).

This Act (which see) regulates the punishments and penalties for counterfeiting, &c., hall marks (d).

(a) § 7 provided penalties for counterfeiting, but this was repealed as to England by 7 & 8 *Vict. c. 22*, § 1, though still unrepealed for Scotland.

(b) The greater part of this Act is repealed by 33 & 34 *Vict. c. 99*, and 36 & 37 *Vict. c. 91*.

(c) By 7 & 8 *Vict. c. 22*, § 15, a crown and 22.

(d) See *R. v. Lee*, 1 Leach, 416, and *R. v. Ogden*, 6 C. & P. 631, decided on the earlier statutes; also *R. v. Suter & Coulson*, 10 Cox, 577; and *R. v. Ardley*, L. R. 1 C. C. R. 301, 12 Cox, 23, in which a spurious hall mark was made the

means of obtaining money by false pretences. In *R. v. Roberts*, 70 L. T. (Journal) 265, the jury found that the marks used by the defendant were not imitations of the genuine hall mark. An action by the Goldsmiths' Company for penalties under this Act is not an action by a common informer within 81 *Eliz. c. 5*, nor an action by a "party grieved" within 8 & 4 *Wm. IV. c. 42*, § 3, and can, therefore, be maintained after the lapse of two years from the commission of the offence, but (in the opinion of Lush, L. J.) not after twenty years; *Robinson v. Currey*, 6 Q. B. D. 21; 7 *ib.* 465.

ENGLISH HALL MARKS AT THE PRESENT DAY (a).

	GOLD.					SILVER.	
	22 CARATS.	18 CARATS.	15 CARATS.	12 CARATS.	9 CARATS.	11 oz. 2 dwt.	11 oz. 10 dwt.
Quality Mark	22	18	15·625	12·5	9·375	None (b).	None.
Standard Mark	Crown.	Crown.	None.	None.	None.	Lion passant.	Britannia.
Date Mark	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.
Maker's Mark	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.
Duty Mark	Sovereign's head.	Sovereign's head.	None.	None.	None.	Sovereign's head.	Sovereign's head.
Assay Town Mark	On all qualities of gold and silver the special mark of the town.						

HALL MARKS.

The special marks of the assay towns are as follows:—London, a leopard's head (except for silver of 11 oz. 10 dwt., for which it is a lion's head orased); Exeter, a castle; Chester, a dagger and 3 sheaves; Newcastle, 3 castles; Sheffield, a crown; Birmingham, an anchor (c).

(a) Gold and silver of all these qualities are manufactured at London, Chester, Newcastle-on-Tyne, and Birmingham. At Exeter only gold of 22 carats and silver of 11 oz. 2 dwt. are manufactured; at Sheffield only silver of 11 oz. 2 dwt. and 11 oz. 10 dwt. At York and Norwich no plate is now manufactured. At Bristol the powers conferred by 12 & 13 Wm. III. c. 4, were never exercised.

(b) Except at Newcastle, where the mark of a leopard's head crowned is used.

(c) The marks for York and Norwich (now discontinued) were:—York, 5 lions on a cross; Norwich, a castle and a lion passant.

§ 15. Gold plate of 22 carats fine to be marked with a crown and 22, instead of the lion passant.

17 & 18 *Vict. c. 96* (1854).

This Act authorises Her Majesty, by Order in Council, to allow any standard for gold plate, not being less than one-third part of the whole, and to approve thereby of the instrument for stamping such plate, setting forth in figures the actual fineness of the metal (a).

18 & 19 *Vict. c. 60* (1855).

Gold wedding rings are to be assayed and marked in the same way as other gold plate.

5 & 6 *Vict. c. 47* (1842) (Customs Act) (b).

§ 59. Foreign gold and silver plate imported from abroad shall be of the respective standards required for plate wrought in England, and it shall not be sold, &c., until assayed, stamped and marked in England, Scotland, or Ireland, as plate of the same description made in that country.

5 & 6 *Vict. c. 56* (1842) (Customs Act).

§ 6 (c). Foreign ornamental plate, manufactured before 1800, and imported, is exempted from the operation of the last Act.

39 & 40 *Vict. c. 35* (1876) (Customs Act).

§ 2 (d). Foreign gold and silver plate imported and sent to an assay office in the United Kingdom for assay shall be marked, in addition to the marks ordinarily used at that office for British plate, with an F. on an oval escutcheon, to denote the foreign origin of the plate.

SCOTLAND (e).

13 *Geo. III. c. 59* (1773) (f).

§ 2, which provided penalties for counterfeiting, &c., the marks for plate, is unrepealed in Scotland.

38 *Geo. III. c. 69* (1798) (see p. 605, *suprà*).

§ 7 (g), which provided penalties for counterfeiting, &c., the marks for plate, is unrepealed in Scotland.

(a) Accordingly the following reduced standards were ordered by the Council:—

15	carats,	to be marked with 15 and 625.
12	"	" " 12 " 500.
9	"	" " 9 " 375.

The crown and sovereign's head are not placed on plate of these qualities.

(b) The entire Act but §§ 59 and 60 is repealed.

(c) The remainder of the Act is repealed by 8 & 9 *Vict. c. 84*, § 2.

(d) This re-enacts 30 & 31 *Vict. c. 82*, § 24, the whole of which Act is repealed by the present one. See also 46 & 47 *Vict. c. 55*, § 10, as to foreign plate. As

to foreign watch-cases, see Merchandise Marks Act, 1887, § 8, and the order in council thereunder, also the table opposite.

(e) In the reign of James III. of Scotland (1483) gold 22 carats fine, and silver 11 penny fine were to be marked with the maker's mark, the mark of the deacon of the craft, and the mark of the town.

(f) This Act was repealed as to England by 7 & 8 *Vict. c. 22*, § 1. The first section was repealed by the Statute Law Revision Act, 1871.

(g) Repealed as to England by 7 & 8 *Vict. c. 22*, § 1.

HALL MARKS FOR IMPORTED FOREIGN WATCH-CASES (a).

		GOLD.						SILVER.
		22 CARATS.	20 CARATS.	18 CARATS.	15 CARATS.	12 CARATS.	9 CARATS.	
Quality Mark	... ..	22·017	20·833	18·75	15·625	12·5	9·375	None.
Date Mark	... ..	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.
Foreign Mark	... ..	"Foreign."	"Foreign."	"Foreign."	"Foreign."	"Foreign."	"Foreign."	"Foreign."
Shape of Shield	... ..	Cross.	Cross.	Cross.	Cross.	Cross.	Cross.	Octagon.
Assay Town Mark	... ..	On all qualities of gold and silver the special mark of the town.						

HALL MARKS.

The special marks for this purpose of the assay towns are as follows:—London, Phœbus; Birmingham, an equilateral triangle; Chester, an acorn and two leaves; Sheffield, four crossed arrows; Edinburgh, a St. Andrew's cross; Glasgow, a Bishop's mitre; Dublin, a shamrock.

(a) Prescribed by the Order in Council of Nov. 28th, 1897, p. 564, *supra*.

6 & 7 Wm. IV. c. 69 (1836).

§ 1. Gold plate not to be made, sold, or exported, under 18 carats fine, nor silver under 11 oz. 2 dwt. fine. Penalty—Fine not exceeding 100*l*.

§ 2. Scotch goldsmiths to send their names, descriptions, and marks (to consist of the initial letters of their Christian and surnames, or, in the case of a partnership, of the initial letters of the firm name) for registration to the Goldsmiths' Company of Edinburgh, or of Glasgow.

§ 3. Gold plate of 22 carats fine, and silver plate of 11 oz. 2 dwt. to be sent, marked with the maker's mark, to the assay office, and to be there marked with—

The mark of the thistle.

A distinct variable letter to denote the year.

The mark of the assaying company.

Gold plate of 18 carats fine to be marked in addition with 18.

Silver plate of 11 oz. 10 dwt. fine to be marked in addition with the figure of Britannia.

§§ 16 and 17 contain certain exemptions from marking.

§§ 18, 19 and 21 contain penalties for selling or exporting plate not duly marked, counterfeiting marks, &c., marking base metal, &c.

The Act also contains provisions with respect to the assaying, recovering penalties, &c.

The following statutes mentioned above under the head of "England" are also in force in Scotland: 6 *Geo. I. c. 11*; 24 *Geo. III. sess. 2, c. 53*; 38 *Geo. III. c. 69*; 5 & 6 *Vict. c. 47*; 5 & 6 *Vict. c. 56*; 17 & 18 *Vict. c. 96*; 18 & 19 *Vict. c. 60*; and 39 & 40 *Vict. c. 35*.

IRELAND.

3 *Geo. II. c. 2* (1730), (Irish Act) (a).

§ 32. Gold and silver plate not to be sold until assayed, touched and marked.

§ 33. Plate to be assayed by the Dublin Company of Goldsmiths. Gold of 22 carats, and silver of 11 oz. 2 dwt., to be touched by the wardens of the company, and marked with "the marks now usual for that purpose." On payment of duty, the plate to be marked with a mark to be appointed by the Commissioners of His Majesty's Revenue (b).

§ 38. Penalties for counterfeiting, &c., provided.

(a) This Act was repealed as to gold by 23 & 24 *Geo. III. c. 23, § 1* (Irish). It fixed a standard of 22 carats for gold (33).

(b) The figure of Hibernia was accordingly appointed.

SCOTCH HALL MARKS AT THE PRESENT DAY (a).

			GOLD.					SILVER.	
			22 CARATS.	18 CARATS.	15 CARATS.	12 CARATS.	9 CARATS.	11 oz. 2 DWT.	11 oz. 10 DWT.
Quality Mark...	...	...	— 22	— 18	— 15	— 12	— 9	— None.	— Britannia.
Standard Mark—									
Edinburgh	...	...	Thistle.	Thistle.	None.	None.	None.	Thistle.	Thistle.
Glasgow	...	...	Lion rampant.	Lion rampant.	Lion rampant.	Lion rampant.	Lion rampant.	Lion rampant.	Lion rampant.
Date Mark	...	...	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.
Maker's Mark...	...	...	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.
Duty Mark	...	...	Sovereign's head.	Sovereign's head.	None.	None.	None.	Sovereign's head.	Sovereign's head.
Assay Town Mark	...	...	On all qualities of gold and silver the special mark of the town.						

The special marks of the assay towns are:—Edinburgh, a castle; Glasgow, a tree, fish, and bell.

(a) Gold and silver of all these qualities are manufactured at Edinburgh and Glasgow.

23 & 24 *Geo. III. c. 23* (1783), (Irish Act).

§ 2. No gold plate to be made, sold, &c., except of 22 carats, 20 carats, or 18 carats fine. Penalty—Forfeiture and fine of 10*l*.

§ 3. The following marks appointed for gold of 22 carats :

The mark of the maker, which is the number 22, and the first letter of the maker's Christian and surname. And,

For Dublin a harp crowned.

For New Geneva (*a*), a like harp with a bar across the strings.

§ 4. Marks for gold of 20 carats :

The number 20.

The maker's initials. And,

For Dublin, a plume with three feathers.

For New Geneva, a plume with two feathers.

§ 5. Marks for gold of 18 carats.

The number 18.

The maker's initials. And,

For Dublin, an unicorn's head.

For New Geneva, an unicorn's head, with a collar round the neck.

§ 6 contains exemptions.

§ 11 provides for the registration of new marks.

§ 28 provides penalties for counterfeiting, &c.

47 *Geo. III. sess. 2, c. 15* (1807).

§ 3. Irish gold plate of 22, 20 or 18 carats, and silver plate of 11 oz. 2 dwt., to be assayed by the Goldsmiths' Company of Dublin, touched and marked with "the marks now or hereafter to be used."

§ 6. On payment of duty, gold and silver plate to be marked with the King's head to denote that this has been done (*b*).

§§ 14, 15 and 16 provide penalties for persons selling or buying unmarked plate, or counterfeiting, &c., the marks used.

The Act also provides for the manner in which duty is to be paid, books kept, &c.

The following statutes mentioned above under the head of "England" are also in force in Ireland : 5 & 6 *Vict. c. 47* ; 5 & 6 *Vict. c. 56* ; 17 & 18 *Vict. c. 96* ; 18 & 19 *Vict. c. 60* ; 39 & 40 *Vict. c. 35*.

N.B.—For very full information on all points connected with Hall Marks, see Mr. Chaffers' book on Hall Marks, 6th ed., London, 1883, 8vo.

(*a*) This was a company of Geneva watchmakers, who established themselves in co. Waterford. They carried on operations only from about 1784 to 1790.

(*b*) The figure of Hibernia continued to be used in addition.

IRISH HALL MARKS AT THE PRESENT DAY (a).

	GOLD.						SILVER.
	22 CARATS.	20 CARATS.	18 CARATS.	15 CARATS.	12 CARATS.	9 CARATS.	11 oz. 2 DWT.
Quality Mark	—	—	—	—	—	—	—
Standard Mark	22	20	18	15·625.	12·5	9·375	None.
Date Mark	Harp crowned.	Plume of 3 feathers.	Unicorn's head.	None.	None.	None.	Harp crowned.
Maker's Mark	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.
Duty Mark	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.
Dublin Mark	Sovereign's head.	Sovereign's head.	Sovereign's head.	None.	None.	None.	Sovereign's head.
	Hibernia.	Hibernia.	Hibernia.	Hibernia.	Hibernia.	Hibernia.	Hibernia.

HALL MARKS.

(a) The only assay town in Ireland is Dublin, where gold is manufactured of a standard (20 carats) not used in England or Scotland, but silver only of the earlier standard of 11 oz. 2 dwt., and none of 11 oz. 10 dwt.

PRINTS AND ENGRAVINGS.

8 *Geo. II. c. 13* (1735).

§ 1. Copyright for fourteen years given to "every person who shall invent and design, engrave, etch, or work, in mezzotinto or chiaro-oscuro, or from his own works and invention shall cause to be designed and engraved, etched, or worked in mezzotinto or chiaro-oscuro" any print, "to commence from the day of the first publishing thereof, which shall be truly engraved with the name of the proprietor on each plate, and printed on every such print or prints" (a). Penalties for Piracy.

7 *Geo. III. c. 38* (1766).

The former Act extended in various respects, including an extension of the term to twenty-eight years.

17 *Geo. III. c. 57* (1777).

The former Acts further extended in various respects.

6 & 7 *Will. IV. c. 59* (1836).

The former Acts extended to Ireland.

SCULPTURES.

54 *Geo. III. c. 56* (1814) (b).

§ 1. Copyright for fourteen years given to "every person or persons who shall make or cause to be made any new and original sculpture, or model, or copy, or cast," to commence from the "first putting forth or publishing the same: Provided, in all and every case, the proprietor or proprietors do cause his, her, or their name or names, with the date, to be put on all and every such new and original sculpture, model, copy, or cast, and on every such cast from nature, before the same shall be put forth or published" (c).

(a) It is clearly settled law that both the date of publication and the name of the proprietor must appear with the engraving, in order to enable the proprietor to assert his statutory rights, notwithstanding *Blackwell v. Harper*, 2 Atk. 25, Barnard. 210; and *Roworth v. Wilkes*. 1 Camp. 94. See *Sayer v. Dicey*, 3 Wils. 60; *Harrison v. Hogg*, 2 Ves. Jun. 323; *Thompson v. Symonds*, 5 T. R. 41; *Bonner v. Field*, 5 T. R. 44; *Macmurdo v. Smith*, 7 *ib.* 518; *Newton v. Cowie*, 4 Bing. 234; *Colnaghi v. Ward*, 12 L. J. Q. B. 1; *Brooks v. Cocks*, 3 Ad. & Ell. 133; *Graves v. Ashford*, L. R. 2 C. P. 410; *Rock v. Lazarus*, L. R. 15 Eq. 104. The requirements of 8 *Geo. II. c. 13* must be complied with in the case of engravings sought to be protected under the International

Copyright Act, 1844 (7 & 8 Vict. c. 12, § 4): *Avanzo v. Mudie*, 10 Ex. 203.

(b) The earlier Act, 38 *Geo. III. c. 71* (1798) was repealed by the Statute Law Revision Act, 1861 (24 & 25 Vict. c. 101).

(c) By the Registration of Designs Act, 1850 (13 & 14 Vict. c. 104, §§ 6, 7) sculptures, &c., were allowed to be registered under that Act, and penalties were imposed for infringement, but this was subject to the provision that every copy or cast of the sculpture, &c., must be marked with the word "registered" and the date of registration. By the Patents, &c., Act, 1883, the Act of 1850 is repealed, and sculptures, &c., within the protection of the Act of 1814, are excluded from registration for the future (see § 60). Existing registrations at the commence-

CLOCKS AND WATCHES, &c.

39 & 40 *Vict. c. 36*, § 42 (a), (1876).

Clocks and watches and other metal articles marked in imitation of British marks are forbidden to be imported into the United Kingdom (b).

METAL BUTTONS.

36 *Geo. III. c. 60* (c), (1796).

§ 1 provides penalties for ordering metal buttons to be falsely marked in indication of quality, and for purchasing buttons so marked.

§ 2 provides penalties for falsely marking buttons in indication of quality, and for offering them for sale so marked.

§ 3. No marks indicative of quality are to be placed upon metal buttons, except the words "gilt," or "plated," respectively.

§ 4. The words "double gilt" and "treble gilt" may be placed upon buttons gilt to a specified degree.

§ 7 declares what quality is required to constitute a "gilt" or "plated" button.

The Act also contains provisions with respect to procedure, &c.

GUN-BARRELS.

By *Royal Charter*, 1637, "The Master, Wardens and Society of the Mystery of Gunmakers of the City of London" were incorporated, proof marks assigned to them, &c.

53 *Geo. III. c. 115* (d), (1813).

§ 4 incorporates "The Guardians, Trustees and Wardens of the Gun-Barrel Proof House of the Town of Birmingham."

§ 7 appoints Birmingham proof marks (e).

18 & 19 *Vict. c. cxlviii.* (1855) (Local), "The Gun-Barrel Proof Act, 1855" (f).

§ 9 repeals the former Acts.

ment of the Act are, however, preserved (§ 113). The requirements of 54 *Geo. III. c. 56* must be complied with in the case of sculptures, &c., sought to be protected under the International Copyright Act, 1844 (7 & 8 *Vict. c. 12*, § 4).

(a) This is a re-enactment, with some variations, of 16 & 17 *Vict. c. 107*, § 44.

(b) See p. 563. As to watches and watch-cases, see also §§ 7 and 8 of the

Merchandise Marks Act, 1887, and the order in council thereunder, p. 564.

(c) Repealed in part, Statute Law Revision Act, 1871.

(d) Repealed by 18 & 19 *Vict. c. cxlviii.*, § 9 (Local).

(e) 55 *Geo. III. c. 59* (1815), further regulated the marking of gun-barrels, but was also repealed by 18 & 19 *Vict. c. cxlviii.*, § 9 (Local).

(f) Repealed by 31 & 32 *Vict. c. cxiii.* (Local).

§ 12 continues the incorporation of the Birmingham Company, under the name of "The Guardians of the Birmingham Proof House."

Many provisions follow for the regulation of the Birmingham Company.

31 & 32 *Vict. c. cxiii.* (1868) (Local), "The Gun-Barrel Proof Act, 1868."

§ 9 repeals the Act of 1855.

§ 12 continues the incorporation of "the Guardians of the Birmingham Proof House." Many provisions follow for the regulation of the Birmingham Company.

§ 107. The London and Birmingham Companies to receive, prove, mark, and deliver barrels brought to them for proof.

§ 116. Barrels to be proved according to Rules, Regulations, and Scales in Schedule B to Act.

§ 117. Power given to the two companies, with approval of Secretary for War, to repeal or alter Rules, &c., and to make and alter any new Rules, &c.

§§ 121, 122. Penalties for offences with respect to proof-marks.

Schedule B provides proof and other marks for the two companies.

Rules and Regulations of December 1887 made by the two companies, with the approval of the Secretary for War, under the authority of the Act of 1868. (See *London Gazette* for January 3rd, 1888, p. 16.)

These repeal the Rules, &c., in Schedule B to the Act, and contain new Rules, Regulations, and Scales for proving and marking gun-barrels, and provide proof marks, view marks, and provisional proof marks for the two companies.

CHAIN CABLES AND ANCHORS.

27 & 28 *Vict. c. 27* (1864); 34 & 35 *Vict. c. 101* (1871); 35 & 36 *Vict. c. 30* (1872); and 37 & 38 *Vict. c. 51* (1874), regulate the testing, proving, and marking of chain cables and anchors, and provide penalties for falsely marking, &c.

By § 4 of the Act of 1874, every contract for the sale of a chain cable implies, in the absence of an express stipulation to the contrary, that the cable has been duly tested and marked.

PLAYING CARDS.

25 & 26 *Vict. c. 22* (1862).

§§ 28-37 provide that playing cards are to be sold in separate packs, enclosed in wrappers to be provided by the Commissioners of Inland Revenue, on which the duty chargeable and the name of the maker are to be marked. Penalties for frauds, &c.

16 & 17 *Vict. c. 107* (1853).

§§ 114-15. Imported playing cards are to be sold in separate packs, to be enclosed in proper wrappers to be provided by the Commissioners of Inland Revenue.

§ 116. Penalties for counterfeiting, &c., such wrappers.

PAINTINGS, DRAWINGS, AND PHOTOGRAPHS.

25 & 26 *Vict. c. 68* (1862), "Copyright for Works of Art Act."

§ 7. By this section it is forbidden to do any of the following acts:—

1. Fraudulently sign any painting, drawing, photograph, or negative with any name, initials or monogram.

2. Fraudulently sell, publish, &c., any painting, &c., marked with the name, &c., of a person who did not execute such work.

3. Fraudulently utter any copy or colourable imitation of any painting, &c., whether the subject of subsisting copyright or not, as having been executed by the author of the original.

4. Where the author of any painting, &c., has parted with the possession of the work, and the work is altered by any other person, it is forbidden, during the life of the author, to make, sell, publish, &c., such work or a copy of it so altered as or for the unaltered work of the author.

The section provides penalties for offenders against its provisions, but limits the time during which they can be incurred to within twenty years after the death of the person whose works have been wrongfully dealt with.

HOPS.

54 *Geo. III. c. 123 (a)*, (1814).

§ 1. Growers of hops are to mark the bags, in letters of specified dimensions, with their names, and the names of the parish and county in which the hops were grown, before putting the hops into the bag. Penalty for putting in the hops before marking the bag.

29 & 30 *Vict. c. 37* (1866), "The Hop (Prevention of Frauds) Act, 1866."

§ 2. Growers of hops are to mark each bag, in addition to their own names and the names of the parish and county, with the year in which

(a) This Act is repealed in part. The former Acts, now repealed, were 14 *Geo. III. c. 68*, under which the excise officer was to mark each bag of hops with the weight of hops, the name and place of abode of the grower, and the date of the year; 39 & 40 *Geo. III. c. 81*, under

which the grower was himself to mark his name and place of abode; the excise officer the weight, date, and progressive number of the bag; and 48 *Geo. III. c. 134*, under which the owner was in addition to mark the name of the parish and county in which the hops were grown.

the hops were grown, the progressive number of the bag, and its weight.

Penalties are provided for not marking, falsely marking, wilfully altering marks, &c. (a).

§ 18. The vendor is to be deemed to contract that the marks are genuine.

§ 20. The provisions of the Merchandise Marks Act, 1862, §§ 23 and 24, are incorporated.

LINEN.

17 *Geo. II. c. 30 (b)*, (1743).

§ 1. Penalties provided for stamping foreign linens in imitation of British or Irish, and for placing counterfeit stamps on British or Irish linens.

18 *Geo. II. c. 24 (b)*, (1744).

§ 1. Linens to be stamped must be sworn to be of the manufacture of [Scotland or] Ireland.

§ 2 (c). No bounty to be paid on British or Irish linens exported, but on such as are marked at both ends of every piece with the name and place of abode of the maker, the year of manufacture, the number of the piece in rotation, the name and place of abode of the exporter or seller for exportation; and unless the ends are also marked with the month and year when, and the name of the port at which, the linens are entered for exportation. The marks to be stamped with lamp black and burnt oil.

Penalties for falsely stamping, &c.

4 *Geo. IV. c. 40* (1823), (Scotland).

§ 3. Every manufacturer or weaver of linen and dealer in linen in Scotland may weave his name, or fix any mark or seal, in any piece of linen of his make, to denote the length, breadth, or quality of the linen, or the maker's name. Penalties for counterfeiting.

5 & 6 *Wm. IV. c. 27* (1835), (Ireland).

§ 4. Across each end of every piece of linen offered for sale in open fair or market in Ireland there are to be woven two coarse threads or cords at a distance of one-fourth of an inch, and close to such threads or cords on each end are to be written the Christian name, surname, and place of residence of the weaver or manufacturer, and on the outside fold of every piece its length and breadth.

(a) See *R. v. Morgan*, 1 Trade Marks, 313, in which the defendant was convicted at the Wandsworth Police Court, on May 18th, 1878, of selling inferior hops in the bags and as the hops of a well-known grower, under § 6 of the above Act, and

fined £10, the maximum penalty; £44, the value of the hops; and £10 10s. costs.

(b) Repealed as to Scotland by 4 *Geo. IV. c. 40*, § 1.

(c) Repealed as to bounty by 6 *Geo. IV. c. 105*.

§ 14. The Lord Lieutenant to appoint a committee of twelve in each county, to superintend the brown linen trade.

§ 19. The committee in each county to prescribe the form and device of the seal or stamp to be used by the county sealmaster of brown linen.

§ 21. The sealmaster shall affix to each piece of brown linen brought for the purpose, and which shall be in accordance with the Act, an impression of the seal, in black, red, or blue; and shall also mark with the same ingredients on the back of each piece its length, breadth, name of sealmaster, and the parish and county where he resides, or the name of the market town to which he is appointed.

Regulations for sales, penalties for frauds, &c.

PUBLIC STORES.

38 & 39 *Vict. c. 25 (a)*, (1875), "The Public Stores Act, 1875."

§ 4. The marks described in the First Schedule to the Act are appropriated to denote Her Majesty's property. Penalty for unauthorised use of such marks.

§ 5. Penalty provided for obliteration of marks.

§ 6. Penalty for unlawful possession of public stores (*b*).

(*a*) This Act repealed the following Acts, by which the Public Stores had previously been regulated:—9 *Wm. III. c. 41* (1697); this Act provided penalties for forging the King's marks, or having in possession goods so marked; 9 *Geo. I. c. 8* (1722); this Act modified the penalties contained in the former Act; 17 *Geo. II. c. 40, § 10* (1743); this provided for the trial of offences against these Acts before any judge, justice, or justices at assizes, or justices of the peace at general quarter sessions; 39 & 40 *Geo. III. c. 89* (1800); this Act provided penalties for selling or having in possession goods marked with the marks specified, or defacing, &c., such marks; 54 *Geo. III. c. 60* (1814); this extended the provisions of the former Acts to cordage wrought with worsted threads; 54 *Geo. III. c. 159, § 10* (1814); this provided a penalty for sweeping for lost anchors, cables, &c., belonging to the King's service; 55 *Geo. III. c. 127* (1815); this extended the previous Acts to include all public stores; 30 & 31 *Vict. c. 128* (1867), "*The War, Department Stores Act, 1867*"; and 32 & 33 *Vict. c. 12* (1869), "*The Naval Stores Act, 1869*." The following Acts have also

from time to time regulated Naval Stores: 25 & 26 *Vict. c. 64*, "*The Naval and Victualling Stores Act, 1862*"; 27 & 28 *Vict. c. 91*, "*The Naval and Victualling Stores Act, 1864*"; 30 & 31 *Vict. c. 119*, "*The Naval Stores Act, 1867*"; all of which Acts were previously repealed.

(*b*) It has been repeatedly decided that on an indictment under 9 & 10 *Wm. III. c. 41*, for being unlawfully in possession of marked stores, the prisoner cannot be convicted unless he is in possession with knowledge of the marks. See *R. v. —*, Foster Cr. Cas. 439; *R. v. Banks*, 1 Esp. 144; *R. v. Willmet*, 3 Cox, 281; *R. v. Cohen*, 8 Cox, 41; *R. v. Sleep*, 8 Cox, 472. In *R. v. Banks*, it was, indeed, held by Lord Kenyon, C. J., that it was sufficient for the prosecution to prove the finding of the marked goods in the prisoner's possession, the prisoner being allowed to obtain acquittal by proving his ignorance; but it is now for the prosecution to prove the knowledge, in the affirmative (see *R. v. Willmet*; *R. v. Cohen*; *R. v. Sleep*). Thus in *R. v. O'Brien*, 15 L. T. N. S. 419, it was held that for a conviction of persons in charge of closed and fastened cases, containing marked goods, to be

First Schedule.

Marks appropriated for use in or on Her Majesty's stores:

Stores.	Marks.
Hempen cordage and wire rope.	White, black, or coloured worsted threads laid up with the yarns and the wire respectively.
Canvas, fearnought, hammocks, and seamen's bags.	A blue line in a serpentine form.
Buntin.	A double tape in the warp.
Candles.	Blue or red cotton threads in each wick or wicks of red cotton.
Timber or metal.	The name of Her Majesty, her predecessors, her heirs or successors, or of any public department or any branch thereof, or the broad arrow, or a crown, or Her Majesty's arms, whether such broad arrow, crown, or arms be alone or be in combination with any such name as aforesaid, or with any letters denoting any such name.
Any stores not before enumerated, whether similar to the above or not.	

obtained, it must be proved that they knew that the goods in the cases were marked. Such knowledge may, however, be presumed by the jury from the circumstances attending the possession: *R. v. Sleep*. Although a specified certificate was required by 9 § 10 *Wm. III. c. 41*, to justify possession of marked goods, it was held that another form of certificate might be accepted (*R. v. Willmet*), or even the certificate be dispensed with altogether (*R. v. —*; *R. v. Banks*), there being no proof of knowledge.

Possession by a railway company for purpose of transfer, on behalf of the prisoner, is such a possession by the prisoner as to justify a conviction: *R. v.*

Sunley, 8 Cox, 179; and see *R. v. Sleep*, 8 Cox, 472, as to the words "receive or have" in 9 § 10 *Wm. III. c. 41*; and *R. v. Cole*, 8 East P. C. 767, as to the necessity for the marked articles to be found in the defendant's possession. In *R. v. Willmet*, 3 Cox, 281, it was held that a man could not be held criminally responsible for the act of his servants, who had, without his knowledge, improperly taken marked goods into his warehouse.

As to the exception in favour of contractors and contractors' servants, see *R. v. Silversides*, 3 Q. B. 406; and *R. v. Fitzgerald*, 43 C. C. C. Sess. Pap. 369.

APPENDIX H.

UNITED STATES STATUTE LAW.

ACT OF CONGRESS OF 1870 (a).

§ 77 (b). *And be it further enacted, that any person or firm domiciled in the United States, and any corporation created by the authority of the United States, or of any State or Territory thereof, and any person, firm, or corporation resident of or located in any foreign country which, by treaty or convention, affords similar privileges to citizens of the United States, and who are entitled to the exclusive use (c) of any lawful trade mark, or who intend to adopt and use any trade mark (d), for exclusive use within the United States, may obtain protection for such lawful trade mark (e) by complying with the following requirements (f), to wit:—*

First—By causing to be recorded in the Patent Office (g), the names of the parties and their residences and place of business (h), who desire the protection of the trade mark.

Second—The class of merchandise (i) and the particular description of goods (k) comprised in such class, by which the trade mark has been or is intended to be appropriated.

Third—A description of the trade mark itself (l) with facsimiles thereof (m) and the mode in which it has been or is intended to be applied and used (n).

Fourth—The length of time, if any, during which the trade mark has been used (o).

Fifth—The payment of a fee of twenty-five dollars, in the same manner and for the same purpose as the fee required for patents (p).

Sixth—The compliance with such regulations as may be prescribed by the Commissioner of Patents (q).

Seventh—The filing of a declaration (r), under the oath of the person or of some member of the firm or officer of the corporation, to the effect that the party claiming protection for the trade mark has a right to the use of the same, and that no other person, firm, or corporation, has the right to such use either in the identical form, or having such near resemblance thereto as might be calculated to deceive (s), and that the description and

facsimiles presented for record are true copies of the trade mark sought to be protected.

(a) Although this Act is no longer in force, the Act of 1881 having been substituted for it, it is thought advisable to print the earlier Act, in order that the effect of the decisions upon it may not be misapprehended. In *Leidersdorf v. Flint* (1), 8 Diss. 327, the validity of the Act of 1870 was questioned by the U. S. Circuit Court, on the ground that the constitution of the United States did not authorise legislation by Congress on the subject of trade marks, except such as had been actually used in commerce with foreign nations, or with the Indian tribes; and in *U. S. v. Steffens*, 100 U. S. Rep. 82, the Act was formally declared by the Supreme Court to be on this ground unconstitutional and invalid. But this does not entitle persons registered under the invalid Act to recover back the fees paid by them (*Woodman v. U. S.*, 15 Ct. of Cl. 541), though they will be credited with such fees when applying for registration under the new Act. See Act of 1881, § 6, *infra*. Nor does the invalidity of the Act justify the disregard of injunctions granted under the general jurisdiction of the Court: *U. S. v. Roche*, 1 McCrary, 385. And it has been held that registration of a mark under the invalid Act, even without re-registration under the Act of 1881, is sufficient to prevent registration of a similar mark under the new Act of 1881: *Ex parte Lyon, Dupuy & Co.*, 28 U. S. Pat. Gaz. 191. Since the passing of the Act of 1870, it has been considered in the U. S. Patent Office that, while, on the one hand, the benefits of registration as trade marks were to be reserved for trade marks, and for trade marks only (e.g., in *In re Parker*, 13 U. S. Pat. Gaz. 323, registration as a trade mark was refused to that which could at most amount to a design), so, on the other hand, it was only by registering them as trade marks, and not by patenting them as designs (*Ex parte King*, U. S. Pat. Comm. Decis. 1870, 109; *In re Whyte*, *ib.* 1871, 304) or registering them as labels (*In re Godillot*, 6 U. S. Pat. Gaz. 641; *In re Simpson & Sons*, 10 *ib.* 333; *Ex parte Davids & Co.*, 16 *ib.* 94; *Ex parte Schumacher & Ettlinger* (1), 19 *ib.* 791) that statutory protection could be obtained for trade marks. Descriptive words, not registrable as trade marks, were properly allowed to be registered as labels: *Ex parte Waeferling*, 16 *ib.* 764; *Ex parte Brigham*, 20 *ib.* 891; *Ex parte Lutz*, 33 *ib.* 1389; and see *In re Park*, 12 *ib.* 2, in which it was sought to register as part of a label a device for which the applicant had previously sought registration as a trade mark. In *U. S. v. Marble*, 22 *ib.* 1366, however, the Supreme Court of Columbia held that the Commissioner of Patents had no authority to refuse registration to a label merely on the ground that it might have been registered as a trade mark; but in the later case of *Ex parte Schumacher & Ettlinger* (2), 22 *ib.* 1291, the Commissioner again refused registration as labels to what he considered to be trade marks; and in *Ex parte Moodie*, 28 *ib.* 1271, and *Ex parte Wiesel*, 36 *ib.* 689, the Commissioner repeated this decision, and his course was, in the former case, upheld on appeal by the Supreme Court of Columbia in *Moodie v. Butterworth*, 28 *ib.* 1271. The Federal Courts have also held that a trade mark must be registered as such, and not copyrighted as a label: *Schumacher & Ettlinger v. Wogram*, 35 Fed. Rep. 210. It is for the Commissioner to decide whether what is presented to him is a trade mark or a label: *Moodie v. Butterworth*, 28 U. S. Pat. Gaz. 1271.

(b) See Act of 1881, §§ 1, 2.

(c) In *McElwce v. Blackwell*, 15 U. S. Pat. Gaz. 658, it was held that, although, where registration had been wrongfully granted to one, it might subsequently be properly granted to another who was really entitled to the exclusive use, yet it would not be granted to another who was not entitled to the exclusive use, even though he might be entitled to use the mark to some extent. And see *Wright v. Simpson*, 15 *ib.* 968; also *Sory v. Welsh*, 16 *ib.* 910, as to admissions of right in another; and *Yale Cigar Manufacturing Co. v. Yale*, 30 *ib.* 1183.

(d) Under these words a new trade mark might be registered prior to any actual use: *In re Rothschild*, 7 U. S. Pat. Gaz. 220; and see *Hoosier Drill Co. v. Ingels*, 14

ib. 785. This is not the case under the Act of 1881. See §§ 1 and 2, and *Ex parte Strasburger & Co.*, 20 *ib.* 155.

(e) As to what is a lawful trade mark, see *infra*, § 79. Registration cannot make a lawful trade mark out of that which does not contain the necessary elements: *Moorman v. Hoge*, 2 Sawy. 78; *Schumacher & Ettlenger v. Schwenke* (2), 36 U. S. Pat. Gaz. 457; but by § 7 of the Act of 1881 registration is *prima facie* evidence of ownership. It has been doubted whether the use of a registered trade mark can be restrained: *Decker v. Decker*, 52 How. Pr. 218; but in *Glen Cove Manufacturing Co. v. Ludeman*, 23 Bl. C. C. 46, an injunction was granted in such a case. See also *Schumacher & Ettlenger v. Schwenke* (2), 36 U. S. Pat. Gaz. 457. Separate registration must be obtained for each mark which differs from another by the addition of a symbol; e.g., "X," "XX," "XXX," were held to require separate registration: *In re English*, U. S. Pat. Comm. Decis. 1870, 142; and see *In re Eagle Pencil Co.*, 10 U. S. Pat. Gaz. 981.

(f) Absolute compliance with these requirements is necessary on the part of applicants: *In re Hankinson*, 8 U. S. Pat. Gaz. 89. But it is not necessary that the very words of the Act should be cited, so long as the spirit of it is satisfied: *In re Vidvard & Sheehan*, 8 *ib.* 143.

(g) In *Lacroix v. Escobal*, 37 La. Ann. 533, it was held that a French citizen, who had not deposited his mark in the U. S. Patent Office, as required by the Convention of 1869 between the U. S. and France, was not entitled to maintain an action for infringement. But see *Société, &c., de la Bénédicte v. Micalovitch*, 36 Alb. L. J. 364.

(h) The registration of the name, &c., of a firm has been held to be sufficient, without giving the particulars as to each of the partners: *Smith v. Reynolds* (2), 10 Bl. C. C. 100.

(i) This requirement has been interpreted to exclude from registration the marks of persons other than manufacturers or merchants, e.g., a carpet cleaner: *In re Hankinson*, 8 U. S. Pat. Gaz. 89.

(k) It has been held that a description of the class and goods as "paints" is sufficient: *Smith v. Reynolds* (2), 10 Bl. C. C. 100; and so with "alcoholic spirits": *In re Boehm & Co.*, 8 U. S. Pat. Gaz. 319; but that "fancy goods" is insufficient, as being too general a term: *In re Lisner*, 13 *ib.* 455. Different persons may register the same trade mark for different descriptions of goods even in the same class: *Sorg v. Welsh*, 16 *ib.* 910. In *Smith v. Reynolds* (2), 10 Bl. C. C. 100, and S. C. (3), 13 *ib.* 458, it was held that a firm who had registered a trade mark for "paints" were not entitled to restrain the use of the mark on white lead by another firm who had used the mark on that variety of paint before the plaintiffs had used or registered their mark; and in the former case it was held that the registration being bad as to white lead was bad *in toto*, though but for that it might have been good.

(l) The trade mark must be sufficiently described for it to be possible to clearly distinguish between the essential and non-essential elements: *In re Volta Belt Co.*, 8 U. S. Pat. Gaz. 144; and see Rule 6, *infra*.

(m) The facsimile limits the verbal description of the mark: *Duke v. Green*, 16 U. S. Pat. Gaz. 1094.

(n) The previous user of the applicants or their derivative title must be stated: *Ex parte Consolidated Fruit Jar Co.*, 16 U. S. Pat. Gaz. 679. Only one example of the mode of use will be admitted: *In re Kimball*, 11 *ib.* 1109; and see *Smith v. Reynolds*, (2), 10 Bl. C. C. 100.

(o) See *Ex parte Consolidated Fruit Jar Co.*, 16 U. S. Pat. Gaz. 679.

(p) A fee paid can only be recovered when it was paid by actual mistake, e.g., a payment in excess, or one not required by law. When, therefore, an application has failed because the proposed mark was not registrable, the fee paid cannot be recovered, although a renewed application for the registration of an essentially different mark has proved successful: *In re Block & Co.*, 14 U. S. Pat. Gaz. 235. See note (a), *supra*, as to crediting fees paid under this invalid Act.

(q) See § 81, *infra*, and note thereto.

(r) As to the necessity for the filing of this declaration, and for the production

of sufficient evidence of it on a trial for infringement, see *Smith v. Reynolds* (1), 10 Bl. C. C. 85, where an injunction was refused on the ground of a deficiency of such evidence.

(s) A declaration that no other person, firm, or corporation has a right to the use of the same, or substantially the same, mark, is a sufficient compliance with this requirement: *In re Vidvard & Sheehan*, 8 U. S. Pat. Gaz. 143.

§ 78 (a). *And be it further enacted, that such trade mark shall remain in force for thirty years from the date of such registration, except in cases where such trade mark is claimed for and applied to articles not manufactured in this country, and in which it receives protection under the laws of any foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this Act, at the same time that it becomes of no effect elsewhere, and during the period that it remains in force it shall entitle the person, firm, or corporation registering the same to the exclusive use thereof, so far as regards the description of goods to which it is appropriated in the statement filed under oath as aforesaid, and no other person shall lawfully use the same trade mark, or substantially the same, or so nearly resembling it as to be calculated to deceive, upon substantially the same description of goods (b). Provided that six months prior to the expiration of the said term of thirty years, application may be made for a renewal of such registration, under regulations to be prescribed by the Commissioner of Patents, and the fee for such renewal shall be the same as for the original registration, certificate of such renewal shall be issued in the same manner as for the original registration, and such trade mark shall remain in force for a further term of thirty years: And provided further, that nothing in this section shall be construed by any Court as abridging or in any manner affecting unfavourably the claim of any person, firm, corporation, or company to any trade mark after the expiration of the term for which such trade mark was registered.*

(a) See Act of 1881, §§ 5, 7, 11.

(b) See *Sternberger v. Thalheimer*, 3 U. S. Pat. Gaz. 120, where the same mark was registered in two names; and *McElree v. Blackwell*, 15 *ib.* 658.

§ 79 (a). *And be it further enacted, that any person or corporation who shall reproduce, copy, counterfeit, or imitate any such recorded trade mark, and affix the same to goods of substantially the same description, properties, and qualities as those referred to in the registration (b), shall be liable to an action on the case for damages for such unlawful use of such trade mark at the suit of the owner thereof in any Court of competent jurisdiction in the United States, and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of his trade mark, and to recover compensation therefor in any Court having jurisdiction over the person guilty of such wrongful use (c). The Commissioner of Patents (d) shall not receive and record any proposed trade mark which is not and cannot become a lawful trade mark (e), or which is merely the name of a person, firm, or corporation only (f), unaccompanied by a mark*

sufficient to distinguish it from the same name where used by other persons, or which is identical with a trade mark appropriated to the same class of merchandise and belonging to a different owner and already registered or received for registration, or which so nearly resembles such last-mentioned trade mark as to be likely to deceive the public (g): Provided, that this section shall not prevent the registry of any lawful trade mark rightfully used at the time of the passage of this Act (h).

(a) See Act of 1881, §§ 7, 3.

(b) See *Osgood v. Rockwood*, 11 Bl. C. C. 310, where it was held that persons who had registered a trade mark for prints made according to a patented process were not entitled under this Act to an injunction against a person who had used the mark on prints not made in accordance with the patent.

(c) It seems that the U. S. Circuit Courts had jurisdiction under this Act in cases of infringement of trade mark, even when both parties were citizens of the same State: *Duvel v. Bohmer*, 14 U. S. Pat. Gaz. 270; but see *Leidersdorf v. Flint* (1), 8 Biss. 327, and §§ 7, 11 of the Act of 1881.

(d) As to the validity of the decisions of the acting commissioner, see *Simpson v. Wright* (2), 15 U. S. Pat. Gaz. 293.

(e) The question what may be registered as being a "lawful trade mark" has been considered in many cases. The device of a crown is a good trade mark: *Smith v. Reynolds* (2), 10 Bl. C. C. 100. The arms of one of the United States cannot, however, constitute of themselves a good trade mark: *Ex parte Davids & Co.*, 16 U. S. Pat. Gaz. 94; and it has been held that the same is the case with the Freemasons' square and compass: *In re Tolle*, 2 *ib.* 415; and the word "Masonic": *Ex parte Smith* (3), 16 *ib.* 764; though in *In re Thomas*, 14 *ib.* 821, the Freemasons' symbols were allowed to be registered in combination. In *Ex parte King* (2), 46 *ib.* 119, the decision in *In re Thomas*, 14 *ib.* 821, was followed, and the design of the badge adopted by the Grand Army of the Republic was allowed to be registered as a trade mark for writing paper by a person who had no connection with that Society, and it was said that, that Society not having used their badge as a mark on writing paper, they would be infringing the applicant's rights if they were to begin to do so. A word which has become common, e.g., "Calhoun" plough, cannot be registered: *In re Hall & Co.*, 13 *ib.* 229. Registration has been refused to the following words and expressions, on the ground of descriptiveness:—"Beeswax oil," *In re Hawthaway* (1), U. S. Pat. Comm. Decis. 1871, 97; S. C. (2), *ib.* 284; "Razor Steel," *In re Roberts* (4), *ib.* 100; "Invisible" face powder, *Ex parte Palmer*, *ib.* 289; "A. Richardson's Patent Union Leather Splitting Machine," *In re Richardson*, 3 U. S. Pat. Gaz. 120; "Für Familien Gebrauch," and "Lawrence Feiner Familien Flannel," *In re Lawrence*, 10 *ib.* 168; "Croup Tincture," *In re Roach*, 10 *ib.* 333; "Crack-proof" india-rubber, *In re Goodyear Rubber Co.*, 11 *ib.* 1062; "Evaporated" articles of food, *Ex parte Alden*, 15 *ib.* 389; "Standard A" cigars, *Ex parte Cohn* (1), 16 *ib.* 680; Druggists' Sundries" cigars, *Ex parte Cohn* (2), 16 *ib.* 680; "Safety" powder, *Ex parte Safety Powder Co.*, 16 *ib.* 136; "Medicated Prunes," *Ex parte Smith* (2), 16 *ib.* 679; "Swing" scythe-sockets, *Ex parte Thompson, Derby & Co.*, 16 *ib.* 137; "Granulated Dirt-killer" soap, *Ex parte Waeferling*, 16 *ib.* 764; and "Satin polish" boots and shoes, *Ex parte Brigham*, 20 *ib.* 891. And the same has been the case with respect to the figure of a fish for fishing lines: *In re Pratt & Farmer*, 10 *ib.* 866; and the representation of a twig with three leaves and a plum for prunes: *Ex parte Smith* (2), 16 *ib.* 679; and see *Popham v. Wilcox*, 66 N. Y. 69. On the other hand, "The Blanchard Churn," *In re Porter Blanchard's Sons*, U. S. Pat. Comm. Decis. 1871, 97; "Beaverine" boots and shoes, *In re Francis & Mallon*, *ib.* 283; and "Dr. Lobenthal's Essentia Antiphthisica," *In re Rokland*, 10 U. S. Pat. Gaz. 980, have been admitted to registration as being non-descriptive. In a series of cases registration has been refused on the ground that the term claimed, if properly applicable to the goods with respect to which it was used,

was descriptive, but if not, was deceptive, e.g. "American Sardines," *In re American Sardine Co.*, 3 *ib.* 495; "Egg Macaroni," *In re Dole Bros.*, 12 *ib.* 939; "Cachemire Milano," *In re Warburg & Co.*, 13 *ib.* 44; "French Paints," *Ex parte Marsching & Co.*, 15 *ib.* 294; "London" animal foods, *Ex parte Knapp*, 16 *ib.* 318; but see *In re Green*, 8 *ib.* 729, where registration was granted to "German Sirup." On the latter ground of deceptiveness, the word "patent" cannot be registered as part of a mark for an article made under an expired patent: *In re Richardson*, 3 *ib.* 120. A geographical name is not usually registrable: *Armistead v. Blackwell*, 1 *ib.* 603, "Durham" tobacco; *In re Tolle*, 2 *ib.* 415, "Cherry Street Mills," and "Market Street Mills"; *Ex parte Knapp*, 16 *ib.* 318, "London" animal foods; *Ex parte Marsching & Co.*, 15 *ib.* 294, "French Paints"; *Ex parte Parnum & Co.*, 18 *ib.* 412, "Lancaster" goods. But such a name may be registered when arbitrarily selected: *In re Cornwall* (2), 12 *ib.* 312, "Dublin" soap. Similarly, numerals may be registered when arbitrarily selected: *Kinney v. Allen*, 1 Hughes, 106; *Ex parte Dawes & Fanning*, 1 U. S. Pat. Gaz. 27; *American Solid Leather Button Co. v. Anthony*, 15 R. I. 338; but not otherwise: *In re Eagle Pencil Co.*, 10 U. S. Pat. Gaz. 981. It has been held that a peculiarity in the form of a barrel is not registrable as a trade mark: *Moorman v. Hoge*, 2 Sawy. 78; nor a representation of such barrel when applied to the goods contained in it: *Ex parte Halliday Bros.*, 16 U. S. Pat. Gaz. 500; nor is a speciality in the hoops of the barrel registrable: *In re Kane & Co.*, 9 *ib.* 105. But see *Cook v. Starkweather*, 13 Abb. Pr. N. S. 392. A special collar-box has been refused registration: *Harrington v. Libby*, 14 Bl. C. C. 128; and so have a sampler-pattern: *In re Parker*, 13 U. S. Pat. Gaz. 323; and a strip of tobacco intended to be wrapped round the mouthpiece of cigarettes, on the ground that it was intended to serve purposes of convenience rather than of identification: *In re Gordon*, 12 *ib.* 517; and the use of a tin tag or ticket on the goods, irrespective of shape and design, is no trade mark: *Lorillard v. Pride*, 28 Fed. Rep. 434; though a tin tag of special shape, size and colour may be: *Lorillard v. Wight*, 15 Fed. Rep. 383. There is no trade mark in the shape of a plug of tobacco: *Liggett & Myers Tobacco Co. v. Hynes*, 20 Fed. Rep. 883; or of a box: *Sawyer v. Horn*, 4 Hughes 239; *Ball v. Siegel*, 116 Ill. 137; or of sticks of chewing gum: *Adams v. Heisel*, 31 Fed. Rep. 279; or of the frame of a sewing machine originally made under a patent: *Wilcox & Gibbs Sewing Machine Co. v. Gibbons' Frame*, 21 Bl. C. C. 431; *Brill v. Singer Manufacturing Co.*, 41 Ohio St. 127; nor in a manner of arranging in boxes cakes of soap wrapped in differently coloured paper wrappers: *Davis v. Davis*, 27 Fed. Rep. 490; nor in a *nom de plume*: *Clemens v. Belford*, 11 Biss. 459. But registration has been granted to a peculiarly shaped stick intended to be so placed in a roll of carpet as to show an octagonal ring at each end: *Loweil Manufacturing Co. v. Larned*, Dig. 428. Registration cannot be granted to minor and non-essential features in a compound mark: *Ex parte Coats*, 16 U. S. Pat. Gaz. 544. Occasionally a mark has been allowed to be registered in alternative forms, e.g., "The Star Shirt," the same words with the figure of a star, and "The * Shirt": *Morrison v. Case*, 9 Bl. C. C. 548; the figure of a lion, the word "Lion," or both: *In re Weaver*, 10 U. S. Pat. Gaz. 1; and see *In re Park*, 12 *ib.* 2; *In re Thomas*, 14 *ib.* 821; *Ex parte Peper*, 16 *ib.* 678. A bad trade mark does not become a good one by the addition of unobjectionable elements: *In re Blakeslee & Co.*, U. S. Pat. Comm. Decis. 1871, 284, "Cundurango Ointment, C. O.;" *In re Dick & Co.*, 9 U. S. Pat. Gaz. 538, "D. D. & Co. Tasteless" drugs; *In re Rader & Co.*, 13 *ib.* 596, "Ironstone" in an oval border; but it appears to be possible for two marks, which separately are not good trade marks, to form one in combination: *Ex parte Davids & Co.*, 16 *ib.* 94. A trade mark cannot be registered for the purpose of being used by all the members of an association on goods of any quality, nor can a mark which is intended to be used in furtherance of a scheme for the restraint of trade: *Ex parte Cigar Makers' Association*, 16 *ib.* 958; and in *Schneider v. Williams*, 44 N. J. Eq. 391, the Court refused to protect such a mark at the instance of a member of the Association. In *Strasser v. Moonelis*, 108 N. Y. 611; *People v. Fisher*, 57 N. Y. Sup. Ct. 552; *Allen v. Macarthy*, 37 Minn. 347, and *Bloete v. Simon*, 19 Abb. N. C. 88, however, a different view was taken of the propriety of such a mark. It seems that the decision

of a competent Court as to the validity of a mark is binding upon the Patent Office : *In re India Rubber Comb Co.*, 8 U. S. Pat. Gaz. 905. If an application is refused on the ground that the proposed mark is not a registrable trade mark, a renewed application for the registration of a mark not open to objection must be treated as a new application, and it cannot be treated as an amendment of the original application, nor can the fee originally paid be returned : *In re Block & Co.*, 14 *ib.* 235.

(*f*) Thus in *In re Rowe & Post*, 9 U. S. Pat. Gaz. 496, the name "The New York Cutlery Co." was refused registration as a new mark. As to the registration of names as old marks, see note (*h*), *infra*. See also *In re Porter Blanchard's Sons*, U. S. Pat. Comm. Decis. 1871, 97 ; *In re Roberts* (1), *ib.* 113 ; S. C. (2), *ib.* 100 ; S. C. (3) *ib.* 101 ; *In re India Rubber Comb Co.*, 8 U. S. Pat. Gaz. 905 ; *In re Consolidated Fruit Jar Co.*, 14 *ib.* 269 ; *Ex parte Davids & Co.*, 16 *ib.* 94. The prohibition does not extend to the registration of the name of a person other than the applicant, and such names may be registered, at all events with their owner's consent, if living : *Ex parte Sullivan & Burke*, 16 *ib.* 765 ; *Ex parte Pace, Talbott & Co.*, 16 *ib.* 909.

(*g*) Thus in *In re The American Lubricating Oil Co.*, 9 U. S. Pat. Gaz. 687, registration was refused to the word "Star" as a trade mark on oil, the device of a star having already been registered for the same article ; so in *In re Coggin, Kidder & Co.*, 11 *ib.* 1109, to a device in which the principal feature was the name "Haxall," which had long been the trade mark of another firm ; so in *In re Bush & Co.*, 10 *ib.* 164, to a combination mark consisting of the applicants' own registered trade mark and two other devices appropriated by other firms ; so in *Ex parte Caire*, 15 *ib.* 248, to the words "Black Swan," the word "Swan" being already registered ; so in *Ex parte Smith* (1), 16 *ib.* 679, to "A. S. California Family * Soap," "California" and "*" being already separately on the register ; and see *Ex parte Weisert Bros.*, 16 *ib.* 680. On the other hand, in *In re Imbs*, 10 *ib.* 463, registration was granted, notwithstanding that two other marks contained somewhat similar features ; and in *In re Cornwall* (1), 12 *ib.* 138, a device of a star and crescent was registered, although there was a star already on the register.

(*h*) Under this proviso registration was granted to a name used as a trade mark before 1870, *e.g.*, "The India Rubber Comb Co. of New York," *In re India Rubber Comb Co.*, 8 U. S. Pat. Gaz. 905 ; "The Rubber Clothing Co.," *In re Rubber Clothing Co.*, 10 *ib.* 111. See *In re Dole Bros.*, 12 *ib.* 939 ; *In re Consolidated Fruit Jar Co.*, 14 *ib.* 269 ; *Ex parte Consolidated Fruit Jar Co.*, 16 *ib.* 679. This saving proviso is, however, omitted from the Act of 1881, so that the prohibition as to names, &c., is universal. See Act of 1881, § 3, and *Ex parte Fairchild*, 21 *ib.* 789, in which case registration was refused to a name which had been used as a trade mark for twenty years, and had been registered under the Act of 1870.

§ 80 (*a*). *And be it further enacted, that the time of the receipt of any trade mark at the Patent Office for registration shall be noted and recorded, and copies of the trade mark and of the date of the receipt thereof, and of the statement filed therewith under the seal of the Patent Office, certified by the Commissioner, shall be evidence in any suit in which such trade mark shall be brought in controversy.*

(*a*) See Act of 1881, §§ 3, 4.

§ 81 (*a*). *And be it further enacted, that the Commissioner of Patents is authorised to make rules and regulations (*b*) and to prescribe forms for the transfer of the right to use such trade marks, conforming as nearly as practicable to the requirements of the law respecting the transfer and transmission of copyrights.*

(*a*) See Act of 1881, § 12.

(b) It was formerly decided that the authority given to the Commissioner by § 81 to make regulations, empowered him to declare an interference in a trade mark case, for the purpose of deciding a question of title to the trade mark, on the analogy of the practice in patent cases: *Lautz Bros. & Co. v. Schultz & Co.*, 9 U. S. Pat. Gaz. 791; *Duke v. Green*, 16 *ib.* 1094. And though it was thought in *Swift v. Peters*, 11 *ib.* 1110, that the question whether a registered proprietor of a mark was entitled to the exclusive use of it as against an ex-partner, was a question for a Court of law, and not for the Office, it was held in *Hoosier Drill Co. v. Ingels*, 14 *ib.* 785, that, in investigating the title to the mark, all matters relating to the ownership should be gone into; and in *Hanford v. Westcott*, 16 *ib.* 1181, the U. S. Circuit Court decided that a decision of the Examiner of Interferences, unappealed, was conclusive as to the right to a mark; and see *Josselyn v. Swezey & Dart*, 15 *ib.* 702, as to reopening the evidence taken on an interference, and *Simpson v. Wright* (1), 15 *ib.* 248, and S. C. (2), 15 *ib.* 293, as to rehearing an interference. After the case of *U. S. v. Steffens*, 100 U. S. Rep. 82, it was held that the Patent Office has no longer any authority to decide questions of disputed titles to trade marks, or to declare interferences in such cases: *Braun & Co. v. Blackwell*, 19 U. S. Pat. Gaz. 481; but see *Ex parte Strasburger & Co.*, 20 *ib.* 155, and *Jacoby & Co. v. Lopes & Co.*, 23 *ib.* 342; and in *Yale Cigar Manufacturing Co. v. Yale*, 30 *ib.* 1183, it was decided that a declaration of interference is authorised by § 3 of the Act of 1881. In such cases the only duty of the Office is to decide whether the opponent has or has not a better title than the applicant, not to decide any further question: *ib.* If, on an interference between an applicant and a registered proprietor with respect to the same mark, the right to registration is adjudged to the applicant, notwithstanding the opposition of the registered proprietor, the result is, while strictly giving the applicant merely the right to register, practically to displace the registered proprietor, though his mark is not removed from the register: *ib.*

§ 82 (a). *And be it further enacted, that any person who shall procure the registry of any trade mark, or of himself as the owner thereof, or an entry respecting a trade mark, in the Patent Office under this Act, by making any false or fraudulent representations or declarations verbally or in writing, or by any fraudulent means, shall be liable to pay damages in consequence of any such registry or entry to the person injured thereby, to be recovered in an action on the case in any Court of competent jurisdiction within the United States.*

(a) See Act of 1881, § 9.

§ 83 (a). *And be it further enacted, that nothing in this Act shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any party aggrieved by any wrongful use of any trade mark might have had if this Act had not been passed (b).*

(a) See Act of 1881, § 10.

(b) See *Osgood v. Rockwood*, 11 Bl. C. C. 310; *U. S. v. Roche*, 1 McCrary, 385.

§ 84 (a). *And be it further enacted, that no action shall be maintained under the provisions of this Act by any person claiming the exclusive right to any trade mark which is used or claimed in any unlawful business, or upon any article which is injurious in itself, or upon any trade mark which has been fraudulently obtained, or which has been formed and used*

with the design of deceiving the public in the purchase or use of any article of merchandise (b).

(a) See Act of 1881, § 8.

(b) It seems that this Act provided no means for removing from the register a mark which was wrongly registered—*e.g.*, a mark which did not contain any of the essential particulars. See *Armistead v. Blackwell*, 1 U. S. Pat. Gaz. 603; *McElwce v. Blackwell*, 15 *ib.* 658; *Wright v. Simpson*, 15 *ib.* 968; *Yale Cigar Manufacturing Co. v. Yale*, 30 *ib.* 1183.

ACT OF CONGRESS OF 1875 (a).

BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled :—

§ 1. That every person who shall, with intent to defraud, deal in or sell, or keep or offer for sale, or cause or procure the sale of, any goods of substantially the same descriptive properties as those referred to in the registration of any trade mark, pursuant to the statutes of the United States, to which, or to the package in which the same are put up, is fraudulently affixed said trade mark, or any colourable imitation thereof, calculated to deceive the public, knowing the same to be counterfeit, or not the genuine goods referred to in said registration, shall, on conviction thereof, be punished by fine not exceeding one thousand dollars, or imprisonment not more than two years, or both such fine and imprisonment.

(a) So far as this Act was dependent on the Registration Act of 1870 it fell to the ground when that Act was declared invalid in *U. S. v. Steffens*, 100 U. S. Rep. 82.

§ 2. That every person who fraudulently affixes, or causes or procures to be fraudulently affixed, any trade mark registered pursuant to the statutes of the United States, or any colourable imitation thereof, calculated to deceive the public, to any goods of substantially the same descriptive properties as those referred to in said registration, or to the package in which they are put up, knowing the same to be counterfeit, or not the genuine goods referred to in said registration, shall, on conviction thereof, be punished as prescribed in the first section of this Act (a).

(a) See the New York case of *People v. Fisher*, 57 N. Y. Sup. Ct. 552.

§ 3. That every person who fraudulently fills, or causes or procures to be fraudulently filled, any package to which is affixed any trade mark, registered pursuant to the statutes of the United States, or any colourable imitation thereof, calculated to deceive the public, with any goods of substantially the same descriptive properties as those referred to in said registration, knowing the same to be counterfeit, or not the genuine goods referred to in said registration, shall, on conviction thereof, be punished as prescribed in the first section of this Act.

§ 4. That any person or persons who shall, with intent to defraud any person or persons, knowingly and wilfully cast, engrave, or manufacture, or have in his, her, or their possession, or buy, sell, offer for sale, or deal in, any die or dies, plate or plates, brand or brands, engraving or engravings, on wood, stone, metal, or other substance, moulds, or any false representation, likeness, copy, or colourable imitation of any die, plate, brand, engraving or mould of any private label, brand, stamp, wrapper, engraving on paper or other substance, or trade mark, registered pursuant to the statutes of the United States, shall, upon conviction thereof, be punished as prescribed in the first section of this Act.

§ 5. That any person or persons who shall, with intent to defraud any person or persons, knowingly and wilfully make, forge or counterfeit, or have in his, her, or their possession, or buy, sell, offer for sale, or deal in, any representation, likeness, similitude, copy, or colourable imitation of any private label, brand, stamp, wrapper, engraving, mould, or trade mark, registered pursuant to the statutes of the United States, shall, upon conviction thereof, be punished as prescribed in the first section of this Act.

§ 6. That any person who shall, with intent to injure or defraud the owner of any trade mark, or any other person lawfully entitled to use or protect the same, buy, sell, offer for sale, deal in, or have in his possession any used or empty box, envelope, wrapper, case, bottle, or other package, to which is affixed, so that the same may be obliterated without substantial injury to such box or other thing aforesaid, any trade mark, registered pursuant to the statutes of the United States, not so defaced, erased, obliterated, and destroyed as to prevent its fraudulent use, shall, on conviction thereof, be punished as prescribed in the first section of this Act.

§ 7. That if the owner of any trade mark, registered pursuant to the statutes of the United States, or his agent, make oath, in writing, that he has reason to believe, and does believe, that any counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, or moulds, of his said registered trade mark, are in the possession of any person with intent to use the same for the purpose of deception and fraud, or make such oaths that any counterfeits or colourable imitations of his said trade mark, label, brand, stamp, wrapper, engraving on paper or other substance, or empty box, envelope, wrapper, case, bottle, or other package, to which is affixed said registered trade mark not so defaced, erased, obliterated, and destroyed as to prevent its fraudulent use, are in the possession of any person with intent to use the same for purpose of deception and fraud, then the several judges of the circuit and district courts of the United States, and the commissioners of the circuit courts, may, within their respective jurisdictions, proceed under the law relating to search-warrants, and may issue a search-warrant authorising and directing the marshal of the United States for

the proper district to search for and seize all said counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, moulds, and said counterfeit trade marks, colourable imitations thereof, labels, brands, stamps, wrappers, engravings on paper, or other substance, and said empty boxes, envelopes, wrappers, cases, bottles, or other packages that can be found; and upon satisfactory proof being made that said counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, moulds, counterfeit trade marks, colourable imitations thereof, labels, brands, stamps, wrappers, engravings on paper or other substance, empty boxes, envelopes, wrappers, cases, bottles, or other packages, are to be used by the holder or owner for the purpose of deception and fraud, that any of said judges shall have full power to order all said counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, moulds, counterfeit trade marks, colourable imitations thereof, labels, brands, stamps, wrappers, engravings on paper or other substance, empty boxes, envelopes, wrappers, cases, bottles, or other packages, to be publicly destroyed.

§ 8. That any person who shall with intent to defraud any person or persons, knowingly and wilfully aid or abet in the violation of any of the provisions of this Act, shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars, or imprisonment not more than one year, or both such fine and imprisonment.

ACT OF CONGRESS OF 1881.

AN ACT TO AUTHORISE THE REGISTRATION OF TRADE MARKS AND PROTECT THE SAME.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled,

§ 1 (a). That owners of trade marks used in commerce with foreign nations or with the Indian tribes, provided such owners shall be domiciled in the United States or located in any foreign country or tribe which, by treaty, convention, or law, affords similar privileges to citizens of the United States, may obtain registration (b) of such trade marks by complying with the following requirements:

1st. By causing to be recorded in the Patent Office a statement specifying name, domicile, location, and citizenship of the party applying; the class of merchandise and the particular description of goods comprised in such class to which the particular trade mark has been appropriated; a description of the trade mark itself, facsimiles thereof (c), and a statement of the mode in which the same is applied and affixed to goods and the length of time during which the trade mark has been used (d).

2nd. By paying into the Treasury of the United States the sum of twenty-five dollars and complying with such regulations as may be prescribed by the Commissioner of Patents.

(a) See Act of 1870, § 77.

(b) Registration is a mere record of a claim, and affords merely *prima-facie* evidence of ownership. See § 7, *infra*, and *Yale Cigar Manufacturing Co. v. Yale*, 30 U. S. Pat. Gaz. 1183.

(c) See *Adams v. Heisel*, 31 Fed. Rep. 279.

(d) In *Lacroix v. Escobal*, 37 La. Ann. 533, it was held that a French citizen who had not deposited his mark at the U. S. Patent Office, as required by the Convention of 1869 between the U. S. and France, was not entitled to maintain an action for infringement. But in *Société, &c., de la Bénédicte v. Micalovitch*, 36 Alb. L. J. 364, it was held that compliance with the terms of that Convention was not essential where the trade mark of a French company had been registered under this Act of Congress.

In California an exclusive right to the use of a trade mark or name cannot now be acquired without registration as required by the State Code: *Whittier v. Dietz*, 66 Cal. 78.

§ 2 (a). That the application prescribed in the foregoing section must, in order to create any right whatever in favour of the party filing it, be accompanied by a written declaration verified by the person, or by a member of a firm, or by an officer of a corporation applying, to the effect that such party has at the time a right to the use of the trade mark sought to be registered, and that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that such trade mark is used in commerce with foreign nations or Indian tribes, as above indicated (b), and that the description and facsimiles presented for registry truly represent the trade mark sought to be registered.

(a) See Act of 1870, § 77.

(b) This Act only recognises trade marks actually in use, and not trade marks which it is only intended to use in the future; and the user must be user in commerce with foreign nations or the Indian tribes, and the declaration on oath (see Rule 7, *post*) that there has been such user is strictly insisted on: *Ex parte Strasburger & Co.*, 20 U. S. Pat. Gaz. 155.

§ 3 (a). That the time of the receipt of any such application shall be noted and recorded. But no alleged trade mark shall be registered unless the same appear to be lawfully used as such (b) by the applicant in foreign commerce or commerce with Indian tribes, as above mentioned, or is within the provision of a treaty, convention, or declaration with a foreign power; nor which is merely the name of the applicant (c), nor which is identical with a registered or known trade mark (d) owned by another and appropriated to the same class of merchandise, or which so nearly resembles some other person's lawful trade mark as to be likely to cause confusion or mistake in the mind of the public, or to deceive purchasers (e). In an application for registration the Commissioner of Patents shall decide the presumptive lawfulness of claim

to the alleged trade mark (*f*); and in any dispute between an applicant and a previous registrant, or between applicants, he shall follow, so far as the same may be applicable, the practice of courts of equity of the United States in analogous cases (*g*).

(*a*) See Act of 1870, § 80, 79.

(*b*) As to what may be lawfully used as a trade mark, see the cases cited in note (*e*) to § 79 of the Act of 1870, *ante*. Under the present Act it has been decided that "Albany Beef" was no trade mark for canned sturgeon, being descriptive: *Ex parte Ams*, 23 U. S. Pat. Gaz. 344; that, on the same ground, "Time-keeper" could not be registered as an essential part of a trade mark for watches: *Ex parte Strasburger & Co.*, 20 *ib.* 155; nor "Cristalline" as a trade mark for artificial brilliants: *Ex parte Kipling*, 24 *ib.* 899; but that "Invigorator" was not descriptive, but a good trade mark for spring bed-bottoms: *Ex parte Heyman*, 18 *ib.* 922. Registration has been refused to the geographical name "Raleigh" (*Ex parte Oliver*, 18 *ib.* 923), but granted to a distinctive band or ribbon, intended to be attached to cigar-boxes, as a trade mark for cigars, it serving no mechanical purpose: *Ex parte Straiton & Storm*, 18 *ib.* 923. There is no trade mark in the colour of an article or of the packets containing it. Thus registration was refused to a red bag intended to contain flower seeds offered for sale: *Ex parte Landreth*, 31 *ib.* 1441. See *Fleischmann v. Starkey*, 25 Fed. Rep. 127. A trade mark of an inherently deceptive character cannot be registered: *Ex parte Bloch & Co.*, 40 U. S. Pat. Gaz. 443. Compare, however, *Société, &c., de la Bénédicte v. Micalovitch*, 36 Alb. L. J. 364.

(*c*) This prohibition being so general, registration has been refused to a name which had been used for twenty years as a trade mark, and had been registered as such under the Act of 1870: *Ex parte Fairchild*, 21 U. S. Pat. Gaz. 789. And in *Ex parte Adviance, Platt & Co.*, 20 *ib.* 1820, registration was refused to a name as part of a trade mark which also included a device. But a name has been allowed to be registered as part of an old combination trade mark: *Ex parte Frieberg & Workum*, 20 *ib.* 1164.

(*d*) These words have been held to prohibit the registration under this Act of a mark identical with or only colourably differing from a mark registered under the invalid Act of 1870, and not re-registered under this Act: *Ex parte Lyon Dupuy & Co.*, 28 U. S. Pat. Gaz. 191. And the fact that the new applicant uses the mark in foreign or Indian commerce, and that it does not appear whether the registered mark was so used, makes no difference: *ib.* So, also, *Yale Cigar Manufacturing Co. v. Yale*, 30 *ib.* 1183. What the applicant has to show is: (1) that he has a right to use the mark, and that no one else has; (2) that it is not too similar to the registered or known mark of another; (3) that the applicant uses it in foreign or Indian commerce: *Ex parte Lyon Dupuy & Co.*, 28 *ib.* 191.

(*e*) In *Ex parte Strasburger & Co.*, 20 U. S. Pat. Gaz. 155, registration as part of a trade mark was refused to the word "Railway," that having already been registered by another manufacturer.

(*f*) The Court cannot grant registration; that is for the commissioner alone: *Yale Cigar Manufacturing Co. v. Yale*, 30 U. S. Pat. Gaz. 1183.

(*g*) Under this section the commissioner has power to declare an interference: *Yale Cigar Manufacturing Co. v. Yale*, 30 U. S. Pat. Gaz. 1183; and it makes no difference that the parties are partners, nor that one is a company and the other a member of it: *ib.* If the better title is with the applicant, he will be registered, notwithstanding that the same mark is on the register in the name of another person with an inferior title: *ib.* As to interferences, see § 81 of Act of 1870, *suprà*.

§ 4 (*a*). That certificates of registry of trade marks shall be issued in the name of the United States of America, under the seal of the Department of the Interior, and shall be signed by the Commissioner of Patents; and a record thereof, together with printed copies of the specifications,

shall be kept in books for that purpose. Copies of trade marks and of statements and declarations filed therewith and certificates of registry so signed and sealed, shall be evidence in any suit in which such trade marks shall be brought in controversy.

(a) See Act of 1870, § 80.

§ 5 (a). That a certificate of registry shall remain in force for thirty years from its date, except in cases where the trade mark is claimed for and applied to articles not manufactured in this country, and in which it receives protection under the laws of a foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this Act at the time that such trade mark ceases to be exclusive property elsewhere. At any time during the six months prior to the expiration of the term of thirty years such registration may be renewed on the same terms and for a like period.

(a) See Act of 1870, § 78.

§ 6. That applicants for registration under this Act shall be credited for any fee or part of a fee heretofore paid into the Treasury of the United States with intent to procure protection for the same trade mark.

§ 7 (a). That registration of a trade mark shall be *prima-facie* evidence of ownership (b). Any person who shall reproduce, counterfeit, copy, or colourably imitate any trade mark registered under this Act, and affix the same to merchandise of substantially the same descriptive properties as those described in the registration, shall be liable to an action on the case for damages for the wrongful use of said trade mark at the suit of the owner thereof; and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of such trade mark used in foreign commerce or commerce with Indian tribes, as aforesaid, and to recover compensation therefor in any Court having jurisdiction over the person guilty of such wrongful act; and Courts of the United States shall have original and appellate jurisdiction in such cases without regard to the amount in controversy (c).

(a) See Act of 1870, §§ 78, 79.

(b) The use of a trade mark which, though registered, is a colourable imitation of another, may consequently be restrained: *Allen Core Manufacturing Co. v. Ludeman*, 23 Bl. C. C. 46; *Schumacher & Ettlinger v. Schwenke* (2), 36 U. S. Pat. Gaz. 457; determining the doubt suggested in *Decker v. Decker*, 52 How. Pr. 218. The registration of a mark does not deprive the public of the right to use a somewhat similar mark, which was of common right before the registration, e.g. where "La Normandi" had been registered, but "La Normanda" was already in common use, no injunction was granted to restrain the use of the latter: *Stachelberg v. Ponce*, 128 U. S. Rep. 6-6.

(c) See § 11, *infra*.

§ 8 (a). That no action or suit shall be maintained under the provisions of this Act in any case when the trade mark is used in any unlawful business or upon any article injurious in itself, or which mark has been

used with the design of deceiving the public in the purchase of merchandise, or under any certificate of registry fraudulently obtained.

(a) See Act of 1870, § 84.

§ 9 (a). That any person who shall procure the registry of a trade mark, or of himself as the owner of a trade mark, or an entry respecting a trade mark, in the office of the Commissioner of Patents, by a false or fraudulent representation or declaration, orally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence thereof to the injured party to be recovered in an action on the case.

(a) See Act of 1870, § 82.

§ 10 (a). That nothing in this Act shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any party aggrieved by any wrongful use of any trade mark might have had if the provisions of this Act had not been passed.

(a) See Act of 1870, § 83.

§ 11 (a). That nothing in this Act shall be construed as unfavourably affecting a claim to a trade mark after the term of registration shall have expired ; nor to give cognisance to any Court of the United States in an action or suit between citizens of the same State (b), unless the trade mark in controversy is used on goods intended to be transported to a foreign country, or in lawful commercial intercourse with an Indian tribe (c).

(a) See Act of 1870, § 78.

(b) The Federal Courts have now no jurisdiction to try a trade mark action between citizens of the same State, unless the pleadings allege that the plaintiff uses the trade mark on goods intended for foreign or Indian commerce : *Ryder v. Holt*, 128 U. S. Rep. 525 ; *Luytius v. Hollender* (1), 22 Bl. C. C. 413 ; *Schumacher & Ettliger v. Schwenke* (1), 26 Fed. Rep. 818. The Federal Court is not limited in its jurisdiction to cases in which the defendant's profits have exceeded 500 dollars : *Symonds v. Greene*, 28 Fed. Rep. 834.

(c) Since under this Act the Federal Court cannot try a trade mark case between citizens of the same State unless the goods are intended for foreign or Indian commerce, there is no jurisdiction in such a case in respect of past wrongful acts : *Schumacher & Ettliger v. Schwenke* (2), 36 U. S. Pat. Gaz. 457.

§ 12 (a). That the Commissioner of Patents is authorised to make rules and regulations and prescribe forms for the transfer of the right to use trade marks and for recording such transfers in his office.

(a) See Act of 1870, § 81.

§ 13. That citizens and residents of this country wishing the protection of trade marks in any foreign country the laws of which require

registration here as a condition precedent to getting such protection there, may register their trade marks for that purpose as is above allowed to foreigners, and have certificate thereof from the Patent Office.

Approved March 3rd, 1881.

RULES AND FORMS ADOPTED BY THE U. S. PATENT OFFICE FOR THE REGISTRATION OF TRADE MARKS UNDER ACT OF MARCH 3RD, 1881.

Who may obtain Registration.

1. (a.) Any person, firm, or corporation domiciled in the United States or located in any foreign country which, by treaty, convention, or law, affords similar privileges to citizens of the United States (a), and who is entitled to the exclusive use of any trade mark and uses the same in commerce with foreign nations or with Indian tribes.

(b.) Any citizen or resident of this country wishing the protection of his trade mark in any foreign country the laws of which require registration in the United States as a condition precedent.

(a) The United States acceded to the International Convention in 1887. See also the Treaty with the United Kingdom, p. 642, *infra*.

Statutory Requirements.

2. Every applicant for registration of a trade mark must cause to be recorded in the Patent Office—

(a.) The name, domicile, and place of business or location of the firm or corporation desiring the protection of the trade mark, and the residence and citizenship of individual applicants.

(b.) The class of merchandise and the particular description of goods comprised in such class to which the trade mark has been appropriated.

(c.) A description of the trade mark itself, with facsimiles thereof, and the mode in which it has been applied and used.

(d.) The length of time during which the trade mark has been used by the applicant on the class of goods described.

3. A fee of twenty-five dollars is required on filing each application, except in the cases hereinafter named. (See pars. 16 and 17).

The Application.

4. An application for the registration of a trade mark will consist of a statement and specification, a declaration or oath, and the facsimile, with duplicates thereof.

5. These should be preceded by a brief letter of advice requesting registration and signed by the applicant.

6. The statement should announce the full name, citizenship, domicile,

residence, and place of business of the applicant (or if the applicant be a corporation, under the laws of what state or nation incorporated), with a full and clear specification of the trade mark, particularly discriminating between its essential and non-essential features. It should also state from what time the trade mark has been used by the applicant, the class of merchandise, and the particular goods comprised in such class to which the trade mark is appropriated, and the manner in which the trade mark has been applied to the goods.

7. The declaration should be in the form of an oath by the person or by a member of the firm, or by an officer of the corporation making the application, to the effect that the party has at the time of filing his application a right to the use of the trade mark described in the statement; that no other person, firm, or corporation has a right to such use, either in the identical form, or in such near resemblance thereto as might be calculated to deceive; that such trade mark is used in lawful commerce with some foreign nation (or nations) or some Indian tribe (or tribes), and that it is truly represented in the facsimile presented for registry (*a*).

(*a*) This statement on oath will be insisted on: *Ex parte Strasburger*, 20 U. S. Pat. Gaz. 155.

8. This oath may be taken within the United States, before a notary public, justice of the peace, or the judge or clerk of any court of record. In any foreign country it may be taken before the secretary of a legation or consular officer of the United States, or before any person duly qualified by the laws of the country to administer oaths, whose official character shall be certified by a representative of the United States having an official seal.

Facsimiles to be Filed.

9. Where the trade mark can be represented by a facsimile which conforms to the rules for drawings of mechanical patents (*a*), such a drawing may be furnished by applicant, and the additional copies will be produced by the photo-lithographic process at the expense of the office. Or the applicant may furnish one facsimile of the trade mark, mounted on a card ten by fifteen inches in size, and ten additional copies upon flexible paper, not mounted; but in all cases the sheet containing the mounted facsimile or the drawing must be signed by the applicant or his authorised attorney.

(*a*) These rules are furnished on application by letter to the Commissioner.

Proceedings in the Office.

10. All applications for registration are considered in the first instance by the Trade Mark Examiner. An adverse decision by such examiner

upon the applicant's right to registration will be reviewed by the Commissioner in person upon petition without fee.

11. No trade mark will be registered unless it shall be made to appear that the same is used as such by the applicant in commerce with foreign nations or with Indian tribes, or is within the provisions of a treaty, convention, or declaration with a foreign power, nor which is merely the name of the applicant, nor which is identical with a known or registered trade mark owned by another, and appropriated to the same class of merchandise, or which so nearly resembles some other person's lawful trade mark as to be likely to cause confusion in the mind of the public or to deceive purchasers.

12. In case of conflicting applications for registration, or in any dispute as to the right to use which may arise between an applicant and a prior registrant, the office will declare an interference, in order that the parties may have opportunity to prove priority of adoption or right; and the proceedings on such interference will follow, as nearly as practicable, the practice in interferences upon applications for patents; but each applicant and registrant will be held to the date of adoption alleged in the statement filed with his application. On the petition of any party dissatisfied with the decision of the Examiner of Interferences the case will be reviewed by the Commissioner without fee (a).

(a) After *U. S. v. Steffens*, 100 U. S. Rep. 82, it was held that the U. S. Patent Office had no authority to decide disputed questions of title to trade marks, or to declare interferences: *Braun & Co v. Blackwell*, 19 U. S. Pat. Gaz. 481. But see *Ex parte Strasburger & Co.*, 20 *ib.* 155, and *Jacoby & Co. v. Lopes & Co.*, 23 *ib.* 342. And it is now decided that there is such authority: *Yale Cigar Manufacturing Co. v. Yale*, 30 *ib.* 1183. And see notes to § 81 of the Act of 1870, and to § 3 of the Act of 1881, *supra*.

13. When these requirements have been complied with, and the office has adjudged the trade mark lawfully registrable, a certificate will be issued by the Commissioner, under seal of the Interior Department, to the effect that applicant has complied with the law, and that he is entitled to the protection of his trade mark in such cases made and provided. Attached to the certificate will be a facsimile of the trade mark and a printed copy of the statement and declaration.

14. The protection for such trade mark will remain in force for thirty years, and may, upon the payment of a second fee, be renewed for thirty years longer, except in cases where such trade mark is claimed for and applied to articles not manufactured in this country, and in which it receives protection under the laws of any foreign country for a shorter period, in which case it will cease to have force in this country, by virtue of the registration, at the same time that the trade mark ceases to be exclusive property elsewhere.

15. The right to the use of any trade mark is assignable by an instrument of writing, and such assignment of a registered trade mark must be recorded in the Patent Office within sixty days after its execution, in

default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice. No particular form of assignment or conveyance is prescribed, but the trade mark should be identified by the certificate number.

16. Owners of trade marks for which protection has been sought by registering them in the Patent Office under the Act of July 8th, 1870 (declared unconstitutional by the Supreme Court of the United States), may register the same for the same goods, without fee, on compliance with the foregoing requirements. With each applicant of this character a specific reference to the date and number of the former certificate is required (a).

(a) See *Jacoby & Co. v. Lopes & Co.*, 23 U. S. Pat. Gaz. 342.

17. Applicants whose cases were filed under the Act of 1870, either prior to or since the decision of the Supreme Court declaring it unconstitutional, which are now pending before the office, are advised to prepare applications in conformity with the law and foregoing rules. On the receipt of such an application, referring to the date of the one formerly filed, all fees paid thereon will be duly applied. Those who have paid only ten dollars as a first fee are advised that the law does not provide for a division of the legal fee of twenty-five dollars, and that the remainder of the entire fee is required before the application can be entertained.

Copies and Publications.

18. Printed copies of the statement and declaration in each case, with a duplicate of the trade mark, can be furnished by the office. The *Official Gazette* of the Patent Office, published weekly, will contain a list of all trade marks registered, with the name and address of the registrant, a brief statement of the essential features of the trade mark, and the particular description of goods to which it is applied.

Fees.

19. On filing an application for registration of trade mark	\$25 00
For recording assignments—	
Under 300 words	1 00
Over 300, and less than 1000, words	2 00
Over 1000 words	3 00
For single printed copy of statement and declaration	25
Single copy <i>Official Gazette</i>	10
Annual subscription <i>Official Gazette</i>	5 00

Correspondence.

20. All letters should be addressed to "The Commissioner of Patents," and all remittances by postal order, check, or draft should be to his order.

21. Letters relating to pending applications should refer to the name of the applicant and date of filing. Letters relating to registered trade marks must refer to the name of registrant, number or date of certificate, and the class of merchandise to which the trade mark is applied.

22. The office cannot undertake to respond to inquiries propounded with a view to ascertain whether certain trade marks have been registered, or, if so, to whom or for what goods; nor can it give advice as to the nature and extent of the protection afforded by the law, or act as its expounder, except as questions may arise upon applications regularly filed. A copy of these rules with this paragraph marked will be regarded as a courteous answer to all such inquiries.

FORMS.

The following forms have been prepared to be used in filing applications for registration of trade marks. Their use is not absolutely required, but as they have been made to conform to the conditions of the law, applicants will find their business facilitated by following them closely.

Letter of Advice.

To the Commissioner of Patents :

The undersigned presents herewith a facsimile of his lawful trade mark, and requests that the same, together with the accompanying statement and declaration, may be registered in the United States Patent Office in accordance with the law in such cases made and provided.

A. B.

Statement.

To all whom it may concern :

Be it known that I, A. B.,* a citizen of the United States, residing at _____, in the county of _____ and State of _____, and doing business at _____, have adopted for my use a trade mark for _____,* of which the following is a full, clear, and exact specification.

My trade mark consists of the letters and words (or arbitrary symbols, as the case may be) _____. These have generally been arranged as shown in the accompanying facsimile. (Here give a full description of the facsimile, including all its features.) But _____ may be omitted

and _____ changed at pleasure without materially altering the character of my trade mark, the essential features of which are _____ .

This trade mark I have used continuously in my business since _____ , 18 _____ .

The class of merchandise to which this trade mark is appropriated is _____ , and the particular description of goods comprised in such class on which I use the said trade mark is _____ .† It has been my practice to (here state fully the manner of applying it to the goods or the packages containing them).

A. B.

Witnesses :

C. D.

E. F.

* The first paragraph of the statement should be modified to conform to the circumstances of each applicant. If a firm, the domicile and place of business are required ; if a corporation, under what State or other laws incorporated, where located, and place of business ; if a person not an American citizen, of what country he is a citizen (or subject, as the case may be), &c., &c.

† The description of the goods on which the trade mark is used should be in the same language in the first and last paragraphs of the statement.

Declaration.

State of _____ , County of _____ , ss :

A. B., being duly sworn, deposes and says that he is the applicant named in the foregoing statement ; that he verily believes that the foregoing statement is true ; that he has at this time a right to the use of the trade mark therein described ; that no other person, firm, or corporation, has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive ; that it is used in commerce with (here name one or more foreign nations or Indian tribes, or both, as the case may be) ; that the description and facsimiles presented for record truly represent the trade mark sought to be registered ; and that he is a citizen of the United States.

Sworn and subscribed before me a _____ this _____ day of _____ , 18 _____ .

G. H., *J.P.*

If the application is made by a firm or corporation, or by a citizen or subject of a foreign power, this declaration should be modified accordingly.

APPENDIX I.

TREATY WITH THE UNITED STATES, 1877 (*a*).

DECLARATION BETWEEN GREAT BRITAIN AND THE UNITED STATES FOR THE PROTECTION OF TRADE MARKS.

The Government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the Government of the United States of America, with a view to the reciprocal protection of the marks of manufacture and trade in the two countries, have agreed as follows :

The subjects or citizens of each of the contracting parties shall have, in the dominions and possessions of the other, the same rights as belong to native subjects or citizens, or as are now granted or may hereafter be granted to the subjects and citizens of the most favoured nation, in everything relating to property in trade marks and trade labels.

It is understood that any person who desires to obtain the aforesaid protection must fulfil the formalities required by the laws of the respective countries.

In witness whereof the Undersigned have signed the present Declaration, and have affixed thereto the seal of their arms.

Done at London, the 24th day of October, 1877.

(L.S.)	DERBY.
(L.S.)	EDWARDS PIERREPONT.

(*a*) The importance of this Treaty has not yet disappeared. See opinion of the Attorney-General of the United States (47 U. S. Pat. Gaz. 397) as to the necessity for legislation, not yet passed, for giving effect to the International Convention of 1883.

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