

legislatures as well as a central legislature, means the central legislature only.

In the application of this Act to Ireland "summary conviction" means a conviction under the Summary Jurisdiction Acts, that is to say, with reference to the Dublin Metropolitan Police District the Acts regulating the duties of justices of the peace and of the police for such district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending it.

(a) See § 112A, *supra*. In *Bow v. Hart*, (1905) 1 K. B. 592, the Court of Appeal left open the point whether the definition of "the Court" in this section excluded the jurisdiction of the County Court in actions for infringement of trade marks, but they held upon the construction of the County Courts Acts and the Judicature Act that the County Court had no jurisdiction to entertain such an action.

SCHEDULES.

THE FIRST SCHEDULE.

Forms.

THE SECOND SCHEDULE.

Fees on Instruments for obtaining Patents and Renewal.

THE THIRD SCHEDULE.

Enactments Repealed.

* * * * *

38 & 39 Vict. c. 91 (1875).—The Trade Marks Registration Act, 1875.

39 & 40 Vict. c. 33 (1876).—The Trade Marks Registration Amendment Act, 1876.

40 & 41 Vict. c. 37 (1877).—The Trade Marks Registration Extension Act, 1877.

APPENDIX G.

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EXTRACTS FROM THE REPORT, *dated the 16th March, 1888.*
of the DEPARTMENTAL COMMITTEE appointed by the
Board of Trade on the 24th of February, 1887, "to
inquire into the duties, organization and arrangements
of the Patent Office under the Patents, Designs, and
Trade Marks Act, 1883 (46 & 47 Vict. c. 57), so far
as relates to trade marks and designs."

LORD HERSCHELL, Chairman.

REPORT.

The complaints which have been made to us of the working of the Act of 1883, and the suggestions which have been submitted of amendments in the law and its administration, have had reference both to the registration of trade marks and designs. We propose to deal with these matters separately, directing attention first to the subject of trade marks.

I.—TRADE MARKS.

1. We propose first to consider the suggestions which have been made for improvements of procedure in relation to the registration of trade marks.

* * * * *

15. We have given very careful consideration to the evidence which has been laid before us by those interested in the trade of Lancashire. The number of marks registered in Classes 23, 24, and 25, which are commonly described as the Cotton Classes, is very large; and the administration of the Act in relation to these classes is of great importance to the trade. There can be no doubt that the working of the Trade Marks Act has not given satisfaction in Lancashire. Even if at times there may have been a disposition to expect too much, we think there have been substantial grounds for the dissatisfaction which has prevailed. The great bulk of the goods manufactured in Lancashire in respect of which trade marks are used is exported to other countries, and there can be no doubt that these marks fulfil important functions in the trade between Lancashire and India, and other countries. One chief complaint has been

that the usages of the trade and the character of the markets where the marks are intended to serve their purpose have not been sufficiently kept in view by the Patent Office. By § 72, sub-sect. 2, the Comptroller is directed not to register, with respect to the same description of goods, a trade mark so nearly resembling a trade mark already on the register with respect to such description of goods as to be calculated to deceive. It is on the question whether marks do so nearly resemble one another as to be calculated to deceive, and what extent of resemblance to an old mark ought to cause the rejection of an application, that the chief difference has arisen between the trade and those to whom the administration of the Act has been entrusted. The tendency of the office has been to construe the words of the enactment more favourably towards applicants for new marks than the trade have thought right. We think the difference has arisen in part from the wording of the Act. The comptroller has felt unable to say that the two marks "so nearly" resemble each other as to be calculated to deceive. He has thus not considered himself at liberty to take into consideration to the extent that he otherwise might, the character of the market in which the mark is to serve its purpose. Two marks, when placed side by side, may exhibit many and various differences, yet the idea left upon the mind by both may be the same, so that a person acquainted with the mark first registered, and not having the two side by side for comparison, might well be deceived, if goods were allowed to be impressed with the second mark, into a belief that he was dealing with goods which bore the same mark as that with which he was acquainted. Take, for example, a mark representing a game of football; another mark may show the players in a different dress, and in very different positions, and yet the idea conveyed by each might be simply a game of football. It would be too much to expect that persons dealing with trade-marked goods, and relying, as they frequently do, upon the marks, should be able to remember the exact details of the marks upon the goods with which they are in the habit of dealing.

In order to avoid misapprehension in the future we recommend, even though it may not be absolutely necessary, a slight amendment of the Act, substituting for the words "so nearly resembling" the words "having such resemblance to"; and further we would suggest that when the question arises whether a mark applied for bears such resemblance to one on the register as to be calculated to deceive, it should be determined by considering what is the leading characteristic of each. The one might contain many, even most, of the same elements as the other, and yet the leading, or it may be the only, impression left on the mind might be very different, whilst, on the other hand, a critical comparison of two marks might disclose numerous points of difference, and yet the idea which would remain with any person seeing them apart at different times might be the same.

In this connection we may refer to a point which has been the subject of considerable controversy, namely, how far registered or common marks when combined together are to be regarded as a new mark. We think that the juxtaposition of two or more such marks is

not, if there be nothing more than this, a combination constituting a new mark. An important test appears to be whether the existing marks are so combined as to suggest a new idea. For instance, assuming a cat and a fiddle to be each an old mark, we do not think the mere representation of a cat and a fiddle together would be a new mark, but the representation of a cat playing upon a fiddle, the idea conveyed by which would be neither the cat nor the fiddle, but a cat playing upon a fiddle, would be a good combination, and might properly be registered. We think this view differs somewhat from that which has been at times, at all events, entertained by the Board of Trade, but it appears to us to be the sound one.

Where several common or open marks are worked into a single new design by being grouped together within a border or otherwise, we think that such a combination may be entitled to registration, but that it would be well to require that all the common elements should be disclaimed.

* * * * *

18. We have had under our serious consideration the question whether it would be expedient and possible to provide for the registration of what are known in the cotton trade as line headings. It is clear that it could only be done by an alteration of the law, making in that case the colours used an essential part of the registered mark. There appears to be a somewhat general concurrence of view, that if it were practicable to provide effectually for the registration of these headings it would be desirable to do so, but the most opposite opinions were expressed by persons of large experience in the Manchester trade on the point whether it would be practicable. We are disposed to concur with those who pronounce it impracticable, but whether this view be correct or not, we clearly cannot recommend the adoption of a scheme the practicability of which is open to such serious doubt. At the same time we are fully conscious of the evils to which our attention has been directed. Woven line headings no doubt play an important part in many markets; they become associated in the minds of buyers with the make of a particular manufacturer, or the merchandize of a particular merchant, and goods bearing particular marks obtain, on account of their proved quality, a high reputation in the market. Thereupon, some other manufacturer or merchant sends to the very market where he knows this reputation has been acquired goods of an inferior quality bearing, not the identical heading, but one so resembling it as to leave on the mind of a person seeing it the same impression. He is thus enabled to undersell the merchant who originally introduced the mark to the market, whilst still securing a good profit for himself on account of the inferior quality of his goods, and this process often goes on until the very mark which gained the reputation is shunned by the buyers who at one time valued the goods to which it was attached.

Even those witnesses who have felt most strongly the impossibility of protecting line headings by registration have admitted the magnitude of the evil, and that these resemblances of headings, of which complaint is made, are not accidental, but intentional. We

are satisfied that not only do individual traders incur loss from this cause, but that the trade of Lancashire suffers from it.

The imitation of headings, however, is not the only mode by which this kind of false representation is successfully carried on. We have had before us pieces of cloth, each of which bore different trade marks, tickets, words, figures, and other marks, but on which those trade marks, tickets, &c., were so coloured and distributed as to convey the impression, in the absence of careful examination, that the goods bore the same marks. No one looking at those pieces of cloth could doubt that the resemblance was intentional, and was designed for the very purpose of deceiving. Although we arrived at the conclusion that it would not be possible to give to line headings the protection of registration, we felt that the fraudulent trading to which our attention had been called ought not to remain unchecked, and that something ought to be done to remedy a state of things so detrimental to sound and honest trading; we, therefore, procured the insertion in the Merchandise Marks Act of a clause having for its object to bring these frauds within the penalties of the law and thus to check their practice. The clause has been the subject of a good deal of criticism, and some alarm has been expressed lest it should press hardly on persons acting with perfect honesty. We do not think this is likely to be the case. It is, of course, difficult so to frame a law as to make it effectual against wrongdoers, and at the same time to guard those who have no unlawful intention from all possible risk of inconvenience. The operation of the Act must, no doubt, be carefully watched, and it may well be capable of amendment, but we could not resign ourselves to the conclusion that mischievous frauds must be allowed to continue without even an attempt to put a stop to them.

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24. We will next proceed to consider the objections which have been taken to the law which now governs what may be registered as trade marks, and the important suggestions which have been made for its amendment.

25. By section 64 (1) (c) of the Act a trade mark may be registered which consists of or contains "a distinctive device, mark, brand, heading, label, ticket, or fancy word, or words not in common use." Some controversy has arisen with reference to the meaning of the word "brand" as distinguished from the other words employed. There can be no doubt that the term derives its origin from the practice of producing some mark by means of burning, but it appears now to be in use in certain trades for the purpose of describing trade marks no longer produced in this way, and differing in no respect from the labels or tickets mentioned in the section; nevertheless a distinction has been made in the practice of the Office, and trade marks have been allowed registration in certain trades as brands when they would not be accepted in other classes as labels or tickets. We see no reason for this distinction. It does not appear to us to receive support from the language of the Act, and we think that in future brands should be dealt with in precisely the same way as labels or tickets.

26. The most difficult question which has arisen upon the enact-

ment under consideration is to determine what may properly be regarded as "fancy words." Words are, undoubtedly, a most popular form of trade mark, but some limit must obviously be put upon the words which an individual may be permitted to register and claim the exclusive use of. The expression "fancy word" is certainly not a happy one, and has naturally given rise to considerable differences of opinion as to its meaning.

It will be convenient to consider first what words ought to be allowed as trade marks. There can be no objection to permitting the registration of an invented word not to be found in the vocabulary of our own or any other country. It seems to us further that existing words may with advantage be permitted as trade marks, subject to limitations which at once suggest themselves. It is manifest that no one ought to be granted the exclusive use of a word descriptive of the quality or character of any goods. Such words of description are the property of all mankind, and it would not be right to allow any individual to monopolise them and exclude others from their use. Again geographical words, which can be regarded as descriptive of the place of manufacture or sale of the goods, are open to obvious objections. One manufacturer or merchant cannot properly be allowed to prevent all his competitors from attaching to their goods the name of the place of their manufacture or sale. The mischief would not be the same where the person seeking to register was the first who had manufactured or sold the goods in the place the name of which he seeks to appropriate as a trade mark. But there are objections to giving a monopoly even in that case, and to attempt to draw any such distinction would be likely to lead to difficulty and litigation. We think, therefore, that geographical names ought only to be permitted where they clearly could not be regarded as indicative of the place of manufacture or sale. We would add upon this point that we think that where an English word would be rejected as not entitled to registration no person ought to be permitted to register its translation into any other language. The question has been raised whether a word having the same sound as one entered on the register, though differently spelt and with a different meaning should be registered. The question in such a case would seem to be whether the resemblance between the old mark and that applied for was such as to be calculated to deceive; if it were it ought, of course, to be rejected.

Our attention has been called to the rejection of words which it is said indicate the use to be made of the articles to which they are to be applied. As, for example, "Mariner's Rum." We think that if the word sought to be registered would be understood as suggesting a special use of the goods, or their adaptability to a particular purpose, it would be objectionable as descriptive of their character.

Registration, it appears, is sometimes sought of devices which are descriptive of the goods to which they are to be applied, *e.g.*, a representation of a hinge to be applied to doors. We think these are not legitimate marks.

Complaints have also been made that where words have been refused as not being distinctive, they have afterwards been allowed

where the applicant has applied for a mark consisting of the same word preceded by the applicant's name with an apostrophe. We think this course ought not to be pursued. Little or no mischief might result where the name of the applicant was an uncommon one, but where the name was a common one the result would be to deprive all persons bearing the same name of their right to use a common word in connexion with their own name, and even if the name were an uncommon one it would be impossible to say that there were not other persons bearing it who might wish to use in connection with it the common word which it is sought to monopolise.

Evidence has been given that marks consisting of a combination of the applicant's name with the article he manufactures or sells are highly valued. There can be no doubt that if a manufacturer or vendor has obtained for his goods a reputation amongst the public he could, by process of law, quite apart from the Trade Marks Act, prevent goods that were not his from being offered to the public on the representation that they were so. But it would be quite a different thing to give by virtue of registration under the Trade Marks Act a right to prevent another manufacturer or merchant honestly describing his own goods by his own name.

It is said that there is often a desire to register short phrases, such as proverbs, &c., and that owing to the difficulty of finding the representation that they were so. But it would be quite an objection to this, provided that they are in no way descriptive of the character or quality of the goods, or of their place of origin, sale, or manufacture.

It is said that there is often a desire to register short phrases, those interested in the cotton classes that words should not be permitted to be registered as trade marks in Classes 23 and 24. If the desire be so general as is represented, we see no reason in principle why it should not be yielded to. But there appears to be a serious difficulty in the way of making such a change at present, owing to the International Convention which has been entered into. We understand that word marks are registered in the cotton classes in some of the countries which are parties to the Convention; and there would be an anomaly in permitting such marks to be registered here when first registered in those countries, whilst registration is denied them if first applied for in England.

27. By section 64, sub-section 2, there may be added to any one or more of the essential particulars "any letters, words, or figures, or combination of letters, words, or figures or of any of them." There is here, it will be seen, no limitation as to the letters, words, or figures, which may be combined with the essential part of a trade mark. By section 74, however, it is provided that nothing in the Act shall be construed to prevent the comptroller registering as an addition to any trade mark "any distinctive word, or combination of words, though the same is common to the trade in the goods with respect to which the application is made." But this section enacts, sub-section 2, that "The applicant for entry of any such common particular or particulars must however disclaim in his application any right to the exclusive use of the same, and a copy of the disclaimer shall be entered on the register." It has

been said, and we think truly, that it is not easy to understand what is the exact status of the added matter provided for by section 64. Where the added words are not common to the trade in the goods with respect to which the application is desired, the right of exclusive use need not be disclaimed, yet it is presumed that the proprietor of the trade mark could not object to their use by any other person except in connection with the essential particular of his trade mark. What purpose then do they serve? Perhaps they may be useful in the case of a colourable imitation of the essential particular. If with such an imitation the same added words were used it would assist the proprietor in establishing that his trade mark had been infringed. But the added matter may, it is assumed, be of so distinctive a character as to form an essential part of the trade mark, so that its use might be an infringement. We think it would clearly be desirable that the added matter, which the proprietor does not claim the exclusive use of, should be disclaimed so that the public may know exactly what is the trade mark registered. We think, too, that all disclaimers should appear in connexion with the mark in the Official Journal. Some misapprehension might perhaps arise if the person registering the mark were compelled to disclaim his own name or the foreign equivalent for it. We think, therefore, this might be excluded from the necessity of disclaimer, but it should be provided that the proprietor of the mark should not thereby acquire the right to prevent any other person *bonâ fide* using his own name in connexion with his goods.

* * * * *

41. It has been suggested that there is a necessity for some statutory definition of the trade mark rights which are acquired in connection with words used as the names of patented articles. Where a patent has been obtained for some article of commerce, and the patentee gives it a name which he registers as his trade mark, has he a right at the end of the term of his patent to prevent other people from selling it under that name? It is clear that he obtains the patent upon the condition that at the expiration of the term of his monopoly the public should have the right to manufacture and use it, and if the only name by which it is known is that which the proprietor has registered as a trade mark, it would certainly seem inconsistent with the right thus intended to be conferred on the public if every one except the original patentee were prevented from calling it, or from selling it, by that name which alone it bears. The authorities appear, however, to show that such a claim could not be maintained.

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II.—DESIGNS.

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(Signed)

HERSCHELL.
CRAWFORD.
MACNAGHTEN.
A. J. MUNDELLA.
H. DE WORMS.
JAMES F. HUTTON.

16th March, 1888.

APPENDIX H.

THE MERCHANDISE MARKS ACTS, 1887—1909, AND
THE STATUTES, REGULATIONS AND ORDERS
CONNECTED 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 repealed 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—(i)

- (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 (k); or
- (c.) That otherwise he had acted innocently (l);

he 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 (m), 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 (n) to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding twenty pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding fifty pounds; and
- (iii.) in any case, to forfeit to Her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed.

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

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

(6.) Any offence for which a person is under this Act liable to punishment on summary conviction may be prosecuted, and any articles liable to be forfeited under this Act by a court of summary jurisdiction may be forfeited in manner provided by the Summary Jurisdiction Acts: Provided that a person charged with an offence under this section before a court of summary jurisdiction shall, on appearing before the Court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly. 42 & 43 Vict. c. 49.

(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. See *Coppen v. Moore* (1), (1898) 2 Q. B. 300, and the Scotch cases of *Lord Advocate v. Jacobs*, (1908) S. C. 90, and *Lord Advocate v. Suits, Ltd.*, (1908) S. C. 1163.

(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), and 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) This Act renders the master or principal criminally liable for the acts of his agents and servants in all cases within § 2, sub-ss. 1 and 2, where the act constituting the offence is done by the servant or agent within the scope or in the course of his employment, subject to this, that the master or principal may be relieved from criminal responsibility where he can prove that he has acted in good faith, and has done all that it was reasonably possible to do to prevent the commission by his agents and servants of offences against the Act: *Coppen v. Moore* (2), (1898) 2 Q. B. 306; and it seems that *Budd v. Lucas*, (1891) 1 Q. B. 408, must be treated as overruled on this point. See also *R. v. Barnado*, Times, Jan. 18th, 1889; *R. v. Hickling*, Times, July 28th, 1890; *R. v. Melin*, Times, March 25th, 1896; *R. v. Jenkinson*, Times, Jan. 3rd, 1901. In the case of an offence under this sub-s. the absence of a fraudulent intent is not of itself sufficient to bring the defendant within Clause (c), and if he offends knowingly he is not acting innocently: *Haddon v. Neilson*, Ct. Sess. Cas. 5th Ser. II. 19; *Thwaites & Co. v. McKelvey*, 20 P. R. 663; 21 P. R. 397; (with which compare *Donohoe v. Cherry*, 26 P. R. 545); *North Eastern Breweries, Ltd. v. Gibson*, 91 L. T. N. S. 78; *Burns v. Turner*, Ct. Sess. Cas. 4th Ser. XXV. 38; *Stone v. Burn*, 27 Times L. R. 6. But a defendant accused of an offence under this sub-s. may prove that he has acted innocently though he has not taken all reasonable precautions, and though he had reason to suspect the genuineness of the article. Accordingly auctioneers who, on being informed that certain china articles on view in their sale rooms were not genuine Dresden, and that the marks were forged, sold it for what it was, were held by the Divisional Court to have acted innocently: *Christie, Manson & Woods v. Cooper*, (1900) 2 Q. B. 522. In an earlier case of *R. v. Tooth*, Times, Aug. 7th, 1891 (which was not cited to the Divisional Court), Sir P. Edlin had held that, where an auctioneer who, on being informed that a piano in his show room was marked with a colourable imitation of a name of a well-known maker, withdrew the lot from the sale, he must none the less be held guilty of an offence under this section. In Scotland it has been held that where the master had given orders that goods were only to be described by the terms employed in the invoice from the manufacturer to himself, and a servant supplied goods which had been invoiced to the master as "overcoating," to a customer who had ordered "Scotch tweed," and the goods were not properly Scotch tweed, it was held that the master had acted innocently within the Act: *Lord Advocate v. Suits, Ltd.* (1908), S. C. 163.

(k) 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.

(l) Clauses (a) and (b) of sub-s. 2 apply to cases where the goods in question are in the possession of the accused for sale, or are sold with the forged trade mark or false trade description already stamped upon them, and not to a case where the false trade description is applied upon the occasion and as part of the terms of the sale, in which case the accused must rely on Clause (c): *Coppen v. Moore* (1), (1898) 2 Q. B. 300.

(m) 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 (*e*), or

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

(*e.*) as to any goods being the subject of an existing patent (*g*), 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 (*h*), 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 (*i*):

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 (*k*).

(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 (*l*), and
- (c.) are either those of a fictitious person or of some person not *bonâ fide* carrying on business in connection with such goods (*m*).

(a) See Table of Orders in Council in Appendix D. Sect. 91 of the Patents and Designs Act, 1907. is now substituted for §§ 103, 104 of the Act of 1883.

(b) See § 18. The Act does not apply to verbal descriptions, but it is not necessary that there should be any physical connection between the description and the goods to which it is applied. The false trade description may be found in the invoice: *Coppen v. Moore* (1), (1898) 2 Q. B. 300. See also *Budd v. Lucas*, (1891) 1 Q. B. 408; *Langley v. Bombay Tea Co.*, (1900) 2 Q. B. 460; *Lord Advocate v. Jacobs*, (1908) S. C. 90; and *Lord Advocate v. Suits, Ltd.*, *ib.* 1163. And as to the corresponding Canadian statute, see *R. v. T. Eaton Co.*, 31 Ont. R. 276. Where a butcher followed up a verbal description that mutton was New Zealand mutton by writing in the invoice the letters "N. M.," meaning thereby New Zealand mutton, he was held guilty of an offence under the Act: *Cameron v. Wiggins*, (1901) 1 K. B. 1. So, in *R. v. English Farmers' Association*, Times April 27, 1899, it was held that initials might be a sufficient trade description (New Zealand mutton described as "W. Leg. M.," meaning Welsh leg of mutton). And see the Scotch cases referred to in note (b) to § 5. The definition of "trade description" has been held in two cases in the Manchester Police Court to be wide enough to reach a somewhat complicated system of fraud practised in the cotton trade. Cotton yarn is reeled into certain lengths called hanks, each hank containing by the custom of the trade 840 yards. In this country the yarn is sold by weight, and is usually made up in bundles of 5 lbs. or 10 lbs. The price is regulated by what is called "the count" of the yarn, or, in other words, by the number of times a hank is contained in a pound weight of yarn, the greater number of hanks in the pound the finer the yarn and the higher the price. For example, yarn containing twelve hanks to the pound is spoken of as twelves, and would fetch a smaller price than yarn containing sixteen hanks to the pound, called sixteens. It is possible for any one acquainted with the trade to tell at a glance, from the make-up of the bundles, how many hanks the yarn contains to the pound, that is to say, the make-up affords an indication of the count of the yarn. In the first case, *Reg. v. Ananiadi* (Manchester Police Court, July 30th, 1889), the defendant, for the purposes of his export trade, caused bundles of yarn containing forty-five hanks to the pound to be made up as yarn containing sixty hanks to the pound. This was effected by a process technically known as "short reeling," by which the length of the hank was reduced below its proper number of yards so far as was necessary to increase the number of hanks per pound from forty-five to sixty. In addition to this, the number "60" was placed on the outside of each bundle to indicate the count of the yarn, though this was done without the express instructions of the defendant, and the numbers were subsequently removed by his orders. In this way a double fraud was committed, since the yarn was made to appear to be of a finer quality than it really was, and the hank, instead of containing its normal number of yards, viz., 840, contained only about 630 yards, and was, in fact, a spurious hank. Consequently there was a misrepresentation both as to the length and as to the fineness of the yarn. The magistrate held that the make-up of the bundles afforded a sufficient indication of the measure of the goods within the definition of "trade description" in § 3, and that it was immaterial whether or not the number of the count was affixed to the wrappers of the bundles, and he convicted the defendant. In the second case, *Reg. v. Manoukian* (Manchester Police Court, May 10th, 1898), the defendant was also convicted upon a similar state of facts.

The effect of the convictions in *Reg. v. Ananiadi* in 1889, and in *Reg. v. Manoukian* in 1898, was to render it difficult, if not impossible, for a merchant desirous of placing "short-reeled" yarn on the market to procure it in Manchester, but in 1903 another person also named Manoukian, a relation of the defendant in the 1898 case, was charged in Manchester under § 11 with having been an accessory to the

commission of a similar offence abroad and convicted: *R. v. Manoukian* (2), Manchester Police Court, September 8th, 1903. In this case the defendant was a member of a firm carrying on business in Manchester and in Constantinople as dealers in cotton yarn. The Constantinople branch of the firm caused yarn to be manufactured and made up in Italy and then supplied to them in Constantinople for sale in the Turkish market. The payment to the Italian manufacturers was made by means of bills drawn upon Manchester and accepted there by the defendant. The yarn which formed the subject of the prosecution had been manufactured in Italy, supplied to Constantinople, and paid for in Manchester in this course of trade. It was made up in 10 lb. bundles purporting to be "fourteens," "twenties" and "twenty-fours," that is to say, each bundle ought to have contained fourteen, or twenty, or twenty-four times 840 yards of yarn, whereas in fact the bundles contained far short of this number of yards by reason of coarser and heavier yarn being used, though the weight was correct. Thus each bundle of "fourteens" contained 91,000 yards instead of 117,600 yards, each bundle of "twenties" contained 129,600 yards instead of 168,000 yards, each bundle of "twenty-fours" contained 168,960 yards instead of 201,600 yards, so that the yarn supplied was both smaller in quantity and inferior in quality than the make-up of the bundles indicated to be the case. If this "short-reeling" had been done in Manchester, the defendant must have been convicted in accordance with the previous decisions, and it was held that as the defendant was a member of the firm trading in Constantinople as well as in Manchester, and had paid for the "short-reeled" yarn by accepting the bills, he must be convicted as an accessory, notwithstanding that he alleged that the Constantinople branch was responsible and that he had had no personal knowledge of the "short-reeling." He was fined 20*l.* with 100*l.* costs. The bundles were also numbered "14," "20," "24," and this marking was the subject of later counts, but the prosecution did not further press the matter after obtaining a conviction on the first count, which was as to the make-up of the bundles.

(c) See *Reg. v. Ananiadi* (Manchester Police Court, July 30th, 1889); *Hooper v. Balfour*, 62 L. T. N. S. 646; *Budd v. Lucas*, (1891) 1 Q. B. 408; *Reg. v. Manoukian* (Manchester Police Court, May 10th, 1898); *R. v. Lipton*, 32 L. R. Ir. 115. Where goods sold in packets are labelled with a given weight, it is an offence under this clause to weigh in the wrapper: *R. v. Lipton* (2), *Times*, June 16th, 1899; *Star Tea Co. v. Whitworth*, 91 L. T. N. S. 87. But where the defendant, in answer to a demand for half-a-pound of tea, handed to the customer a packet stamped with the words "the weight of this packet including the wrapper is half-a-pound," and that was true, he was held not guilty inasmuch as a description expressed in words or implied by conduct was not a trade description within the Act: *Langley v. Bombay Tea Co.*, (1900) 2 Q. B. 460.

(d) See *Stacey v. Chilworth Gunpowder Co.*, 24 Q. B. D. 90; *R. v. Lipton*, 32 L. R. Ir. 115; *Bishop v. Toler*, 65 L. J. M. C. 1, where a man who prepared in England a substitute for butter mainly consisting of margarine manufactured in France was held properly convicted of an offence under the Act in having described the product as manufactured in France. A thing is considered to be manufactured at the place where it first becomes a finished article: *Ibid.*; and see *R. v. Van Straughton, Leon & Co.*, *Times*, Jan. 20, 1899; *R. v. Coopman*, *Times*, Feb. 22, 1906; also § 7 as to watches. Fines have been imposed in many cases where English-made cigars or cigarettes have been sold as foreign: *R. v. Egan*, *Times*, Dec. 24, 1888; *R. v. Cullow*, *Times*, Feb. 8, 1890; *R. v. B. Muriatti, Sons & Co., Ltd.*, *Times*, May 3, 1890; *R. v. Jones*, May 15, 1900; *R. v. Drapkin*, *Times*, June 13, 1900; *R. v. B. Morris & Sons, Ltd.*, *Times*, June 15, 1900; *R. v. Robinson & Barnsdale*, *Times*, Apr. 2, 1901; *R. v. Wholesale Tobacco Co., Ltd.*, *Times*, Jan. 28, 1908; *R. v. Nathan*, *Times*, Feb. 14, 1908; *R. v. Butcher*, 1 Cr. App. R. 54; *R. v. Phillips*, 2 Cr. App. R. 295. In some of the above cases the use on the boxes of foreign terms indirectly indicating the origin of the goods has been held sufficient for a conviction. In *R. v. Robinson & Barnsdale*, *Times*, Apr. 2, 1901, it was further held to be no defence that the back of the box contained the words "made in England." So where foreign ham or bacon has been described as of this country: *R. v. Melia*, *Times*, March 25, 1896; *R. v. Watts*, *Times*, Apr. 7, 1897; *R. v. Metropolitan & Provincial Stores, Ltd.*, *Times*, July 13, 1897; *R. v. Frost & Co.*, *Times*, Nov. 17, 1897, where fines were imposed on both principal and servant: but in *Morris v. Royle*, 31 L. J. (Jo.) 339, the words "Finest Wiltshire Cut" as applied to Irish bacon were held referable to the shape and mode of cutting. Offences against this clause are common also in the china trade: *R. v. Hickling*, *Times*, July 28,

1890; *R. v. Grossbaum*, Times, Apr. 20, 28, 1898; *R. v. Harrod's Stores*, Times, May 17, 1898; *R. v. Hampton*, Times, June 23, 1898; *R. v. Price*, Times, Feb. 1, 1899; *R. v. Hopeon*, Times, May 10, 1900; *R. v. Midland Education Co.*, Times, Nov. 9, 1901; and in the wine trade: *R. v. Lipton*, Times, March 18, 1908 (Spanish wine described as port); *R. v. Camoccio*, Times, Jan. 9, 1909; July 10, 1909 (Australian burgundy described as burgundy); *R. v. Homburger*, Times, Sept. 15, 1908 (wine from the Berneastler district but not from the Berneastler Doctor vineyard sold as Berneastler Doctor). So it has been held a false trade description to describe as sparkling wine foreign still wine aerated in this country: *R. v. Graeger*, Feb. 20, 1890. Where wine was sold under the description of "Stower's Tarragona Port," to which was added in smaller letters the words "Blended with wine produced from finest foreign grapes," and it was proved that one-third of the wine consisted of a special kind of Tarragona (which is a Spanish wine) only fit for blending, and that the remaining two-thirds were composed of a wine made in Greece, from grape must, which consisted of the concentrated juice of fresh grapes grown in Greece, the Divisional Court held that the magistrate was justified in saying that this was not a false trade description: *Hooper v. Riddle*, 21 Cox, 177. In *R. v. Cam Portland Cement Co.*, Times, March 21, 1901, an unsuccessful attempt was made to prove that "blue" lime in the trade was confined to lime got from the Midlands, and it was held to be a generic term; accordingly the defendants, who applied it to lime got from Cambridge, were acquitted. In *Watson v. Dr. Jaeger's Sanitary Woollen System Co.*, 13 Times L. R. 150, upon a summons charging the defendants with causing to be applied a false trade description, to wit, a mark purporting to be an English trade mark, to woollen goods of German manufacture, it was held that evidence that according to the custom of the trade an English trade mark indicated that the goods to which it was applied were of English manufacture, was admissible and the case was remitted to the magistrate. In *R. v. Daniel*, March 6, 1907, it was held an offence to describe tweeds as Donegal. In *R. v. Rylands & Sons, Ltd.*, Times, Apr. 9 and Dec. 9, 1909, it was held an offence to describe Yorkshire blankets as Witney, and the defence (under § 18) that the word "Witney" was used in the trade to describe a special mode of manufacture was held bad; the practice being recent and not lawful. Fines were also imposed in *R. v. Smith*, Times, Sept. 11, 1889 (German saws sold as Sheffield); *R. v. Paget*, Times, May 10, 1890 (tea wrongly described as Logama, the name of a particular tea garden); *R. v. Rhensius*, Times, March 9, 1899 (German lampholders sold as Austrian); *R. v. Peugeot*, Times, May 23, 1906 (French cycle chains sold as English); *R. v. Racco*, Times, Sept. 15, 1909 (fountain pen made in Austria sold as Irish); *R. v. Pike*, Times, Sept. 15, 1909 (Birmingham penholders sold as Irish); and in *Cameron v. Wiggins*, (1901) 1 K. B. 1; and *R. v. English Farmers' Association*, Times, Apr. 27, 1899, as to which, see *ante*, p. 674.

(e) It has been held an offence under this clause to describe machine-made files as hand-cut (*R. v. Bramall*, Times, Dec. 18, 1889), and to describe machine-cut tobacco as hand-cut (*Kirshenboim v. Salmon & Gluckstein*, (1898) 2 Q. B. 19; *R. v. Cohen, Weenen & Co.*, Times, May 3, 1899; *R. v. Phillips*, Times, Dec. 11, 1900); also to sell factory butter as creamery butter (*R. v. Jones, Dickenson & Co.*, Times, June 9, 1908), it being shown that in the trade creamery butter means butter made by centrifugal or machine power as distinguished from factory butter, which is made by putting milk in dishes and allowing the cream to rise.

(f) 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. It is an offence under this clause to describe margarine as butter (*R. v. Goodwin*, Times, April 16, 1896; *R. v. Semprini*, Times, Jan. 25, 1899; *R. v. Davies Bros.*, Times, May 14, 1903), and to describe butter mixed with foreign matter as guaranteed pure butter (*R. v. Coopman*, Times, Jan. 25, 1906); also to describe as pure lard lard solidified with 10 per cent. of ox stearine (*R. v. Nicholls*, Times, Dec. 14, 1896). So it is an offence to describe as linen things made of cotton (*R. v. Thornton*, Times, Sept. 15, 1909), or of a mixture of linen and cotton (*R. v. Jones Bros.*, Times, Jan. 16, 1899; *R. v. Dr. Deimel Underwear Fabric Co.*, Times, Oct. 24, 1903); and to describe as "natural wool" underclothing containing more cotton than wool, notwithstanding the allegation that the description was in accordance with the practice of the trade (*R. v. Downing*, Times, Oct. 20, 1893); and to describe a mattress made of carpet waste (hemp and wool) as a wool mattress (*Meadows v. Catesby*, 107 L. T. (Jo.) 440). On the other hand,

it has been held that the term "flannelette," which material is all cotton, does not import that the substance is made of wool (*R. v. Whiteley*, Times, Jan. 16, 1895), and in *Davenport v. Apollinaris Co., Ltd.* (20 Cox, 502), that the water from the Apollinaris spring was not improperly described as a natural mineral water, notwithstanding that a certain quantity of natural carbonic acid gas was added to it to replace what had been given off during storage. In *Fowler v. Cripps*, (1906) 1 K. B. 16, it was held by the Divisional Court (Darling, J., dissenting) that the mere fact that a description, as applied to particular goods, is scientifically correct will not prevent it from being a false trade description where it is proved that the term has acquired in the trade a special limited sense. Accordingly where Glauber's salts (sulphate of soda) were sold under the name "soda crystals," which name in the trade was always used to denote washing soda (carbonate of soda), it was held that the description, though chemically accurate, was none the less a false trade description; and see *R. v. Burgoyne & Co.*, Times, Jan. 10, 1904, and *R. v. Gilbert*, Times, Apr. 23, 1907. So in the silver and goldsmiths' trade a description which indicates to the public that the goods contain a larger proportion of gold or silver than they do in fact is a false trade description: *R. v. Peck*, Times, Jan. 11, 1888; *R. v. Crompton*, Times, July 9, 1908. Where Guinness' stout was diluted with water, it was held to be an offence to describe the mixture as Guinness' stout: *R. v. Tweedy*, Times, Oct. 17, 1893. Convictions have been obtained in various other cases: *R. v. Hall*, Times, Jan. 4, 1889 (carbolic acid described as Condy's fluid); *R. v. Adcock*, Times, Mar. 4, 1901 (disinfectant deficient in chlorine described as chloros); *R. v. Jacobs*, Times, Nov. 21, 1907 (mixture of sugar and paraffin wax described as chocolate); *R. v. Ashenfarb*, Times, Dec. 31, 1908 (copal described as amber). But in *R. v. Clark*, Times, May 8, 1907, the description of "Juvis," which contained 18 per cent. only of meat extract, as a meat extract, with qualifying words added, was held not to be a false trade description.

(g) See § 89 of the Patents and Designs Act, 1907, replacing § 105 of the Patents Act, 1883. In *Grudley v. Swinborne*, 5 Times L. R. 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 1817; 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 has been held that a person who himself wrongly 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. See *R. v. Vaughan*, Times, Feb. 25, 1888; *R. v. Gruber*, Times, Nov. 20, 1891, where the defendant was convicted although the complete specification had been accepted; cf. *R. v. Townsend*, 13 P. R. 265, where the defendant was not convicted.

(h) 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 aspect unless the inaccuracy would have some effect on the mind of a purchaser. *Stacey 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. Again, in *Kirshenboim v. Salmon & Gluckstein*, (1898) 2 Q. B. 19, where machine-made cigarettes were falsely described as hand-made, it was held no answer to the question of materiality that the thing supplied was as good in quality as that which was asked for.

(i) In many of the cases reported only in the newspapers it does not clearly appear whether the charge was for applying a false trade description or for forging a trade mark, but in some of the cases both charges are included. Convictions have been obtained where the deception of the public has been procured by the effacement of a trade mark: in *R. v. Egan*, Times, Dec. 24, 1888; *R. v. Levy*, Times, Nov. 23,

1903; *R. v. Dunlop Rubber Tyre Co.*, Times, Jan. 11, 1908; *R. v. James' Drug Stores, Ltd.*, Times, May 14, 1908; in *R. v. Zender*, Times, June 6, 1909, the defendant was heavily fined for applying to a piano not of Bechstein's make, a colourable imitation of Bechstein's name; and see *R. v. Tooth*, Times, Aug. 7, 1891. So convictions have been obtained for wrongly marking guns with the names of well known makers: *R. v. Goff*, Times, Nov. 9, 1899; *R. v. McCarthy, Buck & Co.*, Times, Apr. 6, 1900; *R. v. Styles*, Times, Feb. 6, 1901; *R. v. Jeffery*, Times, Oct. 12, 1892, where genuine rifle barrels inscribed with the maker's name were bought second hand by the defendant and were made new and re-marked with the name of the original maker. Other cases are *R. v. Crosse*, Times, Sept. 24, 1891 (sauce wrongly marked Goodall's); *R. v. Ingold*, Times, Jan. 21, 1896 (lampholders marked with a colourable imitation of Edison & Swan's trade mark); *R. v. Weisberg*, Times, June 24, 1904 (spurious gas mantle labeled Welsbach); *R. v. Tobins*, Times, May 4, 1904 (phonograph records falsely described as Edison's); *R. v. Edmans*, Times, July 15, 1905 ("Ormonde" trade mark falsely applied to bicycles); *R. v. Jenkinson*, Times, Jan. 3, 1901 (bicycle wrongly invoiced as having B. S. A. (Birmingham Small Arms) fittings); *R. v. Shepherd*, Times, Dec. 23, 1904 (trade mark falsely applied to rag book); *R. v. Northwood*, Times, Jan. 23, 1908 (pills falsely described as Beecham's); *R. v. Moss*, Times, Feb. 18, 1904 (Swiss watches falsely described as "Waltham" (an American make)); *R. v. Parkes' Drug Stores*, Times, Apr. 2, 1908 (Fayard's Eau de Quinine invoiced as Giraud's); *R. v. Jacobs*, Times, Nov. 21, 1907 (chocolate marked with a colourable imitation of Cailler's name). For the cases in the china trade, see *R. v. Grossbaum*, Times, Apr. 28, 1898; *R. v. Midland Education Co.*, Times, Nov. 9, 1901, and other cases collected under note (d) (*ante*, pp. 675, 676). In some cases the false trade description consists of or is supplemented by the forgery of a government mark giving a certain cachet to the goods to which it is applied: *R. v. Steel, Peach, Tozer & Co.*, Times, Sept. 23, 1898; *R. v. Jones*, Times, May 15, 1900. In *R. v. Hersey*, Times, June 13, 1900, a charge of selling cigarettes with a colourable imitation of the prosecutor's label was dismissed for want of similarity. So in *R. v. Cowland*, Times, Jan. 31, 1896, it was held that the fact that the defendant's name appeared on one of the wheels of a coach was no sufficient indication that he was the maker of the coach, and the charge of applying a false trade description was dismissed. Again, the affixing to a bottle of bovril the number of a registered design which had run out through lapse of time was held not a false trade description of the bottles of bovril: *R. v. Bovril, Ltd.*, Times, June 29, 1898. It is an offence to bake bread not made of Hovis flour in tins supplied by the Hovis Company and marked with their name: *R. v. Johnson*, Times, March 7, 1900; *R. v. Jung*, Times, Sept. 26, 1900. Very analogous to this are the cases which so constantly occur in the mineral water trade where a manufacturer, on getting back from his customers bottles moulded with the names of other makers, fills them with mineral water of his own manufacture: *Wood v. Burgess*, 24 Q. B. D. 162; *Burns v. Turner*, Ct. Sess. Cas. 4th Ser. XXV. 38; *R. v. Evans*, Times, Oct. 26, 1888; *R. v. Wredon*, Times, Nov. 25, 1890; *R. v. Julier*, Times, Dec. 20, 1890; and in such cases it is no defence that the defendant had his own label on the bottles: *R. v. Butler*, Times, May 31, 1889; *R. v. Hickling*, Times, July 28, 1890; *R. v. Tissell*, Times, Apr. 14, 1892; *Thwaites & Co. v. McErilly*, 21 P. R. 397 (contrast *Donohoe v. Cherry*, 26 P. R. (Ir.) 545), or even that the defendant had put up a notice that servants using other manufacturers' bottles would be dismissed: *R. v. Hickling*, Times, July 28, 1890; and see *R. v. Barnado*, Times, Jan. 18, 1889. Similar cases occur in the beer and spirit trades: *R. v. Clarke*, Times, Oct. 26, 1891; *Haddow v. Neilson*, Ct. Sess. Cas. 5th Ser. II. 19; *R. v. Horrigan*, Times, Nov. 13, 1901; *R. v. Welsh*, Times, Oct. 31, 1899; *R. v. Brown & French*, Times, March 2, 1901; *R. v. Pratt*, Times, May 29, 1901; *R. v. Cox*, Times, Apr. 23, 1907; *Stone v. Burn*, 27 Times L. R. 6. In many of the above cases confiscation has been ordered. See *R. v. Tobins*, Times, May 4, 1904; *R. v. Jeffery*, Times, Oct. 12, 1892; *R. v. Jacobs*, Times, Nov. 21, 1907, and other cases, but confiscation will be refused where the offence is not serious: *R. v. Hopeon*, Times, May 10, 1900; *R. v. Burgoyne & Co.*, Times, Jan. 9, 1904. Under the corresponding statute in Canada it has been held that the same tests are to be applied in a criminal prosecution for forging a trade mark as in a civil action for infringement: *R. v. Antier*, 6 Q. O. R. (Q. B.) 146; and that it is open to the person charged to show that the trade mark is invalid: *R. v. Cruttenden*, 10 Ont. L. R. 80.

(k) A good example of the application of a false trade description to goods which falls within this sub-section is supplied by the case of *R. v. Ellinger*, Manchester

Police Court, July 18th, 1893, where the imitation was of a combination marking used by Messrs. G. & R. Dewhurst on grey shirtings for the Indian market. Messrs. Dewhurst's combination consisted of the following marks, arranged vertically one above the other:—An upright oblong green ticket printed in black, with a figure of a lion rampant and some wording in an ornamental border; the signature "G. & R. Dewhurst"; an upright oblong black ticket, printed in silver, with two discs vertically arranged, and containing representations of the two sides of a rupee in an ornamental border; the length, "38½ yds." in ornamental printing; the words "Trade Mark X 3." There was also a coloured heading. The defendant's combination consisted of the following marks, arranged vertically one above the other:—An upright oblong green ticket, printed in black, with a coat-of-arms and some wording in an ornamental border; a horizontal oblong black ticket printed in silver, with two ovals arranged side by side, and containing portraits of the Czar Peter I. and the Czarina Catherine II. in an ornamental border; the signature, "Isaac Wright & Co.;" the length, "37½/38 yds.," in the same printing as Messrs. Dewhurst's; the name, "Isaac Wright & Co.," in plain type, with "O 3." There was also a coloured heading bearing some resemblance to Messrs. Dewhurst's. The tickets were of approximately the same size as Messrs. Dewhurst's. It was held that the "combination" was intended and calculated to deceive, and the defendants were convicted, and a penalty was inflicted with costs.

(l) See *Wood v. Burgess*, 24 Q. B. D. 162, and other cases cited above.

(m) See *R. v. Racco*, Times, Sept. 15, 1909. Clauses (b) and (c) of this sub-section are to be read disjunctively: *R. v. Lipton*, 32 L. R. Ir. 115. In that case a trader who sold inferior qualities of his own goods under his foreman's name was held properly convicted under Clause (c), the accused not having set up the plea that he acted innocently within the proviso in sub-s. 2 of § 2, and not having claimed the benefit of § 18.

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

Forging
trade mark.

(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 (b); 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 (c).

(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 (*b*).

(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 sub-s. (2) of this section.

(b) As to these provisions, see *Stone v. Burn*, 27 Times L. R. 6.

(c) As to what is a false trade description, see notes to § 3. It has been held that a false trade description inserted in an invoice is applied to the goods (*Coppen v. Moore* (1), (1898) 2 Q. B. 300; *Budd v. Lucas*, (1891) 1 Q. B. 408); but (in Scotland) that the supply of goods in response to an order in which the goods ordered are described in a way to which the goods supplied do not correspond, is not an application of a false trade description to the goods: *Lord Advocate v. Jacobs* (1908), S. C. 90; *Same v. Suits, Id., ib.* 1163.

Exemption of certain persons employed in ordinary course of business.

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

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

(b.) That he took reasonable precautions against committing the offence charged; and

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

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

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

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

Application
of Act to
watches.

(a) Persons have been held guilty of falsely describing foreign watches as English in *R. v. Campbell*, Times, Feb. 9th, 1889; *R. v. Kendall*, Times, March 9th, 1889; *R. v. Allpass*, Times, March 16th, 1889; *R. v. Hyland*, Times, Aug. 15th, 1890; *R. v. Bettle*, Times, Feb. 9th, 1891; *R. v. Pierce*, Times, March 28, 1893, notwithstanding that in some cases portions of the watch were made in England, the question under the Act being whether the watch is substantially made in England: *R. v. Bettle*, *supra*. Accordingly in *Williamson v. Tierney*, 83 L. T. N. S. 592, it was held that although the mere fact that a watch includes certain parts which are partly made abroad does not necessarily imply that the description of the watch as English is false, the Court may come to that conclusion upon the evidence.

8.—(1.) Every person who after the date fixed by Order in Council sends or brings a watch-case (a), 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 (b).

Mark on
watch-case.

(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 (b).

(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) Gold and silver watch cases are gold and silver plate within the meaning of the Customs Act, 1842 (5 & 6 Vict. c. 47), s. 59; *Goldsmiths' Co. v. Wyatt*, (1907) 1 K. B. 95, a decision which led to the passing of 7 Edw. VII. c. 8, to condone previous omissions. So also imported articles of gold or silver decorated with enamel: *Fabergé v. Goldsmiths' Co.*, Parker, J., Nov. 21, 1910.

(b) See Order in Council of Nov. 28th, 1887, p. 690, *infra*, for the marks which had to be used from Jan. 1st, 1888, to May 14th, 1907, and Order in Council of May 7th, 1907, p. 690, *infra*, for marks to be used since that date.

Trade mark,
how described
in pleading.

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

Rules as to
evidence.

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

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

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

Punishment
of accessories.

11. Any person who, being within the United Kingdom, procures, counsels, aids, abets, or is accessory (*a*) 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.

(*a*) For an example of a conviction under this section see *R. v. Manoukian* (2), Manchester Police Court, Sept. 8th, 1903, the facts of which are stated *ante*, p. 675.

Search
warrant.

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

(2.) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Act (*a*), 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.

(a) See *Commissioners of Trade and Customs v. Bell*, (1902) A. C. 563.

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.

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

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.

Costs of
defence or
prosecution.

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

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 con-

ditions, 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.)). On a strict reading of the Act, it would therefore appear that, except 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: and that, seeing that such an offence is not necessarily committed whenever the goods have on them a forged trade mark or a false trade description, as the owners have an opportunity of clearing themselves by proving that they acted without intent to defraud (§ 2 (1)), or that otherwise they had acted innocently (§ 2 (2)), the goods ought not to be seized before ascertaining that the owners were unable to clear themselves under these provisions. In a case under the corresponding provisions of the New Zealand statute, which is in substantially the same language, it was, however, held by the Privy Council that the general scope and object of the Act required that goods bearing a false trade mark or false trade description should be excluded from importation and subjected to seizure whatever the state of mind of the importer, and that the words "goods which, if sold, would be liable to forfeiture," must be read as meaning "goods which, if sold, would be liable to forfeiture on conviction of the seller," or "goods, the sale of which would expose the seller to the liability of having the goods forfeited by due process of law":

Commissioners of Trade and Customs v. Bell & Co., (1902) A. C. 563. 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. 689. 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—274, and 40 Vict. c. 13, §§ 4, 5. By §§ 268, 269 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 sub-s. (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. 693.

(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 was the date fixed by the Regulations, p. 696. *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. Swinburne*, 5 Times L. R. 71, it was held that the defendant had a good defence under this section. For advantage to be taken of the section it has to be proved that the trade description was lawfully in use at the passing of the Act. *e.g.*, *R. v. Rylands & Sons. Id.*, Times. April 9th and Dec. 9th, 1909 ("Witney" blankets).

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 § 68 of the Trade Marks Act, 1905, and § 90 of the Patents and Designs Act, 1907, 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 those 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.

THE MERCHANDISE MARKS ACT, 1891.

54 VICT. c. 15.

An Act to amend the Merchandise Marks Act, 1887.

[11th May, 1891.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The customs entry relating to imported goods shall, for the purposes of the Merchandise Marks Act, 1887, be deemed to be a trade description applied to the goods.

Customs entry
to be trade
description.

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

50 & 51 Vict.
c. 28.

Official
prosecutions.

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

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

3. This Act may be cited as the Merchandise Marks Act, 1891, and the Merchandise Marks Act, 1887, and this Act may be cited together as the Merchandise Marks Acts, 1887 and 1891.

Short title.

THE MERCHANDISE MARKS (PROSECUTIONS) ACT, 1894.

57 & 58 VICT. c. 19.

An Act for enabling the Board of Agriculture to undertake Prosecutions in certain cases under the Merchandise Marks Act, 1887.

[20th July, 1894.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The powers exercisable by the Board of Trade under the Mer-

Power of

Board of Agriculture to prosecute in certain cases.	chandise Marks Act, 1891, with respect to the prosecution of offences under the Merchandise Marks Act, 1887, may in cases which appear to the Board of Agriculture to relate to agricultural or horticultural produce be exercised by that Board, and in such cases the former Act shall apply as if the Board of Agriculture were referred to therein instead of the Board of Trade.
Extent of Act.	2. This Act shall not extend to Ireland.
Short title.	3. This Act may be cited as the Merchandise Marks (Prosecutions) Act, 1894, and shall be read with the Merchandise Marks Acts, 1887 and 1891.

THE MERCHANDISE MARKS (IRELAND) ACT, 1909.

9 EDW. VII. c. 24.

An Act to enable the Department of Agriculture and Technical Instruction for Ireland to undertake Prosecutions in certain cases under the Merchandise Marks Act, 1887.

[25th November, 1909.]

BE it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Official prosecutions under 50 & 51 Vict. c. 28.

50 & 51 Vict. c. 28.

62 & 63 Vict. c. 50.

1.—(1.) The Department of Agriculture and Technical Instruction for Ireland (in this Act referred to as "the Department") may, with the concurrence of the Lord Chancellor of Ireland and of the Board of Trade, make regulations providing that, in cases which appear to the Department to relate to Irish agricultural produce, or to the produce of any other Irish rural industry, and to affect the general interests of the country, or of a section of the community, or of a trade, the prosecution in Ireland of offences under the Merchandise Marks Act, 1887, shall be undertaken by the Department, and prescribing the conditions on which such prosecutions are to be so undertaken.

(2.) All regulations made under this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and if Parliament is not then sitting, within three weeks after the beginning of the next session of Parliament, and shall have effect as if enacted by this Act.

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

(4.) In this section the expression "rural industries" means the rural industries mentioned in subsection one of section thirty of the Agriculture and Technical Instruction (Ireland) Act, 1890.

(5.) The expenses of prosecutions undertaken by the Department in pursuance of this section shall be paid out of moneys provided by Parliament.

2. This Act shall apply to Ireland only, and may be cited as the **Extent and short title.**
 Merchandise Marks (Ireland) Act, 1909.

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.**
 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.

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).

* * * * *

(a) This section was amended by 46 & 47 Vict. c. 55, now replaced by § 16 of the Merchandise Marks Act, 1887, and it has since been amended by 52 & 53 Vict. c. 42, 59 & 60 Vict. c. 28, and 60 & 61 Vict. c. 63.

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

§ 153. If any articles of foreign manufacture, and any packages **Foreign manufactures with British marks.**
 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 (a).

(a) 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.

§ 6. * * Provided also, that if any British goods brought into **Entry of British goods returned.**
 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, he 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.

ORDERS IN COUNCIL UNDER § 8 OF THE MERCHANDISE MARKS ACT, 1887. (*Foreign watch-cases.*)

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

PRESENT,

The QUEEN'S Most Excellent Majesty in Council.

(*This Order in Council was in substantially the same terms as the Order of May 7th, 1907, which follows, except that the prescribed marks were different.*)

SCHEDULE I.

Form of Declaration.

* * * * *

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 K. *infra*. These were used from January 1st, 1888, to May 14th, 1907.

II. At the Court at Buckingham Palace, the 7th day of May, 1907.

PRESENT.

The KING'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:—

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

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

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

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

And whereas by Order in Council dated the 28th November, 1887, Her late Majesty did order and declare the marks to be placed by the Authorities mentioned in such Order upon watch-cases which had been made in some country or place out of the United Kingdom;

And whereas it appears expedient to alter the marks prescribed by the Order in Council dated the 28th November, 1887;

Now, therefore, His Majesty, by and with the advice of His Privy Council, and in exercise of the powers vested in him 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 the declaration required by the above-recited provisions 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 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 such marks shall be substituted for the marks prescribed by the said Order in Council of the 28th November, 1887:

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

And it is hereby further ordered and declared that as from the coming into operation of this Order the said Order in Council dated the 28th November, 1887, shall be repealed:

This Order shall come into operation on the fourteenth day of May, 1907.

A. W. FRZROY.

SCHEDULE I.

Form of Declaration.

I (a) of do hereby declare that the (watch-case)
(watch-cases) (brought) (sent) by me this day to the assay office
at in number and in a parcel marked (was)
(were) made in .

Declared at this day of 19 . (b).
Before me (c).

NOTE.—This Declaration may be made before an officer of an assay office appointed in that behalf by the office 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.

(a) Insert name, address, and description of Declarant.

(b) Signature of Declarant.

(c) Signature of person before whom Declaration is made and appropriate description in accordance with note above.

SCHEDULE II. (a).

On Foreign Gold Watch-cases.

The hall mark particular to each assay office, as shown in Figure I. of the Appendix hereto, the carat value of the gold, together with the decimal equivalent of the carat value, as shown in Figure II. of the Appendix.

On Foreign Silver Watch-cases.

The hall mark particular to each assay office, as shown in Figure I. of the Appendix hereto, together with the decimal equivalent of the standard value of the silver, as shown in Figure II. of the Appendix.

The mark for the annual date letter is to be added by each assay authority after the mark for the particular hall and the mark for standard.

(a) See a table of the marks prescribed by this Schedule in Appendix K., *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 reference 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 (a)*, 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.

a For the words in italics are now substituted the words "for such sum not less than double the value of the goods as the Commissioners may require." - G. O. 38 1905.

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 (a). 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.

(a) For the period given in italics "six months" is now substituted. G. O. 38/1905.

8. These regulations apply to transhipment and transit goods as well as to goods landed to be warehoused, or for home consumption.

9. The 1st day of January, 1888, is, by these "regulations," fixed as the day from which § 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 [or Sub-Port] of

I hereby give you notice that the under-mentioned goods, that is to say, (a)

are about to be imported into your port on or about the
day of next, in the (b)
from

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

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 ____ .

 (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.

- (a) Describe the goods, number of packages, marks used, and any other particu-
 lars necessary for their identification.
- (b) Describe the ship, and give name or indication.
- (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.

 (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.
(Superseding many earlier General Orders.)

GENERAL ORDER $\frac{15}{1900}$

CUSTOM HOUSE, LONDON,
26th February, 1900.

MERCHANDISE MARKS ACT, 1887. CONSOLIDATED
INSTRUCTIONS.

THE following consolidation of the General Orders and other instructions on the subject of the Merchandise Marks Act of 1887, is issued for the information and guidance of the officers.

1. The Regulations made by the Board under § 16 of the Merchandise Marks Act, 1887, will be found on page [693, *ante*].

Goods with-
out marks.

2. Goods imported into the United Kingdom which do not bear any marks whatever, either on the goods themselves or on the coverings containing them, are not subject in any way to the Act, and therefore need not bear any statement or indication, such as "Made abroad," "Made in Germany," &c.

3. Although the Act draws no special distinction, except as regards the requirement of qualification in certain cases under § 16, between goods prohibited on account of marks suggesting British origin and goods prohibited on other grounds, for the purposes of Customs administration it is convenient to deal with them separately. The goods, therefore, prohibited under the Act to which the attention of Officers is called may be classed under two heads—

(A) Goods with marks which suggest British origin and require, in order to legalise their importation, some counteracting qualification (paragraph 4).

(B) Goods with marks prohibited on other grounds (paragraph 19).

It is to be noted that by § 1 of the Merchandise Marks Act, 1891 (54 Vict. c. 15), the Customs entry relating to imported goods shall,

for the purposes of the Merchandise Marks Act, 1887, be deemed to be a trade description applied to the goods.

(A) GOODS WITH MARKS SUGGESTING BRITISH ORIGIN.

4. Goods falling under (A) may be again subdivided—

- (a) Goods, whether manufactured or raw, having applied to them any description, figures, words, or marks, or arrangement or combination thereof, which by being or including, either expressly or by reference, the name of a place in or a part of the United Kingdom (*e.g.*, "Irish" = "of Ireland"), or in any other way, constitute a statement or other indication, direct or indirect, that the goods were made or produced in the United Kingdom.
- (b) Goods of foreign manufacture bearing any name or mark which is, or purports to be, the name or trade mark of a manufacturer, dealer, or trader in the United Kingdom.
- (c) Goods, whether manufactured or raw, having applied to them a generally used trade description, which in indicating a particular class of goods or method of manufacture, includes expressly the name of a place in, or a part of, the United Kingdom, and is thereby calculated to mislead as to the place of the manufacture or production of the goods. This class, though in fact only a case of (a), is dealt with specially by the Act (§ 18).

5. (A) (b) relates to manufactured goods, and not to entirely raw goods, and the word "purports" is to be understood as referring to any name or names reasonably suggesting a British manufacturer, dealer, or trader, whether the name is or is not known to the Officer; or as referring to a trade mark, not being merely matter of decoration or ornament, which reasonably suggests itself as British by containing English wording, or other representation specially designed to convey, and, in fact, conveying, an impression of British manufacture.

6. As to (c) that the words "trade description which in indicating a particular class of goods or method of manufacture, includes the name of a place in or a part of the United Kingdom, and is thereby calculated to mislead" (see 4 (c)) mean such terms as Kidderminster Carpets, "Balbriggan" on Hosiery, or "Shetland" on Shawls, and the like, which, although they might be held to be merely phrases descriptive of method of manufacture, are yet calculated to mislead as to place of origin. Where, however, such a description has become associated with a particular class of goods in a manner practically to preclude any probability of deception, as "Portland Cement" and "Bath Chaps," the description need not be accompanied by a statement of the country of actual production. This applies also to the case of Colonial names describing, for instance, classes of wool, &c., where although the names are British, the circumstances preclude mistake.

Places
indicating
method of
manufacture.

7. All such goods as above specified are to be detained and reported to the Board unless they are qualified as follows:—

As to (a), by a definite indication of make or production out of the United Kingdom.

As to (b), by a definite indication of the country in which the goods were made.

As to (c), by the name of the country in which the goods were actually made or produced, with a statement that they were made or produced there.

When
"made in"
not required.

8. With regard to (a), "Made abroad" will be generally sufficient. With regard to (b), the name of the country is a sufficient indication, without the words "made in," if the name or trade mark only appears. Where there is an address, as "John Smith, Sheffield," then the qualification must be "Made in Germany," or similar wording; "Germany" alone would not counteract "Sheffield." (c) requires the full statement "Made in Germany."

Actual place
of origin.

9. Officers are not expected to decide whether goods were actually made or produced in the country from which in the qualification they are stated to come; the name of *some* foreign country, or of some place in a foreign country is sufficient.

Place-name
alike in
United
Kingdom
and abroad.

10. If the goods bear the name of a place identical with, or a colourable imitation of, the name of a place in the United Kingdom, the name should be accompanied by the name of the country in which the place is situated. Thus Boston, in Massachusetts, should be accompanied by the name "United States," or by the initials "U.S.A.," or even by the abridgment "Mass."

English
language on
goods.

11. The use of the English language applied as a description to goods imported from non-English speaking countries is not, simply *as* language and where not involving the name of any place in, or part of, the United Kingdom, a "direct," and, as a rule, is not to be regarded as an "indirect," indication of British origin. Where, however, there is good ground for considering that the use of the language was specially designed to convey, and does in fact convey, an impression of such origin, then the language will be a description within (a) of paragraph 4.

Initials.

Initials.

12. "Initials" under the Act, though not treated as names generally, are to be so treated in certain cases, of which the following are all of which the Officers need take cognizance:—

- (i.) Where the initials are followed by affixes distinctly suggesting a British firm as "& Co.," from countries where that affix is not used, which includes all the Continental countries except Germany, and "Brothers" or "Bros." or the like, which applies to all non-English speaking countries. This holds as to all goods whether manufactured or raw; but in respect of baskets and the like, holding raw fruit, eggs, &c., and sent to and from the Continent, the rule, when the baskets, &c., will not meet the eyes of retail buyers, is not strictly applied.

(ii.) Where, in respect of manufactured goods, the name or mark of a manufacturer, dealer, or trader in the United Kingdom is prohibited on foreign goods, even his own property, without a definite qualification, the initials will fall within the prohibition if they are easily recognizable as those of persons or firms so well-known as to make the initials practically equivalent to the name itself; and also, where they are the initials of known consignees of the goods who will bring them into consumption in the same "coverings." Where the consignees are not known, and no special fact calls attention to the goods, they may, as regards initials, be passed.

Packing Cases and Coverings.

13. Goods will not be liable to detention when the name of a port or place of destination is applied to mere packing cases or outer wrappers in which goods are clearly not intended to be sold or exposed for sale, or if exposed for sale, then in an export market. Address marks, when they are merely and manifestly such, for purposes of carriage only, are not marks within the Act. Cases and coverings.

14. "Coverings" such as boxes, capsules, bottles, &c., are to be judged with discrimination as to whether the marks, if any, on them, refer to them, or to the goods they are to cover. If the marks on them refer, as is rarely the case, distinctly to the coverings, the case should be reserved for the Board. If the marks, such as Royal Arms, or the like, refer to the goods to be covered, and it is shown to the satisfaction of the Officer that they will be British goods, or goods as to which British marks are not objectionable, and do not refer to the coverings themselves, then the coverings may be regarded as not contrary to the Act.

15. This principle will apply to coverings (such as ornamental boxes for tobacco, tea, or confectionery), with names on them of firms who have ordered the coverings for their own goods, or where such firms though not having actually ordered the coverings themselves, consent in writing to their importation for such goods.

Grain Sacks.

16. The name and address of a merchant in this country upon Grain Sacks, are to be regarded as an indication that the Grain is of British origin, and will require the addition of a statement of the country of production. In the case of Grain imported in bulk and transferred *after due entry and clearance* into Sacks on board the importing ship, such marking of the Sacks need not be qualified with a statement of the foreign origin of the Grain. Grain sacks.

Samples, &c.

17. Samples or patterns, readily distinguished as such, and valueless in themselves, are not to be treated as under the Act so far as British origin is concerned. Samples.

Goods not Produced in United Kingdom.

Non-products of United Kingdom.

18. Goods not produced in the United Kingdom, such as wine, tea, and other produce not grown in this country, such as linseed, rapeseed, &c., are also treated as not under the Act, so far as British origin is concerned. This is applied further to some special forms of manufacture which, by shape, make, or colour, cannot be mistaken for the manufacture here of the same article, as, for instance, Dutch cheese of the kind well-known to be made in Holland, bearing the initials of British dealers.

(B) GOODS PROHIBITED ON OTHER GROUNDS.

19. Goods prohibited on grounds other than marking suggestive of British origin are those which, whether manufactured or raw, have applied to them a false trade description—

- (a) as to the place or country in which they were made or produced;
- (b) as to trade-marks or names so as to constitute forgery;
- (c) as to number, quantity, measure, gauge or weight, and mode of manufacture or material;
- (d) as to being the subject of any existing patent, privilege, or copyright.

Marks as between foreign countries.

20. As to (a), this relates, of course (British origin having been dealt with above), to questions between two foreign countries; that is to say, to goods with marks indicating make or production in a place or country which is not that in which the goods were made or produced. The Act does not specify particularly what is to be the qualification here; but if the mark indicates, expressly, or by reference, a place or country not that, in reality, of the make or production of the goods, there must be a definite qualification to the effect that the goods were not made or produced in the place or country indicated; or, a definite indication of the place or country in which the goods were made or produced.

Mark including place-name.

21. A mark which, though not naming, *includes* the name of a place or country, is to be held as naming such place or country. For instance, a wine, the produce of Germany, and described as "Port" or "Sherry" (which words include the names of the places Oporto and Xeres), should have that description accompanied by the statement "produced in Germany," or should be described as "German Port" or "Australian Sherry," &c. Such a mark as "Lancashire Swedish" on Swedish iron, where the qualifying word follows the misleading name, may be admitted. As in marks suggesting British origin, exception to this rule is made in cases where the name of a place in a trade description is indicative merely of the character of the goods, and is not calculated to mislead as to the country of origin. The description "Brussels Carpet" is an exception of this kind.

Port of shipment evidence of origin.

22. For judging between two foreign countries the Act provides that, in the absence of proof to the contrary, the port of shipment of goods shall be *prima facie* evidence of the place or country in

which the goods were made or produced; and this rule the Officers can, generally, act upon. Where, however, the port of shipment is merely an ordinary trading route from some inland country, as Rotterdam or Antwerp with respect to Germany, or Hamburg with respect to Austria, the Officers may, if they have no reason to doubt the good faith of the importer, accept the statement that the goods are the make or produce of the inland country.

23. The use of language of one foreign country on goods of another must not be viewed more strictly than its use in cases indicating British origin, dealt with in paragraph 11. The use of a certain language is allowed freely to all countries when, by custom, that language is usually applied to such goods: *e.g.*, Spanish on tobacco and cigars, when the recognized words are applied only to colour, shape, size, and the like; or French on sardines, when confined to the words "Sardines à l'huile," without any additional French description.

Foreign language not of country of origin.

24. The forging of a trade-mark (par. 19 (b)) is the application to goods of any figure, words, or marks, or arrangement or combination thereof, reasonably calculated to lead persons to believe that the goods are the manufacture or the merchandise of some person other than the person whose manufacture or merchandise they really are; and this includes the name or initials of a person. The figures, words, or marks applied need not be an actual trade-mark, or actual name or initials, provided they are a colourable imitation of the mark, name, or initials of a person carrying on business in connexion with goods of the same description, and are used without his authority.

Forging trade-mark.

REGISTRATION.

25. As to goods under all the three heads, (b), (c), and (d), of paragraph 19, the difficulty of detection by Officers, without special information, and more particular examination than is ordinarily bestowed for revenue purposes, is greater than in the case of goods falling under (a), but as regards the forging of trade-marks (b), as above explained, while it would not be possible for Officers to enter into the examination of all names and marks so as to detect fraud of this kind, the Board have, nevertheless, felt that a manufacturer, dealer, or trader who has reason to believe that his name or trade-mark is one not unlikely to be imitated, so as to constitute a forgery, is entitled to ask that, without the requirement of information beforehand, goods so marked shall be stopped; and to meet this the Board have established the following system.

Registration.

26. They have established a system of registration of name or marks so that a manufacturer, dealer, or trader may register his name or mark at such port or ports as he desires. In respect of names or marks so registered, it will be the duty of the Officers, at the particular port or ports, to prevent the delivery of goods to which such names or marks or imitations of them as above explained may be applied, unless the delivery is authorised by the registered proprietor.

Detention on account of registration.

27. When goods are thus detained on account of names or marks which have been registered in this Department, care is to be taken in every case that, in addition to the usual notice of seizure required under § 207 of the Customs Consolidation Act, information of the detention and of the cause of such detention, shall be at once given in writing to the person who has so registered his name or mark, or to the representative appointed by him to authorise delivery of the goods, who is to be informed that unless immediate attention is given to the matter the goods will be released. If, at the end of forty-eight hours, the Collector (or other Principal Officer concerned) does not receive a reply he will release the goods; but Collectors will observe that the limit to the time of detention here laid down does not apply in cases where the marks are such as to render the goods liable to detention irrespective of the question of registration. In any case of detention under this system of registration the Board, if they see fit, may order security to be given if prolongation of the detention is requested, and the matter is, at all, one of doubt.

Registering
foreign
marks; and
agency.

28. Any manufacturer, dealer, or trader, whether British or Foreign, may register his name or mark; but Officers may refuse registration to any name or mark which they consider to be of a character too indefinite or indistinct to recognise, referring to the Board in any case of doubt. An applicant for registration must prove his proprietorship of the name or mark by declaration (see Form C. in the Appendix); and if, in order to avoid delay, he desires to do so, he may appoint an agent to give authority for delivery of his goods.

Registered
marks on
goods im-
ported by
owner.

29. It must, however, be distinctly understood that the use by any manufacturer, dealer, or trader in the United Kingdom of even his *own* name on foreign goods, and the use by any manufacturer, dealer, or trader, on like goods, of words, figures, or marks of any kind stating or indicating, directly or indirectly, make or production in the United Kingdom, are prohibited unless such goods are properly qualified by the required definite indication of origin. It must, therefore, be clearly explained to every person registering a name or mark which involves any such statement or indication, as will probably often be the case, that, while the name or mark will be guarded by such registration, it will not be rendered admissible unless duly qualified, as the law may require, in every case.

Release
when
qualified.

30. Goods bearing a mark registered in this Department may be delivered by the Officers without reference to the Board on receipt by them of the authority of the proprietor of the mark, or of his duly appointed agent, provided the mark be properly qualified, as in this Order shown.

GENERAL.

British Returned Goods.

British
returned
goods

31. British goods returned bearing the name, brand, or mark of any British manufacturer may be admitted upon proof of their origin being furnished. This may be done by Bill of Store; or by a declaration by the importer that the goods are, to his knowledge, British

goods returned, and were originally manufactured in this country; or by and with the consent in writing of the proprietor of such name, brand, or mark, or his legal representative (42 & 43 Vict. c. 21, s. 6).

32. The declaration by the importer as to the British origin of the goods may be in the usual form as an ordinary Customs document, but if the Officer sees reason to doubt it, he should refer the papers to the Board; and he should, in no case, require a statutory declaration, under the Act as to such declarations, without the Board's order.

33. On any other point British goods returned will not be dealt with except on information.

Goods for Private Use.

34. *Dutiable.*—Tobacco, except cigars, not exceeding 20 lbs. (a), wine not exceeding twelve gallons, and spirits not exceeding one-half that quantity, in any one consignment, may be admitted free of the Act, on the Officer being satisfied that the goods are for private use. Private use.

(a) This exception of cigars is under General Order $\frac{13}{1910}$.

35. *Non-dutiable.* Such goods sent as presents, or for personal use, and not in any process of sale or purchase, are similarly free of the Act, and this especially includes articles not new, and which are manifestly private property, such as clothing, or other personal effects, and old, used, and damaged articles sent for repairs, imported by, or consigned to, persons whose names are on them. This applies also to presents to corporate bodies or public institutions.

Goods in Transit.

36. Under the Transshipment Regulations, transshipment and transit goods are not to be specially examined for the purpose of scrutinising marks *in the absence of information* (General Order $\frac{43}{1910}$); nor are such goods to be detained under the Merchandise Marks Act unless they infringe its provisions in one or other of the following ways:— Transshipment goods.

- (a) By reason of their bearing marks which raise a clear and direct claim to British origin; or
- (b) By reason of their bearing the name or trade-mark of a manufacturer, dealer, or trader in the United Kingdom, without qualification; or
- (c) By reason of their bearing a trade-mark specially registered at the Customs.

When the mark on a package, or on goods found therein, contravene the Merchandise Marks Act, all the packages of the same mark on the Entry are to be examined, the packages with other marks being treated as if on a separate entry.

This direction also applies to goods entered for home consumption, but intended to be forthwith re-shipped for exportation, on

production of satisfactory evidence (such as Bills of Lading, Invoices, &c.), of the final destination abroad of the goods; but they are subject to examination under G.O. 1844, as laid down in G.O. 1844 par. (8).

Marks not descriptive but part of the Goods.

Marks where part of goods.

37. Wording or marking, whatever may be its character, if it is not a description "applied" to goods, but part of the goods themselves, as, for instance, the regulating words on a thermometer, the titles of books, christian names on handkerchiefs, such words as "a present from Margate" on china, and the like, are not amenable to the Act.

Goods imported for advertising purposes only, and not for sale, although bearing the name, or name and address of a British trader, provided he is not a maker of, or dealer in, such articles, may be delivered upon a written statement to that effect from the person whose name is on the goods.

Reports of Detention.

Detained goods to be reported at once; monthly and quarterly.

38. Report (on Form 291) is to be made immediately of all cases of detention of goods, stating briefly the number of packages detained, the port from which they come, the marks and numbers of the packages, the description and value of the goods, and the objectionable marking, whether by means of labels or on the goods themselves, on account of which they are detained. Reference should be made to any previous cases of the importation of illegally marked goods consigned to the same merchants or coming from the same consignor.

A monthly return is to continue to be made to the Board, being forwarded to the Solicitor on Forms 401 and 402.

A quarterly return is to be made to the Board (Div. IV.) on Form No. 398, for which purposes the present form of record at the various stations is to be maintained.

When report dispensed with.

39. Immediate reports of detentions of goods may be dispensed with when such detentions are made in consequence of the absence of evidence that the marks on the goods are correct, provided that the Officers have reason to believe that such evidence will be forthcoming within a reasonable time. On production of the evidence, the Officers, if satisfied therewith, will deliver the goods. This direction will include British returned goods bearing marks which would be open to objection on goods of foreign origin; also goods bearing marks indicative of origin in some country other than that from which the goods are imported, when such marks are believed to be authentic.

All marks to be reported.

40. The whole of the marks found on the detained goods should be reported, including the marks on cartons, cases, &c., containing the goods and not merely the actual mark for which the detention has been made.

Qualifying Words to be conspicuous, &c.

41. The Officers are to take care that, in all cases where the Board allow qualifying words to be added before the delivery of goods, such words are applied in characters clear, conspicuous, and as indelible as the marks requiring qualification, and in close proximity to those marks. Qualification to be conspicuous.

Seizures and Unclaimed Goods.

42. In all cases in which goods are ordered to be retained as seizures, a *full examination* of the contents of all the packages should be made as soon as the order for seizure is given, and any discrepancy between the marks originally reported and those found on the goods should be communicated to the Board forthwith. Seizures. Full examination.

But if an importer should express a wish not to have *all* his packages opened, Officers may forego this upon a consent in writing from him, or his agents, that the whole consignment shall be taken as having marks applied to them similar to those on the goods in the packages already opened.

43. Goods which have been placed under detention on account of illegal marks, and in respect of which no applications have been made by the importers for, or no steps taken to carry out the conditions imposed by the Board on their release, are to be removed to the Queen's Warehouse, within two months from the date of the Board's order for their detention, without special directions in each case, if the Officers see no circumstances which call for exceptional treatment. They are to be entered in the Monthly Seizure Account. Goods in London not claimed within two months.

Patent or Copyright on Goods.

44. In order that there may be no risk of goods protected by Patent or Copyright in the United Kingdom being offered for sale by this Department, in submitting Accounts of Seizures under the Act, particular attention should be called in column 8 to any goods included for disposal marked "Patent," or "Copyright," or which the Officers have any reason to suppose are patented, or the subject of copyright, in this country. Goods for sale: Patent or copyright.

Watch Cases and Watches.

45. A special provision as to Watch Cases and Watches is made by § 7 of the Act. It provides that, as regards Watches, any mark on the case is to be deemed to extend to the Watch. If, therefore, a Watch Case is made in this country, with any statement or indication of origin such as, for instance, a British Hall-Mark, and, having been exported, is returned with a foreign movement, then, in the absence of a counter description on the Watch itself, the mark on the case will apply to the Watch. Watch cases and watches.

General Order 1854, which goes fully into this subject, is not affected by this Consolidating Order.

PROCEDURE ON INFORMATION.

Detentions
on informa-
tion.

46. It must be borne in mind that information, in itself, even though given, is not a mandate to the Crown to detain; and no detention should on account of it be made where it is clear that the law would be against it. Officers may sometimes see at once that a consignment to which the information points does not infringe the law, and they will then not detain the goods. But they are authorized to make, when necessary, a fuller examination than ordinarily takes place.

Deposit or
bond.

47. In any other case the Officer will detain the goods, and require (if it is not already given) immediate security, as in Regulation 4 [page 695, *ante*]. The sufficiency of the sureties named in the notice of information must be tested in the usual way. Regulation 7 [page 695, *ante*] shows when the security will be delivered up.

No security,
no detention.

Whenever security is not duly given, there will be no further detention.

Information
as to origin.

48. Information will not generally touch the point of origin. Whenever it does do so, and affects the interests of "British Possessions" or "Foreign States," if the name complained of is found to be applied to the goods, and is the name of a country, or of a place in a country, not the country of the port of shipment, the Officer may, in the absence of proof of make or produce at the place or in the country named on them, be satisfied that the alleged infringement clearly exists. This is in accordance with the principle in paragraph 22.

Forged
marks in
certain
States and
British
Possessions.

49. Wherever an information relates to a forged trade-mark alleged to be one recognised in a British Possession or foreign State, information will not be good unless it relates to a Possession or State to which § 103 of the Patents, Designs, and Trade Marks Act, 1883, has been applied by Orders in Council (*a*), viz.:

BRITISH POSSESSIONS	{	New Zealand.
	{	Queensland.
	{	Tasmania.
	{	Western Australia.
FOREIGN STATES IN EUROPE	{	Belgium.
	{	Denmark, including Farøe Islands.
	{	France.
	{	Greece.
	{	Italy.
	{	The Netherlands.
	{	Norway.
	{	Portugal, including Azores and Madeira.
	{	Roumania.
	{	Servia.
	{	Spain.
	{	Sweden.
	{	Switzerland.

In N. AND S. AMERICA AND THE W. INDIES.	{	Brazil. Ecuador. Mexico. Paraguay. San Domingo. Surinam and Curaçoa. The United States of America. Uruguay.
IN AFRICA	{	Tunis.
IN ASIA	{	Japan. Netherlands East India Colonies.

(a) See list at date of this book on p. 573, *ante*.

Definitions.

50. The Officers will note the meanings given by the Act to the Definitions following expressions, viz.:—

“ Goods ” “ Trade Mark ” * “ Trade Description ” “ False Trade Description ” “ Person ” “ Manufacturer ” “ Dealer ” or “ Trader ” “ Proprietor ” “ Name ” “ Name or initials ”	}	Section 3, and *54 Vict. c. 15, s. 1.
“ Applied ” “ Falsely applied ” “ Coverings ”	}	Section 5, (1), (2), and (3).

51. The following General Orders are hereby cancelled:—

- Nos. 81 and 99 of 1887.
- Nos. 10, 14, 26, 33, 39, 44, 121, 122, 125 and 147 of 1888.
- No. 7 of 1889.
- Nos. 1 and 8 of 1890.
- Nos. 50 and 68 of 1893.
- No. 4 of 1894.
- Nos. 4, 28, 34 and 82 of 1895.
- Nos. 4 and 9 of 1896.
- No. 63 of 1897.

By Order of the Board,
JOHN COURROUX.

C.

MERCHANDISE MARKS ACT, 1887.

50 & 51 VICT. c. 28.

DECLARATION ON REGISTRATION UNDER PARAGRAPH 28 OF GENERAL

ORDER $\frac{15}{1900}$.*Port of*

I (*a*) hereby declare that (*b*) (*c*)
 the Proprietor of (*d*) , viz., which (*e*)
 expect to be applied to goods imported from time to time, at this
 Port; and that (*f*) have appointed Mr. (*g*) of
 to be (*h*) agent, to give authority for the delivery
 of such goods.

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

Signed

Declared this day of , 19 .

At

Before me

*A Commissioner to Administer Oaths, &c.**(a)* Full name and address of declarant.*(b)* "I" or "I and my partners, trading as Messrs. ," or "such and such a company, of which I am the representative official," or "so and so of such and such a place abroad whom I represent in this country."*(c)* "Is" or "are."*(d)* "The following name as a trade description," or "the following trade mark," or "the following name as a trade description and trade mark."*(e)* "I" or "we."*(f)* "I" or "we."*(g)* This portion as to appointment of agent may be erased, where such appointment is not desired.*(h)* "My" or "our."

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.

GENERAL ORDER ⁹
1888.CUSTOM HOUSE, LONDON,
18th January, 1888.

SIR,

In accordance with paragraph 33 of General Order 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. 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, was published in the London Gazette of 9th December last; and a copy of this order, together with sheets 1 and 2 of Appendix to Schedule II, therein referred to, which contain diagrams of the required new marks, are sent to you herewith.

You will carefully study these sheets, and note how the marks apply variously to the different assay offices in the United Kingdom.

The directions to be observed by you in applying this new law will relate to---

- (a.) Watch-cases with assay marks imported alone.
- (b.) Like watch-cases imported with the watches, that is to say, watches of foreign manufacture in them.

(a.) Watch-cases with Assay Marks imported alone.

If the cases are wholly unmarked, or are duly marked in accordance with the Order in Council, or with a foreign assay mark, and there is not, in addition, any wording on any part of the case proper, or on the dome, indicating make or produce in the United Kingdom, the goods may be delivered. If, on the other hand, there is any such wording, the goods must be detained and the matter referred to the Board.

If the cases are marked with a British Hall Mark as placed on watch-cases made in the United Kingdom, you will detain the goods unless they are entered as "British goods brought back," in which case they may be admitted under the usual regulations.

(b.) Watch-cases imported with the Watches in them.

If the cases are wholly unmarked, or are marked either--

- In accordance with the Order in Council, or
- With a foreign assay mark, or

With a British assay mark as placed on a watch-case made in the United Kingdom, and with an equally conspicuous statement either above or below the assay mark, that the watch is of foreign make;

And if there is no wording either as an addition on the case or dome, or upon the watch itself, whether on the dial or the plate, or any part of the works, indicating make or produce in the United Kingdom, then the goods may be delivered.

If, on the other hand, there is any such wording, the goods must be detained and the matter referred to the Board.

If the cases are marked with a British assay mark as placed on a watch-case made in the United Kingdom, and with no statement of foreign make on the cases, as required above, you will detain them as a seizure, unless there is upon the dial of each watch and also on the top "plate" (where the watch is of that construction) or on the bottom "plate" (where the watch is of that construction) visibly, between the "bridges," an indelible and definite indication of the place or country in which the watches were made. Such an indication will be considered definite, if it is, or contains only the name of the place or country of origin; if in addition, it contains the name of a place in, or a part of the United Kingdom, as, for instance, "Geneva and London," or if there is anywhere on the watch an indication by figures, words, or otherwise, that the watch might be the make or produce of the United Kingdom, then, in addition to the name of place or country of origin, there must be a distinct statement that the watches were there made.

I am, Sir,

Your obedient Servant.

The Collector at

E. GOODWYN

N.B.—The above Order was saved by General Order ¹⁵ 1900

GENERAL ORDER ⁴⁵ 1898

CUSTOM HOUSE, LONDON.

6th July, 1898.

Revised Transhipment and Transit Regulations.

* * * * *

Application of
Merchandise
Marks Acts on
information.

(3.) Transhipment goods are not to be specially examined for the purpose of scrutinising marks. If, however, information as to any such goods is given, under Regulations B of General Order 99/1887, that they infringe the provisions of the Merchandise Marks Acts in one or other of the following ways:

- (a) By reason of their bearing marks which raise a clear and direct claim to British origin; or
- (b) By reason of their bearing the name or trade mark of a manufacturer, dealer, or trader in the United Kingdom without qualification; or

(c) By reason of their bearing a trade mark specially registered at the Customs,
the goods are to be examined and, if found to be illegally marked, detained.

* * * * *

70
GENERAL ORDER 1898*

CUSTOM HOUSE, LONDON,
15th October, 1898.

Marks on imported Chinaware.

Officers are informed that representations have reached the Board from persons interested in chinaware, to the effect that importations are made into this country of china bearing marks indicative of the manufacture of certain well-known factories abroad and in this country, such marks being spurious.

The marks which are most commonly used for the purpose are as follows, viz.:—

The Worcester Mandarin Mark (a grating) always printed in blue, slightly blurred, on the bottom of articles. It is the mark used by the Royal Worcester Porcelain Co. (a).

The Crown Derby Mark: always printed in red, and generally on the bottom of articles. It was a mark used by the Royal Crown Derby Porcelain Co. (b).

The Royal Chelsea Gold Anchor Mark: printed in gold, generally on the back, but sometimes on the side of articles. There is now no factory at Chelsea (c).

(Similar to Worcester.) The Lowestoft Mark: printed always in red. There is now no factory at Lowestoft (d).

A Sèvres Mark: printed in very dark blue on vases, generally with ormolu mounts (e).

A Sèvres Mark: printed in black (with two other changeable marks) on tea sets, plates, and small goods generally (f).

A Dresden (Meissen) Mark: printed in dark blue or green (g).

A Capo di Monte Mark: printed in gold (h).

It is further stated that it is frequently the custom to cover the mark on the Chinaware with a paper label, bearing the words "made in Germany." &c., printed on it.

Officers are accordingly instructed that such paper labels should be viewed with suspicion, and that china goods to which they are applied should occasionally be examined to see whether they bear other marks below the labels.

Where marks are found on the china itself under such circumstances, the goods should be detained, and instructions sought from the Board.

By Order of the Board,
R. T. PROWSE.

a Illustrations of the marks referred to are included in the order. The Worcester mark is a grating with five bars.

- (b) A crown surmounting a capital D in cursive type.
- (c) An anchor.
- (d) A grating with three bars.
- (e) Two capital L's in cursive type, placed back to back.
- (f) A crown surmounting two conjoint letters, placed back to back, each composed of a combination of P and L.
- (g) Two swords crossed.
- (h) A coronet surmounting a capital N.

1
GENERAL ORDER 1906

CUSTOM HOUSE, LONDON,
1st January, 1906.

Entries for Wine described as Port or Sherry.

The Board direct that the Importation Code be amended by the addition of the following direction at the end of paragraph 311:

Entries in which wine from countries other than Portugal is described as Port, unaccompanied by satisfactory evidence that the wine is the produce of that country, should not be accepted unless the word Port is qualified by an unmistakable indication of the country in which the wine was produced, such as Spanish Port, French Port, or German Port. Such descriptions as Tarragona Port, Catalonia Port, Roussillon Port, or Hamburg Port must be accompanied by the words "Produce of Spain," "Produce of France," or "Produce of Germany," as the case may be. Wines described as Sherry imported from countries other than Spain should be similarly qualified.

By Order of the Board,
R. HENDERSON.

38
GENERAL ORDER 1907

CUSTOM HOUSE, LONDON,
29th June, 1907.

Imported Gold and Silver Watch Cases (with or without Works).

A copy of an Order in Council, dated 7th May, 1907, altering the marks prescribed to be placed upon foreign-made watch cases by the Order in Council, dated 28th November, 1887, is transmitted herewith for the information and government of Officers concerned.

Officers are further informed that, in accordance with a recent decision in the High Court (a), watch cases (either with or without works inserted therein) are deemed to be plate within the meaning of § 59 of the Customs Act, 1842, and § 10 of the Revenue Act, 1883, and that, as from the 1st instant inclusive, all such goods imported

are therefore to be treated as subject to these Acts in regard to assay.

The attention of importers of Watches is to be called to this Order.

* * * * *

By Order of the Board,
R. HENDERSON.

NOTE.—This General Order cancels Circular of the 28th ultimo, No. 50.

(a) *Goldsmiths' Co. v. Wyatt*, (1907) 1 K. B. 95.

MERCHANDISE MARKS.

WATCH CASES.

REGULATIONS, dated August 6th, 1907, made by the Commissioners of Customs under sect. 1 of the Imported Watch Cases (Existing Stocks Exemption) Act, 1907.

The Commissioners of Customs in pursuance of the power vested in them by § 1 of the Imported Watch Cases (Existing Stocks Exemption) Act, 1907, do hereby make the following Regulations:—

1. Any person possessed of a watch case imported from foreign parts into the United Kingdom before the 1st day of June, 1907, who, on or after the 2nd day of September, 1907, desires to export it from the United Kingdom for repair or any other purpose, and to claim that it is exempt from assay upon being subsequently re-imported into the United Kingdom for sale or exchange, must comply with the following rules:—

- (a) He must before exporting the watch case submit the same for inspection to the prescribed Assay Office in order that it may be capable of identification on being re-imported.
- (b) He must, at the time of submitting the watch case, produce evidence by statutory declaration or otherwise to satisfy the Officers of the Assay Office that it was imported into the United Kingdom before the 1st day of June, 1907.
- (c) He must, at the time of submitting the watch case, leave with the Officers of the Assay Office a form in duplicate in the Form No. 1 set forth in the Schedule hereto filled in with the particulars thereby required and duly signed by him. One form countersigned by the Officer of the Assay Office must be sent abroad with the watch case or watch cases referred to therein, and must be returned with it or them to the Assay Office on re-importation.

Any person possessed of a watch case so imported as aforesaid who, having before the said 2nd day of September, 1907, exported it from the United Kingdom for repair or any other purpose, desires to claim that it is exempt from assay upon being re-imported into the United Kingdom for sale or exchange after the date of these regulations, must produce evidence to the satisfaction of the pre-

scribed Assay Office that it is so exempt, and for this purpose any watch case so re-imported after the 1st day of June, 1907, and now remaining in Customs' charge, shall be deemed to have been re-imported after the date of these regulations.

2. The Officer of the Assay Office may require production of such books and invoices relating to any watch case as he may think necessary.

3. The following fees shall be paid to the Assay Office upon submission of any watch case before exportation, or if the watch case was exported before the 2nd day of September, 1907, before delivery thereof from the Assay Office, that is to say:—

For each gold watch case Two pence.
For each silver watch case One penny.

4. Upon the importation of a watch case which is claimed to be exempt from assay by reference to the provisions of the said Act the Officer of Customs at the port of importation shall cause the watch case to be sent under the usual conditions applicable to imported plate to the prescribed Assay Office accompanied by an Advice Note in the Form No. 2 in the Schedule hereto, and if the watch case is identified as having been imported from foreign parts into the United Kingdom before the 1st day of June, 1907, the Officer of the Assay Office shall return the form to the said Officer of Customs with a certificate to that effect in the Form No. 3 in the said Schedule.

5. For the purpose of the said Act and these Regulations Goldsmiths' Hall, in the City of London, shall until otherwise determined be the prescribed Assay Office (*a*).

Dated this 6th day of August, 1907.

T. J. PITTAR.
F. S. PARRY.

Two of the Commissioners of Customs.

(*a*) By additional regulation of Nov. 12th, 1908, "the Assay Office in the City of Birmingham" is added as a "prescribed Assay Office."

THE SCHEDULE.

FORM No. 1.

Form of Identification.

To
The Deputy Warden (or Assay Master).
Assay Office,

Date 19 .

SIR,

Herewith in accordance with the Regulations made by the Commissioners of Customs under the Imported Watch Cases (Existing Stocks Exemption) Act, 1907, I forward for your identification (*a*)

Watch as described in the Schedule, hereunto annexed,
 which I propose to export to (b) in order that (c)
 Signed (d)
 Address

- (a) Here insert the number of watches sent.
- (b) Here give the full name and address of the person to whom the watch watches) is (are) to be sent.
- (c) Here state purposes of exportation.
- (d) Full name and address of the exporter.

SCHEDULE.

No.	Description of Watch.	Name and Number on Case.	Name and Number on Movement.	Any other Marks on Case or Movement.	Nature of Repair.
	State whether Hunter, Half-Hunter, Crystal, &c.				State whether to Case or Movement.

NOTE 1.—This form is to be filled in and signed in duplicate by the exporter.

NOTE 2.—One form is to be retained by the Assay Office and the other is to be forwarded abroad with the watch or watches and returned with them to the Assay Office on re-importation.

FORM NO. 2.

Advice Note of Imported Watch Cases.

To the Deputy Warden (or Assay Master),
 at

The Watch Cases herein described have been forwarded for inspection, they having been claimed as exempt from assay under the provisions of the Imported Watch Cases (Existing Stocks Exemption) Act, 1907.

Port of Importation (Station)

Ship's Name.	Rotation Number.	Port or place whence.	Importer's Name and Address.
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Marks on Packages.

Particulars of Watch Cases.

Date 19 .

Officer of Customs.

APPENDIX H.

FORM No. 3.

*Certificate of the Assay Office.**Imported Watch Cases (Existing Stocks Exemption) Act, 1907.*

It is hereby certified that the Watch Cases above described have been identified as imported from foreign parts into the United Kingdom before the first day of June, 1907, and that they are exempt from assay.

Deputy Warden (or Assay Master).

Assay Office . 19 .
To the Collector of Customs at (a)

a Port of importation.

No. $\frac{11288}{1909}$.

Memorandum respecting Marks on Goods Imported for Home Use.

1. Foreign goods imported into the United Kingdom which do not bear any marks whatever, either on the goods themselves or on the packages or wrappers containing them, are not required to bear any qualifying statement or indication, such as "Made abroad," "Made in Germany," &c.

2. Foreign manufactured goods bearing a name or trade mark, being, or purporting to be, the name or trade mark of a manufacturer, dealer, or trader, in the United Kingdom, must have that name or trade mark accompanied by a definite indication of the country of origin of the goods. The name of the country is a sufficient indication, without the words "Made in," if a name or trade mark only appears, *e.g.*, "John Smith, Germany," would be satisfactory. If such a mark as "John Smith, Sheffield," is used, then the qualification must be "Made in Germany," or similar wording.

3. If foreign imported goods bear the name of a place identical with, or a colourable imitation of, the name of a place in the United Kingdom, the name should be accompanied by the name of the country in which the place is situated. Thus Boston, in Massachusetts, should be accompanied by the name "United States," or by the initials "U.S.A."

4. If a trade description includes the name of a place, and the goods on which it appears are not the produce of that place, or of the country in which it is situated, the trade description must be accompanied by a statement indicating the actual country of production. For instance, a Wine, the produce of Germany, and described as "Port" or "Sherry" (which words are derived from the names of the places Oporto and Xeres), should have that description accompanied by the statement "Produced in Germany," or should be described as "German Port" or "German Sherry." An exception to this rule is made in cases where the name of a place

in a trade description is indicative merely of the character of the goods, and is not calculated to mislead as to the country of origin. Thus such a description as "Brussels Carpet," or "Portland Cement," need not be accompanied by a statement of the country of actual production, unless as required under paragraph 2 above.

5. Trade descriptions in the English language applied to foreign goods imported for home use from non-English-speaking countries are not regarded as indirect indications that the goods are of British or Irish origin, unless the officers have good ground for considering that such trade descriptions are specially designed to convey, and do in fact convey, an impression of British or Irish origin for the goods.

Trade descriptions on imported goods in a foreign language, which is not that of the country from which the goods are imported, must be accompanied by a statement of the actual country of production of the goods, *e.g.*, "Made in Germany."

6. As regards Watches, any mark on the case is deemed to extend to the Watch. If, therefore, a Watch Case is made in this country, and bears any statement or indication of such origin (as, for instance, a British assay mark), and the Watch itself is made in Switzerland, then there must appear either--

- (a) in close proximity to the assay mark a conspicuous statement that the Watch is of foreign make; or
- (b) on the dial and also on the top or bottom plate of the movement, visible between the bridges, an indelible statement or indication that the Watch is of Swiss origin.

7. All qualifying statements or indications must be distinct, in equally conspicuous and indelible characters with, and in close proximity to, the marks they are intended to qualify.

8. Marks on samples or patterns, whether of British or foreign manufacture, are not required to be accompanied by any qualification, provided such samples or patterns are valueless in themselves, do not form whole or complete articles, and can be readily distinguished as samples or patterns.

CUSTOM HOUSE, LONDON.

18th October, 1909.

Secretary Customs.

REGULATIONS, dated May 21st, 1892, made by the Board of Trade, with the concurrence of the Lord Chancellor, under § 2 of the Merchandise Marks Act, 1891, with regard to the prosecution of offences under the Merchandise Marks Act, 1887.

1. The prosecution of offences under the Merchandise Marks Act, 1887, shall, subject to the condition hereinafter prescribed, be undertaken by the Board of Trade in cases which appear to the Board to affect the general interests of the country, or of a section of the community, or of a trade.

2. Every application to the Board to undertake a prosecution shall be accompanied by the following documents:--

- (a) A statement showing the nature and circumstances of the case and sufficient to enable the Board to form an opinion whether the case affects the general interests of the country, or of a section of the community, or of a trade.
- (b) A statement showing the facts which, if the Board undertake the prosecution, will be capable of proof, and setting out the proofs and names of the witnesses available to prove such facts.

The Board may require the above statements to be supplemented or additional evidence to be furnished.

3. If, on the evidence, the Board is of opinion that there is no reasonable prospect of a conviction being obtained, the Board will not, unless it thinks fit, undertake the prosecution.

4. If the Board is of opinion that the prosecution would be better or more properly conducted under some Act of Parliament other than the said Acts, the Board will not undertake the prosecution.

5. The Board may, before undertaking a prosecution, require the applicant to give security for costs on such terms and in such manner as it thinks proper.

6. For the purpose of carrying these regulations into effect the Board may, from time to time, prescribe the use of such forms and give such directions as it may deem expedient.

M. E. HICKS-BEACH,
President of the Board of Trade.

I concur,

HALSBURY. C.

21st May, 1892.

REGULATIONS, dated October 27th, 1894, made by the Board of Agriculture, with the concurrence of the Lord Chancellor, pursuant to § 1 of the Merchandise Marks (Prosecutions Act, 1894, with regard to the prosecution of offences under the Merchandise Marks Act, 1887, relating to agricultural or horticultural produce.

1894. No. 400.

1. The Board of Agriculture shall, where it appears to them from the statements hereinafter mentioned, that there is a reasonable prospect of a conviction being obtained, and subject to the other conditions in the next following regulation prescribed, undertake the prosecution of offences under the Merchandise Marks Act, 1887, in cases which appear to the Board to relate to agricultural or horticultural produce, and to affect the general interests of the country, or of a section of the community, or of a trade.

2.—(i.) Every application to the Board to undertake a prosecution shall be accompanied by the following documents:—

- (a) A statement showing the nature and circumstances of the case, and sufficient to enable the Board to form an opinion whether the case relates to agricultural or horticultural produce, and affects the general interests of the country, or of a section of the community, or of a trade.
- (b) A statement of the facts capable of proof, with the names and addresses of the witnesses available to prove such facts.

(ii.) The Board may require the above statements to be supplemented, or additional evidence to be furnished.

3. For the purpose of carrying the foregoing regulations into effect, the Board may, from time to time, prescribe the use of such forms and give such directions as they may deem expedient.

(Signed) T. H. ELLIOTT,
Secretary of the Board of Agriculture.

I concur,

(Signed) HERSCHELL, C.

27th October, 1894.

REGULATIONS, dated April 14th, 1910, made by the Department of Agriculture and Technical Instruction for Ireland, with the concurrence of the Lord Chancellor of Ireland and of the Board of Trade, pursuant to sect. 1 (1) of the *Merchandise Marks (Ireland) Act, 1909* (9 Edw. 7. c. 24) with regard to the *Prosecution in Ireland of Offences under the Merchandise Marks Act, 1887* (50-1 V. c. 28).

1910. No. 471.

1. The Department of Agriculture and Technical Instruction for Ireland shall, subject to the conditions in the next following Regulations prescribed, undertake the prosecution in Ireland of offences under the *Merchandise Marks Act, 1887*, in cases which appear to the Department to relate to Irish agricultural produce, or to the produce of any other Irish rural industry, and to affect the general interests of the country, or of a section of the community, or of a trade.

2.—(i.) Every application to the Department to undertake a prosecution shall be accompanied by the following documents:—

- (a) A statement showing the nature and circumstances of the case and sufficient to enable the Department to form an opinion whether the case relates to Irish agricultural produce, or to the produce of any other Irish rural industry, and affects the general interests of the country, or of a section of the community, or of a trade.
- (b) A statement showing the facts which, if the Department undertake the prosecution, will be capable of proof, and

setting out the proofs and names of witnesses available to prove such facts.

(ii.) The Department may require the above statements to be supplemented or additional evidence to be furnished.

3. If, on the evidence, the Department are of opinion that there is no reasonable prospect of a conviction being obtained, the Department will not, unless they think fit, undertake the prosecution.

4. If the Department are of opinion that the prosecution would be better or more properly conducted otherwise than under these Regulations, the Department will not undertake the prosecution.

5. The Department may, before undertaking a prosecution, require the applicant to give security for costs on such terms and in such manner as they think proper.

6. For the purpose of carrying these Regulations into effect, the Department may, from time to time, prescribe the use of such forms and give such directions as they may deem expedient.

T. P. GILL,

Secretary of the Department of Agriculture
and Technical Instruction for Ireland.

14th April, 1910.

I concur in these Regulations.

S. WALKER, C.

The Board of Trade concur in these Regulations.

H. LLEWELLYN SMITH,

Secretary.

APPENDIX I.

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



WEIGHTS AND MEASURES.

THE WEIGHTS AND MEASURES ACT, 1878.

41 & 42 VICT. c. 49.

PART I.—LAW OF WEIGHTS AND MEASURES.

Stamping and Verification of Weights and Measures.

§ 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.

Stamping of weights and measures with denomination.

Every measure of [length or] (a) 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.

(a) These words were introduced by the Weights and Measures Act, 1904, c. 28, § 13.

§ 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.

Stamping of verification on measures and weights.

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.

§ 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":*

Lead or pewter weights.

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 (b).

(b) This section was repealed by the Weights and Measures Act, 1904, under which the Board of Trade has power to make regulations.

Stamping of verification on weights for coin.

§ 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.

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.

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

§ 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.

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.

THE COAL MINES REGULATION ACT, 1887.

50 & 51 VICT. c. 58.

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

§ 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.

THE WEIGHTS AND MEASURES ACT, 1889.

52 & 53 VICT. c. 21.

Verification of weighing instruments

§ 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.

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

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

THE WEIGHTS AND MEASURES ACT, 1901.

4 EDW. VII. c. 28.

§ 10.—(1.) Any person who removes a stamp from any weight or measure or weighing or measuring instrument, and inserts the same into another weight or measure or weighing or measuring instrument, shall be deemed to forge or counterfeit a stamp within the meaning of sect. 32 of the principal Act. Forging
of stamps.

(2.) Such of the provisions of the said section as impose penalties on any person who wilfully increases or diminishes a weight after it has been stamped, or who knowingly uses, sells, utters, disposes of or exposes for sale a weight so increased or diminished, shall apply to measures in like manner as they apply to weights.

THE WEIGHTS AND MEASURES (IRELAND) AMENDMENT ACT, 1862.

25 & 26 VICT. c. 76.*

PART III.—PREVENTION OF FRAUDS.

§ 14. If any person commit any of the following offences, he shall for each offence be liable to a penalty not exceeding five pounds. Penalty on
counterfeit-
ing brand.

- (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 *bonâ fide* application of an impression of any such genuine brand or stamp;

* This Act was repealed in part by 41 & 42 Vict. c. 49.

- (6.) *Or knowingly weigh or cause 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.

Penalty for fraudulently increasing weight of butter in casks.

§ 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 fleeces.

§ 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.

(a) This sub-clause is repealed by the Statute Law Revision Act, 1893.

THE CRAN MEASURES ACT, 1908.

8 EDW. VII. c. 17.

§ 1. The cran and quarter-cran measures to be the only legal measures for use in the sale of fresh herrings. The measures to be branded or otherwise marked by an inspector of weights and measures in the prescribed manner.

§ 2.— (1.) Provision made for marking measures.

(2.) Penalties for wrongful marking by an inspector.

§ 5. Penalties for counterfeiting marks for cran or quarter-cran measures.

THE EXHIBITION MEDALS ACT, 1863.

26 & 27 Vict. c. 119.

§ 1. If any trader commits any of the offences following, that is to say:

(1.) Falsely represents that he has obtained a medal or certificate from the Exhibition Commissioners (a) in respect of any article or process for which a medal or certificate has been awarded by the Commissioners:

(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 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:

Penalty on false representations.
As to having obtained medals.

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.

(a) Of 1851 or 1862. See § 3.

REGISTERED DESIGNS.

THE PATENTS AND DESIGNS ACT, 1907.

7 EDW. VII. c. 29.

§ 54.—(1.) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall—

Marking registered designs.

- (a) * * * * *
- (b) Cause each such article to be marked with the prescribed mark, or with the prescribed words or figures, denoting that the design is registered; and if he fails to do so, the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

(2.) Where a representation is made to the Board of Trade by or on behalf of any trade or industry that in the interests of the

trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the Board may, if they think fit, by rule under this Act, dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as they think fit (*a*).

(*a*) The marking of articles bearing a registered design with some prescribed mark for the purpose of intimating to persons who might desire to reproduce the design that this is protected by registration has always been insisted on, and under § 51 of the Patents Act, 1883, the penalty for non-marking was the loss of copyright in the design, unless the proprietor could show that he had taken all proper steps to ensure the marking of the article. Now the failure to mark the goods no longer involves the loss of the copyright, but only the minor penalty of the loss of penalties and damages, while if it can be shown that the infringer was aware of the fact of registration he cannot rely on non-marking for even this limited purpose. Moreover, by sub-s. (2) the Board of Trade may, under certain conditions, dispense with the requirement of marking altogether.

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 (*Percy 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. Elroy*, 4 Ex. 350); nor by the sale of a butter-dish with a cover, the dish being marked but the cover not (*Fielding 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.*; but see *Johnson v. Bailey*, 11 P. R. 21).

Under the Act of 1883 it was 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 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). On the other hand, it has been held, following *Heywood v. Potter* (1 E. & B. 439), that where a design was registered for dusters, the marking of each piece containing a dozen dusters is not a compliance with the statute (*Hollorsall v. Moore*, 9 P. R. 27). The right of a manufacturer who had registered a design for lace has been held to be lost by the sale of the article in an unfinished state unmarked to a finisher, under an arrangement by which the finisher was to mark the article before putting it on the market, notwithstanding that the mark on the unfinished article would be destroyed in the finishing, and that there was no retail trade in such article (*Woolley v. Broad*, 9 P. R. 429). The copyright was not lost by marking an article required by the Rules to be marked "R^d" with the fuller abbreviation "Reg^d" (*Heinrichs v. Bastendorff*, 10 P. R. 160). It was held in Scotland (*Johnson v. Bailey*, 11 P. R. 21), that it was not enough for the registered proprietor to give general instructions that the protected article should be marked in compliance with the statute: he must see that adequate means are taken to carry out his instructions, and that every article was examined before being sent out: and where the marking was made from a mould, which was so far worn out that the mark had ceased to be legible, the rights of the proprietor were held to be forfeited (*ib.*; cf. *Fielding v. Hawley*, 48 L. T. N. S. 639); and it would appear that, under the Act of 1883, as under the former Acts, the sale of a single article unmarked might be a ground for depriving the registered proprietor of his right (*ib.*; see also *Widckind v. General Electric Co.*, 14 P. R. 190).

The proprietor of a registered design was not deprived of his right to protection merely because he placed on the articles which he sold, besides the registered number of his design, other registered numbers which ought not to be there; consequently, where a design was registered for a stove, and two other designs were registered for certain adjuncts of the stove, the placing by the proprietor of all three marks upon

the stove, though improper, was held no bar to an action to restrain an infringement of the design for the stove (*Harper & Co. v. Wright & Butler Lamp Manufacturing Co.*, (1896) 1 Ch. 142). The proprietor of a design might so acquiesce in the public delivery on sale of the registered article unmarked as to deprive himself of his copyright, although no formal relationship of principal and agent existed between him and the person who delivered the goods on sale (*Wedekind v. General Electric Co.*, 14 P. R. 190). Where, owing to the mistake of a die-sinker employed by the proprietor, the wrong number was stamped on the registered article, a "5" being substituted for a "3," and the mistake was not discovered for two years, but was then immediately rectified: it was held by the House of Lords, affirming Kekewich, J., and the Court of Appeal, that the proprietor had taken all proper steps to ensure the marking of the article within the proviso (*In re Rollason*, (1898) A. C. 499; (1898) 1 Ch. 237). The object of the section being to give the public warning of the registration, a proprietor needed a much stronger case to escape the loss of his copyright where the article was not marked at all than where there was some error in the marking, if there were such compliance as plainly to denote that the design was a registered one (*ib.*, *per* Lord Herschell). The mark ought to be placed on some part of the article which is included in the registered design, as to place it on some other part not only fail to comply with the requirement of the Act, but suggests truly that the part on which the mark is placed is protected: *In re Morton*, 17 P. R. 117; *Loa & Perrins v. Price*, 22 P. R. 122. But see *Ingram & Kemp, Ltd. v. Edwards*, 21 P. R. 463.

Now that the penalty for non-marking has been reduced to the loss of penalties and damages leaving the copyright intact, it would appear probable that the Courts will show themselves not more lenient in cases of non-marking than was the case under the more stringent Acts.

THE DESIGNS RULES, 1908.

68. Before delivery on sale of any article to which a registered design has been applied, the proprietor of such design shall cause each such article to be marked with the word "Registered" or with the abbreviation "Regd." or with the abbreviation "Rd.," as he may choose, and also (except in the case of articles to which have been applied designs registered in classes 9, 13, 14 and 15), with the number appearing on the certificate of registration (a).

Registration
mark.

a; Class 9 includes "Lace."

Class 13 includes "Printed or woven designs on textile piece goods (other than checks or stripes)."

Class 14 includes "Printed or woven designs on handkerchiefs and shawls (other than checks or stripes)."

Class 15 includes "Printed or woven designs (on textile piece goods or on handkerchiefs or shawls) being checks or stripes."

APPENDIX K.

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

CUTLERY.

59 *Geo. 3, 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. 1, 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 31 *Geo. 3, c. 58*.

31 *Geo. 3, 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. 3, 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. 3, c. 119* (1814), (Local).

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

§ 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

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

(b) And see § 6 of the Act of 1814.

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.

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

See also the special provisions in regard to the Cutlers' Company

(*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 De 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.

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

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

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, all now repealed, the Sheffield Cutlers' Register was re-organised. A new "Sheffield Register" was established, in which were 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 were, when made by persons trading within the specified limits, to be made to the company. Notice of such applications was to be given by the company to the comptroller, who might give notice of objection; and notice of applications by persons trading outside the specified limits for marks for similar goods was to be given by the comptroller to the company. Notice of registrations in the Sheffield register was to be given to the comptroller, who was to enter the marks in the general register; and notice of all other entries was also to be given to him. The practice at Sheffield was to follow generally that at London, and an appeal was 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 were 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 was to make the Sheffield Register an exact duplicate of the general register, so far as that related 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 of 1888, the principal alteration being the enlargement of the class of goods to which the section was made applicable. Such goods were therein described by the term "metal goods," which was defined as meaning "all metals, whether wrought, unwrought, or partly wrought, and all goods composed wholly or partly of any metal."

The provisions of the Patents, &c. Acts, 1883—8, relating to the Sheffield Register, were repealed by the Trade Marks Act, 1905,

and the "Sheffield Register" is now governed by § 63 of the Act of 1905, and the Trade Mark Rules 107—112 of 1906. The only alteration of any consequence is that under the new Act an appeal against a decision of the Cutlers' Company has to be brought direct to the Court.

GOLD AND SILVER PLATE.

ENGLAND.

2 *Hen. 6, 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 *Will. 3, 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*).

(*a*) The earliest statute on the subject was 28 *Edw. 1, 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. 7, 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. 1, c. 11*, both standards were established. See *infra*.

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

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. 2, c. 26, § 5*.

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 (c)	Sovereign's head.	Sovereign's head.	None.	None.	None.	Sovereign's head.	Sovereign's head.
Assay Town Mark (d)	On all qualities of gold and silver the special mark of the town.						

HALL MARKS.

(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 Will. 3, c. 4, were never exercised.

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

(c) Disused since 53 & 54 Vict. c. 8.

(d) 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 erased); Exeter, a castle; Chester, a dagger and 3 sheaves; Newcastle, 3 castles; Sheffield, a crown; Birmingham, an anchor. The marks for York and Norwich (now discontinued) were:—York, 5 lions on a cross; Norwich, a castle and a lion passant.

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

12 & 13 Will. 3, 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. 1, 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).

12 Geo. 2, c. 26 (1739) (e).

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

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

(b) See 12 Geo. 2, c. 26, § 5.

(c) The whole of this Act but §§ 1-3 and § 41 was repealed by the 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. 2, c. 26, § 5.

(e) Repealed in part, 30 Geo. 3, c. 31, § 1; Statute Law Revision Acts, 1867 and 1887.

SCOTCH HALL MARKS AT THE PRESENT DAY (a).

	GOLD.					SILVER.	
	<u>22 Carats.</u>	<u>18 Carats.</u>	<u>15 Carats.</u>	<u>12 Carats.</u>	<u>9 Carats.</u>	<u>11 oz. 2 dwt.</u>	<u>11 oz. 10 dwt.</u>
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 (b) ...	Sovereign's head.	Sovereign's head.	None.	None.	None.	Sovereign's head.	Sovereign's head.
Assay Town Mark (c)	On all qualities of gold and silver the special mark of the town.						

HALL MARKS.

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

(b) Disused since 53 & 54 Viet. c. 8.

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

§ 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 (*a*), 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*l.* fine, or, in default, hard labour not exceeding six months (*b*).

§ 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*l.* fine, and 10*l.* more for using any other mark; in default, hard labour not exceeding six months.

13 *Geo. 3, c. 52* (1772), "An Act for appointing wardens and assay-masters for assaying wrought plate in the towns of Sheffield and Birmingham" (*c*).

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

§ 4. No silversmith or plate worker in either of these towns, or within twenty miles thereof, to sell or export silver plate made in those 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.

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.

(*a*) By 38 *Geo. 3, 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.

(*b*) See *Robinson v. Currey*, 6 Q. B. D.

21; 7 *ib.* 465.

(*c*) Repealed as to Birmingham by 5 *Geo. 4, c. lii.* (local). As to Sheffield, see 24 *Geo. 3, sess. 2, c. 20*. The present Act only deals with silver.

(*d*) Or "Sheffield."

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	22	20	18	15·625	12·5	9·375	None.
Standard Mark	Harp crowned.	Plume of 3 feathers.	Unicorn's head.	None.	None.	None.	Harp crowned.
Date Mark	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.
Maker's Mark	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.
Duty Mark (b)	Sovereign's head.	Sovereign's head.	Sovereign's head.	None.	None.	None.	Sovereign's head.
Dublin Mark	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.

(b) Disused since 53 & 54 Vict. c. 8.

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. 3, 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. 3, 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—50l., 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. 3, c. 31* (1790).

This Act regulates the exemptions from marking.

38 *Geo. 3, 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—10l.

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

(a) This Act is now repealed by the Customs and Inland Revenue Act, 1890 (53 & 54 *Vict. c. 8*).

HALL MARKS FOR IMPORTED PLATE, 1904—6 (a).

	GOLD.						SILVER.	
	<u>22 Carats.</u>	<u>20 Carats.</u>	<u>18 Carats.</u>	<u>15 Carats.</u>	<u>12 Carats.</u>	<u>9 Carats.</u>	<u>11 oz. 2 dwt.</u>	<u>11 oz. 10 dwt.</u>
Quality Mark	22·916	20·833	18·75	15·625	12·5	9·375	·925	·9584
Date Mark.....	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.
Shape of Shield.....	Octagon.	Octagon.	Octagon.	Octagon.	Octagon.	Octagon.	Oval.	Oval.
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, Phoebus; Birmingham, equilateral triangle; Chester, acorn and two leaves; Sheffield, four crossed arrows; Edinburgh, St. Andrew's cross; Glasgow, bishop's mitre; Dublin, shamrock.

(a) Prescribed by the Order in Council of October 24th, 1904. See note (a), p. 746.

§ 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.* 3, c. 185 (1815) (b).

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

5 *Geo.* 4, c. *lii.* (1824) (Local—Birmingham and thirty miles round).

§ 1. 13 *Geo.* 3, 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 (*d*).

" 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*l.*, 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 (*e*).

(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) This Act is now repealed by the Customs and Inland Revenue Act, 1890 (53 & 54 *Vict.* c. 8).

(c) Already before 53 & 54 *Vict.* c. 8, the greater part of this Act was repealed by 33 & 34 *Vict.* c. 99, and 36 & 37 *Vict.* c. 91.

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

(e) Repealed in part by the Customs

and Inland Revenue Act, 1890 (53 & 54 *Vict.* c. 8). 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

HALL MARKS FOR IMPORTED FOREIGN WATCH-CASES, 1887—1907 (a).

	GOLD.						SILVER.
	22 Carats.	20 Carats.	18 Carats.	15 Carats.	12 Carats.	9 Carats.	
Quality Mark	22·917	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, equilateral triangle; Chester, acorn and two leaves; Sheffield, four crossed arrows; Edinburgh, St. Andrew's cross; Glasgow, bishop's mitre; Dublin, shamrock.

(a) Prescribed by the Order in Council of Nov. 28th, 1887, p. 690, *supra*; and replaced by Order in Council of May 7th, 1907, *ib.*

§ 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 authorizes 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) (b).

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) (c).

§ 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 (d).

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

§ 6 (e). 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 (f). *Foreign gold and silver plate imported and sent to an assay office in the United Kingdom for assay shall be marked, in*

common informer within 31 Eliz. c. 5, nor an action by a "party grieved" within 3 & 4 Will. 4, 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.

(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 is not placed on plate of these qualities.

(b) Repealed in part by the Statute Law Revision Act, 1875.

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

(d) In the case of *Goldsmiths' Co. v. Wyatt*, (1907) 1 K. B. 95, the question was considered whether gold and silver watch-cases forming parts of finished watches imported from abroad ought to be regarded as gold and silver plate within sect. 59 of the Act of 1842, and it was held by the Court of Appeal that they must be so regarded. In order to relieve from hardship holders of existing stocks of foreign watches with

unmarked cases the Assay of Imported Watch-Cases (Existing Stocks Exemption) Act, 1907 (7 Edw. 7, c. 8) was passed, by which watch-cases imported before June 1st, 1907, were exempted from assay and from the provisions of sect. 59 of 5 & 6 Vict. c. 47, and 46 & 47 Vict. c. 55. Imported articles of gold and silver decorated with enamel are within 5 & 6 Vict. c. 47, § 59: *Fabergé v. Goldsmiths' Co.*, Parker, J., Nov. 21st, 1910.

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

(f) Repealed by 53 & 54 Vict. c. 8, § 36, and 4 Edw. 7, c. 6. See also 46 & 47 Vict. c. 55 (Revenue Act, 1883), § 10, as to foreign plate. As to foreign watch-cases, see Merchandise Marks Act, 1887, § 8, and the Orders in Council thereunder, also the tables on pp. 743 and 745. The Order of Nov. 28th, 1887, was repealed by the Order of May 7th, 1907, as from May 14th, 1907, since which date the marks prescribed by the last-mentioned Order, which are identical with those prescribed by the Order in Council of May 11th, 1906, under the Hall-Marking of Foreign Plate Act, 1904, have been in use.

HALL MARKS FOR IMPORTED PLATE SINCE 1906 (a), AND FOR
IMPORTED WATCH-CASES SINCE 1907 (b).

	GOLD.						SILVER.	
	22 Carats.	20 Carats.	18 Carats.	15 Carats.	12 Carats.	9 Carats.	11 oz. 2 dwt.	11 oz. 10 dwt.
Quality Mark	22·916	20·833	18·75	15·625	12·5	9·375	·925	·9584
Date Mark	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.
Shape of Shield	Octagon.	Octagon.	Octagon.	Octagon.	Octagon.	Octagon.	Oval.	Oval.
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, sign of constellation Leo; Birmingham, equilateral triangle; Chester, acorn and two leaves; Sheffield, Libra; Edinburgh, St. Andrew's cross; Glasgow, double block letter F inverted; Dublin, Boujet.

(a) Prescribed by the Order in Council of May 11th, 1906. See note (a), p. 746.

(b) Prescribed by the Order in Council of May 7th, 1907, p. 690, *supra*, which adopted the same marks as the Order of 1906.

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.

4 *Edw. 7, c. 6* (1904) (Hall-marking of Foreign Plate Act, 1904).

§ 1. Foreign plate imported and brought to an assay office in the United Kingdom shall be marked in such manner as may be determined by Order in Council, to denote the foreign origin (*a*).

SCOTLAND (*b*).

13 *Geo. 3, c. 59* (1773) (*c*).

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

38 *Geo. 3, c. 69* (1798) (see p. 740, *supra*).

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

6 & 7 *Will. 4, 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.

(*a*) Under this Act two Orders in Council have been made—an order dated Oct. 24th, 1904, by which the marks set out in the table at p. 741 were prescribed, and a further Order dated May 11th, 1906, which revoked the former Order and substituted the marks set out in the table at p. 745, which last-mentioned marks were adopted for the purposes of foreign watch cases by the Order in Council of May 7th, 1907, under the Merchandise Marks Act. The Order of May 11th, 1906, came into operation on May 29th, 1906, except as regarded

Sheffield and Glasgow, where the date was postponed till July 1st, 1906.

(*b*) 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.

(*c*) 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.

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

§§ 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.* 1, c. 11; 38 *Geo.* 3, c. 69; 5 & 6 *Vict.* c. 47; 5 & 6 *Vict.* c. 56; 17 & 18 *Vict.* c. 96; 18 & 19 *Vict.* c. 60; and 4 *Edw.* 7, c. 6.

IRELAND.

3 *Geo.* 2, c. 3 (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.

23 & 24 *Geo.* 3, 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 (c), 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.

(a) This Act was repealed as to gold by 23 & 24 *Geo.* 3, c. 23, § 1 (Irish). It fixed a standard of 22 carats for gold (§ 33).

(b) The figure of Hibernia was accord-

ingly appointed.

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

§ 6 contains exemptions.

§ 11 provides for the registration of new marks.

§ 28 provides penalties for counterfeiting, &c.

47 *Geo. 3, 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 (a).

§§ 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*; 4 *Edw. 7, c. 6*.

N.B.—For very full information on all points connected with Hall Marks, see Mr. Chaffers' book on Hall Marks, 9th ed., London, 1905.

PRINTS AND ENGRAVINGS.

8 *Geo. 2, 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" (b). Penalties for Piracy.

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

(b) 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.* 95; *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.* 138; *Graves v. Ashford*, *L. R.* 2 *C. P.* 410; *Rock v. Lazarus*, *L. R.* 15 *Eq.* 104. The requirements of 8 *Geo. 2, 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.

7 *Geo. 3, c. 38* (1766).

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

17 *Geo. 3, c. 57* (1777).

The former Acts further extended in various respects.

6 & 7 *Will. 4, c. 59* (1836).

The former Acts extended to Ireland.

SCULPTURES.

54 *Geo. 3, c. 56* (1814) (*a*).

§ 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" (*b*).

CLOCKS AND WATCHES, &c.

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

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

METAL BUTTONS.

36 *Geo. 3, c. 60 (e)* (1796).

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

(*a*) The earlier Act, 38 *Geo. 3, c. 71* (1798), was repealed by the Statute Law Revision Act, 1861 (24 & 25 *Vict. c. 101*).

(*b*) 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 was repealed, and sculptures, &c., within the protection of the Act of 1814, were excluded from registration for the future

(see § 60). Existing registrations at the commencement of the Act were, however, preserved (§ 113). The requirements of 54 *Geo. 3, 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*).

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

(*d*) See p. 689. As to watches and watch-cases, see also §§ 7 and 8 of the Merchandise Marks Act, 1887, and the Orders in Council thereunder, p. 690.

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

§ 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. 3, c. 115 (a)* (1813).

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

§ 7 appoints Birmingham proof marks (*b*).

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

§ 9 repeals the former Acts.

§ 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.

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

(*b*) 55 *Geo. 3, c. 59* (1815), further regulated the marking of gun-barrels,

but was also repealed by 18 & 19 *Vict. c. cxlviii.*, § 9 (Local).

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

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.

ANCHORS AND CHAIN CABLES.

57 & 58 *Vict. c. 60* (1894), "Merchant Shipping Act, 1894."

By § 543 every manufacturer of anchors is required, under penalties, to mark every anchor made by him in two specified places with his name and initials, and also to mark it with a progressive number and the weight.

62 & 63 *Vict. c. 23* (1899), "Anchors and Chain Cables Act, 1899" (a), regulates the testing, proving, and marking of anchors and chain cables, and provides penalties for falsely marking, &c.

By § 2, every contract for the sale of a chain cable or of an anchor weighing more than $1\frac{1}{2}$ cwt. implies, in the absence of an express stipulation to the contrary, a warranty that the anchor or cable has been duly proved.

(a) This Act replaces 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).

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, 115. 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 (b).

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

(b) As to § 114, see § 286 of the Customs (Consolidation) Act, 1876 (39 & 40 *Vict. c. 36*).

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. 3, 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 name and the names of the parish and county, with the year in which 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. (*b*).

(*a*) This Act is repealed in part. The former Acts, now repealed, were 14 *Geo. 3, 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. 3, 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. 3, c. 134*,

under which the owner was in addition to mark the name of the parish and county in which the hops were grown.

(*b*) 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*l.*, the maximum penalty; 4*l.*, the value of the hops; and 10*l.* 10*s.* costs.

§ 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.

COFFEE AND CHICORY.

45 & 46 *Vict. c.* 41, "The Customs and Inland Revenue Act, 1882."

§ 5. A duty imposed on imitations of coffee and chicory, to be collected by means of adhesive labels provided by the Commissioners of Inland Revenue.

§ 6. Penalties for defective labelling. Packets containing coffee mixtures to have labels stating the names of the substances included.

MARGARINE, &c.

50 & 51 *Vict. c.* 29, "The Margarine Act, 1887."

§§ 6, 7. Packages of butter-substitutes to be marked "margarine" in a specified manner. Penalties for offences.

62 & 63 *Vict. c.* 51, "The Sale of Food and Drugs Act, 1899."

§§ 1, 5, 6. Further provisions as to "margarine," "margarine-cheese," "machine-skimmed milk," and "skimmed milk."

7 *Edw. 7. c.* 21, "The Butter and Margarine Act, 1907."

§§ 8—11. Further provisions as to marking margarine, &c. Penalties for offences.

TOBACCO.

26 & 27 *Vict. c.* 7, "The Manufactured Tobacco Act, 1863."

§§ 3—8. Provisions as to marking negrohead and cavendish tobacco. Penalties, &c.

LINEN.

17 *Geo. 2, c.* 30 (*a*) (1743):

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

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

18 *Geo. 2, c. 24 (a)* (1744).

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

§ 2 (b). 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. 4, 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 *Will. 4, 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.

§ 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.

9 *Edw. 7, c. 21*, "The Irish Handloom Weavers Act, 1909.

§§ 1—3. Irish hand-woven linen damask goods to be marked "Irish hand-woven linen damask." Irish hand-woven cambric or linen diaper goods to be marked "Irish hand-woven." Penalties for failure to mark, improper marking, &c.

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

(b) Repealed as to bounty by 6 *Geo. 4, c. 105*.

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 Will. 3, c. 41 (1697); this Act provided penalties for forging the King's marks, or having in possession goods so marked; 9 Geo. 1, c. 8 (1722); this Act modified the penalties contained in the former Act; 17 Geo. 2, 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. 3, 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. 3, c. 60 (1814); this extended the provisions of the former Acts to cordage wrought with worsted threads; 54 Geo. 3, c. 159, § 10 (1814); this provided a penalty for sweeping for lost anchors, cables, &c., belonging to the King's service; 55 Geo. 3, c. 127 (1815); this extended the previous Act 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 Will. 3, 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*, 3 Cox, 281; *R. v. Cohen*, 8 Cox, 41; *R. v. Sleep*, *ib.* 472. 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 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*, 8 Cox, 472. Although a specified certificate was required by 9 & 10 Will. 3, c. 41, to justify possession of marked goods, it was held that another form of certificate might be accepted (*R. v. Willmet*, 3 Cox, 281), or even the certificate be dispensed with altogether (*R. v. —*, Foster, Cr. Cas. 439; *R. v. Banks*, 1 Esp. 144), 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 Will. 3, 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.

[FIRST SCHEDULE.]

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.	

APPENDIX L.

THE INTERPRETATION ACT. 1889.

52 & 53 Vict. c. 63.

An Act for consolidating enactments relating to the Construction of Acts of Parliament and for further shortening the Language used in Acts of Parliament. [30th August, 1889.]

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 :

Re-enactment of existing Rules.

1.—(1.) In this Act and in every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, unless the contrary intention appears,— Rules as to gender and number.

(a.) words importing the masculine gender shall include females; and

(b.) words in the singular shall include the plural, and words in the plural shall include the singular.

(2.) The same rules shall be observed in the construction of every enactment relating to an offence punishable on indictment or on summary conviction, when the enactment is contained in an Act passed in or before the year one thousand eight hundred and fifty.

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

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

3. In every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, the Meanings of certain words

in Acts since 1850. following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them; namely,—

The expression "month" shall mean calendar month:

* * * * *

The expressions "oath" and "affidavit" shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and the expression "swear" shall, in the like case, include affirm and declare.

4. [Meaning of "county" in past Acts.]

5. [Meaning of "parish."]

6. [Meaning of "county court."]

7. [Meaning of "sheriff clerk," &c. in Scottish Acts.]

Sections to be substantive enactments.

Acts to be public Acts.

8. Every section of an Act shall have effect as a substantive enactment without introductory words.

9. Every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, shall be a public Act and shall be judicially noticed as such, unless the contrary is expressly provided by the Act.

Amendment or repeal of Acts in same session.

Effect of repeal in Acts passed since 1850.

10. Any Act may be altered, amended, or repealed in the same session of Parliament.

11.—(1.) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed, unless words are added reviving that enactment.

(2.) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into operation.

New General Rules of Construction.

Official definitions in past and future Acts.

12. In this Act, and in every other Act whether passed before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

(1.) The expression "the Lord Chancellor" shall, except when used with reference to Ireland only, mean the Lord High Chancellor of Great Britain for the time being, and when used with reference to Ireland only, shall mean the Lord Chancellor of Ireland for the time being.

(2.) The expression "the Treasury" shall mean the Lord High Treasurer for the time being or the Commissioners for the time being of Her Majesty's Treasury.

(3.) The expression "Secretary of State" shall mean one of Her Majesty's Principal Secretaries of State for the time being.

* * * * *

(5.) The expression "the Privy Council" shall, except when used with reference to Ireland only, mean the Lords and other

for the time being of Her Majesty's Most Honourable Privy Council, and when used with reference to Ireland only, shall mean the Privy Council of Ireland for the time being.

* * * * *

(8.) The expression "the Board of Trade" shall mean the Lords of the Committee for the time being of the Privy Council appointed for the consideration of matters relating to trade and foreign plantations.

* * * * *

(18.) The expression "the Bank of England" shall mean, as circumstances require, the Governor and Company of the Bank of England or the bank of the Governor and Company of the Bank of England.

* * * * *

13. [Judicial definitions in past and future Acts.]

14. In every Act passed after the commencement of this Act, unless the contrary intention appears, the expression "rules of Court" when used in relation to any Court shall mean rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such Court, and as regards Scotland shall include acts of adjournal and acts of sederunt.

Meaning of "rules of Court."

The power of the said authority to make rules of Court as above defined shall include a power to make rules of Court for the purpose of any Act passed after the commencement of this Act, and directing or authorising anything to be done by rules of Court.

15. [Meaning of "borough."]

16. [Meaning of "guardians" and "union."]

17. [Definitions relating to elections.]

18. In this Act, and in every Act passed after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

Geographical and colonial definitions in future Acts.

(1.) The expression "British Islands" shall mean the United Kingdom, the Channel Islands, and the Isle of Man.

(2.) The expression "British possession" shall mean any part of her Majesty's dominions exclusive of the United Kingdom, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession.

(3.) The expression "colony" shall mean any part of her Majesty's dominions exclusive of the British Islands, and of British India, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony.

(4.) The expression "British India" shall mean all territories and places within her Majesty's dominions which are for the time being governed by her Majesty through the Governor-General of India or through any governor or other officer subordinate to the Governor-General of India.

- (5.) The expression "India" shall mean British India together with any territories of any native prince or chief under the suzerainty of her Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India.
- (6.) The expression "governor" shall, as respects Canada and India, mean the Governor-General, and include any person who for the time being has the powers of the Governor-General, and as respects any other British possession, shall include the officer for the time being administering the government of that possession.
- (7.) The expression "colonial legislature" and the expression "legislature," when used with reference to a British possession, shall respectively mean the authority, other than the Imperial Parliament or her Majesty the Queen in Council, competent to make laws for a British possession.

Meaning of "person" in future Acts.

19. In this Act and in every Act passed after the commencement of this Act the expression "person" shall, unless the contrary intention appears, include any body of persons corporate or unincorporate.

Meaning of "writing" in past and future Acts.

20. In this Act and in every other Act whether passed before or after the commencement of this Act expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Meaning of "statutory declaration" in past and future Acts. 5 & 6 Will. 4, c. 62.

21. In this Act, and in every other Act, whether passed before or after the commencement of this Act, the expression "statutory declaration" shall, unless the contrary intention appears, mean a declaration made by virtue of the Statutory Declarations Act, 1835.

22. [Meaning of "financial year" in future Acts.]

23. [Definition of "Lands Clauses Acts."]

24. [Meaning of "Irish Valuation Acts."]

25. [Meaning of "ordnance map."]

Meaning of "service by post."

26. Where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve," or the expression "give" or "send," or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

27. [Meaning of "committed for trial."]

28. [Meanings of "sheriff," "felony," and "misdemeanour" in future Scotch Acts.]

29. [Meaning of "county court" in future Irish Acts.]

References to the Crown.

30. In this Act and in every other Act, whether passed before or after the commencement of this Act, references to the Sovereign reigning at the time of the passing of the Act or to the Crown shall, unless the contrary intention appears, be construed as references to the Sovereign for the time being, and this Act shall be binding on the Crown.

Construction of statutory rules, &c.

31. Where any Act, whether passed before or after the commencement of this Act, confers power to make, grant, or issue any instru-

ment, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, expressions used in the instrument, if it is made after the commencement of this Act, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power.

32.—(1.) Where an Act passed after the commencement of this Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

Construction of provisions as to exercise of powers and duties.

(2.) Where an Act passed after the commencement of this Act confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

(3.) Where an Act passed after the commencement of this Act confers a power to make any rules, regulations, or byelaws, the power shall, unless the contrary intention appears, be construed as including a power, exerciseable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or byelaws.

33. [Provisions as to offences under two or more laws.]

34. [Measurement of distances.]

35.—(1.) In any Act, instrument, or document, an Act may be cited by reference to the short title, if any, of the Act, either with or without a reference to the chapter, or by reference to the regnal year in which the Act was passed, and where there are more statutes or sessions than one in the same regnal year, by reference to the statute or the session, as the case may require, and where there are more chapters than one, by reference to the chapter, and any enactment may be cited by reference to the section or sub-section of the Act in which the enactment is contained.

Citation of Acts.

(2.) Where any Act passed after the commencement of this Act contains such reference as aforesaid, the reference shall, unless a contrary intention appears, be read as referring, in the case of statutes included in any revised edition of the statutes purporting to be printed by authority, to that edition, and in the case of statutes not so included, and passed before the reign of King George the First, to the edition prepared under the direction of the Record Commission; and in other cases to the copies of the statutes purporting to be printed by the Queen's Printer, or under the superintendence or authority of Her Majesty's Stationery Office.

(3.) In any Act passed after the commencement of this Act a description or citation of a portion of another Act shall, unless the contrary intention appears, be construed as including the word, section, or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

36.—(1.) In this Act, and in every Act passed either before or after the commencement of this Act, the expression "commencement," when used with reference to an Act, shall mean the time at which the Act comes into operation.

"Commencement."

(2.) Where an Act passed after the commencement of this Act, or any Order in Council, order, warrant, scheme, letters patent, rules,

regulations, or byelaws made, granted, or issued, under a power conferred by any such Act, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day.

Exercise of statutory powers between passing and commencement of Act.

37. Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation.

Effect of repeal in future Acts.

38.—(1.) Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

(2.) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

- (a.) revive anything not in force or existing at the time at which the repeal takes effect; or,
- (b.) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or
- (c.) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or
- (d.) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e.) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed.

Supplemental.

Definition of "Act" in this Act.
Saving for past Acts

39. In this Act the expression "Act" shall include a local and personal Act and a private Act.

40. The provisions of this Act respecting the construction of Acts passed after the commencement of this Act shall not affect the construction of any Act passed before the commencement of this Act,

although it is continued or amended by an Act passed after such commencement.

41. The Acts described in the Schedule to this Act are hereby repealed to the extent appearing in the third column of the Schedule.

42. This Act shall come into operation on the first day of January one thousand eight hundred and ninety.

43. This Act may be cited as the Interpretation Act, 1889.

Repeal.

Commence-
ment of Act.

Short title.

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ENACTMENTS REPEALED.

Sect. 41.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
7 & 8 Geo. 4, c. 28.	An Act for further improving the administration of justice in criminal cases in England.	Section fourteen.
9 Geo. 4, c. 54.	An Act for improving the administration of justice in criminal cases in Ireland.	Section thirty-five.
7 Will. 4 & 1 Vict. c. 39.	An Act to interpret the word "sheriff," "sheriff clerk," "shire," "sheriffdom," and "county," occurring in Acts of Parliament relating to Scotland.	The whole Act.
13 & 14 Vict. c. 21.	An Act for shortening the language used in Acts of Parliament.	The whole Act.
29 & 30 Vict. c. 113.	The Poor Law Amendment Act of 1866.	Section eighteen, from the beginning to "can be appointed, and."
42 & 43 Vict. c. 49.	The Summary Jurisdiction Act, 1879..	In section twenty the subsections numbered (3) and (6). Section fifty.
17 & 18 Vict. c. 43.	The Summary Jurisdiction Act, 1854..	Section seven.
51 & 52 Vict. c. 43.	The County Courts Act, 1888.....	Section one hundred and eighty-seven, from the beginning to "is meant, and."

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