

Government, but there the matter drops, chilled and lifeless. Now, this should not be so. Governments are designed for the good of the people, and should not turn a deaf ear to their respectful requests.

One reason that the subject has been so long neglected is, that there is no unity of action on the part of those who desire the proposed amendment. If Sheriffs require a modification of the laws regulating their offices, they combine, and the end is attained. So with Clerks of the Peace, Crown Attorneys, and other public officers. Railway companies have not been an exception to this rule of conduct. Indeed, of late years, we fear that our Legislature has given too much consideration to Railway projects, and too little consideration to the social wants of the people.

We trust that on this occasion we call attention to the necessity for some provision for the payment of Crown witnesses for the last time. We are on the eve of a session of Parliament. That Parliament is a new one. It contains many members fresh from the body of the people, and emulous of distinction. The man who shall take up the subject of these remarks—stick to it—and push it through, will earn for himself well-merited distinction.

SELECTIONS.

ON FRAUDULENT TRADE MARKS

BY JOHN MORRIS, ESQ.

The Trade Marks Bill, which passed the House of Lords in the last session of parliament, was withdrawn by the President of the Board of Trade when it came into committee in the Commons, with notice that it would be re-introduced "the first thing next session, and referred to a select committee."

The object of this paper is to indicate some of the points to which attention will have to be directed in dealing with any bill to be hereafter introduced in lieu of that so recently withdrawn.

The late bill dealt with two very distinct offences—the first relating to fraudulent trade marks; the second to false labelling. At first sight the two may appear to be, if not identical, at all events intimately connected, but upon closer examination the principles applicable to each will be found to be widely different.

Trade marks refer wholly to ownership, or to that property which arises from manufactures. False labelling includes many cases in which no question of trade mark or peculiar ownership is involved; as, for instance, the false marking of goods as to *quantity* or *length*. For reasons which I shall afterwards explain I would limit the offence of false labelling to cases in which there is a false indication as to *quantity*, *length*, or the *name* of the manufacturer or owner.

Trade marks are not confined to the name of the manufacturer or owner, but extend, as we shall presently see, to the use of signs and marks of every conceivable kind, as to the right to use which there may be, and often are, disputed questions.

There can rarely be any dispute as to the right to use the name of the manufacturer or owner, where it is the name of a living person actually engaged in the production of the article;

and, therefore, in such cases, I would put the name under the same protection as the quantity and length, because so far as the fraudulent use of the name is concerned (which will include most of the flagrant offences in this class of cases) you thereby get rid of many of the difficulties which arise as to trade marks.

The distinction between cases of false labelling and of trade marks is most important: the former is an offence against the public, and may, therefore, come under the head of the criminal law, while the latter partakes of the nature of a civil wrong; the former can be dealt with at once by legislation, but before the latter can be made the groundwork of criminal proceedings you must, by registration or otherwise, provide for settling preliminarily the two essential questions, what is a trade mark? and who, in any given case is entitled to its exclusive use?

Whether it will be wise to deal with both these subjects of false labelling and trade marks by one Bill may be open to question.

A trade mark is a species of private property, and there certainly seems no more reason why that should be protected by the criminal law than copyright, patents, or designs.

On the other hand, no one doubts the propriety of checking the false marking of goods as to lengths or quantity, or as to the name of the manufacturer or owner.

I will now proceed to examine in detail some of the provisions of the late bill; and first, as to false labelling:—Section 6 applied to cases where there should be "any false indication, statement or description of the quantity, quality, measure, substance, or material of such chattel or article or any part thereof, or of the manner or piece in or at which, or of the person by whom, such chattel or article was made, manufactured, produced, or was, or is, dealt in."

The words "quality," "substance," "material," "manner or place," are (thus applied) all objectionable. They are not required to meet any admitted mischief, while they will give rise to all sorts of disputed questions, like the one now often raised—what is paper? Can carpets known as "Brussels" be sold under that designation when it is notorious they are not made at Brussels? What are "superfine," "firsts," "seconds," and all such terms applied to quality? Now, the mischief complained of is not that the public are misled by the use of any such terms as these, because as to them purchasers can and should exercise their own judgment; the real cause of complaint is, that the public are misled by misrepresentations as to quantity, length, and the name of the manufacturer or owner, as to which no skill or care on the part of a purchaser can protect him.

But even in those cases of false labelling to which I have said the criminal law might be properly applied, there is a clear distinction which should always be borne in mind between the case of the *maker* of goods so falsely marked and the *vendor*—the latter may innocently sell a reel of cotton marked 100 yards and containing only fifty; but the manufacturer cannot innocently make and mark it. It is impossible that the dealer can test the lengths and quantities of a large mass of articles dealt in, such as cotton, ribbons, lace, &c. Such articles are necessarily sold to the public in precisely the same state in which they leave the manufacturer's hands. Some protection, therefore, should be extended to the innocent vendor of falsely-labelled goods. This might be done by requiring proof of *knowledge and intent to defraud*, while in the case of the maker (the source of the mischief) less stringent provisions as to proof might be required.

A marked distinction is made by our law between the manufacturer and the dealer in the case of gold and silver wares having forged or counterfeited marks; such marks are *well known*, and if in any case the dealer ought to be held responsible for what he sells, it should be in that case,—yet, while the maker is liable to transportation, the dealer escapes