

(5) No prosecution under the Trade Mark Act shall be commenced after the expiration of three years, next after the committing of the offence, or after one year next after the first discovery thereof by the prosecutor, which ever expiration first happens.

(6) Every 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 of the United Kingdom or of Canada, is liable to summary conviction to a penalty not exceeding \$100.

Civil Remedy.

The proper remedy at Common Law for fraud, committed by means of the infringement of a trade mark belonging to a rival trader, is by an action on the case for deceit. The manner in which that form of action was made applicable to cases of trade mark, and developed to meet the interests of such cases, are in some respects different from other cases of fraudulent misrepresentation, may be well stated in the language employed by Mr. Justice Mellish, who says: "In my opinion all actions of this kind must be founded upon false representations. Originally, I apprehended the right to bring an action in respect of the improper use of a trade mark arose out of the Common Law right to bring an action for a false representation, which, of course, must be a false representation made fraudulently. It differed from an ordinary action for false representation in this respect, that an action for false representation is generally brought by the person to whom the false representation is made, but in the case of the improper use of a trade mark the Common Law Courts noticed that the false representation which is made by putting another man's trade mark, or the trade name of another manufacturer on the goods which the wrongdoer sells, is calculated to do an injury, not only to the