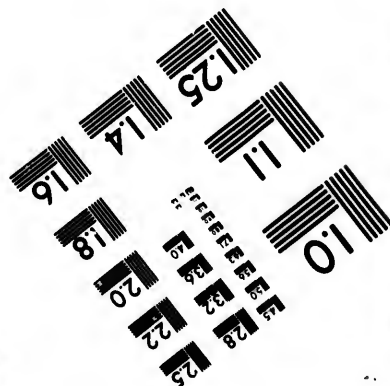
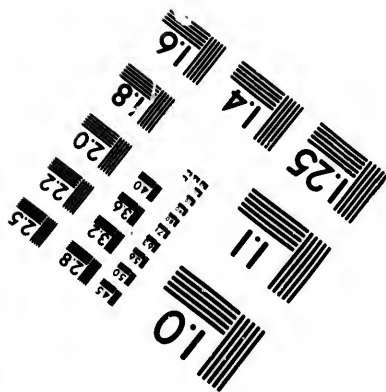
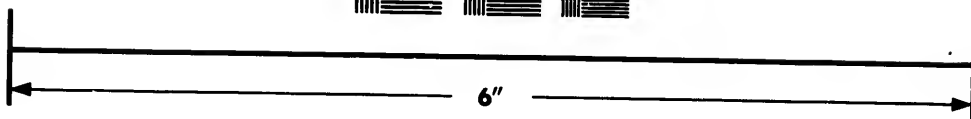
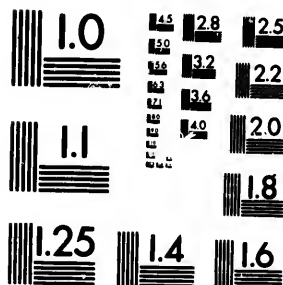


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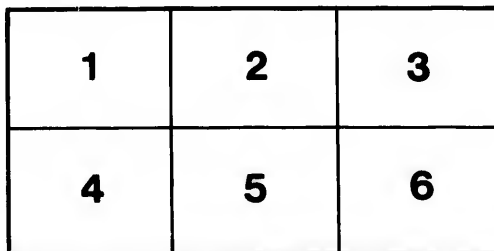
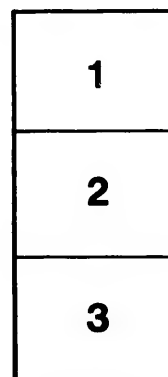
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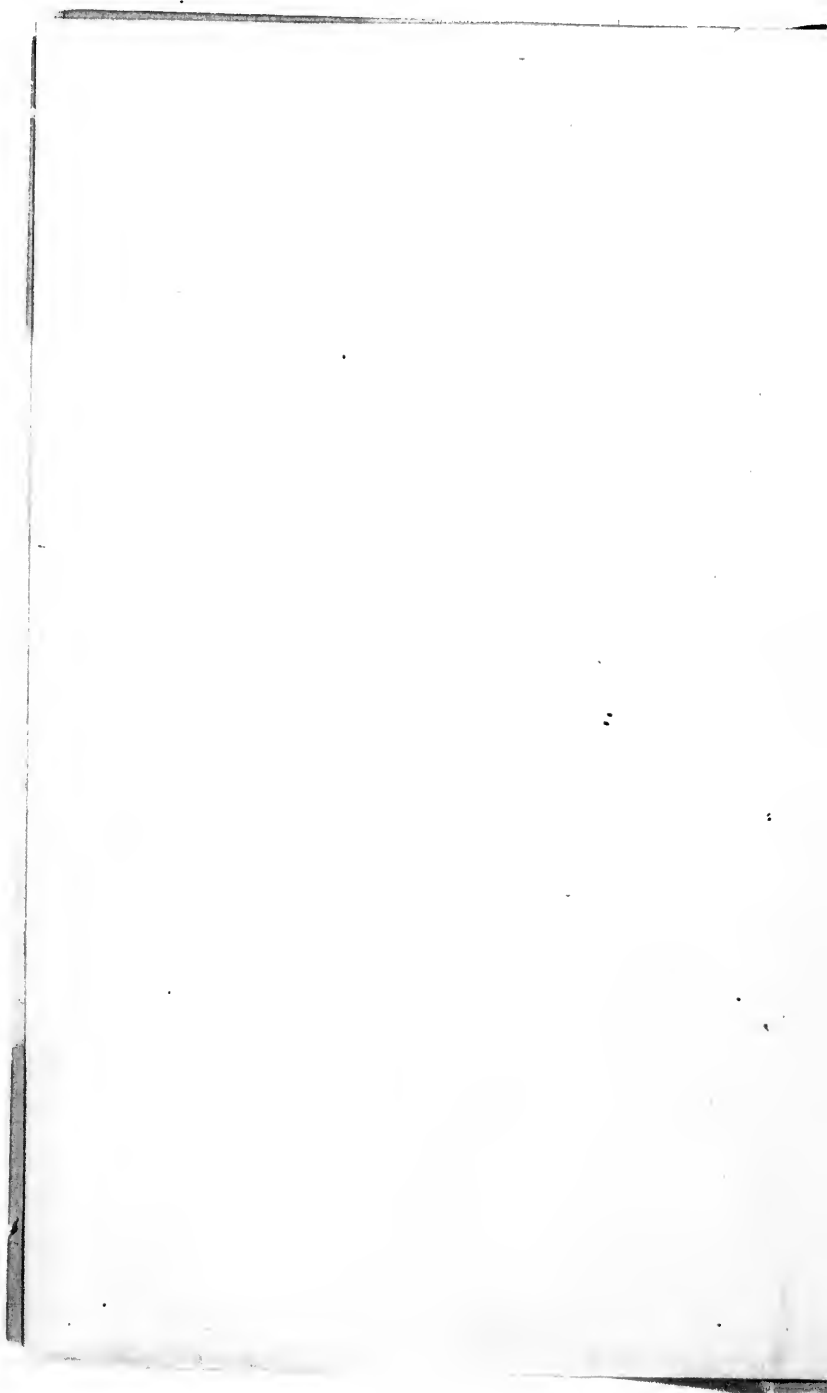
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THE
TRADE MARK LAWS

OF THE
UNITED STATES,

France, Great Britain, German Empire, Canada,
Belgium, Russia and Austria.

BY
FRANCIS FORBES.



NEW YORK :

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ADVERTISEMENT.

The following pages appeared, for the most part, in the *Iron Age*, at the instance of the United States Trade Mark Association, and from that journal were copied into many others. Chapters 2 and 3 were added as an appendix to bring the cases and statutes down to date. No attempt was made to harmonize the decisions of the various states, but rather to bring out the differences between such decisions. It was considered that the effect of these contradictory decisions in connection with the various inconsistent and often ill-digested laws of the various states would lead to national legislation on the subject of Trade Marks. There have been added extracts from treaties, conventions and declarations, concerning Trade Marks between the United States and some foreign Countries; and also such parts of the French, English, German, Canadian, Belgian, Russian and Austrian Trade Mark statutes as are of importance to citizens of the United States.

The paging of the two parts is different because the parts were printed at different offices.

165 BROADWAY, NEW YORK, *October, 1881.*



CHAPTER I.

§ 1.—Property in trade marks is protected in all the States of the Union under the common law. By common law we mean "those principles, usages and rules of action applicable to the government and security of persons and property, which do not rest for their authority upon any express and positive declaration of the will of the legislature." In the States of Alabama, Arkansas, Colorado, Delaware, Florida, Louisiana, Maryland, Minnesota, Mississippi, New Hampshire, Rhode Island, South Carolina, Texas, Tennessee, Virginia, Vermont, Wisconsin and West Virginia, there exist no statutes on the subject of trade-marks, and yet suits may be maintained in any of these States for damages and to restrain the infringer.

The reports, however, show that owners of trade-marks have not had occasion to enforce their rights under the common law in Alabama, Arkansas, Colorado, Delaware, Florida, Iowa, Kansas, Maine, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, Oregon, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia and Wisconsin. If any suits have been brought in these States they have not been reported. It is not strange, then, that many of the States have not enacted trade-mark statutes.

It is necessary to distinguish statutes relating to trade-marks from those which refer solely to cattle brands or marks and log marks. The latter statutes have been passed in many of the States, but are of merely local interest.

§ 2.—In California the Political Code, approved March 12, 1872, contains an article on trade marks (Art. III, Sec. 3196 to Sec. 3199, Hittell's).

"Section 3196.—The phrase trade mark as used in this chapter includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label or wrapper usually affixed by any mechanic, manufacturer, druggist, merchant or tradesman to denote any goods to be goods imported, manufactured, produced, compounded or sold by him, other than any name, word or expression generally denoting any goods to be of some particular class or description."

Any such person may secure the exclusive use of such trade-mark, by filing with the Secretary of State a copy or description of the same and claim of ownership, with his affidavit that he is the exclusive owner or agent of the owner.

The Secretary of State is required to keep a record of all trade-marks so filed, and collect a fee of \$3 each.

"Section 3199. Any person who has first adopted, recorded and used a trade mark or name, whether within or beyond the limits of this State, is its original owner. Such ownership may be transferred in the same manner as personal property, and is entitled to the same protection by suit at law." Injunction may be granted.

The Civil Code, approved March 21, 1872 (Sec. 5655, Hittell's), enacts that there may be ownership in trade-marks, and (Sec. 5991 Hittell's ed.) that any form, symbol or name to designate origin or ownership, but which does not relate to the name, quality or description of the thing or business or place, and not previously used, may be exclusively appropriated as a trade mark by any one who produces or deals in a particular thing or conducts a particular business. (As amended 1874.)

The Penal Code, approved July 14, 1872 (Sec. 13,350 to 13,354 of Hittell's), provides that every person who willfully forges or counterfeits a trade mark with intent to pass off any goods to which such forged or counterfeit trade mark is affixed as the genuine goods, or who sells or keeps for sale any goods upon which a counterfeit trade mark has been affixed, intending to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor. The phrases "forged trade mark" and "counterfeit trade mark" include every alteration or imitation of any trade mark so resembling the original as to be likely to deceive. It repeats the definition of trade mark given in the Political Code, Sec. 3196.

"Section 13,354. Every person who has or uses any cask, bottle, vessel, case, cover, label or other thing bearing or having in any way connected with it the duly filed trade-mark or name of another, for the purpose of disposing, with intent to deceive or defraud, of

any article other than that which such cask, bottle, vessel, case, cover, label or other thing originally contained or was connected with by the owner of such trade-mark or name, is guilty of a misdemeanor." A misdemeanor is punishable by imprisonment in the county jail not exceeding 6 months, or by a fine not exceeding \$500, or by both (Sec. 13,010 Hittrell's Penal Code).

§ 3.—In Connecticut the following statute is in force (General Statutes, Revision of 1875, p 523.) "Every person who shall use, forge, or counterfeit the individual stamp or label of any mechanic or manufacturer, with intent to defraud another; or who shall vend, or offer to vend, any goods having any such forged or counterfeited stamp or label thereon, knowing it to be forged or counterfeited, without disclosing the fact to the purchaser, shall be imprisoned not more than six months, or fined not more than \$100, or both."

This is the revision of an act approved June 5, 1847, which contained substantially the same provisions.

§ 4.—The definition of trade mark contained in the Political Code of California is copied into the Penal Code of Dakota, approved February 7, 1877, Sec. 415 (see Sec. 576 Civil Code); so also are the provisions of the Penal Code of California in reference to counterfeiting trade-marks, and selling goods bearing such counterfeits (Secs. 411 and 413). The punishment, however, is imprisonment in the county jail not exceeding one year or fine not exceeding \$500, or both. Other sections of the act, *i. e.*, Sec. 412, against keeping dies, plates, brauds or imitations of trade-marks for the purpose of making counterfeits, &c., and Sec. 414, against affixing any imitation of a trade-mark which is the same to the eye or the ear as the genuine, are the same as the acts of Missouri and New York, except in phraseology.

The punishment is the same as prescribed in Secs. 411 and 413, except that the person offending under Sec. 414 "is liable to the party aggrieved in the penal sum of \$100 for each and every offense, to be recovered by him in a civil action."

Sections 418 and 419 provide for the punishment of persons refilling or selling bottles, or keeping same without consent, the marks of which had been recorded according to law, by a penalty of 50 cents for each and every bottle filled, bought or sold for first offense, and \$5 each for every subsequent offense. Section 420 provides for proceedings to obtain search warrant in cases mentioned in Secs. 418 and 419, and for the summary trial of the offender, when brought before the magistrate, and fine as prescribed.

The Civil Code, Sec. 160, declares that there may be ownership in trade marks.

§ 5.—In Georgia, by statute, courts of equity may grant injunctions and relief.

§ 6.—In Illinois, "An act" (was approved May 2, 1873) "to protect manufacturers, bottlers and dealers in ale, porter, lager beer, soda, mineral water and other beverages, from the loss of their casks, barrels, kegs, bottles and boxes." All persons engaged in the manufacture, bottling or selling of ale, &c., in casks, barrels, kegs, bottles or boxes, with their names or their marks of ownership stamped or marked thereon, may file in the office of the Secretary of State and in that of the County Clerk of their county a description of such names and marks, and publish same in a newspaper of said county for six weeks. It is declared to be unlawful for any person, without the written consent of the owner, to fill with ale, &c., or any other article of merchandise, for sale or to be furnished to customers, any such casks, barrels, kegs, bottles or boxes so marked or stamped, or to sell, dispose of, buy or traffic in or wantonly destroy any such casks, &c., so marked or stamped by the owner after the owner shall have complied with the first section of this act. Violation of act is made a misdemeanor; punishable by fine of \$5 for each cask, barrel or box, and 50 cents for each bottle so filled, bought, sold, used, trafficked in or wantonly destroyed, together with the costs of suit for the first offense, and by double fine for each subsequent offense.

The using by any other person than the rightful owner thereof without written permission of any such cask, &c., for the sale therein of ale, &c., or any other article of merchandise, &c., or to be furnished to customers, or the buying, selling or trafficking in such casks, &c., by any person other than the owner without such written permission, or the fact that any junk dealer or dealer in casks, &c., shall have in his possession any such cask, &c., so marked and registered without such written permission, is declared to be *prima facie* evidence that such use, buying, selling, trafficking or possession is unlawful, and any person found guilty of such use, buying, selling, &c., shall be liable to be arrested and fined, as before provided; and it is declared to be the duty of any justice of the peace, &c., upon oath having been made that any person has violated the provisions of this act, to issue his warrant and cause the accused to be brought before him and tried, and in case the accused is found guilty, to assess the fine above stated. On oath being made by the owner or his agent that he has reason to believe that any manufacturer or bottler of ale, &c., or any other person, is using his casks, &c., or that any junk dealer or dealer in casks, &c., or any other dealer has any such casks, &c., secreted in his premises, the said justice, &c., shall issue his search

gia, by statute, courts of injunctions and relief.

4. "An act" (was approved protect manufacturers, bot- in ale, porter, lager beer, and other beverages, from casks, barrels, kegs, bottles persons engaged in the manu- or selling of ale, &c., in cgs, bottles or boxes, with their marks of ownership ed thereon, may file in the tary of State and in that clerk of their county a de- names and marks, and pub- newspaper of said county for declared to be unlawful without the written consent to fill with ale, &c., or of merchandise, for sale ed to customers, any such cgs, bottles or boxes so ped, or to sell, dispose of, or wantonly destroy any so marked or stamped by the owner shall have com- at section of this act. Vio- ade a misdemeanor; punish- for each cask, barrel or box, each bottle so filled, bought, icked in or wantonly de- with the costs of suit for and by double fine for each

any other person than the hereof without written per- cask, &c., for the sale c., or any other article of , or to be furnished to cus- buying, selling or trafficking &c., by any person other without such written per- act that any junk dealer or &c., shall have in his pos- cask, &c., so marked and at such written permission, be prima facie evidence buying, selling, traffick- on is unlawful, and any uly of such use, buying, ll be liable to be arrested ore provided; and it is de- luty of any justice of the a oath having been made has violated the provisions e his warrant and cause the ought before him and tried, accused is found guilty, to ove stated. On oath being er or his agent that he has e that any manufacturer or c., or any other person, is &c., or that any junk dealer , &c., or any other dealer has c., secreted in his premises, &c., shall issue his search

warrant and cause the premises to be searched, &c., and in case any such cask, &c., shall be found in the premises, the officer executing the search warrant shall arrest the person named in the search warrant and bring him before said justice, who shall hear the case, and if the accused is found guilty fine him as above stated.

March 27, 1874, there was approved "An act to revise the law in relation to criminal jurisprudence," which contains the following sections:

"Section 115. Whoever knowingly and willfully counterfeits, or causes to be counterfeited, any private stamp, label or trade-mark used by a merchant or manufacturer about the sale of his goods, with intent to defraud the purchaser or manufacturer, or sells such goods with such counterfeit stamps, labels or trade-marks thereon, knowing them to be counterfeit, shall, for each offense, be fined not exceeding \$200.

"Section 116. When a person uses any peculiar name, letters, mark, device, or figures cut, stamped, cast or engraved upon, or in any way attached to or connected with any article manufactured or sold by him, to designate it as an article of a peculiar kind, character or quality, or as manufactured by him, whoever shall, without his consent, use the same or any similar names, letters, marks, devices or figures, for the purpose of falsely representing any articles to have been manufactured by him, or to be of the same kind, character or quality as that manufactured or sold by the party rightfully using the same, shall, for each offense, be fined not exceeding \$200."

§ 7.—In Indiana an act was approved March 16, 1875, entitled "An act to protect the manufacturers and bottlers of mineral water, ale, cider, and ginger pop."

It provides that manufacturers and vendors of mineral water, cider, beer, ginger pop and other beverages in bottles impressed with their names or other trade marks may file with the Clerk of the Circuit Court in any county a written description and sample of bottle and marks, and cause such description to be published for two weeks in a newspaper in said county; and that it shall be unlawful for any person, without the consent in writing of the owner, to fill such bottles with mineral water, &c., or to offer for sale or to traffic in any such bottles not purchased by him of the owner, and persons offending shall be liable to a fine of \$1 for each bottle so filled, sold or used for the first offense and of \$5 for every subsequent offense. Clerk's fee, \$1.

§ 8.—In Iowa it is provided in the Code of 1873, Sec. 4079: "If any person counterfeit any mark, stamp, or brand of another, or falsely mark any cask, package, box or bale, as to quality or quantity with intent to defraud, he shall be punished by fine not exceeding \$200 or by imprisonment in the

county jail not more than six months, or by both fine and imprisonment."

"Section 4080. If any person with intent to defraud use any cask, package, box or bale, marked, branded or stamped by another for the sale of merchandise or produce of an inferior quality, or less in quantity or weight than is denoted by such mark, stamp or brand, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding \$200, or by both fine and imprisonment, at the discretion of the court." (Same as Section 4400 and 4401 of Revision of 1860.)

§ 9.—In Kansas "An act (took effect May 31, 1866) to prevent the counterfeiting, changing or destroying trade marks, devices and brands:"

"Section 1. If any person or persons shall willfully change, alter, deface, destroy, counterfeit, cut out or dispose of any trade-mark, brand, impression or device used by any person, company or corporation within this State, to designate a particular description of goods, wares, merchandise, cask, barrel, half-barrel, keg, bottle, package, or the contents thereof, he or they shall forfeit and pay to the owner or owners thereof, for each offense, not exceeding the sum of \$25, to be recovered in any court proper to try the same, or before a justice of the peace having jurisdiction of same.

"Section 2. If any person shall change, shift and place any brand, mark or device used or intended to be used for the purpose aforesaid, to or upon any piece of goods," &c., "or shall intermix, take out, change or shift any article liquid or commodity whatever, into a branded cask," &c., or package, and thereby avail himself of another person's brand, mark or device, he shall forfeit for every offense the sum of \$25, to be recovered as above.

§ 10.—The General Statutes of Kentucky, 1873, copy the statutes of Indiana, and add the following section: "If any person use a false brand on anything sold, or to be sold or offered for sale, with intent to deceive purchasers, he shall be fined for each offense not less than \$200." Clerk's fee for recording description, \$2.

§ 11.—The Revised Statutes of Maine (1871) provide that whosoever knowingly and willfully counterfeits any private stamps, labels or trade-marks with intent to defraud the purchaser or manufacturer; or sells such goods with the counterfeit stamps thereon without disclosing the fact to the purchaser, shall be punished by imprisonment less than one year, or by fine not exceeding \$200; also, that if any person shall use another's trade-mark for the purpose of falsely representing any article to have been manufactured by him, or to be of the same kind and character as that manufactured by the party rightfully using the same, the party

offending shall be liable to any person aggrieved for all damages incurred; also, that no person shall use the name of any person formerly connected with him in business, either alone or in connection with his own name, without the consent in writing of such person or his legal representative. The Supreme Judicial Court may grant injunctions to restrain the violation of the above provisions. The revision embodies Chap. 10, Public Laws of 1866.

§ 12.—The General Statutes of Massachusetts provide (Chapter 56, Act of 1859, Chapter 234) that when a person uses a trade mark no other shall use the same for the purpose of falsely representing any article to have been manufactured by or to be of same kind, character, quality, as that manufactured or sold by the person rightfully using such trade mark, under the penalty of responding in damages to the party aggrieved; also (by Act of 1853, Chapter 156), that no person shall continue to use the name of a person formerly connected with him in business without the consent in writing of such person or his legal representatives. The Supreme Judicial Court may restrain by injunction any use of trade marks or names in violation of above section. In Chapter 161, Sec. 55 (Act of 1850, Chapter 90), it is also provided that whoever knowingly and willfully forges or counterfeits upon any goods, &c., the private label or trade mark of any mechanic or manufacturer, with intent to defraud the purchaser or manufacturer of any goods, &c., whatever, shall be punished by imprisonment not exceeding six months, or by fine not exceeding \$50; also, that whoever vends any goods, &c., having thereon forged or counterfeited stamp, label or trade mark, knowing the same to be forged, without disclosing the fact to the purchaser, shall be punished by imprisonment not exceeding six months, or by fine not exceeding \$50.

"An Act to prevent fraud in the sale of watches" (was approved June 11, 1870), "whoever shall knowingly sell or expose for sale any watch, watch case or watch movement having any name * * * connected therewith in violation of Sec. 56 of the General Statutes, shall be punished by imprisonment not exceeding one year, or by a fine not exceeding \$200; and the possession of two or more such watches shall be *prima facie* evidence of such selling or exposing for sale."

§ 13.—The Compiled Laws of Michigan contain "an act to prevent and punish the counterfeiting and fraudulent use of trade marks, labels, stamps, &c." Approved February 6, 1863. It provides that every person who shall knowingly or willfully forge or counterfeit or cause, &c., any representation, likeness, &c., of the private stamp, brand, mark, wrapper or label usually affixed by any mechanic, druggist * * *

with intent to deceive and defraud the purchaser * * * upon conviction thereof shall be punished by imprisonment in the county jail for a term not exceeding six months or by fine not exceeding \$1000, or both. It contains a similar provision in reference to persons having in their possession dies, plates, engravings or printed labels, brands, stamps, wrappers or any representation, &c., with intent to use or sell the same for the purpose of aiding or assisting in any way whatever in vending any goods, &c., in imitation of or intended to resemble, &c., the goods of others. The fine is \$500, otherwise the punishment is the same.

It also contains a similar provision in reference to persons who shall sell any goods with forged or counterfeit stamps, &c., knowing them to be forged, or spurious goods with genuine stamps with intent to defraud, &c.

In the case of spurious goods, however, the punishment is a fine of \$250 or imprisonment not more than three months or both.

§ 14.—In Missouri "An act" (was approved March 6, 1866) "to protect mechanics, manufacturers and others in their trade-marks." It provides that a description of the trade-mark, duly acknowledged, shall be recorded in the office of the Recorder of Deeds of the county where articles to bear the mark are manufactured, and that such record shall be notice to all persons. A second act with same title was approved February 22, 1870. It provides in addition that any person who shall knowingly and willfully forge or counterfeit any representation, &c., of the private label, brand, stamps, wrapper, engraving, mold or trade-mark of any manufacturer, &c., with intent to pass off any goods &c., to which said forged counterfeit representation is affixed, or in connection with which same may be used as the goods, &c., of such manufacturer, shall be deemed guilty of a misdemeanor and punished by imprisonment in the county jail for a period of not less than three months nor more than twelve months, or fined not less than \$500 nor more than \$5000, or both.

It also provides that any person who shall with intent to defraud, have in his possession any die, plate, brand, engraving, printed label, stamps, imprints, &c., or trade-marks, &c., or any imitation of said marks, &c., usually affixed by any manufacturer, &c., for the purpose of making impressions or selling the same when made, or using the same in connection with any other articles made, &c., by him for the purpose of making impressions or selling the same when made, or using the same in connection with any other article made, &c., and passing the same off upon the community as the original goods, &c., of any other person, or who shall in fact sell or use the same, &c., or who shall wrongfully or fraudulently use the genuine label, &c., or

ceive and defraud the person conviction thereof shall imprisonment in the county not exceeding six months or exceeding \$1000, or both. It provision in reference to in their possession dies, or printed labels, brands, or any representation, &c., or sell the same for the or assisting in any way any goods, &c., intended to resemble, &c., &c. The fine is \$500, otherwise is the same.

is a similar provision in persons who shall sell any goods counterfeit stamps, &c., to be forged, or spurious stamps with intent to spurious goods, however, is a fine of \$250 or imprisonment more than three months or

Act "An act" (was approved to protect mechanics, manners in their trade-marks." description of the trade-acknowledged, shall be recorded Recorder of Deeds of the dies to bear the mark are that such record shall persons. A second act with approved February 22, 1870. tion that any person who willfully forge or counterfeits, &c., of the pri-stamps, wrapper, engrave-mark of any manufac-ent to pass off any goods forged counterfeit repre- or in connection with e used as the goods, &c., urer, shall be deemed eanor and punished by e county jail for a period re months nor more than ined not less than \$500, or both.

that any person who shall aud, have in his posses-ate, brand, engraving, mps, imprints, &c., or or any imitation of said affixed by any manu- the purpose of making the same when made, in connection with any e, &c., by him for the g impressions or selling ade, or using the same in any other article made, he same off upon the com-inal goods, &c., of any o shall in fact sell or use ho shall wrongfully or the genuine label, &c., or

trade-mark with intent to pass off any goods, &c., not the manufacture of the person to whom such label, &c., properly belongs, shall be deemed guilty of a misdemeanor and punished as before stated.

It also provides that any person who shall vend or keep for sale any goods, &c., upon which any forged imitation or counterfeit label, &c., shall be placed, knowing the same to be imitation or counterfeit, shall be deemed guilty of a misdemeanor and punished as before stated, except that the lowest term of imprisonment is one month. He shall also be liable to a civil action to the person whose goods, or whose labels, &c., are imitated or counterfeited for all damages which such person shall sustain, both by virtue of the loss of profits and the damage done to the reputation of the genuine article, &c., and he may be enjoined from doing any of the acts mentioned.

It also provides that any person who, with intent to defraud, shall affix any label, &c., which shall designate any article by any word or words, or by general design, which shall be the same to the eye, or in sound to the ear, as the word or design used to designate goods, &c., of another, shall be deemed guilty of a misdemeanor and liable to the latter in the penal sum of \$500, and for a further sum equal to the amount which the aggrieved party might have received for the same amount of genuine goods, &c., and may be punished by imprisonment in the county jail for a period not less than one month, or more than twelve months. The seizure and destruction of counterfeit trade-marks, and seizure and sale of goods bearing such marks, is provided for.

§ 15.—The General Statutes of Nebraska (1873, p. 758) contain a provision that "if any person shall falsely make, alter, forge, counterfeit, print or photograph, any private stamp, brand, wrapper, label or trade-mark, usually affixed by any mechanic, manufacturer, druggist, merchant or tradesman" * * * with intent to damage or defraud any person, &c., or who shall utter or publish, as true and genuine, any such, knowing the same to be false, &c., shall be imprisoned in the penitentiary for any space of time not exceeding twenty years, nor less than one year, and pay a fine not exceeding \$500.

It also provides for the punishment of persons keeping false dies, &c., for the purpose of counterfeiting as above, by imprisonment for not less than six months nor more than 10 years, and a fine not exceeding \$1000. Also that "any person who shall vend, or keep for sale, any goods, * * * upon which any forged or counterfeit stamps, * * * or trade marks shall be affixed and intended to represent the said goods, * * * as the true and genuine

goods, * * * of any person or persons, knowing the same to be counterfeit, shall be punished by a fine not exceeding \$100."

§ 16.—In Nevada "An act" (was approved March 8, 1865) "concerning trade-marks and names." The registration of the trade-mark or name with the Secretary of State is necessary to obtain advantage of act. For such registration there is a fee of \$20. It is made unlawful for any person, without the consent of the owner of trade-mark, to use such mark for the purpose of representing any article to have been manufactured or sold by such owner, or to be of the same kind, character, or quality as his. Any person violating act shall be guilty of misdemeanor and punished by a fine of not less than \$25, nor more than \$500, or by imprisonment in the county jail for not less than five days nor more than thirty days, or both, and he shall be further liable to the party aggrieved for all damages actually incurred, to be recovered as a debt.

Counterfeiting of trade-mark, or using a counterfeit trade-mark, or selling any article bearing a counterfeit trade-mark, filed, &c., knowing it to be such, or having good reason to know it to be such, is unlawful and punishable as above.

Filling old bottles and casks having trade-marks attached, with intent to defraud, is a misdemeanor and punishable as above.

"Every person who shall knowingly aid or abet, or counsel in or procure the commission of any offense which is by this act made a misdemeanor, shall be deemed and held to be guilty of a misdemeanor," and punished as above.

Trade-marks may be transferred like personal property, and shall be entitled to same protection as personal property. Courts may restrain by injunction any use of trade-marks in violation of act.

§ 17.—The Revised Statutes of the State of New Jersey (1877) contain the following section under the title "Crimes," viz.: "Every person who shall knowingly and willfully forge or counterfeit, or cause or procure to be forged or counterfeited, upon any goods, wares or merchandise, the private stamps or labels of any mechanic or manufacturer, with intent to defraud the purchasers or manufacturers of any goods, wares or merchandise whatsoever, or who shall vend any goods, wares or merchandise, having thereon any forged or counterfeited stamps or labels, purporting to be the stamp or label of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall, upon conviction, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding \$100."

§ 18.—In New York "An act" (was passed

April 17, 1862) "to prevent and punish fraud in the use of false stamps, brands, labels or trade marks." (Repealing a similar act of 1845, Chapter 279; amended 1850, Chapter 123.) It provides that any person who shall knowingly and willfully forge or counterfeit any representation, &c., of the private stamp, brand, wrapper, label or trade-mark usually affixed by any manufacturer, &c., or cause same to be done with intent to pass off any work, goods, &c., as the work, goods, &c., of such manufacturer, shall be deemed guilty of a misdemeanor, and punished by imprisonment in the county jail for a period of not less than six nor more than twelve months, or fined not more than \$5000.

It also provides the same punishment for any person who shall with like intent have in his possession any die, plate, brand, engraving or printed label, &c., or imitation of same, usually affixed by any manufacturer, &c., to articles made by him, for the purpose of making impressions or selling the same when made, or using same upon any article, and passing same off upon the community as the original goods, &c., of any other person; or who shall fraudulently use a genuine stamp, &c., or trade mark with intent to pass off any spurious goods, &c., as genuine.

It also provides that any person who shall vend or keep for sale any goods, &c., upon which any forged or counterfeit stamps, &c., shall be placed, knowing the same to be counterfeit, shall be deemed guilty of a misdemeanor and punished by a fine not exceeding \$500, and (amended act of 1863, chapter 209) shall also be liable in a civil action to a person whose goods, &c., are counterfeit or whose trade-marks are forged, for all damages such person may sustain by means of any of the acts mentioned, and may be restrained by injunction.

Act of 1862 also provides the punishment first above given for any person who shall, with intent to defraud, knowingly affix or cause to be affixed to any bottle, can, box or package containing any goods, &c., any stamps, &c., which shall designate the goods by a word or words which shall be the same, wholly or in part, to the eye or in sound to the ear, as the words used by any other person to designate his goods, or shall knowingly sell or offer for sale any such bottle, &c., with such stamp. By amendment of 1863, (Chapter 209,) he is liable to the party aggrieved in the penal sum of \$100 for each offense. A supplemental act was passed June 8, 1878 (Chapter 401), which is as follows:

"An act supplemental to chapter three hundred and six of the laws of eighteen hundred and sixty-two, entitled An act to prevent and punish fraud in the use of stamps, brands, labels or trade marks."

"Section 1.—Any person or persons who, with intent to defraud or to enable another

to defraud any person, shall manufacture or knowingly sell, or cause to be manufactured or sold, any article or articles marked, stamped or branded, or encased or enclosed in any box, bottle or wrapper having thereon any engraving or engravings, or printed labels, stamps, imprints, marks or trade-marks, which article or articles are not the manufacture, workmanship or production of the person named, indicated or denoted by such marking, stamping or branding, or by or upon such engraving or engravings, printed labels, stamps, imprints, mark or trade-mark, shall, upon conviction thereof be deemed guilty of a misdemeanor, and for such offense shall forfeit and pay a fine of \$100, to be recovered with costs in any of the courts of this State having cognizance thereof in an action to be prosecuted by the District Attorney in the name of the people, and the one-half of such recovery shall be paid to the informer and the residue shall be applied to the support of the poor in the county where such recovery is had."

"Section 2.—Any person or persons who, with intent to defraud or to enable another to defraud any person, shall manufacture or knowingly sell or expose for sale or offer to sell or have in his or her possession, with intent to sell, any article or articles marked, stamped or branded, or encased or enclosed in any box, bottle or wrapper, having thereon printed, marked, stamped or engraved any word or words, sign or signs indicating or denoting or purporting to indicate or denote the quality, grade or character of such article or articles, which do not truly indicate, denote or represent the quality, grade or character of such article or articles, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and for each such offense shall forfeit and pay a fine of \$100, to be recovered, with costs, in any of the courts of this State having cognizance thereof, in an action to be prosecuted by the District Attorney, in the name of the people, and the one-half of such recovery shall be paid to the informer and the residue shall be applied to the support of the poor in the county where such recovery is had."

"Section 3.—This act shall take effect immediately."

In 1847 an act was passed (Chapter 207) in relation to sale of bottles used by manufacturers of mineral waters and others. Registry of names or other marks was allowed. This act was amended by Chapter 117 of Laws of 1860. A new and more extended act was passed May 14, 1875 (Chapter 303) which is as follows:

"An act to protect the owners of bottles, boxes, baskets, casks and syphons used in the sale of soda waters, mineral waters, porter ale, cider, ginger ale, small beer, lager beer, white beer, or other similar beverages."

"Section 1.—All persons and corporations engaged in the manufacture, bottling, packing in boxes, baskets or casks, or in the sale

person, shall manufacture or cause to be manufactured article or articles marked, labeled, or encased or enclosed in wrapper having thereon or engravings, or printed imprints, marks or trade-mark or articles are not the workmanship or production named, indicated or denoted by stamping or branding, or engraving or engravings, stamps, imprints, mark or all, upon conviction thereof by a misdemeanor, and for all forfeit and pay a fine of \$100, to be recovered with costs in any of this State having cognizance of such recovery shall be the support of the poor in the such recovery is had."

"Any person or persons who, by fraud or to enable another person, shall manufacture or sell or expose for sale or have in his or her possession, any article or label, stamped or branded, or enclosed in any box, bottle or wrapper thereon printed, marked, engraved any word or words, indicating or denoting or denote the quality, grade or character of such article or do not truly indicate, denote quality, grade or character of articles, shall, upon conviction, be deemed guilty of a misdemeanor for each such offense shall a fine of \$100, to be recovered, in any of the courts of this State having cognizance thereof, in an action brought by the District Attorney, in the name of the people, and the one-half of the fine shall be paid to the informer and the other half shall be applied to the support of the poor in the county where such recovery is had."

"This act shall take effect immediately. An act (was passed March 29, 1859) to prevent and punish fraud in the use of false stamps, brands, labels or trademarks."

of soda waters, mineral waters, porter, ale, cider, ginger ale, small beer, lager beer, white beer, or other similar beverages in syphons or bottles packed in boxes, baskets or casks, or unpacked with their name or names or other marks or devices branded, stamped, engraved, etched, blown, impressed or otherwise produced upon such bottles, syphons, boxes, baskets, casks, or upon the faucets, stoppers, corks or other thing connected therewith and appertaining thereto, may file in the office of the clerk of the county in which the principal place of business of such person or persons or corporation is situated, and in the office of Secretary of State, a description of the names and marks so used by them respectively, and cause such description to be published once in each week for three weeks successively in such county, except the city and county of New York and the city of Brooklyn, in the county of Kings, where each publication shall be made for the same time (Sundays excepted) in two daily newspapers published in the cities of New York and Brooklyn respectively."

"Section 2.—It is hereby declared to be unlawful for any employee, corporation, person or persons hereafter, without the written consent of the person, firm or corporation, as owner thereof, to fill with soda water, mineral water, porter, ale, cider, ginger ale, small beer, lager beer, white beer or other beverages any such syphon or bottle so marked, or to deface, file off, turn off or by other means obliterate or efface the names, marks or devices thereon, with intent to sell, dispose of, buy or traffic in any such syphons, bottles, boxes, baskets, casks, faucets, stoppers, corks or other thing connected therewith or appertaining thereto, so marked, branded, stamped, engraved, etched, blown, impressed, or otherwise produced thereon, and not bought by him, her, them or it of such owner thereof. Any person or corporation offending against the provisions thereof shall be deemed guilty of a misdemeanor, and shall forfeit to the party aggrieved a sum not exceeding \$25 for each and every offense."

"Section 3.—The fact of any person other than the rightful owner, without such written permission as aforesaid, using such syphons, bottles, boxes, baskets, casks, faucets, stoppers, corks or other thing connected therewith or appertaining thereto, or having the same in his, her, their or its possession or in his, her, their or its possession with intent to sell or for the sale therein or thereby of any soda water, mineral water, porter, ale, cider, ginger ale, small beer, lager beer, white beer or other similar beverage, and any such owner or the agent of such owner who shall make oath or affirmation before any magistrate that he has reason to believe and does believe that any of such syphons, boxes, baskets, casks, faucets, stoppers, corks or other thing connected therewith and appertaining thereto,

belonging to him, them or it, marked, branded, stamped, engraved, etched, blown, impressed or otherwise produced thereon and registered as aforesaid, are being unlawfully used by any corporation, person or persons, selling or manufacturing soda water, mineral water, porter, ale, cider, ginger ale, small beer, lager beer, white beer or other similar beverages, or that any junk dealer, manufacturer or vender of bottles, boxes, baskets, casks, faucets, stoppers or corks shall have any of such syphons, bottles, boxes, baskets, casks, faucets, stoppers or corks secreted upon his premises, or in any other place, or is or has become unlawfully possessed thereof, or has defaced, filed off, turned off, or by other means obliterated or effaced the names, marks or devices thereon or on any of the same with unlawful intent, then the said magistrate shall thereupon proceed to obtain the same under the existing provisions of law in relation to search warrants, which are hereby declared to fully relate to the purposes of this act."

"Section 4.—All acts and parts of acts inconsistent herewith are for the purpose of this act hereby repealed."

"Section 5.—This act shall take effect immediately."

§ 19.—In Ohio "An act (was passed March 29, 1859) to prevent and punish fraud in the use of false stamps, brands, labels or trademarks."

This act was repealed by an act to amend, revise and consolidate the statutes relating to crimes and offenses, &c., passed May 5, 1877, which while adopting the former act in the main, omitted the provision in regard to punishment by fine (one-half to complainant) of any vendor of spurious goods with false stamps, &c., knowing them to be false."

Chapter 11, Section 23 (act of May, 1877), provides that whoever willfully forges or counterfeits any representation, &c., of the private brand, wrapper, label or trade mark usually affixed by any person to his goods, "or by any maker of wines from grapes grown within this State to the bottles or casks used by him to contain the same, with intent to pass off the goods," &c., to which such forged or counterfeit representation, &c., is affixed as the genuine goods, &c., shall be fined not exceeding \$500, or imprisoned not more than 12 months or both."

Section 24 provides that whosoever has in his possession any die, plate, brand, engraving, printed label, stamp, imprint, wrapper or trade mark, or any representation, &c., thereof for the purpose of making impressions or selling the same when made, or using the same upon spurious goods and passing same off as genuine; or wrongfully and fraudulently uses the genuine stamp, brand, imprint, wrapper, label or trade mark with intent to pass off spurious goods, &c., as genuine, shall be fined not more than \$500 or imprisoned not more than 12 months, or both."

"An act (was passed May 6, 1869) to establish a code of criminal procedure for the State of Ohio," which contained at Title I, Section 13, a provision as to search warrants. This and following sections were incorporated into the act passed May 5, 1877, given above as Section 15, of Chapter 1, Title II. It is enacted that "it shall be lawful for any magistrate named in Section 1 to issue warrants to search any house or place."

* * * 2. For forged or counterfeit coins, stamps, labels, trade marks, bank bills or other instruments of writing."

Provision is made for the execution of the warrant; for the preservation of the property as evidence; and upon conviction of the offender the destruction of the trade marks, &c., under direction of the court.

§ 20.—Oregon "An act (Oct. 21, 1864) to provide for the regulation and protection of trade marks." Provides for the registration of trade marks, names of hotels and places of business in the office of the Secretary of State, by the person who first presents same for record. Fee, \$2.50. It also provides that any person who shall use any name, mark, &c., the same or similar to one so recorded for the purpose of deception or profit, shall forfeit to the use of the owner of the mark, &c., one-half of the property, goods or articles of trade upon which the same may be used or placed, or the value thereof, for first offense, and the whole for second offense.

It provides for same remedy in case of articles imported into State. Also, that any person who shall use any second-hand sack, box, barrel, can, package, or other article on which has been placed any name, mark, &c., the property of another, for the purpose of description, shall be liable to the same forfeiture of property inclosed therein. This act does not affect the power of courts of equity to grant injunctions against improper use of any mark, &c., "which may have been secured by the provisions of this chapter."

In addition to the above act the Criminal Code of 1864, which took effect May 1, 1865 (Section 583) provides that if any person shall willfully and knowingly use or cause to be used any private brand, label, stamp or trade mark of another, or any colorable imitation thereof, with intent to deceive any one, such person shall be punished by imprisonment in the county jail not less than one month nor more than six months, or by fine not less than \$20 nor more than \$300.

§ 21.—In Pennsylvania, as early as March 3, 1847 (Laws No. 149), an act was passed "to punish and prevent frauds in the use of false stamps and labels." This was amended in 1855 (May 8, Law No. 534), and finally incorporated, with slight changes, into an act to consolidate the penal law, March 31, 1860, sections 173, 174 and 175 (Brightley's Digest, 10 ed., p. 365). By the act of 1860

it is provided that if any one shall knowingly and willfully forge or counterfeit any representation, &c., of the private stamps, wrappers or labels of any mechanic or manufacturer, with intent to deceive or defraud the purchaser or manufacturer of any goods, wares or merchandise, such person shall be guilty of a misdemeanor, and punishable by a fine not exceeding \$100 and an imprisonment not exceeding two years. Also, that if any person shall have in his possession any die, plate, engraving or printed label, stamp or wrapper, or any representation &c., of such of any mechanic or manufacturer, with intent to use or sell the said die &c., for the purpose of aiding or assisting in vending any goods, wares or merchandise intended to imitate or to be sold for the genuine, he shall be guilty of a misdemeanor with the same punishment. Also, that if any person shall vend any goods, wares or merchandise having thereon any forged or counterfeited stamps or labels of any mechanic or manufacturer, knowing them to be forged or counterfeited, and resembling or purporting to be imitations of the genuine stamps, without disclosing the fact to the purchaser, shall be guilty of a misdemeanor and be fined not exceeding \$500.

Manufacturers and makers of mineral waters and other beverages in bottles "impressed" with mark, were protected by laws passed in 1849 providing for registry, &c. (Laws of 1849, pp. 524-680). A supplement to these acts was approved April 20, 1853, (Laws p. 643, Brightley's Digest 10 ed., p. 1405.) It is provided that they may file in the office of the secretary of the commonwealth a description of such bottles, and of the name or marks thereon, and publish the same for six weeks successively in a daily, weekly or other newspaper published in the county wherein the same shall be manufactured or sold, except in Philadelphia, where publication should be made for some time in two daily newspapers. It is declared to be unlawful for any person or persons, without the permission of the owner, to fill with mineral waters or other beverages any bottles so marked, or to sell, dispose of, or to buy or to traffic in any such bottles so marked and not bought by him of such owner thereof; and every offender shall be liable to a penalty of 50 cents for each bottle so filled or sold or used or disposed of, or bought or trafficked in, for the first offense and of \$5 for every subsequent offense.

"The fact of any person, other than the rightful owner thereof, using any such bottles for the sale therein of any beverage, shall be *prima facie* proof of the unlawful use or purchase of such bottles as aforesaid." Any owner or agent of the owner of bottles duly stamped and registered, may make oath before any alderman or justice of the peace that he has reason to believe, and believes, that said bottles are being unlawfully used or concealed by any person selling or manufacturing mineral water or other beverage,

that if any one shall knowingly forge or counterfeit any representation of the private stamps, wrapper of any mechanic or manufacturer to deceive or defraud the manufacturer of any goods, merchandise, such person shall be a misdemeanor, and punishable by a fine of \$100 and an imprisonment of two years. Also, that any person who shall have in his possession any engraved or printed label, wrapper, or any representation of any mechanic or manufacturer to use or sell the said die, for the purpose of aiding or assisting in the manufacture of goods, wares or merchandise, or to be sold for the purpose of being guilty of a misdemeanor, shall be punishable by a fine of \$100 and an imprisonment of two years. Also, that if any person shall vend any goods, wares or articles, or any forged stamps or labels of any manufacturer, knowing them to be counterfeit, and resembling or imitating the imitations of the genuine article, and disclosing the fact to the purchaser, shall be guilty of a misdemeanor, and be punishable by a fine not exceeding \$500.

It is declared to be unlawful for any one, other than the lawful owner, to fill with mineral water, or to use, traffic in, purchase, sell, dispose of, detain, convert, mutilate or destroy, or willfully or unreasonably refuse to return or deliver to such owner, on demand, any such butt, &c., or to remove, cut off, deface or obliterate, or to brand or stamp other brands or stamps on the same, without the written permission of such original or lawful owner thereof, or unless there shall have been a sale in express terms of such article, exclusive of the malt liquors therein, to such person by the lawful owner; any person so offending shall be deemed guilty of a misdemeanor, to be punished for the first offense by a fine of \$10 for each butt, &c., so filled and trafficked in, purchased, sold, &c., and by a fine of \$20, and imprisonment in a county jail for not less than one and not more than three months, for each subsequent offense (one-half to officer making arrest).

There is also a provision for issue of search warrant and arrest similar to that in the case of bottles given above.

In 1870 (April 9) it was enacted (for the city of Philadelphia only) that any person who shall, without the permission of the owner, fill with mineral water, or any other articles, any bottle marked and registered as aforesaid, or shall sell or buy or traffic in or use or dispose of, any such bottles for gain, convenience or profit, shall be deemed guilty of a misdemeanor, and liable to a fine not exceeding \$500, or imprisonment not exceeding six months. "The using by any other person than the rightful owners of such bottles as aforesaid shall be *prima facie* proof of the unlawful dealing in or using said bottles."

In 1871 (May 25) the act of April 9, 1870, was extended to the counties of Northampton, Lehigh, Bucks, Carbon and Monroe.

In 1876 (May 5) it was enacted that the

and said alderman, &c., shall thereupon issue a process in the nature of a search warrant, &c., and if, upon search, any bottles so marked shall be found, to bring the same, together with the body of the person in whose possession they may be found, before said alderman, &c., there to be dealt with according to law.

In 1865 another act was passed for the benefit of manufacturers of malt liquors (approved April 4; Laws, p. 58). It provides that any person engaged in the manufacture of malt liquors for sale in butts, hogsheads, barrels, half barrels, casks, half casks, quarter casks or kegs, with his name or other private mark branded or stamped thereon, may file in the office of the prothonotary of the county in which such articles shall be manufactured, a description of the names or makes, and cause the same to be published once a week for six weeks in a newspaper of the county, but in the city of Philadelphia in two daily newspapers for the same time.

It is declared to be unlawful for any one, other than the lawful owner, to fill with malt liquor, or to use, traffic in, purchase, sell, dispose of, detain, convert, mutilate or destroy, or willfully or unreasonably refuse to return or deliver to such owner, on demand, any such butt, &c., or to remove, cut off, deface or obliterate, or to brand or stamp other brands or stamps on the same, without the written permission of such original or lawful owner thereof, or unless there shall have been a sale in express terms of such article, exclusive of the malt liquors therein, to such person by the lawful owner; any person so offending shall be deemed guilty of a misdemeanor, to be punished for the first offense by a fine of \$10 for each butt, &c., so filled and trafficked in, purchased, sold, &c., and by a fine of \$20, and imprisonment in a county jail for not less than one and not more than three months, for each subsequent offense (one-half to officer making arrest).

There is also a provision for issue of search warrant and arrest similar to that in the case of bottles given above.

In 1870 (April 9) it was enacted (for the city of Philadelphia only) that any person who shall, without the permission of the owner, fill with mineral water, or any other articles, any bottle marked and registered as aforesaid, or shall sell or buy or traffic in or use or dispose of, any such bottles for gain, convenience or profit, shall be deemed guilty of a misdemeanor, and liable to a fine not exceeding \$500, or imprisonment not exceeding six months. "The using by any other person than the rightful owners of such bottles as aforesaid shall be *prima facie* proof of the unlawful dealing in or using said bottles."

In 1871 (May 25) the act of April 9, 1870, was extended to the counties of Northampton, Lehigh, Bucks, Carbon and Monroe.

In 1876 (May 5) it was enacted that the

certificate of the Secretary of the Commonwealth under seal should be conclusive evidence of the publication marking and registering of mineral water and other bottles.

§ 22.—Sections 186 and 187 of the Penal Code of Utah (Compiled Laws of 1876, p. 608) provide that every person who willfully forges or counterfeits a trade mark with intent to pass off any goods to which such forged mark is affixed as the genuine goods, and "every person who sells or keeps for sale any goods upon which such counterfeited trade-mark has been affixed, intending to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor."

Section 190 provides that every person who has or uses any bottle or other thing bearing the duly filed trade mark or name of another, for the purpose of disposing, with intent to deceive or defraud, of any article other than that which such bottle, &c., originally contained, is guilty of a misdemeanor. By Section 17 of the Penal Code a misdemeanor is punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding \$300, or by both.

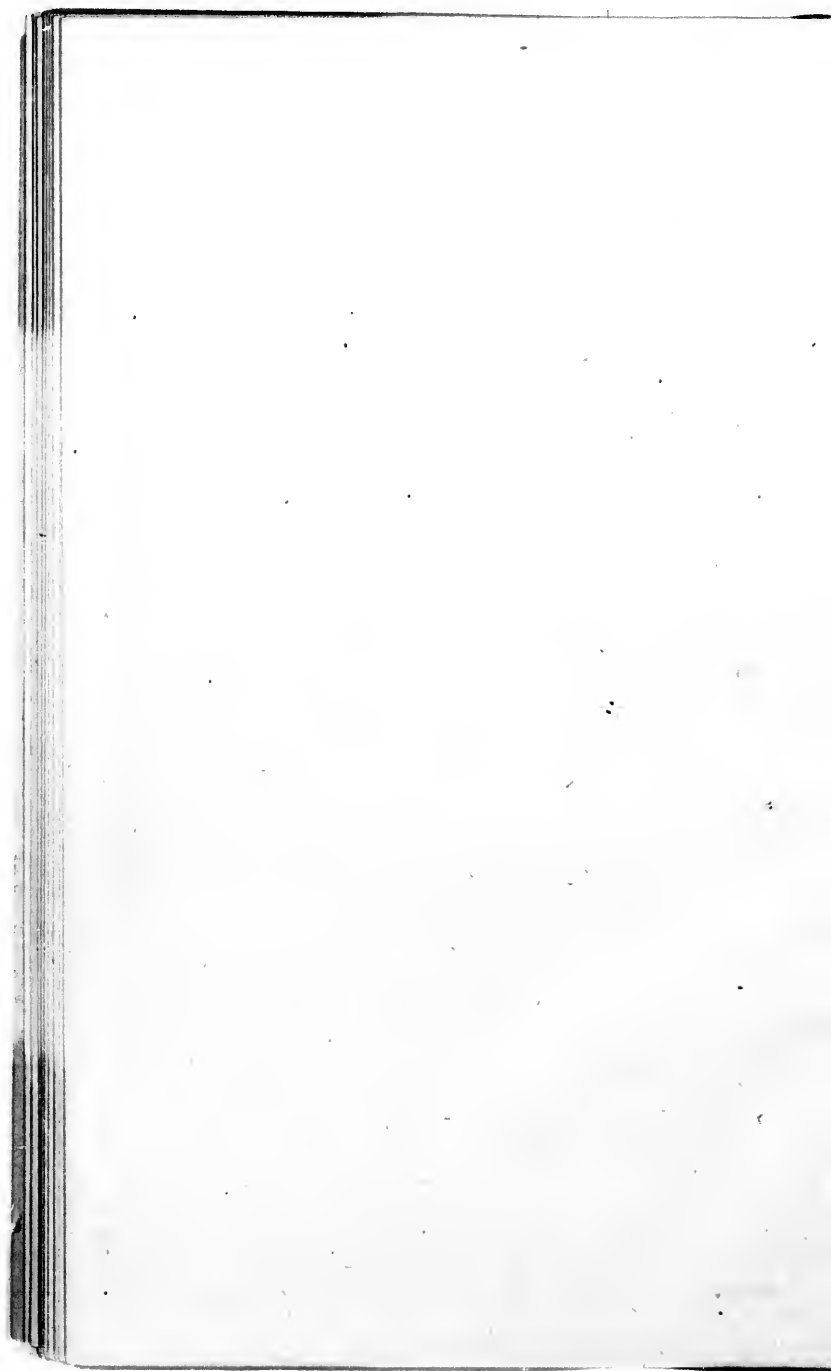
The definition of trade-mark contained in the Political Code of California is copied in section 189 of the Penal Code of Utah.

§ 23.—The foregoing abstract of the laws of the States is the best argument in favor of a uniformity of action among all trade-mark owners. Particular classes of trade-mark owners have obtained special protection, *e. g.*, manufacturers and venders of mineral water and other beverages, flour, watches, wines, &c. But these laws only exist in a few States. Marks on watches are protected by an act in Massachusetts; marks on receptacles of wine made from grapes grown in Ohio are similarly protected there. The same may be said of flour marks in Missouri.

In certain States it is made obligatory to mark certain articles, *e. g.*, in New York, by act 1860, every person who shall put up and press hay for market shall mark the initials of his name on some piece of wood attached to the bale of hay, and by act of 1865, every manufacturer of butter firkins is required to brand the same with his name and the true weight of the firkin.

In Ohio it was provided that the weight of soap and candles and the name of the manufacturer must be marked on the box; marks were also obligatory on packages of sugar, rice, tobacco, &c. In New Jersey (1877) trade-marks on packages of commercial manures are obligatory.

In South Carolina many articles are enumerated in the Revised Statutes of 1873, subject to inspection, and to which marks and names must be affixed.



CHAPTER II.

§ 1. *California*.—It was held in *Woodward vs. Lazar* (21 Cal., 448, 1863), that the name of a hotel is a trade-mark in which the proprietor has a valuable interest, which a court of chancery will protect. A tenant giving a particular name to a building, as a sign of the hotel business, for which he uses it, does not thereby make the name a fixture of the building and the property of the landlord upon the expiration of the lease.

In *Derringer vs. Plate* (29 Cal., 292, 1865), that the right of property in a trade-mark is recognized by the common law, and is not limited by territorial bounds. The California statute of 1863, concerning trade-marks, does not take away from those who do not register their trade-mark according to its provisions their common law remedy.

In *Falkinburg vs. Lucy* (35 Cal., 52, 1868), that by the terms "peculiar name, letters, marks, devices, figures, or other trade-mark or name," as used in the statute concerning trade-marks (Hittel's Laws, Art. 7134), is not meant the established and proper names by which the "articles" to which they are attached and by which they are known in the market, nor something indicating their actual kind or quality, but something new—not before in use—intrinsically foreign to the "articles" themselves, and which only serves to designate them because it has been fancifully put to that use, in disregard of all natural relations. In this case, plaintiff's alleged trade-mark consisted of a highly colored picture of a wash room, &c., with the following legend interblended with it: "Standard Soap Company, Erasive Washing Powder," followed by directions for the use of the "washing powder," and the place of manufacture. The alleged imitation consisted of a label (with picture) which was the same as the plaintiff's only in the use of the words "washing powder," the directions for the use of the powder and the color of the paper. Injunction, in court below, restraining defendant from the use of his label, was dissolved.

In *Choyanski vs. Cohen* (39 Cal., 501, 1870), it was decided that "Antiquarian Book Store" is descriptive, and therefore not a trade-mark.

In *Graham vs. Plate* (40 Cal., 593, 1871), that the profits realized by defendant from

sales of the spurious article under the stimulated trade-mark, is a proper measure of damages, but the recovery of the plaintiff is not limited to the amount of such profits.

Burke vs. Cassen (45 Cal., 467, 1873), was an action brought to restrain defendants whose label read as follows: "Van Wolf's Aromatic Schiedam Schnapps. A superior tonic, anti-dyspeptic and invigorating cordial. This wholesome beverage." &c. Plaintiff's label read: "Wolfe's Aromatic Schiedam Schnapps. A superlative tonic, diuretic, anti-dyspeptic and invigorating cordial. This medicinal beverage." &c. The description in either case was slightly different. Because the words "Aromatic Schiedam Schnapps" were merely descriptive of the article, (Schnapps meaning gin and Schiedam being the name of the place where manufactured,) an injunction was only granted against the use of the name "Wolfe" or "Van Wolf," or any colorable imitation of the name Wolfe, or plaintiff's label. The Court said that a label at common law is not a trade-mark, but when a manufacturer or seller of goods adopts a label to distinguish his goods from those of another, he is entitled to be protected in its use, and others will be enjoined from using the same or a colorable imitation thereof.

§ 2. *Connecticut*.—In *Bradley vs. Norton* (33 Conn., 157, 1865), it was decided that the exclusive right to a trade-mark is a species of property recognized by law. The imitation of a trade-mark, which will constitute an infringement of this right, need not be a precise copy of the original; if there is a substantial similarity, so that the community would be likely to be deceived, it is sufficient. In *Boardman vs. Meriden Britannia Co.* (35 Conn., 402, 1868), the defendants used labels similar in arrangement to those of plaintiff, but substituted their own names for that of plaintiff. Thus; "1-2 Gross L. Boardman's No. 2340 Wire Strengthened, French Tipped Tea Spoons." "1-2 Gross Meriden Britannia Co.'s No. 2340 Wire Strengthened, French Tipped Tea Spoons." The principal feature of the label (not in size of type) was the numerals designating the kind of spoon contained in the package. Defendants were enjoined. The decree in this case

was the subject of review. 36 Conn., 207, 1869. In *Holmes, Booth & Haydens vs. The Holmes, Booth & Atwood Mfg. Co.* (37 Conn., 278, 1870), it was held that when the name of a manufacturing corporation designates the origin and ownership of goods manufactured by it, it will be protected in the use of its name to the same extent and upon the same principle that individuals will be protected in the use of trade-marks. Defendant corporation was enjoined against the use of its name.

Meriden Britannia Co. vs. Parker (39 Conn., 450, 1872). The plaintiffs had in their employ three brothers by the name of Rogers, who had formerly, from 1847, manufactured spoons on their own account and stamped them "Rogers." They entered the plaintiffs' employment and stamped spoons "1847, Rogers Bros., A 1." Defendant acquired the right from other brothers named Rogers, not in his employ, to stamp their name on spoons. He stamped his spoons "C. Rogers Bros., A 1," and "C. Rogers & Bros., A 1," and was enjoined. The court declined to enjoin the name "Rogers" when used alone.

§ 3. *Georgia*.—In *Ellis vs. Zeilin* (42 Ga., 91, 1871), the plaintiff claiming proprietorship of a medicinal preparation, "Dr. Simmon's Liver Regulator or Medicine," filed a bill against defendants, alleging that they sold a preparation called "Simmon's Genuine Liver Medicine," put up in packages similar in form and size to his, to take advantage of the reputation of his medicine. Defendants demurred, thus admitting the allegations of the bill to be true. Their demurrer was overruled and an injunction directed to issue. On appeal, judgment affirmed. The court say: "In matters of trade-mark we lay down the rule to be, that, in order to authorize the interposition of a court of equity, the title to the use and enjoyment must be clear and unquestionable, and will be adjudicated only upon the rights of parties before the court and as between their conflicting claims, and not with a view to the guardianship of the public upon the merits or demerits of nostrums, except in cases where injury to the public health or morals enters into the ingredients of the allegations."

§ 4. *Illinois*.—*Candee vs. Deere*. (54, Ill. 439, 1870.) The plaintiffs were manufacturers of plows at Moline, Ill., and claimed as their trade-mark the words "Moline Plow," which they used in their circulars, price lists and advertisements, but did not place upon the articles manufactured. Defendants made the same use of these words. It was held that "Moline Plow" did not become plaintiff's trade-mark, because not affixed to the articles manufactured, and because the words were a generic term indicating the place at which the plows were made. The plaintiffs stenciled on their plow beams

the words "John Deere" in large heavy capitals in the segment of a circle, and the words "Moline, Ill." in a straight, horizontal line underneath, in smaller capitals. Defendants stenciled the words "Candee, Swan & Co." in smaller capital letters on a segment of a circle, at least 2 inches longer than that of "John Deere," and the address "Moline, Ill." in still smaller capital letters, on a straight, horizontal line underneath. Held that while there was some resemblance between these brands, there was no such similarity as would show that "Candee, Swan & Co." intended thereby to sell their plows as plows manufactured by "John Deere."

Plaintiff claimed the use of the word "Holbrook" as a trade-mark, invented or arranged by one Josiah Holbrook, who allowed different persons in different places to manufacture school apparatus under the same name for 20 years before the plaintiff began to use the name; it was held that "Holbrook" had become a genuine name. *Sherwood vs. Andrews*, 5 Am. Law Rep., N. S., 588; Superior Court of Chicago, 1866.

§ 5. *Indiana*.—*Sohl vs. Geisendorf* (1 Wilson's Sup. Ct., 60, 1871.) Plaintiffs purchased a trade-mark, mark or label for flour in this form: "White Rose Mills," "Snowflake," "Sohl, Wild & Co." They substituted their own firm name of "Sohl, Gibson & Co." Held that their title to whole mark or label was good. It is an infringement of a trade-mark, even though the imitation and original, when placed side by side, would not mislead, if the similarity is such that a difference would not be noticed when seen at different times or places.

§ 6. *Kentucky*.—*Laird vs. Wilder* (9 Bush, 131, 1872). Defendant unwarrantably adopted, to mislead the public, the design of the bottle and the label of plaintiff's preparation. The imitation was so nearly exact as to be well calculated to produce the desired effect. The plaintiff put his compound upon the market with the express, as well as implied, assurance that it was "free from all mineral and poisonous substances." The evidence showed that it contained poisonous substances. Injunction refused. *Harden, J.* said: "To a party thus presenting himself, a court of equity, adhering to the maxim that 'he who asks equity must come with pure hands,' will not lend its aid when the object to be effected is to secure him the exclusive privilege of deceiving the public in a particular way, although, in doing so, it might prevent another equally guilty from committing the same wrong."

§ 7. *Louisiana*.—*Wolfe vs. Barnett & Lyon* (24 A., 97, 1872). Plaintiff claimed as a trade-mark—"Wolfe's Aromatic Schiedam Schnapps." Defendants' labels were colorable imitations of those of plaintiff. The

at Worcester, under the name of F. & Co., with the assent of F.'s representatives until 1861, when their firm was dissolved and its orders, correspondence and good will were sold to T, who thereafter pursued the business of buying and selling, but not of manufacturing machinery. Held that J. R. & C. could not maintain a bill in equity to enjoin T from using the name F. & Co. in his business, and attaching it to machinery which he sells, made by others than themselves.

Emerson vs. Badger (101 Mass., 82, 1869). Charles Emerson, a maker of razor straps which bore a label stating that they were made by "Charles Emerson, Emerson Place," taught his business to his five nephews. After his death intestate one of them, of the same name as the uncle, carried on the business at Emerson Place, and used a label precisely similar to that formerly used by his uncle. Held that it was no infringement of this nephew's rights for the son of another nephew to use a label on similar straps which he manufactured, stating that he was the son of a successor of the "original Charles Emerson, Emerson Place."

Hallett vs. Cumston (110 Mass., 29, 1872). Plaintiff allowed his name to be used in the firm name "Hallett & Cumston," without any interest in said firm. On the death of Cumston his son continued to use same firm name in partnership with another person by the name of Hallett. Held, that plaintiff who had had no interest in the business of Hallett & Cumston, had no right to any trade-mark used in it. He could not, therefore, maintain suit to restrain the use of the name Hallett & Cumston as a trade-mark.

Morse vs. Hall (109 Mass., 409, 1872). Under statutes forbidding continued use of name of deceased partner the surviving partner cannot use the name of the deceased partner without consent of his legal representatives.

Sohler vs. Johnson (111 Mass., 238, 1872). A trade-mark is a device or symbol used to designate the article manufactured, and the right to use it passes with the business and good will as an incident, unless something appears to show a different intention of the parties.

In *Chase vs. Mayo* (121 Mass., 343, 1876), it was decided that an official inspector of fish, who branded the packages of fish packed by him in his business with his official brand, does not thereby gain a private right in the brand as a trade-mark.

In *Gilman vs. Hunnewell* (122 Mass., 139, 1877), Gray, J., said: "A trade-mark may consist of a name or a device or a particular arrangement of words, lines or figures in the form of a label, which has been adopted and used by a person in his business to designate goods of a particular kind manufactured by him, and which no other person has an equal right to use. The right in a trade-mark so applied is recognized as property which a court of equity will protect by injunction.

A mere general description, by words in common use, of a kind of article, or of its nature or qualities, cannot of itself be the subject of a trade-mark. A person may have a right in his own name as a trade-mark, as against a person of a different name; but he cannot have such a right as against another person of the same name, unless the defendant uses a form of stamp or label so like that used by the plaintiff as to represent the defendant's goods as of the plaintiff's manufacture. * * * The court will not restrain a defendant from the use of a label on the ground that it infringes the plaintiff's trade-mark, unless the form of the printed words, the words themselves, and the figures, lines and devices are so similar that any person, with such reasonable care and observation as the public generally are capable of using and may be expected to exercise, would mistake the one for the other." The principles of law thus enunciated were applied to the case, which is too long to be given in this article.

§ 10. *Michigan*.—*Gray vs. Koch* (2 Mich. N. P., 119, 1871). No property can be acquired in words or marks which do not denote the goods or property or particular place of business of a person. Held, accordingly, that no person, by prior use, can acquire an exclusive right to the use of the words "Mammoth Wardrobe," as a sign or designation of a place where a large amount of clothing is kept.

§ 11. *Missouri*.—*Filley vs. Fassett* (44 Mo., 168, 1866). Plaintiff's stoves were marked with oak leaves and the words "charter oak." Defendants were held to infringe, though they omitted the oak leaves. The imitation need not be exact, nor of the whole trade-mark. It will be enjoined if likely to deceive. It is not necessary to prove actual deception of others. It is no defense that others have infringed, unless it be shown that plaintiff assented to or acquiesced in such infringement.

McCartney vs. Garnhart (45 Mo., 593, 1870). Plaintiff sold whiskey in barrels, on the heads of which were stenciled two anchors, with the upper parts leaning away from each other. Defendant sold whiskey in barrels, on the heads of which were stenciled two picks with the handles leaning toward each other. The names of plaintiff and defendants were used on their own barrels respectively. The only similarity was between the anchors and picks. No fraud was shown, nor that any one had been misled. Held that the resemblance between the two brands is too slight to be likely to mislead.

State of Missouri vs. Gibbs (56 Mo., 133, 1874). "Lea & Ferrin's Worcestershire Sauce." The act to protect merchants, &c., against counterfeit trade-marks, approved Feb. 22, 1870, did not abridge the common

al description, by words in a kind of article, or of its title, cannot of itself be the trade-mark. A person may use in his own name as a trademark a person of a different name, but cannot have such a right as a person of the same name, who uses a form of stamp that used by the plaintiff as a trademark of the defendant's goods as of the fact. * * * The court held that a defendant from the use of a trademark on the ground that it infringes the trademark, unless the form of the words, the words themselves, the lines and devices are so similar, and the person, with such reasonable observation as the public generally would make, may be excused, would mistake the one for the other. The principles of law thus applied to the case, which given in this article.

Gray vs. Koch (2 Mich.).—No property can be acquired in marks which do not denote the identity or particular place of the person. Held, accordingly, that a person, by prior use, can acquire an exclusive right to the use of the words "wardrobe," as a sign or designation where a large amount of

Filley vs. Fassett (44 Mo.).—Plaintiff's stoves were marked with the words "charter oak." Defendant held to infringe, though the imitation was of oak leaves. The imitation was not of the whole trademark, but of the words, and was enjoined if likely to deceive. It is no defense that the defendant did not prove actual infringement, unless it be shown that the defendant used or acquired in

Garnhart (45 Mo., 593).—Plaintiff sold whiskey in barrels, on which were stenciled two words, the upper parts leaning away from each other. Defendant sold whiskey in barrels, the heads of which were stenciled with the handles leaning away from each other. The names of plaintiff were used on their own barrels. The only similarity was in the words and picks. No fraud was shown that any one had been misled by the resemblance between the two, so slight to be likely to

Gibbs (56 Mo., 133).—Plaintiff's Worcester shire to protect merchants, &c., in their trade-marks, approved and did not abridge the common

law property in a trade-mark, and applies to citizens of other States and nations, as well as those of Missouri.

St. Louis Piano Mfg. Co. vs. Merkel (1 Mo., App. 305, 1876).—Plaintiffs used the words "bell treble" in circulars and other advertisements of its pianos, but did not affix the words to pianos. Defendants affixed the words to their pianos. Injunction against defendant in court below was dissolved, because "the failure of the plaintiff to affix the term or name 'bell treble' to pianos of its manufacture disables it from claiming that defendants have injured it by affixing it to theirs."

§ 12. *New York*.—There are about as many cases reported in the New York reports as in those of all the other States combined—a fact probably due to two causes, viz., the custom in New York to publish decisions of the lower courts and of single judges, and also because the city of New York is the greatest distributing point of the United States. A digest is made of the leading cases for convenience of examination.

Who May Acquire a Trade-Mark and How.—The vendors of an article of trade or manufacture, who use a particular trade-mark to distinguish such article are entitled to protection, though they do not manufacture the goods. *Taylor vs. Carpenter*, 2 Sandf., ch. 603, 1846.

Aliens have the same right to relief against a piracy of their trade-marks as citizens of the United States. *Coates vs. Holbrook*, 2 Sandf., 586, 1845.

The sale of the *good will* of a business does not transfer a right to the use of the vendors sign, or trade name, e. g., "Howe's Bakery." *Howe vs. Searing*, 19 How. Pr., 14, 1860.

The purchasers of a spring (whose waters are designated by a trade-mark) and all the interest of the original proprietors, acquire a valid title to the trade-mark. *C. & E. Spring Co. vs. H. R. C. Spring Co.*, 45 N. Y., 491, 1871.

Though one discover or invent an article and give it a peculiar and distinctive name, if he permits another, with his acquiescence, to appropriate it with that name and put it forth to the public as his own, that other will become the proprietor of the name if he meets the other conditions prescribed by the law in such cases. *Caswell vs. Davis*, 78 N. Y., 223, 1874.

It was decided that one might acquire the right to use a trade-mark, registered under the United States statute, by license, paying royalty for its use. We do not think this good law. *Hilsen vs. Libby*, 44 N. Y. Superior Ct., R. 12, 1878.

What May Become a Trade-Mark.—"Yankee soap." *Williams vs. Johnson*, 2 Bosw., 1, 1857; id. vs. Spence, 25 How., Pr. 366, 1863. "Cocaine," as applied to a hair wash. *Burnett vs. Phalon*, 3 Keys, N. Y. 594, 1867.

"Bismarck," as applied to paper collars. *Meserole vs. Tynberg*, 4 Abb. Pr., N. S. 410, 1868.

"Bovaline" as applied to a hair pomade. *Lockwood vs. Bostwick*, 2 Daly, 521, 1869.

"Congress Water," or "Congress Spring Water," appropriately indicates the origin and ownership of the water flowing from Congress Spring, and the word "Congress" used in connection with the bottling and sale of such water, is a proper and legitimate business trade-mark. *C. & E. S. Co. vs. H. R. C. S. Co.*, 45 N. Y., 291, 1871.

"303," as applied to steel pens, not to express any size or quality, but the character or pattern. *Gillott vs. Esterbrook*, 48 N. Y., 374, 1872; id. "1/2" on cigarettes. *Kinney vs. Busch*, 16 Am. Law Reg., N. S. 596, 1877; id. "35" on cards for photographic mounts. *Williams vs. Reynolds*, 7 Abb., New Cases 17, 1879.

"Akron," the name of the place of origin of a cement, is a good trade-mark of such cement as against persons not living in Akron. *Newman vs. Alford*, 51 N. Y., 189, 1872. "Worcestershire" as applied to sauce in same manner, 15 Abb. Pr. (N. S.) 1873.

What Cannot Become a Trade-Mark.—Marks, symbols or letters which merely indicate the appropriate name, mode or process of manufacture, or the peculiar or relative quality of the fabric manufactured, as distinguished from those marks which indicate the time, origin or ownership of the fabric—e. g., the letters "A. C. A.," used by a manufacturer of tickings to designate the first quality of his fabric—are not trade-marks to use which an exclusive right may be claimed. *Amoskeag Mfg. Co. vs. Spear*, 2 Sandf., 599, 1849.

Arbitrary names—e. g., "Galen," "Lake," "Cylinder," "Wayne" and "New York"—when applied to glass to denote quality only, are not entitled to protection as trade-marks. *Stokes vs. Landgraaf*, 17 Barb., 608, 1853.

"Schnapps," used in Holland to mean a dram, or gin, as applied to gin. *Wolfe vs. Goulard*, 18 How. Pr., 64, 1859.

"Schiedam," because the name of a town. Same case.

"Club House," as applied to gin; because it had been previously used to indicate a superior quality of articles, including gin. *Corwin vs. Daly*, 7 Bosw., 222, 1860.

"Old London Dock Gin" is descriptive. *Binniger vs. Wattles*, 28 How. Pr., 206, 1865.

"Dessicated Codfish," is descriptive. *Town vs. Stetson*, 5 Abb. Pr. (N. S.) 218, 1868.

A person cannot acquire a trade-mark in his own name, and thus debar others having the same name from using it in their business. *Meneely vs. Meneely*, 62 N. Y., 427, 1875. *Devlin vs. Devlin*, 69 N. Y., 212, 1877. *Decker vs. Decker*, 52 How. Pr., 218, 1876. *Faber vs. Faber*, 49 Barb., 357, 1867.

Clark vs. Clark, 25 Barb., 76, 1857. Contra, dictum in Howe vs. Howe Machine Co., 50 Barb., 236, 1867.

Words and phrases in common use and which indicate the character, kind, quality and composition of an article of manufacture cannot become a trade-mark, even though the form of the words or phrases adopted also indicate the origin and maker of the article. The words must express only the latter to become a trade-mark—*e. g.*, a medicine, the principal ingredients of which are iron, phosphorus and elixir of calisaya bark cannot be called (as a trade-mark) "Ferro-Phosphorated Elixir of Calisaya Bark." Caswell vs. Davis 58 N. Y., 223, 1874.

"Gold Medal," as applied to saleratus Taylor vs. Gillies, 59 N. Y., 331, 1874.

When an Injunction will be Granted.—The name of a newspaper may be protected by injunction if the title is clear. Snowden vs. Noah Hopkins, Ch. Rep., 347. Bell vs. Locke, 8 Paige, Ch. 75, 1840. Matsell vs. Flannagan, 2 Abb. Pr., N. S., 459, 1867. Where the Court sees that the complainant's trade-marks are simulated in such a manner as probably to deceive his customers or patrons, the piracy will be checked at once by injunction. The Court proceeds upon the ground that the complainant has a valuable interest in the good will of his trade or business; and that having appropriated to himself a particular label, or sign, or trade-mark, indicating that the article is manufactured or sold by him or by his authority, or that he carries on business at a particular place, he is entitled to protection against any other person who attempts to pirate upon the good will of the complainant's friends or customers by using his trade-mark without his authority or consent. An injunction will be granted against one who affixes to his own goods a copy or imitation of the trade-mark of another, but only to the extent to which the trade-mark is imitated. Amoskeag Mfg. Co. vs. Spear, 2 Sandf., 599, 1849.

Against pirating the name of a hotel. Howard vs. Henriques, 3 Sandf., 725, 1851.

Against a colorable imitation of a trade-mark, containing such differences as the public would not be likely to observe. Clark vs. Clark, 25 Barb., 77, 1857.

The use of "Brooklyn White Lead and Zinc Company" enjoined on application of "Brooklyn White Lead Company." B. W. L. Co. vs. Masury, 25 Barb., 416, 1857.

The use of the word "Cocaine" was enjoined on complaint of the owner of trade-mark "Cocaine." Burnett vs. Phalon, 3 Keys, N. Y., 594, 1867.

Against pirating the name of a newspaper, when the name adopted by defendant is calculated to deceive. Matsell vs. Flannagan, 2 Abb. Pr., N. S. 459, 1867; Coster vs. Peters, 4 id., 53, 1868.

Against defendant's label, which closely

resembled that of plaintiff, except that defendant had substituted "Bovina" in place of "Bovaline." Lockwood vs. Bostwick, 2 Daly, 521, 1869.

To protect a species of good-will analogous to a trade-mark, *e. g.*, "Number 10," the number of a place of business which was printed on advertisements, circulars, &c., in connection with a place of business. The Glen & Hall Mfg. Co. vs. Hall, 61 N. Y., 226, 1874.

To prevent the use of the name of the defendant in such a way as to mislead or induce the public to believe that he is the plaintiff—*e. g.*, defendant, who had no partner, used the name of the complaining firm "Devlin & Co." Devlin vs. Devlin, 69 N. Y., 212, 1877.

Against a manufacture of labels which have such a resemblance to the genuine as to deceive purchasers of ordinary caution, or the careless and unwary. Coleman vs. Crump, 70 N. Y., 573, 1877.

To sustain such an action it is not necessary to establish a guilty knowledge or fraudulent intent on the part of the defendant. It is sufficient to show the proprietary right of the plaintiff and its actual infringement. Same case.

The Court will enjoin the use of a wrapper and label the general effect of which is to constitute a wrongful imitation of those of plaintiff, although the defendant may have replaced the trade-mark name by some other, *e. g.*, "Sapallo" by "Saphia." The name was not enjoined. Morgan vs. Schwachofer, 5 Abb., N. C., 265, 1878.

When an Injunction will be Refused.—One Brindle, a watchmaker, stamped all watches made by him with his name. One Samuel purchased from Brindle the right to stamp Brindle's name on watches made by Samuel, and Samuel assigned his right to plaintiff. Defendants had on hand watches made by Brindle, and stamped with his name. Injunction refused. Samuel vs. Buger, 13 How. Pr., 342, 1856.

When the name or phrase claimed as a trade-mark is calculated to deceive, *i. e.*, "Balm of a Thousand Flowers," which instead of being an extract of flowers was a liquid soap. Fetridge vs. Wells, 4 Abb. Pr., 144, 1857.

The points of difference are so prominent and striking, as at once to produce the impression that both the plaintiffs and defendants medicines and books are different productions, and when that is the case, an action for an injunction cannot be maintained. Talcott vs. Moore, 13 Supreme Court Reports, N. Y., 106, 1875.

Plaintiff, a dealer in refined lard, stamped upon the cans in which it was put up for sale the figure of a large fat hog. The defendants stamped upon their packages of lard a globe with a small gaunt wild boar on top. Remainder of devices used with alleged trade-mark were dissimilar. Injuncto-

tion refused. *Popham vs. Cole*, 66 N. Y., 69, 1876.

What cannot be set up as a Defense.—No defense that the simulated article is equal to the genuine. *Coats vs. Holbrook*, 2 Sandf., ch. 586, 1845; *Taylor vs. Carpenter*, id. 603, 1846; *Partridge vs. Menck*, id. 622, 1847.

No defense that the maker of the spurious goods, or the jobber who sells them to the retailers, informs those who purchase that the article is spurious or an imitation. *Coats vs. Holbrook*, above.

The alienage of the person whose trade-marks are simulated, and his residence in a foreign country, do not affect his right to their exclusive use when he has introduced them here. *Coats vs. Holbrook*, 2 Sandf., ch. 586, 1845; *Taylor vs. Carpenter*, 2 Sandf., ch. 603, 1846. That plaintiff had ceased to use the mark infringed for 3 years. *Lemoine vs. Ganton*, 2 E. D. Smith, 343, 1854.

In an action to restrain the infringement of plaintiff's trade-mark, the complaint alleged that they manufactured brandy which they put up and sold in "quart and pint bottles," on which they put the trade-mark in question. The Court found that defendant pirated plaintiff's trade mark, but falsely and deceitfully used bottles represented to be "quart and pint" which did not hold that quantity, and that the trade-mark was designed and used to protect a fraud, and upon this ground dismissed the complaint. This ground was not set up in the answer, and does not appear to have been litigated on the trial. Nothing appeared upon the bottles to indicate the quantity contained, nor did it appear that such bottles were used in the trade as a measure of quantity, or that purchasers did not understand their capacity; or that plaintiff ever deceived any one. The findings of fact and conclusions were held, on appeal, to be erroneous. *Hennessy vs. Ward Wheeler*, 69, N. Y., 271, 1877.

The fact that the same device is used upon other articles of merchandise does not take from the plaintiff the exclusive right to its use upon the articles manufactured by him. *Coleman vs. Crump*, 70 N. Y., 573, 1877.

Statutes.—To render a person liable under the provisions of § 4, ch. 306, Laws of 1862, entitled "an act to prevent and punish the use of false stamps, labels, or trade-marks," as amended by § 2, ch. 209, Laws of 1863, the act complained of must have been done with intent to defraud some person or persons or some body corporate. *Low vs. Hall*, 47 N. Y., 104, 1871.

§ 13. *North Carolina.*—*Blackwell vs. Wright* (73 N. C., 310, 1875). It was held in this case that every manufacturer has the unquestionable right to distinguish the goods he manufactures and sells, by a particular label, symbol or trade-mark, and no other

person has a right to adopt his trade-mark, or one so like his as to lead the public to suppose the article to which it is affixed is the manufacture of the inventor. But before the owner of the trade-mark can invoke the power of the courts to prevent an infringement thereof, he must show a clear legal title to the trade-mark and a plain violation of it. If it appear that the trade-mark alleged to be an imitation, though in some respects resembling that of the plaintiff, would not probably deceive the ordinary mass of purchasers, an injunction will not be granted. The name of the town where both parties are doing business cannot be used as a trade-mark.

In this case plaintiff's label was as follows: "Genuine Durham Smoking Tobacco, manufactured by W. T. Backwell (successor to J. E. Green & Co.), Durham, N. C.," with the picture of a bull in the center of the label, over which are the words "Trade Mark." He alleged that this was imitated by the label of defendant, which was on glazed paper of the same color and general appearance of plaintiff's, with the picture of the head of a bull in the center, and read: "The Original Durham Smoking Tobacco, manufactured by W. A. Wright." Injunction in the court below dissolved.

§ 14. *Ohio.*—*McGowan, & Co. vs. McGowan*, (2 Cincinnati Superior C., Rep. 313, 1872). T. & J. McG., pump manufacturers, were partners as McGowan Bros. J. sold out to T. all his interest in the firm, including the old patterns, with the name of McGowan Bros. on them. T. and others procured a certificate of incorporation as "McGowan Bros. Pump and Machine Co." Held that J., who had set up a similar business, could enjoin the use by the corporation of the name "McGowan Bros." The old name is not a trade-mark, and while there is a right to use the old patterns with the name of McGowan Bros. on them, it cannot hold out by the corporation term that all the articles made by it were in fact produced by the skill and labor of J., or that the corporation is in fact the old firm composed of both brothers.

§ 15. *Pennsylvania.*—The decisions in this State are more numerous than in any other State except New York. They are, therefore, given under the form of a digest for convenience and perspicuity.

What may become a trade-mark.—A word which is the name of an article or indicates its quality cannot be appropriated as a trade-mark, *e. g.*, "Extract of Night Blooming Cereus." *Phelan vs. Wright* (5 Phil., 464, 1864).

A trade-mark may consist of distinctive words, not in common use, descriptive of similar articles. The name of the inventor may form part of the trade-mark, *e. g.*, "Dr. J. N. Lindsey's Improved Blood

Searcher." *Fulton vs. Sellers* (4 Brewster, 42, 1867); *Ayer vs. Hall* (3 Brewster, 509, 1871).

No right can be absolute in a name, as a name merely. It is only when that name is printed or stamped upon a particular label or jar, and thus becomes identified with a particular style and quality of goods, that it becomes a trade-mark. *Rowley vs. Houghton* (2 Brewster, 303, 1868); *Ferguson vs. Davol Mills* (id. 314, 1868).

It is requisite that the device should perform the office of a finger-board, and indicate the name and address of the manufacturer, to invest it with the attributes of a trade-mark entitled to protection. The letter K inclosed in a double ring with the letters "No." and "yds" between the rings, not a trade-mark. *Ferguson vs. Davol Mills* (2 Brewster, 314, 1868).

A trade-mark to be capable of exclusive use must be such as will identify the article to which it is affixed as that of the owner and distinguish it from those of others. *Palmer vs. Harris* (60 Penn. S. R., 156, 869).

Title to the property in the name "Keystone Lime," acquired by many years certain, exclusive appropriation and use of it by shippers of merchandise who did not own the vessels employed by them will be protected in equity. *Winson vs. Clyde* (9 Phil., 513, 1872).

When an injunction will be granted.—To entitle the owner of a trade-mark to prevent its use by another person, there must be in the copy such a general resemblance of the form, words and symbols in the original as to mislead the public. *Rowley vs. Houghton* (2 Brewster, 303, 1868); *Dixon Crucible Co. vs. Gugenheim*, (id. 321, 1869). A sufficiently distinctive individuality must be presented, so as to procure for the person himself the benefit of that deception which general resemblance is calculated to produce. *Rowley vs. Houghton*, supra.

The jurisdiction of a Court of Chancery in trade-mark cases attaches because of the injury to the one whose goods are simulated by interfering with his profits, not because of the deception upon the public. *Dixon Crucible Co. vs. Gugenheim* (2 Brewster, 321, 1869).

Defendant put up a sign—"Dr. F. R. Thomas, formerly operator at the Colton Dental Rooms." The words "formerly operator" were very small—the others very large. Held, that the use of the sign was fraudulent, as against owner of the Colton Dental Rooms. Enjoined. *Colton vs. Thomas* (2 Brewster, 308, 1868).

Defendant will be enjoined against the use of his own name when the same has been employed by him as a trade-mark and sold to another, with covenant not to use the trade-mark. *Ayer vs. Hall* (3 Brewster, 509, 1871).

When an Injunction will be Refused.—The

label of the plaintiff was printed upon pinkish paper—"Aremingo Mills; warranted indigo blue." The label of defendant was printed on paper with a fanciful deep pink border—"Superior domestic pure linen goods, manufactured by William Baird, at Aremingo Mills, Frankford, Pa.; warranted fast colors." The words "Aremingo Mills" were printed in small capitals. The size of the labels was different; the color different; the size of the letters, &c., except the words "Aremingo Mills," were distinct. Injunction refused. *Calladay vs. Baird* (4 Phil., 139, 1860).

A trade-mark in the Spanish language, on cigars made in New York, indicated that they were made in Havana. Injunction refused, because the mark gave a false indication. *Gillis vs. Hall* (2 Brewster, 324, 1870).

The plaintiff had adopted a trade-mark so recently as not to have become known to the trade. Defendant, in entire ignorance of the fact and without any apparent design or intention, used the same words as a part of his trade-mark. Injunction refused. *Seltzer vs. Powell* (8 Phil., 296, 1871).

Plaintiffs claimed the use of the name "Galaxy Publishing Company" as a trade-mark. There was no such corporation. Held that if plaintiff's firm name falsely implies that they are a corporation a court of equity will not assist them. *McNair vs. Cleare* (31 Legal In., 212, 1874).

The name of an incorporated borough cannot be held as a trade-mark to the exclusion of other residents of the borough. This is so, though the trade-mark was adopted before the incorporation of the borough and before there was any town in that place. A corporation adopted the trade-mark "Glendon" on their iron. The place where their furnaces were was afterward made a borough by the name of Glendon. Another company afterward used the mark "Glendon" on their iron. Held that the second company could lawfully use this mark. *Glendon Iron Co. vs. Uhler* (75 Penn. S. R., 467, 1874).

Title.—The purchaser of a trade-mark and the right of manufacture of the article designated by it may be protected by injunction. He need not designate himself as assignee. *Fulton vs. Sellers* (4 Brewster, 42, 1867); *Dixon Crucible Co. vs. Gugenheim* (2 Brewster, 321, 1869). A person may sell a trade-mark which contains his own name, and covenant not to use the same. *Ayer vs. Hall* (3 Brewster, 509, 1871).

The use of the name "Keystone line" by a steamship company while the shippers were its agents is a mere license, and gives no right to its use after the agency is terminated. *Wilson vs. Clyde* (9 Phil., 513, 1872).

§ 16. *Rhode Island.*—*Davis vs. Kendall* (2 R. I., 566, 1850). Plaintiff was the inventor of a medicine which he called "Pain Killer." Defendant put up a medicine in similar

packages, calling it "J. A. Perry's Vegetable Pain Killer." The court said: "Trade-marks may be, first, the name of the maker; second, symbolical; third, the name of a compound. Of this last kind is the trade-mark of the plaintiff—"Pain Killer." All are entitled to make and vend this compound, and to vend it as a similar article to that made and sold by the plaintiff; but no one but the plaintiff has a right to sell it as a medicine manufactured by the plaintiff.

* * If the defendant states in his label that the article which he sells was made by himself, although he calls it by the same name as the plaintiff's, he will not be liable, because he has a right to make and vend the compound, if he vends it as his own and not as made by the plaintiff. If the defendant, without fraud, use the trade-mark of the plaintiff, he is still liable. The whole question in this case is whether the defendant's label is liable to deceive the public, and to lead them to suppose they are purchasing an article manufactured by the plaintiff instead of the defendant." Judgment for the plaintiff.

Barrows vs. Knight (6 R. I., 434, 1860). In this case it was decided that "Roger Williams' Long Cloth" was a good trade-mark.

A. Carmichel & Co. vs. Latimer, Stillman & Co. (11 R. I., 395, 1876). A. C. & Co. being the successors, by purchase, of Stillman & Co., woolen manufacturers, continued to use "Stillman & Co." as a trade-mark. Latimer, Stillman & Co., the lessees of a mill formerly used by Stillman & Co., known both as "Stillman Mill" and "Seventh Day Mill," used "Stillman Mills" as a trade-mark. On a petition for an injunction against defendants to prevent their using the word "Stillman"—it appearing that no deception could be charged on the defendants, and that no person of the old firm of Stillman & Co. was a member of A. C. & Co.—an injunction was refused because a manufacturer has a right to label his goods with his own name or that of his mill, if no fraudulent purpose is intended. The question was raised (but not decided) whether a trade-mark whose reputation depends upon the excellence of the manufacture or the skill and honesty of the manufacturer, can be assigned.

§ 17. *Wisconsin*.—*Dunbar vs. Glenn* (42 Wis., 118, 1877). The owner of a natural product (as the water of a mineral spring) is entitled, like the manufacturers of artificial products, to have his trade-mark protected. When a particular word or combination of words, used as a trade-mark, distinctly point to the origin and ownership of the article to which it is applied (and which is not a generic word or geographical name of place of origin), it will be protected. The word "Bethesda" is a good trade-mark of natural mineral waters.

§ 18. *United States*.—*Federal Courts*.—*What may become a Trade-mark*.—The corporate name of a corporation is a trade-mark and will be protected by a court of equity. *Newby vs. The Oregon Central Railroad Co.*, 1 Deady, 610; Oregon, 1869.

"Eureka," first used by complainant in a compound fertilizer which they call "Eureka Ammoniated Bone Superphosphate of Lime," is a trade-mark. *Fertilizer Company vs. Woodside*, 1 Hughes, 115; Maryland, 1869.

"Our Young Folks," as the title of a publication. *Osgood vs. Allen*, 1 Holmes, 185; Maine, 1872.

"The Star Shirt," or "The * Shirt," as applied to shirts. *Morrison vs. Case*, 9 Blatch., 548; Conn., 1872.

A representation of a crown as applied to paints. *Smith vs. Reynolds*, 10 Blatch., 100; New York, S. Dist., 1872.

But only as to the particular class of paints on which it had been used, and not as to paints generally. Same case on final hearing, 13 Blatch., 458, 1876. *La Société, &c. vs. Baxter*, 14 Blatch., 261; New York, S. D., 1877.

"Dr. J. Blackman's Genuine Healing Balsam," as applied to a medicine. *Filkins vs. Blackman*, 13 Blatch., 440; Conn., 1876.

½ printed in large bold red characters in a certain form and style on packages of cigarettes. (No exclusive right to the use of the numeral character ½ used in the ordinary manner). *Kinney vs. Allen*, 1 Hughes, 106; Virginia, E. D., 1877.

What cannot become a Trade-mark.—"Lackawanna," as applied to coal mined in the Lackawanna Valley. *Canal Co. vs. Clark*, 13 Wall, 311; U. S. Supreme Court, 1871.

To entitle a name to equitable protection as a trade-mark the right to its use must be exclusive, and not one which others may employ with as much truth as those who use it. Same case.

A barrel of peculiar form, dimensions and capacity, irrespective of any marks or brands impressed upon or connected with it, cannot become a lawful trade-mark, or a substantial part of a lawful trade-mark. *Moorman vs. Hoge*, 2 Sawyer, 78; California, 1871. Cited and approved in *Harrington vs. Libbey*, in which case a tin pail of peculiar design for holding paper collars for sale was held not to be a trade-mark. 14 Blatch., 128; New York, S. Dist., 1877.

A mark calculated to convey the impression that the article to which it is affixed is patented, when there is no valid patent upon it, is deceptive in its name, and therefore invalid. Trade-mark claimed "Mason's Patent, November 25, 1858." The patent had been held invalid. *The Consolidated Fruit Jar Co. vs. Dorfinger*, 2 Central L. J., 721; Penn., E. Dist., 1875.

When an Injunction will be Granted.—The plaintiff called his medicine the "Chinese

Liniment," the defendant called his "Ohio Liniment," but from the body of the label, and the directions for the use of the medicine, it was clear that the language of the defendant was so assimilated to that of the plaintiff as to appear to be the same medicine, the alterations being only colorable. Injunction granted. *Coffin vs. Brunton*, 4 McLean, 516; Indiana, 1849. See same case on appeal.

When on ordinary observation the two marks would be confounded and defendant's mark is calculated to mislead the public. *Walton vs. Crowley*, 3 Blatch., 440; New York, S. D., 1856.

"Bills of this description are not maintainable upon the ground that the plaintiff has a right of property in the trade-mark. The relief is given because the mark is a sign or representation, importing, and so understood and acted upon by the public, that the article to which it is attached is the manufacture or production which is generally known in the market under that denomination;" *id.* But a later case says: "The law is well settled that a party who has appropriated a particular trade-mark to distinguish his goods from other similar goods, has a right or property in it which entitles him to its exclusive use."

An imitation of a label in every respect like the original, except that "Hostetter" was altered to "Holsteter," and the words "Hostetter & Smith" to "Holsteter & Smyth" was enjoined. *Hostetter vs. Vowinkle*, 1 Dillon, 329; Nebraska, 1871.

Plaintiff claimed as a trade-mark the words "Genuine Durham Smoking Tobacco," and the side view of a Durham bull, and alleged that defendant infringed by using the words "The Durham Smoking Tobacco," and the device of a bull's head, with the note of the sale to the defendant of Wright's patent for the manufacture of "Genuine Durham Smoking Tobacco." Both labels were printed on paper of the same color. Injunction granted. *Blackwell vs. Armistead*, 5 Am. Law T., 85; Virginia, W. D., 1872.

An injunction will be granted when the imitation is so close that by the form, marks, contents, words or their special arrangement, or by the general appearance of the infringing device, purchasers exercising ordinary caution are likely to be misled into buying the article bearing it for the genuine one. *McLean vs. Fleming*, 6 Otto, 245; U. S. Supreme Court, 1877.

Plaintiff's bottles were branded with the word "Apolinaris" and the representation of an anchor. Defendants were enjoined against the use of the word "Apolinis" and the representation of a bow and arrow or anchor, plaintiff giving bond to pay damages. *Action, &c. vs. Somborn*, 14 Blatch., 380; New York, S. D., 1878.

When an Injunction will be Refused.—A court of equity will not, in a contest be-

tween persons who profess to be manufacturers of quack medicines, interfere to protect the use of trade-marks by injunction. A complainant whose business is imposition cannot invoke the aid of equity against a piracy of a trade-mark. *Fowle vs. Spear*, 1 Law Reps. (N. S.), 130; Penn., E. D., 1857. *Hoath vs. Wright*, 3 Wallace, Jr., 141 Per. n., 1855.

On final hearing injunction was refused and also an application for a rehearing, because there was a controversy whether both plaintiff and defendant were not engaged in establishing the business. If the rights of the plaintiff are not clear, the court will refuse an injunction and leave him to his action at law. *Coffin vs. Brunton*, 5 McLean, 516; Ind., 1851.

A statement filed by O., in United States Patent Office, set forth that his trade-mark consisted of the words "Heliotype," "in connection with the production and publication of prints," and that "the particular article of trade" upon which he had used it was "the prints which he designated as 'Heliotype.'" Such prints were made by a process to which the name "Heliotype" was applied, and which was a process secured by letters patent of the United States, under which O. was the sole licensee. The defendant used the word "Heliotype" on prints published by him, but not made by such patented process. Held that the right of O. to the recorded trade-mark was limited to its use on prints made by such patented process. *Osgood vs. Rockwood*, 11 Blatch., 310; New York, S. D., 1873.

When the registered trade-mark consists of a combination of designs, each of which alone is public property, one who used only part will not be enjoined; *e. g.*, plaintiffs claimed as a mark a perspective of a bed bottom, with the letters "T. M. Co." in monogram in the center of the picture, and over it the words "Tucker Spring Bed." Defendant used the picture and the words "Tucker Spring Bed" and the same colored label. Held he had a right so to do. *The Tucker Mfg. Co. vs. Boyington*, 9 O. G., 455; Illinois, N. D., 1875.

Defendant put up Hamburg tea in packages of the same size and general shape and similarly-colored envelope as the plaintiff. Similar printed notices and directions for use were tied up with the package; but on the labels, which were similar in place on the package and in color, the name of the defendant was printed instead of that of the plaintiff. Injunction refused, because the ownership of the packages was sufficiently indicated. *Frese vs. Bachof*, 13 Blatch., 234; New York, S. D., 1876.

When a person who claimed property in a trade-mark had acquired it, if at all, by use in circulars of fraudulent and deceptive and untrue language as to the origin and qualities of the article in respect of which the trade-mark was claimed. Injunction re-

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The right of A. to a trade-mark in connection with the dry white oxide of zinc is not infringed by the sale of a paint composed of a white oxide of zinc ground in oil, and untruly represented as containing white oxide of zinc made by A., such trade-mark never having been applied by A. to that article ground in oil. *La Société, &c., vs. Baxter*, 14 Blatch., 261; New York, S. D., 1877.

The word "Worcestershire," as applied to sauce, has become generic in meaning by constant use for a particular species of sauce without suit to prevent it, and the fact that persons reside in Worcestershire, in England, and manufacture there a sauce which they call "Worcestershire Sauce," does not give them the sole right to such application of the term. A suit having been brought—the same plaintiffs against the principal in England—and the case dismissed, the same plaintiffs cannot sustain a writ here against the agents. A trade-mark had in England cannot become the ground for an injunction here against articles of English manufacture. *Lea vs. Deakon*, 18 Am. Law Reg., 322; Illinois, N. D., 1879.

What Cannot be set up as a Defense.—That plaintiff is an alien. *Taylor vs. Carpenter*, 3 Story, 459; Mass., 1844.

Usage abroad to use trade-marks of others when aliens with impunity is not a competent defense to the jury, and such a usage being a bad one, and not in existence here, cannot offset the law here. *Taylor vs. Carpenter*, 2 Wood & M. 1; Mass., 1846.

No defense that plaintiffs placed on their business envelopes and business cards, "established in 1860," when the fact was that the business was established in 1865, the mistake having been corrected as soon as discovered. *Blackwell & Armistead*, 5 Am. Law T., 85; Va., W. D., 1872.

Title.—If use by defendant was for such a length of time and under such circumstances as to indicate an abandonment of the marks to the public, or a license to use them, the plaintiff could not recover. *Taylor vs. Carpenter*, 2 Wood & M., 1; Mass., 1846. *Lea vs. Deaken*, 18 Am. Law Reg., 322; Illinois, N. D., 1879.

Trade-marks pass by assignment, with the good-will of the business. *Watson vs. Crowley*, 3 Blatch., 440; New York, S. D., 1856.

The person for whom goods are manufactured is equally entitled to his trade-mark as the manufacturer, *id.*

A partnership was formed by the retirement of a partner from a previous firm who sold to the firm his interest and recipe. It

was held that as the new partnership showed exclusive use of trade-mark since 1858 they were not obliged to show, as against wrongdoers, that they have a written assignment from one of their former partners. *Hos-tetter vs. Vowinkle*, 1 Dillon, 329; Nebraska, 1871.

The name of a patented article, e. g., "Tucker Spring-Bed" became common property after the expiration of the patent. *Tucker Mfg. Co. vs. Boyington*, 9 Off. Gaz., 455; Illinois; N. D., 1875.

The exclusive right to use a trade-mark of a medicine will pass by assignment to the person who has obtained the right to make and sell, and who does make and sell the medicine according to the original formula. *Filkins vs. Blackman*, 13 Blatch., 440; Conn. 1876, Equity.

When two persons, associated in business for the manufacture and sale of a commodity invented by one of them, jointly adopt a trade-mark for it, they are equally entitled to its use after the dissolution of their connection. *Taylor vs. Bothin*, 5 Sawyer, 584; Cal. D., 1879.

Damages for Infringement.—Is entitled to recover to the extent of his damages by the loss of sales and defendant's profits, even though the articles sold as and for his were not inferior in quality to his. *Taylor vs. Carpenter*, 2 Wood & M. 1; Mass., 1846.

When no specific damages are proved, nominal damages will be given. *Coffin vs. Brunton*, 4 McLean, 516; Ind., 1849.

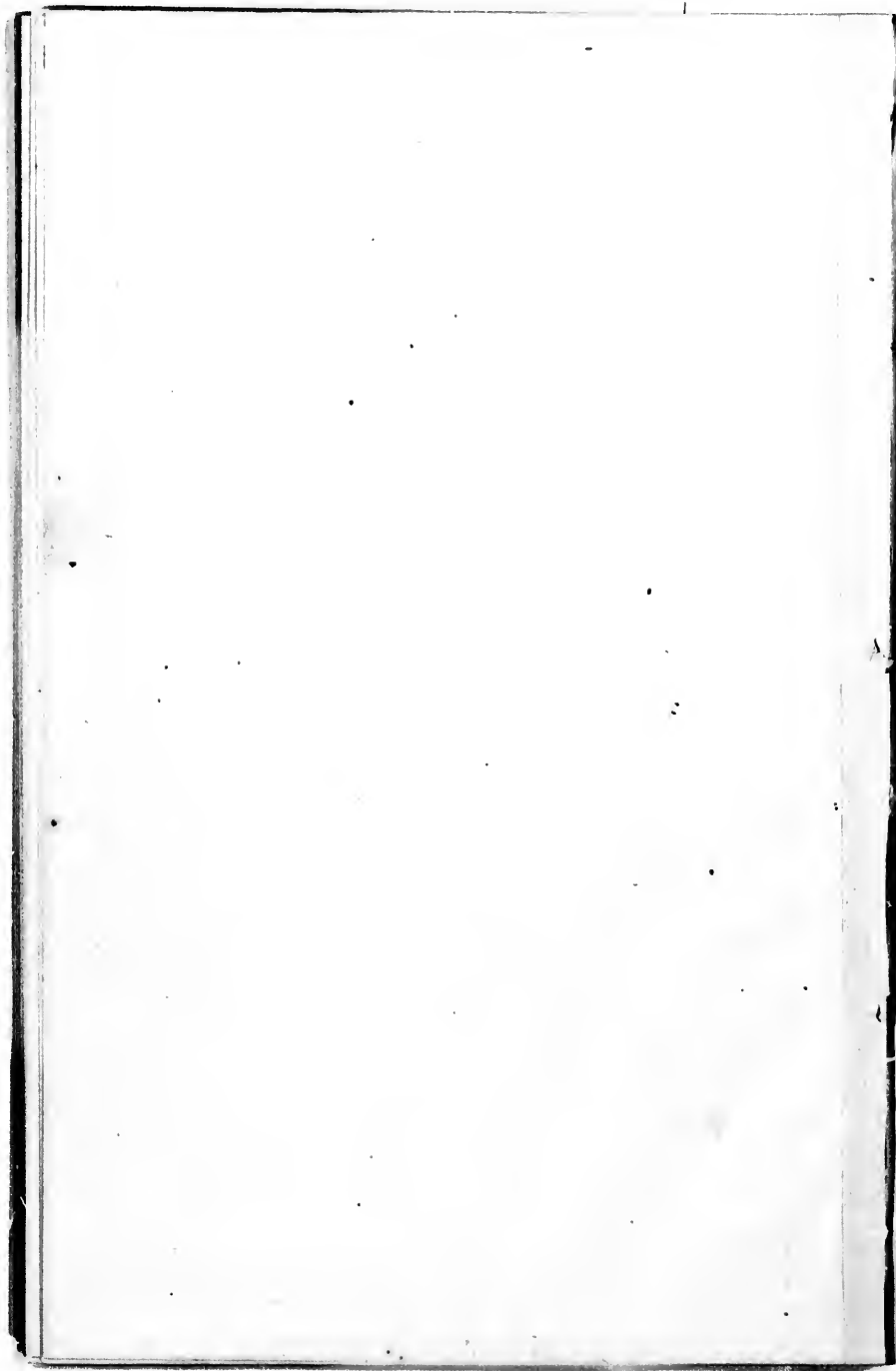
When the plaintiff has long acquiesced in the infringement and has unreasonably delayed seeking relief, he is not entitled to an account of profits. *McLean vs. Flemming*, 6 Otto., 245, 1877.

Statutes.—The certificate of registry is not conclusive evidence that the device claimed is a lawful trade-mark, and plaintiff is entitled to its exclusive use. *Moorman vs. Hoge*, 2 Sawyer, 78; Cal., 1871.

The act of C. of June 18, 1874, is to be regarded as an amendment of the copyright law. To acquire a copyright in any print or label deposited in the Patent Office, it is essential that the title of the print or label be first deposited (before use), in pursuance of the provisions of the R. S. concerning copyrights. *Marsh vs. Warren*, 14 Blatch., 263; New York, S. D., 1877.

Labels to be used on bottles containing medicine are not the subjects of copyright. *Scoville vs. Toland*, 6 West. Law J., 84; Ohio, 1848.

Trade-mark statutes of 1870 and 1876 are unconstitutional. U. S. vs. *Steffens* 16 O. G. 999; U. S. Supreme Court, October Term, 1879.



CHAPTER III.

Connecticut.—"An act concerning trade-marks" was approved March 25, 1880. It provides that any person entitled to the exclusive use of any lawful trade-mark, or who intends to adopt and use a lawful trade-mark, may file for record such trade-mark in the office of the Secretary of that State in form prescribed by the act. That false swearing in the proceedings shall be perjury, and that the Secretary of State may refuse to record the mark filed if he believes the statement accompanying it to be untrue. A mandamus is allowed to compel the recording. "Every party having the lawful right to make and file such certificate and affidavit, upon the recording of the same in said office, shall become entitled to the exclusive use of the trade-mark therein described, for so long as he or his assigns shall continue to be engaged in the manufacture or sale of the merchandise or description of goods to which it is appropriated." Right assignable in writing. Copies of record, with certificate of Secretary of State under the seal of the State, *prima facie* evidence of title. Infringer of recorded trade-mark with knowledge of record shall pay to owner double damages, and such sum in addition thereto (not exceeding \$500) as the Court may order to be added. Rights to any existing trade-mark not abridged by this act. "§ 8. Every person who fraudulently and with intent to deceive, affixes any trade-mark recorded under this act, or any such imitation thereof as is calculated to deceive, to any goods, receptacle or package similar in descriptive properties to those to which such trade-mark is appropriated; or who fraudulently and with intent to deceive places in any receptacle or package to which is lawfully affixed a recorded trade-mark, goods other than those which said trade-mark is designed and appropriated to protect; or who fraudulently and with intent to deceive, deals in or keeps for sale any goods with a trade-mark fraudulently affixed, as above described in this section; or any goods contained in any package or receptacle having a lawful trade-mark, but not being such goods as said trade-mark was designed and appropriated to protect, shall be fined not more than \$500 or

imprisoned not more than 30 days, or both."

Delaware.—In 1859 an act was passed entitled "An act for the protection of manufacturers and venders of mineral waters, porter, ale and other beverages in bottles." This was amended in 1861, and re-enacted in 1879 (Chap. 92). It provides for the filing by venders of such beverages of their marks in the office of the Secretary of State, and publication for six weeks in a newspaper of the county where the same are manufactured and sold. The person refilling or trafficking in, without the consent of the owner, bottles, &c., bearing marks so filed and published, is liable to a penalty of 50 cents for every bottle for first offense, and \$5 for every subsequent offense. (§ 3.) "That the fact of any person, other than the rightful owner thereof, using any such bottles for the sale therein of any beverages shall be *prima facie* proof of the unlawful use or purchase of such bottles as aforesaid." The issue of a search warrant, to discover alleged wrongfully used bottles, is provided for in language similar to that of the New York statute. (See New York, § 371 post.)

Montana.—The Legislative Assembly, at its first session in 1865, provided for the registration of marks for animals, and punishment for wrongful use or destruction of marks (ordered published, laws of 1870, p 58), and also for the counterfeiting of trade-marks by § 79 & 80, Chap. 7, of "An act concerning crimes and punishments," as follows: "That every person who shall knowingly and willfully forge or counterfeit, or cause or procure to be forged or counterfeited, upon any goods, wares or merchandise, the private stamps or labels of any mechanic or manufacturer, with intent to defraud the purchasers or manufacturers of any goods, wares or merchandise whatsoever, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not exceeding six months, or by a fine not less than \$300 nor more than \$600.

"§ 80. That any person who shall sell any goods, wares or merchandise, having thereon any forged or counterfeited stamps or labels, purporting to be stamps or labels of any mechanic or manufacturer, knowing the same

to be forged or counterfeited, without disclosing the fact to the purchaser, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not exceeding six months, or by a fine not less than \$300 nor more than \$600." In the revision of this act, approved Jan. 12, 1872, the same sections appear as § 91 & 92.

This was followed in 1874 by "An act in relation to trade-marks and brands," which provided that any person who desired the exclusive use within the territory of any name, mark, brand, print, designation or description for any article of manufacture or trade, or for any mill, hotel, factory, machine shop or other business, shall register such mark, &c. (if it has not been previously registered), and thereafter the registrants shall have the exclusive right to use said mark. Figures, letters or Roman numerals not protected as marks. Any person who shall use a registered mark for the purpose of deception and profit is guilty of a misdemeanor. Penalty, fine from \$100 to \$1000.

Any who shall use a second-hand sack, box, &c., on which has been placed the name, mark, &c., the property of another, for the purpose of deception, is guilty of a misdemeanor. Penalty as above.

Fee of Recorder, \$1. Powers of courts of equity to enjoin improper use of trade-mark, &c., excepted from provisions of act. All fines under act to go to school fund. All acts in conflict repealed. Act to take effect July 1, 1874.

Mississippi.—In 1880 "The Revised Code" of the statute laws was adopted. § 2841 reads: "Every person who shall knowingly and willfully forge or counterfeit, or cause or procure to be forged or counterfeited, any representation, likeness, similitude, copy or imitation of the private stamps, wrappers or labels usually affixed by any mechanic or manufacturer to, and used by such mechanic or manufacturer on, in or about the sale of any goods, wares or merchandise whatsoever, upon conviction thereof shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not less than three months, nor more than two years."

§ 2842: "Every person who shall have in his possession any die, plate, engraving or printed label, stamp or wrapper, or any representation, likeness, similitude, copy or imitation of the private stamp, wrapper or label usually fixed by any mechanic or manufacturer to, and used by such mechanic or manufacturer on, in or about the sale of any goods, wares or merchandise, with intent to use or sell the said die, plate or engraving, or printed stamp, label or wrapper, for the purpose of aiding or assisting in any way whatever in vending any goods, wares or merchandise, in imitation of, or intended to resemble and be sold for, the goods, wares or merchandise of such mechanic or manufacturer, shall, upon conviction thereof, be

deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not less than three months, nor more than one year."

§ 2843: "Every person who shall vend any goods, wares or merchandise having thereon any forged or counterfeit stamp or label, imitating, resembling or purporting to be the stamp or label of any mechanic or manufacturer, knowing the same to be forged or counterfeited, and resembling or purporting to be imitations of the stamps or labels of such mechanic or manufacturer, without disclosing the fact to the purchaser thereof, shall, upon conviction, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not exceeding one year, and by a fine, not less than fifty nor more than five hundred dollars, or by both such fine and imprisonment."

Nebraska.—The law of Nebraska, digested at p. 7, is contained in the criminal code under the head of forgery, and is included with records, deeds, wills, &c. Sections 137, 138 and 139 of the criminal code also provide (§ 137) that sugar, rice, tobacco, soap, starch, candles, cheese, or any goods or articles sold by weight packed in kegs, barrels, tierces, casks, boxes, hogsheads, or any case whatever, such kegs, &c., shall be marked with the weights both of the package and the contents. It also provides (§ 138) that "any brand, mark or stamp put upon any keg, barrel, box, cask, hogshead or case by the manufacturer indicating the article, its quality, quantity, or the manufacturer's name, or either of them, shall be considered the manufacturer's certified brand, stamp or mark," &c., "which shall be subject to no erasure or obliteration." Nor shall it be transferred for the purpose of refilling for the purpose of selling an inferior article.

Penalty (§ 139)—The party violating provisions of above sections "shall in all cases pay to the party aggrieved double in value of the difference between the actual quantity contained in such keg," &c., "and the net quantity or weight for which the same may have been sold;" and for the first offense be subject to a fine of \$20 to \$60, or imprisonment in county jail 30 to 60 days. Second and subsequent offenses—fine, \$50 to \$100, or imprisonment 30 to 90 days. (As amended, 1875.)

New Jersey.—March 11, 1881, "An act for the better protection of manufacturers and bottlers of, and dealers in mineral waters, beer, ale, porter and other beverages," was approved. It recites that manufacturers and bottlers may file in County Clerk's Office description of boxes or bottles and marks thereon, and may publish same for four weeks in newspapers of county. It is made unlawful to use, sell, buy, &c., any boxes or bottles marked or stamped and registered and published. Penalty for so doing not less than \$25 or more than \$50. It says:

"That the fact of any person or persons other than the rightful owner or owners thereof using such box or boxes, bottle or bottles, for the sale therein of any mineral water, beer, ale, porter or beverage, or any junk vender, or dealer in bottles having secreted in or upon his, her or their premises, or any other place or places, or having in his, her or their possession unlawfully any of such boxes or bottles, shall be *prima facie* proof of the unlawful use and purchase of such box or boxes, bottle or bottles, as aforesaid."

Owners, upon belief, may make complaint of the unlawful use, &c., of their boxes or bottles before any justice. Magistrate to issue process or search warrant to bring the property or person before him. Offender to enter into recognizance in \$100 to appear at such time as the justice shall appoint for a hearing, and in default of recognizance to be committed to jail to abide the hearing. If found guilty, the justice shall render judgment against the person arrested for an amount not less than \$25, or more than \$50, and costs of proceeding, and in default of payment shall issue execution against the offender and deliver bottles and boxes into the possession of the owner.

If no person is found by constable, the boxes and bottles may be seized and delivered to the owner after summary trial.

Parties may demand trial by jury. Appeals may be had to general quarter sessions.

New York.—The new penal code, passed July 26th, 1881, which by its terms will become a law on the first day of May 1882, contains the following sections in relation to trade-marks. Title XI.

"Section 364.—A person who, in a case where provision for the punishment of the offense is not otherwise specially made by statute, with intent to defraud;

1. Falsely makes or counterfeits a trade-mark; or,

2. Affixes to any article of merchandise, a false or counterfeit trade-mark, knowing the same to be false or counterfeit, or the genuine trade-mark of another, without the latter's consent; or,

3. Sells, or keeps or offers for sale, goods to which is affixed a false or counterfeit trade-mark, or an imitation of a trade-mark, or the genuine trade-mark of another, without the latter's consent; or,

4. Has in his possession a counterfeit trade-mark, knowing it to be counterfeit, or a die, plate, brand, or other thing for the purpose of falsely making or counterfeiting, or causing to be counterfeited, a trade-mark; is guilty of a misdemeanor."

"Sec. 365.—The term "article of merchandise," as used in this title, signifies any goods, wares, work of art, commodity, compound, mixture, or other preparation or thing which may be lawfully kept or offered for sale."

"Sec. 366. The word 'trade-mark,' as used in this title, includes any letter, word,

device, emblem, figure, seal, stamp, diagram, brand, wrapper, ticket, label, or other mark, lawfully adopted by any person, being a mechanic, manufacturer, merchant, druggist or tradesman, and usually affixed by him to an article of merchandise, to denote that the same is or has been imported, manufactured, produced, sold, compounded, bottled, packed or otherwise prepared for sale by him; and also a signature or mark, used or commonly placed by a painter, sculptor or other artist upon a painting, drawing, engraving, statue or other work of art, to indicate that the same was designed or executed by him."

"Sec. 367. A trade-mark is deemed to be affixed to an article of merchandise within the meaning of this title, when it is placed in any manner in or upon, either

1. The article itself; or

2. A box, bale, barrel, bottle, case, cask, or other package or vessel, or a cover, wrapper, stopper, brand, label or any other thing in, by or with which the goods are packed, inclosed or otherwise prepared for sale."

"Sec. 368. An imitation of a trade-mark within the meaning of this title is deemed to be a counterfeit trade mark, when it so far resembles a genuine trade-mark as to be likely to induce the belief that it is genuine."

"Sec. 369. Whenever a person engaged in manufacturing, bottling or selling in bottles, soda, mineral waters, porter, ale, cider or small beer, has filed and published in the manner authorized by law, a description of a name, mark or label, usually stamped by him on the bottles containing such beverage, every other person who, without the written consent of such manufacturer or dealer, refills with any beverage, whether genuine or otherwise, with intent to sell the same, any bottles stamped with such name, mark or label, and every person who sells, disposes of, purchases or traffics in such bottles, is liable to a penalty of 50 cents for every bottle so filled, sold, bought, disposed of or trafficked in, for the first offense, and \$5 for every bottle so filled, sold, bought, disposed of or trafficked in, for every subsequent offense."

"Sec. 370. A person who keeps any bottles such as are designated in the last section, without the written consent of the manufacturer (unless it appears that they were not kept with intent to refill), or use or sell them in violation of the last section, is liable to the penalty therein prescribed."

"Sec. 371. Whenever a manufacturer or dealer mentioned in Sec. 369, or his agent, makes oath before a magistrate that he has reason to believe, and does believe, that any of his bottles, stamped and registered as mentioned in that section, are unlawfully used by any person selling or manufacturing mineral water or other beverage, or that any junk dealer or vender of bottles has any of such bottles secreted in any place, the magistrate must thereupon issue a search

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is not more than \$50. It says:

warrant to discover and obtain the same, and may cause to be brought before him the person in whose possession the bottles are found, and inquire into the circumstances of his possession, and if the magistrate, on summary examination, finds that such person has been guilty of a violation of Sec. 369, he may impose the fine therein prescribed, and, if the same be not paid, may commit such person to prison for a term not exceeding 15 days."

Ohio.—A revision of the Statutes of Ohio was made and published in 1879. The synopsis at § 19 is substantially correct. April 9, 1880, an act was passed "To protect manufacturers, bottlers and dealers in ginger ale, seltzer water, soda water, mineral water and other beverages from the loss of their bottles and boxes." It provides that manufacturers of ginger ale, &c., may file with Secretary of State and County Clerk description of bottles used by them, and cause the same to be printed in a newspaper of the county six times a week for six weeks. It is made unlawful to use such bottles without consent of owners. A violation of this provision is made a misdemeanor, and the culprit shall be fined \$5 for each box and 50 cents for each bottle trafficked in, destroyed, &c., and double that sum for second offense.

It is provided that owner may apply to a justice, on affidavit that he has reason to believe and does believe that this act is being violated, for a search warrant, and upon search being made if any such bottles are found the officer shall arrest the persons named in the warrant and bring them before the justice for trial.

United States.—A new federal trade-mark statute was approved March 3, 1881, as follows:

AN ACT to authorize the registration of trade-marks and protect the same. Approved March 3, 1881.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That owners of trade-marks used in commerce with foreign nations, or with the Indian tribes, provided such owners shall be domiciled in the United States, or located in any foreign country or tribes which by treaty, convention, or law, affords similar privileges to citizens of the United States, may obtain registration of such trade-marks by complying with the following requirements:

1. By causing to be recorded in the Patent Office a statement specifying name, domicile, location and citizenship of the party applying; the class of merchandise and the particular description of goods comprised in such class to which the particular trade-mark has been appropriated; a description of the trade-mark itself, with fac-similes thereof, and a statement of the mode in which the same is applied and affixed to goods, and the length of time during which the trade-mark has been used.

2. By paying into the Treasury of the

United States the sum of \$25, and complying with such regulations as may be prescribed by the Commissioner of Patents.

Sec. 2. That the application prescribed in the foregoing section must, in order to create any right whatever in favor of the party filing it, be accompanied by a written declaration verified by the person, or by a member of a firm, or by an officer of a corporation applying, to the effect that such party has at the time a right to the use of the trade-mark sought to be registered, and that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that such trade-mark is used in commerce with foreign nations or Indian tribes, as above indicated; and that the description and fac-similes presented for registry truly represent the trade-mark sought to be registered.

Sec. 3. That the time of the receipt of any such application shall be noted and recorded. But no alleged trade-mark shall be registered unless the same appear to be lawfully used as such by the applicant in foreign commerce or commerce with the Indian tribes, as above mentioned, or is within the provision of a treaty, convention, or declaration with a foreign power; nor which is merely the name of the applicant; nor which is identical with a registered or known trade-mark owned by another and appropriate to the same class of merchandise, or which so nearly resembles some other person's lawful trade-mark as to be likely to cause confusion or mistake in the mind of the public, or to deceive purchasers. In an application for registration the Commissioner of Patents shall decide the presumptive lawfulness of claim to the alleged trade-mark; and in any dispute between an applicant and a previous registrant, or between applicants, he shall follow, so far as the same may be applicable, the practice of courts of equity of the United States in analogous cases.

Sec. 4. That certificates of registry of trade-marks shall be issued in the name of the United States of America, under the seal of the Department of the Interior, and shall be signed by the Commissioner of Patents, and a record thereof, together with printed copies of the specifications, shall be kept in books for that purpose. Copies of trade-marks and of statements and declarations filed therewith, and certificates of registry so signed and sealed, shall be evidence in any suit in which such trade-marks shall be brought in controversy.

Sec. 5. That a certificate of registry shall remain in force for thirty years from its date; except in cases where the trade-mark is claimed for and applied to articles not manufactured in this country, and in which it receives protection under the laws of a foreign country for a shorter period, in which case it shall cease to have any force in this country, by virtue of this act, at the

time that such trade-mark ceases to be exclusive property elsewhere. At any time during the six months prior to the expiration of the term of thirty years, such registration may be renewed on the same terms, and for a like period.

Sec. 6. That applicants for registration under this act shall be credited for any fee, or part of a fee, heretofore paid into the Treasury of the United States with intent to procure protection for the same trade-mark.

Sec. 7. That registration of a trade-mark shall be *prima facie* evidence of ownership. Any person who shall reproduce, counterfeit, copy or colorably imitate any trade-mark registered under this act, and affix the same to merchandise of substantially the same descriptive properties as those described in the registration, shall be liable to an action on the case for damages for the wrongful use of said trade-mark, at the suit of the owner thereof; and the party aggrieved shall also have his remedy according to the course of equity, to enjoin the wrongful use of such trade-mark used in foreign commerce or commerce with Indian tribes, as aforesaid, and to recover compensation therefor in any court having jurisdiction over the person guilty of such wrongful act, and courts of the United States shall have original and appellate jurisdiction in such cases, without regard to the amount in controversy.

Sec. 8. That no action or suit shall be maintained under the provisions of this act in any case when the trade-mark is used in any unlawful business, or upon any article injurious in itself, or which mark has been used with the design of deceiving the public in the purchase of merchandise, or under any certificate of registry fraudulently obtained.

Sec. 9. That any person who shall procure the registry of a trade-mark, or of himself as the owner of a trade-mark, or an entry respecting a trade-mark, in the office of the Commissioner of Patents, by a false or fraudulent representation or declaration, orally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence thereof to the in-

jured party, to be recovered in an action on this case.

Sec. 10. That nothing in this act shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any party aggrieved by any wrongful use of any trade-mark might have had if the provisions of this act had not been passed.

Sec. 11. That nothing in this act shall be construed as unfavorably affecting a claim to a trade-mark after the term of registration shall have expired; nor to give cognizance to any court of the United States in an action or suit between citizens of the same State, unless the trade mark in controversy is used on goods intended to be transported to a foreign country, or in lawful commercial intercourse with an Indian tribe.

Sec. 12. That the Commissioner of Patents is authorized to make rules and regulations and prescribe forms for the transfer of the right to use trade-marks and for recording such transfers in his office.

Sec. 13. That citizens and residents of this country wishing the protection of trade-marks in any foreign country, the laws of which require registration here as a condition precedent to getting such protection there, may register their trade-marks for that purpose as is above allowed to foreigners, and have certificate thereof from the Patent Office.

Virginia.—By an act approved March 9, 1880, it is provided that manufacturers and vendors of beer, mineral water and other beverages in bottles, may file with the clerk of the Corporation Court of the city of Alexandria a description of such bottles and marks, and cause the same to be published for two weeks in a daily or weekly newspaper published in said city. Clerk to copy and index files. Fee, \$1.

It is made unlawful for any person, without the permission of the owner, to fill with beer, mineral water or other beverage any such bottles so marked and not bought by him of such owner. Penalty, 50 cents for each bottle so filled, &c., for first offense, and \$5 for subsequent offense, to be recovered as other fines are recovered.

CHAPTER IV.

Iowa.—*Shaver vs. Shaver* (54 Iowa, 208, 1880). Plaintiffs and defendants were for a period partners in the manufacture of wagons at Eldora. On dissolution, plaintiff acquired all the property of the firm. He continued in business, and in 1874 adopted as a trade-mark the words, "Shaver Wagon, Eldora," which he painted on all wagons made and sold by him. The defendants, more than two years after, commenced the manufacture of wagons, and painted thereon the identical words used as the trade-mark of the plaintiff. They changed somewhat the form of inscribing the words, and painted their own initials near the trade-mark. Defendants were enjoined. It was held that courts of common law and equity will, in the absence of any statute upon the subject, protect the proprietor of a trade-mark in its exclusive use; that the exclusive right to a trade-mark is acquired by its use, which the law does not require shall be continued for any prescribed length of time; that the use by another of a trade-mark used to indicate the quality of an article sold, though placed on articles of equally good quality, and without any intention to defraud either the proprietor or the public, will be restrained by a Court of Chancery, and this although it is not copied with the fullest accuracy, if the copy is calculated to deceive and may be taken for the original.

Massachusetts.—*Magee Furnace Co. vs. Le Barron* (127 Mass., 115, 1879). The plaintiff—a manufacturer of stoves and ranges (not patented)—put upon each of them a name and number as a trade-mark, and also placed upon such of their separate parts respectively as were liable to be worn out rapidly, the initial letter, and the number of the stove to which it belonged. Each of these parts was well known, had acquired a high reputation, and was sold under the name of the letter and number placed upon it. The defendant procured some of these parts, made patterns from them and cast from the patterns parts of stoves and ranges, inferior in quality to the plaintiff's, but having all their peculiarities of ornamentation, lettering and numbering, and advertised these parts for sale as manufactured by him-

self, describing the parts in his circulars by the names used to designate them by the plaintiff. The complaint was dismissed. The court say: "As he publishes to the world the fact that he is the manufacturer of what he sells, and does not attach to his goods any label or mark apt to deceive subsequent purchasers from his vendees as to the origin of the goods, he cannot be regarded as infringing on the rights of the plaintiff." (The initial letter and number by themselves do not appear to have been treated as a trade-mark).

Connell vs. Reed (128 Mass., 477, 1880). If a person can have a trade-mark in the words "East Indian" in connection with the word "remedy" upon bottles of medicine (which is at least doubtful), yet, if he has falsely adopted and used these words to denote and to indicate to the public that the medicines were used in the East Indies, and that the formula for them was obtained there, he cannot maintain a bill in equity to restrain an infringement of such trade-mark.

Lawrence Manufacturing Company vs. Lowell Hosiery Mills (129 Mass., 325, 1880). It was decided that numerals used on goods to denote their origin and not their quality, are a valid trade-mark; and a person who uses them for the purpose of imitating the trade mark, and whose use is calculated to deceive, and does deceive, persons buying his goods, will be enjoined, even though he use the numerals in combination with other devices which he has a right to use, and which are similar to devices in connection with which the plaintiff uses them.

Maryland.—*Robertson, appellant, vs. Berry & Co., respondents* (50 Md., 591, 1878). This case was treated as belonging to the domain of trade marks. The plaintiffs (respondents here) published an almanac entitled "J. Gruber's Hagerstown Town and Country Almanac." The defendant (appellant) also published an almanac in similar style and general appearance, which he entitled "T. G. Robertson's Hagerstown Almanac." Defendant had been enjoined in the court below. The order was affirmed. The Court said: "It is immaterial to the decision of this case, in the view we have taken of it, whether the devices, marks,

pictures and words, in the manner in which they are collocated and combined upon the two outside pages of the complainants' almanac, be regarded as a trade-mark proper, or as wrappers or labels, or as the title, or particular external marks which an author or publisher affixes to his work to distinguish it, because the grounds of relief in equity are substantially the same in either case. A publisher or author has either in the title of his work, or in the application of his name to the work, or in the particular marks which designate it, a species of property similar to that which a trader has in his trade-mark, and may, like a trader, claim the protection of a court of equity against such use or imitation of the name, marks or designations, as is likely, in the opinion of the court, to be a cause of damage to him in respect of his property. This doctrine, in cases where the facts are sufficient to sustain it, has been held applicable to such periodical publications as newspapers, magazines and almanacs."

Misouri.—When one named Oakes sold the exclusive right to manufacture and sell "Oakes' candies," he was restrained from manufacturing and selling candies made by him as "Oakes' candies."
Probasco vs. Bonyon, 1 Mo., App. Rep. 241, 1876.

Clark vs. German Mutual Fire Insurance Co. (7 Mo., App. 77, 1879). This is not a trade-mark case, properly speaking. It is given, however, as opposed to the case of the *Galaxy Publishing Co.*, where an injunction was refused, because the name was misleading in Pennsylvania. One trading under the name "National Slipper Company" assumes that designation as his trade name, and that he insures in that name is not, in the absence of deceit, a breach of warranty that the interest of the assured in the policy shall be truly stated. The name "National Slipper Company" does not necessarily imply a corporation, nor an association of persons; it may be the trade name of one man.

New York.—*Who May Acquire a Trade-Mark*.—The right to protection is not exclusively in the manufacturer. The person for whom the goods are manufactured (*Amoekeag Mfg. Co. vs. Spear*, 2 Sandf., 599), and the vendor who sells and who may have no direct relation to the manufacturer, has such right. (*Partridge vs. Menck*, 2 Barb., ch. 103; *Taylor vs. Carpenter*, 2 Sandf., ch. 603); *Godillot vs. Hazard* (Spec. Term) 49 How. Pr., 5; (affirmed General Term) 44 N. Y. Sup. Court, 427; (affirmed Court of Appeals) 81 N. Y., 263, 1880.

What may Become a Trade-Mark.—"Grenade Syrup." It was held, on a motion to dissolve injunction during suit, that this was a good trade-mark on syrup manufactured from the juice of the pomegranate, although "Grenade" was a French word meaning pomegranate, and that Grenade syrup was sold in France under that name.

Rillet vs. Carlier, 11 Abb. Pr. (N. S.) 186, 1870. This case was afterward tried and the complaint dismissed.

"Established 1780," which has been conspicuously displayed and used upon the signs, labels, bill heads, &c., of a drug house for a great number of years, is a trade-mark, and will be protected by a court of equity.

Hazard vs. Caswell, 57 How. Pr. 1, 1878. The numerals 2, 101 and 32.
India Rubber Co. vs. Rubber Comb Co., 45 N. Y. Sup. Ct. Rp. 258, 1879.

An entire label made up of parts which are common property. *Godillot vs. Harris*, 91 N. Y. 263, 1880.

"Royal," as applied to flavoring extracts. *Royal Baking Powder Co. vs. Sherrill*, 59 How. Pr. 17, 1880.

"National System of Penmanship," as applied to copy books. *Potter vs. McPherson*, 21 Hun., 559, 1880.

"Pride," as applied to cigars. *Heir vs. Abrahams*, 82 N. Y., 519, 1880.

What Cannot Become a Trade-Mark.—"Cherry Pectoral" is not a good trade-mark. The word 'cherry' describes one of the ingredients of the compound, and the word 'pectoral' describes the use and application of the medicine." *Ayer vs. Rushton*, New York Common Pleas Court (7 Daly, 9, 1877).

"Rye and Rook" form a description of the articles of which the liquid to which the plaintiff applied the words is compounded, and therefore it is not a trade-mark. *Van Bell vs. Prescott*, 46 N. Y. Sup. Ct. Rep., 542; affirmed, 82 N. Y., 630, 1880.

When an Injunction will be Granted.—Plaintiff had for some years manufactured and vendend an article called "Gouraud's Oriental Cream." Defendants, sons of plaintiff, but having a different surname, commenced to manufacture and vend an article of like nature with plaintiffs, which they labeled "Dr. T. F. Gouraud's Son's Crème Orientale." Defendants were enjoined. *Gouraud vs. Trust*, 6 N. Y. Supreme Court, Rp. 133, 1875.

When one partner retires from a firm and the other members of the firm, with the consent of the retiring member, continue the business under the old firm name, they will be held to have succeeded to the business of the old firm. As the right to use the words "Established 1780," when the partnership between the plaintiffs and the defendant ended, belonged to the business, it passed to the successors of the firm. The retiring partner will be enjoined from further use of such trade-mark, because conveying an untruth injurious to the plaintiffs and the public. *Hazard vs. Caswell*, 57 How. Pr., 1, 1878; approved in a subsequent suit in the Superior Court, 46 N. Y., Superior Ct. Rep., 559.

Plaintiffs published a series of copying books on the covers of which was printed, "Fayson, Dunton & Scribner's National System of Penmanship," and the book has

been called and known as the "National System of Penmanship." The defendants published a book in substantially the same form bearing on the cover: "Independent National System of Penmanship." They were enjoined from the use of the words, "National System of Penmanship." *Potter vs. McPherson*, 21 Hun., 559.

A person has a right to use his own name as a trade-mark to designate an article which he produces and sells, although another person of the same name has previously produced and sold the like article with the same designation, and has made the use of the designation valuable. But while a person has a legal right to change his name, if, however, such change and use is made for the purpose of leading the public to believe that the articles so designated are those of the prior user of the designation, and thus deprive such prior user of his gains, the court will restrain such dishonest use. *England vs. The New York Publishing Co.*, 8 Daly, Com. Pl. Rep., 375, 1878.

When plaintiff's trade-mark "Pride" had been used by defendants on their goods, it was held that it was no defense that defendant's labels were different in color, picture and words from the plaintiff's.

Heir vs. Abrabams, 82 N. Y., 519, 1880.

When an Injunction will be Refused.—A man's right to the use of his own name as a component part of a trade-mark can only be interfered with when it is used fraudulently with intent to deceive the public, or to pirate upon the business of another. *Helmhold vs. Helmbold Mfg. Co.*, 53 How. Pr., 453, 1877.

The words "tempest" and "hurricane" are not so similar as to warrant the conclusion that the public is liable to be misled into believing that lanterns to which these words are respectively applied are of the same manufacture. *Hurricane Patent Lantern Co. vs. Miller*, 56 How. Pr., 234.

Title.—When a man uses a common English word in connection with his own name, the latter simply identifies his goods and it is the only distinctive feature of his trade-mark (e. g., *Helmhold's Buchu*). In such a case the right to use his own name is a personal right, and does not pass to assignee by an adjudication in bankruptcy. *Helmhold vs. Helmbold Mfg. Co.*, 53 How. Pr. 453, 1877.

One of a firm of two partners who purchases on its dissolution the assets and good will, is entitled to continue the business under the old firm name under the Revised Statutes of the State, if the firm has done business the period required by the statute. *Adams vs. Adams*, 7 Abbot N. S., 292, 1879.

The proprietary right which a man has acquired in a trade-mark or in the use of his name, or in any name general or otherwise which designates a particular business established by him, is transmissible by assignment or bequest, and will pass under a general assignment for the benefit of

creditors, which, by its terms, transfers all the insolvent's property for the payment of his debts, although it may not be specified in the schedule annexed to the assignment. *Hegeman vs. Hegeman*, 8 Daly, N. Y. Common Pleas 1, 1880.

The parties to suit were formerly partners in the business of manufacturing glass chimneys for lamps, and they adopted the word "Silex" as a trade-mark. The firm was dissolved in June, 1877; the defendants sold to the plaintiff their interest in the real estate used for the business and in certain specified personal property connected with it. Nothing was said at the time about the good will of the business or the trade-mark, and there was no reference to it in the bill of sale. Thereafter the plaintiff continued the business at the same place, using the same trade-mark. In October, 1877, defendants commenced and thereafter carried on the same business in the same city, using the same trade-mark. In an action to restrain such use, held, that assuming the word "Silex" could be used as a trade-mark, and that the firm while it existed had the exclusive right so to use it, such exclusive right was not acquired by plaintiff, and the action was not maintainable; that after the dissolution either of the late partners could use it until in some way he had divested himself of that right; that as the trade-mark was not in its nature local, it did not pass as incident to what was sold. *Huwer vs. Dannenhoffer*, 82 N. Y., 499, 1880.

Ohio.—The name "Domestic," applied to bread, may become a trade-mark whose infringement will be enjoined. *Smith vs. Cernan*, 5 Cinn. Law Bulletin, 145; Super. Court, Cinn., 1880.

Pennsylvania.—*Morse vs. Worrell* (10 Phil. Rep., 168, 1874). This was a motion for a preliminary or special injunction during pendency of the trial. The plaintiff used as a trade-mark the words "The Rising Sun." The defendant put up goods on which he affixed the words "Rising Moon." The court said "the defendant's label, in my judgment, lies very close upon the border. We will determine on which side of the line it is after the plaintiffs shall have established their right at law or upon final hearing." The case came on to be heard in 1875, and a perpetual injunction was granted against the defendant. It was also decreed that all copies of the counterfeit trade-mark, and all plates for producing the same, should be given up to be destroyed, and damages and costs.

Wisconsin.—*Leidersdorf vs. Flint* (50 Wis., 401, 1880). This was in an action to restrain a defendant from using a trade-mark alleged to have been devised by him in imitation of that of plaintiff, and to be, in fact, deceptive to purchasers, &c. *Fac similes* of the two trade-marks were annexed to the complaint. It was held that on demurrer it will not be decided; that the one is not sufficient-

terms, transfers all for the payment of not be specified in the assignment. 8 Daly, N. Y.

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ty similar to the other to mislead and to constitute an infringement, unless the dissimilarity is so marked as to leave no doubt in the mind of the court; but the question of infringement will be reserved until the coming in of the proofs.

United States—Federal Courts.—What may Become a Trade-Mark.—The word "Yankee," applied to a soap. Williams vs. Adams, 7 Reporter, 613.

The word "Paratola," applied to needles. Roberts vs. Sheldon, 18 O. G., 1277, N. D. of Ill., 1879.

What Cannot Become a Trade-Mark.—A system of lines marked or stamped upon pipes of tobacco.

Drusman & Drummond Tobacco Co. vs. Ruffner, 15 O. G., 559; N. D. of Ill., 1878.

Letters and figures affixed to merchandise by a manufacturer, for the purpose of denoting its quality only, cannot be appropriated by him to his exclusive use as a trade mark. Manufacturing Co. vs. Trainer, 101 U. S. Sup. Ct. Rep. 51, 1879. (See *Amo-keag Mfg. Co. vs. Spear*, 2 Sandf., 599, 1849.)

When an Injunction will be Granted.—The plaintiff's firm had long been accustomed to pack a compound called "Hamburg Tea" in long cylindrical packages with pink wrappers, and to have a crimson paper of directions, and yellow ones of warning, tied in with each package, and their firm name printed across a white label within a circle pasted across the ends of the string, and the same embossed with the words "Hamburg, Hopfenrock, 6," on another white label pasted on the package, so that the package, by its form and colors, would be at once known by its general appearance, without taking time to read anything on it; and their wares had come to be well known as theirs by the appearance of the packages. B. openly used such style of package and firm name to put up Hamburg tea. He then discontinued the use of the firm name, and of the words "Hopfensack 6," but continued to use the exact form and style of package, substituting his own name merely for that of the firm on the labels: Held, that, with the proper parties before the court, B. ought to be restrained by injunction from such use of the symbols (see same case, motion for injunction, 13 Blatch., 234, 1876). *Frese vs. Bachof*, 14 Blatch., 432; S. D. of New York, 1878.

A person has no right to mark his goods with any words or terms indicating that they are manufactured under a patent which he does not own and has no right. Washburn & Moen Mfg. Co. vs. Haish, 18 O. G., 465; N. D. of Illinois, 1879.

The general rule is to enjoin when the imitation is so close that by the form, marks, contents, words, or their special arrangement, or by the general appearance of the infringing device, purchasers exercising ordinary caution are likely to be misled into buying the article bearing it for the genuine one. It is not necessary, to entitle

a party to an injunction, that a particular trade-mark has been infringed. To satisfy the court that the respondent intended to represent to the public that his goods were those of the complainant, is sufficient. *Mellan vs. Fleming*, 95 U. S. Supreme Court, 245. *Sawyer vs. Horn*, 1 Federal Rep.; M. L., 1880.

When an Injunction will be Refused.—E. & T. Fairbanks & Co., manufacturers of scales, alleged that J. made scales, by using, to make the iron castings thereof, the corresponding parts of a scale made by them, to form the molds for those castings, and that the general shape and arrangement, and color and external appearance of such scales were imitated from the Fairbanks scale so nearly that only an expert in scales could distinguish the difference between them. The words "Fairbanks patent" were cast on the scales made by both parties. All the patents which Fairbanks & Co. have had had expired. Fairbanks & Co. applied for an injunction to restrain J. from using the words "Fairbanks patent" on his scales, and from making or selling an imitation of Fairbanks & Co.'s scales: Held, that the application must be denied; that the words "Fairbanks patent" were not a trade-mark; and that J. did not represent his scales to be of the make of Fairbanks & Co. *Fairbanks vs. Jacobus*, 14 Blatch., 337; S. D. of N. Y., 1877.

Proof that the trade-mark is deceptively used by the complainant, and the public is defrauded by his sales, defeats his claim to an injunction. *Manhattan Medicine Co. vs. Wood*, 14 O. G., 519; M. L., 1878. *Sesbury vs. Grosvenor*, 14 Blatch., 222; S. D. of New York.

G. having a patent for an improvement in stoves, acquiesced during the entire duration of the patent in the manufacture and sale by M. of stoves containing said improvement, with the name "Charter Oak" upon them. After the patent expired M. continued to make and sell stoves containing said improvement, and to put the name "Charter Oak" upon them, but did not represent them as made by G. G. claimed the name "Charter Oak" as a trade-mark applied to stoves containing said improvement, and brought a suit to restrain the use of it by M. on such stoves. Held, that M. ought not to be so restrained. *Filley vs. Child*, 16 Blatch., 376; S. D. of New York, 1879.

An injunction will not be granted to restrain a manufacturer from using a label bearing no resemblance to the complainant's, except that certain letters, which alone convey no meaning, are inserted in the center of each, the dissimilarity of the labels being such that no one will be misled as to the true origin or ownership of the merchandise. *Manufacturing Co. vs. Trainer*, 101; U. S., 51, 1879.

Title.—There cannot be an ownership of the same trade-mark at different places by

different persons. Licensees under a proprietor of a trade-mark may lose their rights by disregarding the territorial limits prescribed by the license for their sales; or by relinquishing the use of the mark in their business and adopting another of their own designing. *Manhattan Medicine Co. vs. Wood*, 2 J. G. 519; Me., 1878.

A right to a trade-mark may be lost by non-user for eight years. *Blackwell vs. Dibrell*, 3 Hughes, 151; Va., 1878.

If owners of trade-marks have been reasonably diligent in prosecuting infringers, abandonment is not to be inferred from the infringements. *Williams vs. Adams*, 7 Reporter, 613; Ill., 1879.

A trade-mark may be owned by one mem-

ber of a firm by whom goods, on which it is used, are manufactured. A trade-mark may be sold with the establishment when the goods known by it are manufactured. *Kidd vs. Johnson*, 100 U. S. Supreme Court, 617, 1879.

The right of the proprietor of a trade-mark to the exclusive use of the same, and to protect and enforce his exclusive right by proceedings in chancery, exists by virtue of the common law, and independently of the statute. The decision of the Supreme Court, therefore, declaring the trade-mark statute of 1870 unconstitutional, does not affect suits in the federal courts under the common law. *U. S. vs. Roche*, 1 McCrary, 385; Col., 1879.

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EXTRACTS

From Treaties, Conventions and Declarations, concerning Trade Marks and Property.

The treaty with the Argentine Confederation, concluded July 27th, 1853, contains the following :

“ARTICLE XIII. The citizens of the United States and the citizens of the Argentine Confederation, respectively, residing in any of the territories of the other party, shall enjoy in their houses, persons and properties, the full protection of the Government.”

The convention with Austria, concluded November 25th, 1871, contains the following :

“ARTICLE I. Every reproduction of trade marks which, in the countries or territories of the one of the contracting parties, are affixed to certain merchandise to prove its origin and quality, is forbidden in the countries or territories of the other of the contracting parties, and shall give to the injured party ground for such action or proceedings to prevent such reproduction, and to recover damages for the same, as may be authorized by the laws of the country in which the counterfeit is proven, just as if the plaintiff were a citizen of that country.

"The exclusive right to use a trademark for the benefit of citizens of the United States in the Austro-Hungarian Empire, or of the citizens of the Austro-Hungarian Monarchy in the territory of the United States, cannot exist for a longer period than that fixed by the law of the country or its own citizens. If the trademark has become public property in the country of its origin, it shall be equally free to all in the countries or territories of the other of the two contracting parties."

"ARTICLE II. If the owners of trademarks, residing in the countries or territories of the one of the contracting parties, wish to secure their rights in the countries or territories of the other of the contracting parties, they must deposit duplicate copies of those marks in the Patent Office at Washington, and in the Chambers of Commerce and Trade, in Vienna and Pesth."

The treaty of commerce with Belgium, concluded December 20th, 1868, contains this article:

"The higher contracting parties, desiring to secure complete and efficient protection to the manufacturing industry of their respective citizens, agree that any counterfeiting in one of the two countries of the trademarks affixed in the other on merchandise to show its origin and quality, shall be strictly prohibited, and shall give ground for an action of damages in favor of the injured party, to be prosecuted in the Courts of the Country in which the counterfeit shall be proven."

"The trademarks in which the citizens of one of the two countries may wish to secure the right of property in the other, must be lodged, to wit: the marks of citizens of the United States at Brussels, in the office of the Clerk of the Tribunal of Commerce; and the marks of Belgian citizens in the Patent Office at Washington. It is understood that if a trademark has become public property in the country of its origin it shall be equally free to all in the other country."

The agreement with Brazil for the protection of the marks of manufacture and trade, concluded Sept. 24th, 1878, says:

"The citizens or subjects of the two High Contracting Parties, shall have in the dominions and possessions of the other, the same rights as belong to native citizens or subjects, in everything relating to property in marks of manufacture and trade."

"It is understood that any person who desires to obtain the aforesaid protection must fulfil the formalities required by the laws of the respective countries."

The convention with France, concluded April 16th, 1869, says:

"ARTICLE I. Every reproduction in one of the two countries of trade marks affixed in the other to certain merchandise to prove its origin and quality is forbidden, and shall give ground for an action for damages in favor of the injured party, to be prosecuted in the courts of the country in which

the counterfeit shall be proven, just as if the plaintiff were a subject or citizen of that country."

"The exclusive right to use a trade mark for the benefit of citizens of the United States in France, or of French subjects in the territory of the United States, cannot exist for a longer period than that fixed by the law of the country for its own citizens."

"If the trade mark has become public property in the country of its origin, it shall be equally free to all in the other country.

"ARTICLE II. If the owners of trade marks, residing in either of the two countries, wish to secure their rights in the other country, they must deposit duplicate copies of those marks in the Patent Office at Washington, and in the clerk's office of the Tribunal of Commerce of the Seine, at Paris."

The convention with the German Empire concluded Dec. 11, 1871, contains the following :

"ARTICLE XVII. With regard to the marks of labels of goods or of their packages, and also with regard to patterns and marks of manufacture and trade, the citizens of Germany shall enjoy in the United States of America, and American citizens shall enjoy in Germany, the same protection as native citizens."

The declaration between Great Britain and the United States, dated October 24, 1877, says :

"The subjects or citizens of each of the contracting par-

ties shall have, in the dominions and possessions of the other, the same rights as belong to native subjects or citizens, or as are now granted or may hereafter be granted to the subjects and citizens of the most favored nation, in everything relating to property in trade-marks and trade labels."

"It is understood that any person who desires to obtain the aforesaid protection must fulfil the formalities required by the laws of the respective countries."

The treaty with Russia concluded January 27, 1868, says:

"The high contracting parties, desiring to secure complete and efficient protection to the manufacturing industry of their respective citizens and subjects, agree that any counterfeiting in one of the two countries of the trade marks affixed in the other on merchandise, to show its origin and quality, shall be strictly prohibited and repressed, and shall give ground for an action of damages in favor of the injured party, to be prosecuted in the courts of the country in which the counterfeit shall be proven."

"The trade marks in which the citizens or subjects of one of the two countries may wish to secure the right of property in the other, must be lodged exclusively, to wit, the marks of citizens of the United States in the Department of Manufactures and Inland Commerce at St. Petersburg, and the marks of Russian subjects at the Patent Office in Washington."

Trade Mark Laws of Countries with which
Treaties, &c. have been made.

FRANCE. •

LAW OF JUNE 23, 1857, ON TRADE MARKS.

Title I. Right of Property in Marks.

ARTICLE I. The mark of manufacture or of commerce is optional. However, decrees rendered in the form of rules of public administration may always make it, in particular cases, obligatory for the products which they specify. Are considered as marks of manufacture and of commerce; names under a distinctive form, "titles," emblems, imprints, stamps, seals, vignettes, reliefs, letters, numerals, wrappers and every other sign serving to distinguish the products of a manufactory or the objects of trade.

ARTICLE II. No one can claim exclusive ownership in a trade mark unless he has deposited two copies of the trade mark at the Registry of the Tribunal of Commerce of his domicile.

ARTICLE III. The deposit has effect for only fifteen years. The ownership of the mark can always be preserved for a new term of fifteen years by means of a new deposit.

ARTICLE IV. (Fees.)

Title II. Foreigners.

ARTICLE V. Foreigners who possess in France establishments of industry or or commerce enjoy, for the products of their establishments, the benefit of the present law, on fulfilling the formalities that it prescribes.

ARTICLE VI. Foreigners and French citizens whose establishments are situated outside of France have also the benefit of this law for the product of their establishments, if, in the countries where they are situated, treaties have established reciprocity for French marks. In this case the deposit of foreign marks is made at the Registry of the Tribunal of Commerce of the department of the Seine.

Title III. Penalties.

ARTICLE VII. Are punished by a fine, of from fifty francs to three thousand francs, and by an imprisonment of from three months to three years, or by one of these punishments:

1st. Those who have counterfeited a mark, or used a counterfeit mark.

2nd. Those who have fraudulently placed on their products, or the objects of their commerce, a mark belonging to another.

3rd. Those who have knowingly sold, or placed on sale, one or more products invested with a counterfeit mark or one fraudulently affixed.

ARTICLE VIII. Are punished by a fine, of from fifty francs to two thousand francs, and by an imprisonment, of from one month to one year, or by one of these penalties:

1st. Those who, without counterfeiting a mark, have made a fraudulent imitation of it proper to deceive the buyer, or have made use of a mark fraudulently imitated.

2nd. Those who have made use of a mark, bearing indications of the kind to deceive the purchaser as to the nature of the product.

3rd. Those who have knowingly sold, or placed on sale, one or more products invested with a mark fraudulently imitated, or bearing indications of a kind to deceive the buyer as to the nature of the product.

ARTICLE IX. Are punished by a fine, of from fifty francs to one thousand francs, and by an imprisonment of from fifteen days to six months, or by one of these penalties:

1st. Those who have not fixed upon their products a mark declared obligatory.

2nd. Those who have sold, or placed on sale, one or more products, not bearing the mark declared obligatory for that kind of products.

3rd. Those who have contravened the provisions of the decrees rendered in execution of article first of the present law.

ARTICLE X. The penalties established by the present law cannot be cumulated.

The greatest penalty is alone pronounced for all the acts anterior to the first process.

ARTICLE XI. (Penalties may be doubled in case of repetition of offense.)

ARTICLE XII. Article 463 of the Penal Code may be applied to misdemeanors under the present law.

ARTICLE XIII. (Offenders may be deprived of their rights to participate in certain elections, for a term of less than ten years.)

The court may order the posting of the judgment in places that it determines, and its insertion in full or by extracts in the newspapers that it designates; the whole at the expense of the condemned.

ARTICLE XIV. The confiscation of the products, the mark of which shall be found to be contrary to the provisions of articles 7 and 8, even in case of acquittal, can be ordered by the court, as well as the instruments and utensils which specially served for the commission of the wrong. The court may order that the confiscated products be delivered to the proprietor of the mark counterfeited or fraudulently affixed, or imitated, independently of ampler damages, if there be occasion therefor. It prescribes, in every case, the destruction of the mark found to be contrary to the provisions of articles 7 and 8.

ARTICLE XV. (Imposition of obligatory marks must always be decreed. The court may decree the confiscation of the products in case of condemnation for same offense within five years.)

Title IV. Jurisdiction.

ARTICLE XVI. Civil actions relative to marks are brought before the civil tribunals and judged as summary matters.

In case of an action brought criminally, if the defendant raises for his defense questions relative to the ownership of the mark, the tribunal of *Police Correctionnelle* passes judgment on the question.

ARTICLES XVII and XVIII. (Regulate proceedings before the courts.)

Title V. General Provisions.

ARTICLE XIX. (Provides that all foreign products bearing the mark or name of a manufacturer resident in France, or the name, or the place of a French factory, shall be excluded from France, or seized.)

ARTICLE XX. All the regulations of this law are applicable to wines, eau-de-vie, and other drinks, to animals, grains, flour, and generally to all agricultural products.

ARTICLES XXI, XXII, and XXIII. (Provide for deposit of trademarks; that law shall take effect in six months; for rules of deposit and publication; and that this law shall not affect previous deposits.)

GREAT BRITAIN.

THE ENGLISH TRADE MARKS REGISTRATION
ACT, 1875.

38 & 39 VICT. c. 91.

An Act to establish a Register of Trade Marks.

[13th August, 1875.]

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

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

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

3. The registration of a person as first proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of such trade mark, and shall, after the expiration of five years from the date of such registration, be conclusive evidence of his right to the exclusive use of such trade mark, subject to the provisions of this Act as to its connection with the good will of a business.

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

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

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

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

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

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

6. The registrar shall not, without the special leave of the Court, to be given in the prescribed manner, register in respect of the same goods or classes of goods a trade mark identical with one which is already registered with respect to such goods or classes of goods, and the registrar shall not register with respect to the same goods or classes of goods a trade mark so nearly resembling a trade mark already on the

register with respect to such goods or classes of goods as to be calculated to deceive.

It shall not be lawful to register as part of or in combination with a trade mark any words the exclusive use of which would not, by reason of their being calculated to deceive or otherwise, be deemed entitled to protection in a Court of Equity, or any scandalous designs.

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

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

8. The certificate of the registrar as to any entry, matter or thing which he is authorized by this Act, or any general rules made thereunder, to make or do, shall be evidence of such entry having been made, and of the contents thereof, and of such matters and things having been done or left undone.

9. (Provisions as to Cutlers' Company and Sheffield corporate marks.)

10. For the purposes of this Act:

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

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

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

A distinctive device, mark, heading, label, or ticket ; and there may be added to any one or more of the said particulars any letters, words, or figures, or combination of letters, words, or figures ; also

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

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

“ Court ” means any of her Majesty’s superior courts of law or equity at Westminster, or any court to which the jurisdiction of such courts may be transferred, or any one or more of such courts which may be declared to be the court for the purposes of this Act by such general rules as aforesaid ; but the provisions of this Act conferring a special jurisdiction on the court as above defined shall not, excepting so far as such jurisdiction extends, affect the jurisdiction of any court in Scotland or Ireland in causes, actions, suits, or proceedings relating to trade marks ; and if the register requires to be rectified in consequence of any proceedings in any such court in Scotland or Ireland, due notice of such requirements shall be given to the registrar, and he shall rectify the register accordingly.

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

* * * * *

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

From and after the first day of July, one thousand eight hundred and seventy-seven, a person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of any trade mark as defined by the principal Act until and unless such trade mark is registered in pursuance of that Act, or until and unless, with respect to any device, mark, name, combination of words, or other matter or thing in use as a trade mark before the passing of the principal Act, registration thereof as a trade mark under the principal Act shall have been refused as hereinafter is mentioned.

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

GERMAN EMPIRE.

Trade Mark Law of the 30th November, 1874.

We, William, by the Grace of God, German Emperor, King of Prussia, &c., decree, in the name of the German Empire, and pursuant to resolutions passed by the Bundesrath and the Reichstag, as follows :

SEC. 1. Tradesmen whose firms have been entered in the Handelsregister, may announce to the competent authorities, for registration in the Handelsregister of the place in which such firms have their principal depot, any marks intended to be placed either on goods, or on the packages in which they are contained, for the purpose of distinguishing such goods from those of other traders.

SEC. 2. The announcement must be accompanied by an accurate fac-simile of the trade mark, (Sec. 1) together with a specification of the description of goods to which it is intended to be applied, and it must also bear the signature of the firm.

SEC. 3. The registration of those marks which are protected by law, and of those which have been in general and current use as marks of the goods of a certain trader up to the beginning of the year 1875, cannot be refused. Registration, however, is to be refused to such marks as consist exclu-

sively of figures, letters, or words, or which contain a public escutcheon or any device tending to cause scandal or offence.

SEC. 4. The registration takes place under the name of the firm making the announcement. The date of the announcement must also be noted. In the event of a trade mark being sent more than once for registration, owing to a change in the domicile of the firm, the date of the first announcement must be given.

SEC. 5. On application of the head of the firm, a trade mark already registered may be cancelled. The registration may be officially cancelled under the following circumstances: (1) If the name of the firm has been struck out of the Handelsregister; (2) If the name has been changed and no announcement of the retention of the mark been made at the same time; (3) If ten years are allowed to elapse from the date of registration without an announcement that the mark is intended to be retained; or should the same space of time elapse without a renewal of such announcement being made; (4) If the trade mark according to Sec. 3. was not legally entitled to registration.

SEC. 6. The first registration and the cancelling of a trade mark will be published in the columns of the "Deutscher Reichs-Anzeiger." The costs of such publication to be borne by the firm.

SEC. 7. For the first registration of a trade mark which has not already received the protection of the law a fee of fifty marks shall be paid. The payment for the registration of a trade mark which has been in general and current use as the

trade mark of a certain firm up to the beginning of the year 1875, may be remitted by the local authorities. Other registrations and cancellings are done gratuitously.

SEC. 8. The right to make use of a particular trade mark on goods, or articles in which goods are packed, belongs exclusively and solely to the firm for which the registration was in the first instance effected.

SEC. 9. To trade marks which are protected by law, or which have been in general and current use as the marks of certain firms up to the beginning of the year 1875, no one can acquire a right so long as the firms whose said trade marks are legally protected, or which have been in general and current use, make their announcement before the first of October, 1875.

SEC. 10. By adopting a trade mark which contains letters or words, no one will be prevented from making use of his name or the name of his firm—either abbreviated or in full—as a means of distinguishing his goods. No one can obtain a right by announcement to any trade mark which up to the present time has been in free use among all or certain classes of business people, or whose registration is not permissible.

SEC. 11. The head of a firm for which a trade mark has already been registered must cause the same to be cancelled upon the demand of a person who is justified in precluding him from the use of it, or in the cases provided for in Sec. 10.

SEC. 12. The right of using a trade mark of which due notification has been made expires; (1) by the withdrawal of the notification, or on an application to cancel the trade

mark on the part of the authorized firm : or (2) by the coming into operation of either of the first three cases mentioned in Sec. 5.

SEC. 13. Every native producer or trader who has received protection or authorization for his trade mark may, in the event of another unlawfully making use of the same or the name of his firm, in virtue of this law enter an action against any person so doing, in order to obtain a legal decision that he is not entitled to make use of such trade mark. The producer or trader may likewise prosecute any person who unlawfully exposes or keeps for sale any goods unlawfully marked with the complainant's trade mark, that the person so doing may be judicially declared unauthorized to expose or keep for sale any goods so marked.

SEC. 14. Whosoever knowingly and unlawfully exposes or keeps for sale any goods, or the packages thereof, bearing the trade mark or name of the firm of a native producer or trader who has received the protection of this law, shall be liable to a fine of not less than one hundred and fifty marks, and not more than three thousand marks, or to imprisonment for any period not exceeding six months, and he shall also be bound to pay an indemnity to the said producer or trader. The punishment is only to be enforced upon the demand of the aggrieved party.

SEC. 15. The party so aggrieved may, at his own option, in addition to the punishment, demand for himself compensation not exceeding five thousand marks, instead of claiming any indemnification obtainable under this law. Should there

be more than one infringer in any case, they are conjointly liable. A compensation thus adjudged precludes the demanding of any further indemnity.

Sec. 16. The Court, however, will reserve to itself, after duly weighing all the circumstances, the power of freely deciding as to whether any damage has been sustained, and to what amount.

Sec. 17. In the event of judgment being given on the ground of Sec. 14, at the desire of the aggrieved party all trade marks on goods or packages for the same in the possession of the defendant may be destroyed, and if, owing to the nature of the goods this is not practicable without the destruction of the goods, or the packages containing them, the destruction of the said goods or packages may be ordered. Should the judgment be delivered in criminal process, the aggrieved party has a right to demand that it be made public at the expense of the person convicted. The manner in which the judgment is to be made public, as also at what time, is to be determined when judgment is delivered.

Sec. 18. The protection accorded by the provisions of the present law to the owner of a trade mark, a name, or a signature, will not be invalidated in case such trade mark, name or signature should be reproduced with such alteration as only a close and accurate examination could detect.

Sec. 19. Civil law suits in which claims are advanced in virtue of this law will be considered in the spirit of both imperial and local legislation as commercial cases.

Sec. 20. The provisions of this law are likewise applicable

to the trade marks of traders who have no business house in this country, as well as to the names or firms of foreign manufacturers or merchants, if in the State in which they have their domicile, according to a notification in the Reichs-Gesetzblatt, German trade marks, names, and signatures enjoy protection; this, however, subject to the following conditions: (1) The announcement of a trade mark is to be made to the Handelsgericht, Leipsic, together with a declaration that the person making the announcement will, in cases of dispute, submit to the jurisdiction of the above-named Court; (2) With the announcement proofs must be given that all conditions have been fulfilled in his native country under which the person making the announcement can claim protection there for his trade mark; (3) The announcement substantiates a right to the trade mark only for so long a time as the person making the announcement is protected in his own country.

SEC. 21. This law shall come into operation on the 1st of May, 1875. To trade marks which, up to the present time, have been protected by local legislation, the same legislative enactments shall continue to apply, until announcement in accordance with the provisions of the present law has been made, and which must take place prior to the 1st of October, 1875.

Given under our Imperial hand and seal at Berlin, the 30th day of November, 1874.

WILLIAM.
PRINCE V. BISMARCK.

L. S.

CANADA.

AN ACT RESPECTING TRADE MARKS AND
INDUSTRIAL DESIGNS.

[Assented to 15th May, 1879.]

Whereas it is expedient to make alterations in the law providing for the registration of Trade Marks and Industrial designs: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enact as follows:—

1. A register of Trade Marks shall be kept in the office of the Minister of Agriculture in which any proprietor of a Trade Mark may have the same registered by complying with the provisions of this Act.

2. The Minister of Agriculture may, from time to time, subject to the approval of the Governor in Council, make rules and regulations and adopt forms for the purposes of this Act, as respects Trade Marks, and such rules, regulations and forms circulated in print for the use of the public, shall be deemed to be correct for the purposes of this Act; and all documents executed according to the same and accepted by the Minister of Agriculture, shall be held valid so far as relates to official proceedings under this Act.

3. The Minister of Agriculture may cause a seal to be made for the purposes of this Act and may cause to be sealed therewith trade marks and other instruments and copies proceeding from his office in regard of trade marks.

4. From and after the first day of July, one thousand eight hundred and seventy-nine, no person shall be entitled to institute any proceeding to prevent the infringement of any trade mark until and unless such trade mark is registered in pursuance of this Act. Provided always, that actions may be instituted as heretofore against persons fraudulently marking merchandise in accordance with the Act thirty-five Victoria, chapter thirty-two, intituled "*An Act to amend the law relating to the fraudulent marking of merchandise,*" even in the absence of registration.

5. The Minister of Agriculture may object to register any trade mark in the following cases:—*First.* If the said trade mark proposed for registration is identical with or resembles a trade mark already registered: *Second.* If it appears that the said trade mark is calculated to deceive or mislead the public: *Third.* If the said trade mark contains any immorality or scandalous figure: *Fourth.* If the so called trade mark does not contain the essentials necessary to constitute a trade mark, properly speaking.

6. The proprietor of a trade mark may have it registered by forwarding to the Minister of Agriculture a drawing and description in duplicate of such trade mark, together with a declaration that the same was not in use to his knowledge by any other person than himself at the time of his adoption

thereof; the whole being accompanied with the fee hereinafter provided.

7. On compliance with the requirements of this Act and of the rules hereinbefore provided for, the Minister shall register the trade mark of the proprietor so applying, and shall return to the said proprietor one copy of the drawing and description with a certificate signed by the Minister or his Deputy to the effect that the said trade mark has been duly registered in accordance with the provisions of this Act, and there shall be further stated in such certificate the date, month and year of the entry thereof, in the register; and every such certificate purporting to be so signed shall be received in all courts of law or of equity in Canada, as *prima facie* evidence of the facts therein alleged without proof of the signature.

8. For the purposes of this Act, all marks, names, brands, labels, packages or other business devices, which may be adopted for use by any person in his trade, business, occupation or calling, for the purpose of distinguishing any manufacture, product or article of any description by him manufactured, produced, compounded, packed or offered for sale, no matter how applied, whether to such manufacture, product or article, or to any package, parcel, case, box or other vessel or receptacle of any description whatever containing the same, shall be considered and known as trade marks, and may be registered for the exclusive use of the party registering the same in the manner herein provided; and thereafter he shall have the exclusive right to use the same to designate articles manufactured or sold by him: and for the purposes

of this Act, timber or lumber of any kind upon which labor has been expended by any person in his trade, business, occupation or calling, shall be deemed a manufacture, product or article.

9. A trade mark may be general or specific, according to the use made or intended to be made by the proprietor thereof, for the sale of various articles in which he deals in his trade, business, occupation or calling generally, or specific if applied or intended to apply to the sale of a class of merchandise of a particular description.

10. A general trade mark once registered and destined to be the sign in trade of the proprietor thereof shall endure without limitation. A specific trade mark for the sale of a special class of goods or merchandise when registered shall endure for the period of twenty-five years, subject before the expiration of the said period to the renewal thereof by the proprietor thereof, or his legal representative, such renewal being subject to re-registration at or before the expiration of such periods of twenty-five years, for any number of times.

11. The proprietor of a trade mark applying for its registration must state in his application whether the said trade mark is intended to be used as a general trade mark or as a specific trade mark.

12. Before any action is taken in relation to an application for registering a trade mark the following fees shall be payable into the hands of the Minister of Agriculture, to wit:—

On every application to register a general trade mark, including certificate.....	\$90 00
On every application to register a specific trade mark, including certificate.....	25 00
On every application for the renewal of the registration of a specific trade mark, including certificate.....	20 00
For copy of each certificate of registration, separate from the return of the duplicate hereinbefore mentioned.....	1 00
For the recording of an assignment, as hereinafter provided.....	2 00
For office copies of documents, not above mentioned, per every hundred words or less.....	0 50
For each copy of any drawing or emblematic trade mark, the reasonable expenses of preparing the same.	

All of which fees shall be paid over by the Minister of Agriculture to the Receiver-General of Canada; provided always, that in case of refusal to register the trade mark for which application is made, the fee shall be returned to the applicant or his agent, with the exception of the sum of five dollars, to be retained in compensation of office expenses.

13. Any person having registered a trade mark may petition for the cancellation of the same, and the Minister of Agriculture may on receiving such petition, cause the said trade mark to be so cancelled; and the same shall, after such cancellation, be considered as if it had never been registered under the name of the said party.

14. Every trade mark registered in the office of the Minister of Agriculture shall be assignable in law, and on the assignment being produced and the fee hereinbefore provided being paid, the Minister of Agriculture shall cause the name of the assignee, with the date of the assignment and such other details as he may see fit, to be entered on the margin

of the register of trade marks on the folio where such trade mark is registered.

15. If any person makes application to register, as his own, any trade mark which has been already registered, the Minister of Agriculture, if not satisfied that such person is undoubtedly entitled to the exclusive use of such trade mark, shall cause all parties interested therein to be notified to appear, in person or by attorney, before him, with their witnesses, for the purpose of establishing which is the rightful owner of such trade mark, and after having heard the parties and their witnesses, the said Minister shall order such entry or cancellation, or both, to be made as he shall deem just; in the absence of the said Minister, his Deputy may hear and determine the case and make such entry or cancellation or both, as to right and justice may appertain; and any error in registering trade marks or any oversight about conflicting registrations of trade marks may be settled in the same manner.

16. If any person, other than the party who has registered the same, marks any goods or any article of any description whatever with any trade mark registered under the provisions of this Act, or with any part of such trade mark, whether by applying such trade mark or any part thereof to the article itself or to any package or thing containing such article, or by using any package or thing so marked which has been used by the proprietor of such trade mark, or knowingly sells or offers for sale any article marked with such trade mark, or with any part thereof, with intent to deceive and

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to induce persons to believe that such article was manufactured, produced, compounded, packed or sold by the proprietor of such trade mark, he shall be guilty of a misdemeanor, and, on conviction thereof, shall forfeit, for each offence, a sum not less than twenty dollars and not exceeding one hundred dollars, which amount shall be paid to the proprietor of such trade mark, together with the costs incurred in enforcing and recovering the same; Provided always, that every complaint under this section shall be made by the proprietor of such trade mark, or by some one acting on his behalf and duly authorized thereto.

17. A suit may be maintained by any proprietor of a trade mark against any person using his registered trade mark, or any fraudulent imitation thereof, or selling articles bearing such trade mark or any such imitation thereof, or contained in packages being or purporting to be his, contrary to the provisions of this Act.

18. Any person may be allowed to inspect the register of trade marks, and the Minister of Agriculture may cause copies or representations of trade marks to be delivered, on the applicant for the same paying the fee or fees hereinbefore provided.

19. Clerical errors happening in the drawing up or copying of any instrument under this Act shall not be construed as invalidating the same, and when discovered they may be corrected under the authority of the Minister of Agriculture.

BELGIUM.

Trade Mark Law, Approved April 1st, 1879.

ARTICLE 1. Is considered as a mark of manufacture or of commerce, every sign serving to distinguish the products of an industry, or the objects of a commerce.

The name of a person as well as that of a commercial or industrial house, may be used as a mark in the distinctive form given to it by the owner.

ART. 2. No one can claim the exclusive use of a mark if he has not deposited the model in triplicate, with the stereotype of his mark, at the office of the clerk of the tribunal of commerce in the place where his establishment is situated.

ART. 3. Whoever has first made use of a mark may alone make the deposit.

ART. 4. The instrument of deposit is inscribed on a special register and signed both by the depositor or his attorney, and the clerk; the power of attorney remains annexed to the instrument. It states the day and hour of the deposit. It indicates the kind of industry or of commerce for which the depositor intends to employ the mark.

A copy of the instrument of deposit is given to the depositor.

Another copy is sent, within the week, with one of the deposited models and the stereotype of the mark to the central

office by which the announcement of the deposit, the description and the design of the mark shall be published in a special publication six months at the farthest after the reception of the packet.

ART. 5. For each mark deposited a tax of two francs is paid. The deposit is only received on the production of a receipt proving the payment of the tax.

ART. 6. Foreigners who conduct in Belgium industrial or commercial establishments, enjoy for the products of these establishments the benefits of the present law by fulfilling the formalities which it prescribes.

The same applies to foreigners or Belgians who conduct their industry or commerce out of Belgium, if in the countries where their establishments are situated international conventions have stipulated reciprocity for Belgian marks. In the latter case the deposit of the marks conveyed takes place at the office of the clerk of the Tribunal of Commerce of Brussels.

ART. 7. A mark cannot be conveyed except with the establishment of which it serves to distinguish the objects of manufacture or of commerce.

Every conveyance of a mark between the living shall be registered at the fixed charge of ten francs.

The conveyance is of no effect as to third persons, until after a deposit of an extract of the conveyance in the forms prescribed for the deposit of the mark.

ART. 8. Are punished by an imprisonment of from eight

days to six months, and a fine of twenty-six francs to two thousand francs, or of one of these penalties alone.

(a.) Those who have counterfeited a mark, and those who have fraudulently made use of a counterfeit mark.

(b.) Those who have fraudulently affixed, or made to appear by additions, retrenchment or by any alteration, on the products of their industry, or the objects of their commerce, a mark belonging to another.

(c.) Those who have knowingly sold, put on sale or in circulation products clothed with a counterfeit mark or mark fraudulently affixed.

ART. 9. Are punished as authors of the offences provided for in the preceding article. Those who shall have committed them, or shall have co-operated directly in their commission. Those who by some act shall have given aid without which the crime could not have been committed. Those who by gifts, promises, menaces, abuse of authority or power, plots or culpable artifices, shall have directly instigated the offence.

ART. 10. May be condemned to an imprisonment of one year, and to a fine of four thousand francs, or to one of these penalties alone, whoever shall have committed one of the crimes mentioned in Article 8 in the five years which follows a preceding conviction under that article.

ART. 11. If there exist extenuating circumstances, the penalties of imprisonment and fine imposed by reason of

Article 8 may be reduced respectively to above eight days and above twenty-six francs, but they may not be less than the penalties of simple police.

ART. 12. May be confiscated in whole or in part, the products bearing a counterfeit or falsely applied mark, as well as the instruments and utensils having specially served in the commission of the crime, if the convicted is the owner.

The confiscated objects may be granted to the plaintiff in civil proceedings on account or aid of his damages.

The tribunal may order in any case, the destruction of the counterfeit marks.

ART. 13. The tribunal may order that that judgment be posted in the places which it shall designate, and inserted in whole or in part in the newspapers which it shall indicate, at the expense of the convicted.

ART. 14. The public prosecution can only be commenced on the complaint of the party injured.

ART. 15. The provisions of the law of 25th March, 1876, on competence in disputed matters are applicable to the civil action relative to the use of marks, when this action is brought separately from the public prosecution.

ART. 16. The deposit of a mark made contrary to the provisions of the present law shall be declared void on the demand of an interested party.

The judgment which pronounces the nullity, after it shall

have acquired the force of a judgment, shall be noted in the margin of the certificate of deposit.

ART. 17. Are repealed, the laws in force in reference to trade marks, and especially, the resolution of 25 nivose year IX, the laws of the 22 germinal year XI, the decrees of 20 February, and of 5 September, 1810, the royal decree of 25 December, 1818, the resolution of 1st June, 1820, as well as the provisions of Article 50 of the law of 7 February, 1859, and of Articles 184-213 and 214 of the Penal Code so far as they apply to said marks.

Nothing is enacted which concerns the special marks applied for the security of the public, and especially for the execution of the common laws concerning customs and fire arms.

ART. 18. Every deposit of a mark made under existing laws shall cease to have effect the 1st of January, 1881, if it has not been renewed before that date conformably to Art. 2.

The new deposit shall be free from stamp and register duty, and the tax imposed by Article 5.

ART. 19. The Government may conclude international conventions, or sign articles additional to existing conventions granting to foreigners, and to Belgians who export from Belgium their industrial and commercial products, the exclusive use of their mark in Belgium on condition of compliance with the formalities prescribed by the present law, and of reciprocity for Belgian marks.

It may also, on conditions which it shall determine, authorize the deposit of marks, and the payment of the tax in the Belgian consulates abroad.

ART. 20. A royal decree shall determine the time of taking effect of the present law, the formalities to be employed for the deposit and the publication of marks, as well as the necessary measures for the execution of the law.

RUSSIA.

Extract from the Laws relating to Manufacturing Industry.

CODE OF CIVIL LAWS, VOL. XI. PART 2.

Edition of 1857.

RELATIVE TO THE IMPOSITION OF MARKS ON PRODUCTS OF
RUSSIAN MILLS AND MANUFACTORIES.

SECTION 74. The right of stamping or marking Russian-manufactured produce of various descriptions shall be enjoyed by every manufacturer. It shall not be lawful to make searches in factories and domestic industrial establishments, to ascertain whether their products have been stamped or not.

SEC. 75. Russian products, the exportation of which is not prohibited by the present dispositions of the tariff, shall be admitted at the Custom Houses for exportation, without let or hindrance, whether such products be stamped or not.

SEC. 76. Stamped products of Russian origin enjoy the following privileges:—(1st). If among foreign goods which have not paid duty Russian goods are found bearing an undoubted Russian trade mark, they shall be held to be home-made goods, not subject to confiscation; and may, in case of need, be considered as guarantees for fines, like all other goods, in conformity with the Customs Laws. But if, among

the contraband goods, there should be found articles alleged to be Russian without having a mark confirming such origin, they shall be subjected to confiscation, without any kind of inquiry being made respecting their origin. (2d). If Russian goods provided with the proper stamp be sent abroad, and thence returned to the Empire owing to their having remained unsold, they shall be passed without hindrance free of duty; unstamped goods, however, shall be treated like foreign produce, in conformity with the Customs Laws.

Sec. 77. The following general rules shall be observed respecting the introduction of a uniform regulation in the stamping of products. (1st). The stamp must contain, even if only in initials, the Christian name and surname of the producer, and the place of his residence. The stamp must be durable and clear; the letters thereon must be unmistakably Russian; other letters may be used on condition that a Russian mark shall in addition be employed. (2nd). On establishing a new manufactory, the founder of the same shall, if he intends to place a stamp on his manufactures, give notice thereof to the Department of Commerce and Industry, stating where and for what purpose the manufactory is to be established. To this must be added a sample and description of the stamp intended to be placed on the goods. (3rd). On selling or abandoning the manufactory, the manufacturer shall also give notice thereof to the Department of Commerce and Industry. (4th). If a manufacturer deems it necessary to effect an alteration in his stamps, he shall give previous notice to the Department of Commerce and Industry,

stating the period at which he intends to make use of the new stamps. (5th). If the Department of Commerce and Industry finds that the projected stamp is impracticable, or not in conformity with the regulations, or too much resembles another stamp, the alteration of such mark will be required.

SEC. 78. Whosoever falsifies foreign marks or signs, which have been adopted with the sanction of the Government, on manufactures or products of manufactories, factories, or other establishments, shall be subject to the penalties imposed by Art. 1354 of the Penal Code, besides the payment of damages caused by such falsifications.*

SEC. 79. (1868). In case Russian goods, not provided with a proper stamp, are returned to the Russian Empire from abroad, they shall only enjoy the right of a free entry without paying duty if the proprietors shall produce the original customs' certificate proving them to have been, in fact, exported from Russia.

SEC. 80. It is not necessary to stamp the products of trades and guilds not specially designated.

SEC. 81. It is not, however, prohibited to stamp products of this kind (Sec. 80), or of the kinds mentioned in the supplement to Sec. 79, provided samples of the marks have been submitted to the Department of Commerce and Industry, in conformity with the general regulations.

* Deprivation of all civil rights and exile to distant provinces of the Empire, other than those of Siberia, or to imprisonment in a house of correction for a term ranging from four months to eight months.

Sec. 82. Although the products of peasants, properly so called, which are not subject to stamping, are enumerated in this law, yet (just as it is ordained in the tariff regulations that articles not enumerated in the tariff may be treated as similar objects which are enumerated) the Department of Commerce and Industry shall be at liberty, with the sanction of the Minister of Finance, to assign new products to their necessary places, and may, according to its judgment, either assimilate them to such goods as require stamping in order to be recognized as Russian goods, or assimilate them to such goods as are by themselves recognized as the products of peasants. For it cannot be assumed that it will be necessary, for the future, to enumerate all such products without omitting a single one of them, seeing that products are subject to alterations, from time to time, both in respect to quality and appearance, and with regard to their material relation and nomenclature.

AUSTRIA.

LAW FOR THE PROTECTION OF TRADE MARKS
AND OTHER DENOTATIONS.

IMPERIAL PATENT OF DECEMBER 7, 1858. TO TAKE EFFECT
JANUARY 1, 1859.

I. *General Provisions.*

SEC. 1. In this law marks are understood to be those special signs which serve to distinguish the productions and goods of one tradesman intended for the commercial market, from those of any other tradesman (devices, ciphers, vignettes and the like).

SEC. 2. A tradesman who wishes to secure to himself the sole right to the use of a mark, must have it registered according to the provisions of the next division.

SEC. 3. No exclusive right can be acquired in marks which consist of such signs as are commonly used in the trade in particular kinds of goods, nor in such as consist merely of letters, words or numbers, or of the arms of States and Countries.

SEC. 4. The exclusive right to a mark precludes the use thereof by other tradesmen only in regard to that kind of goods to which the productions or commercial articles of the trade to which the protected mark is intended, belong.

SEC. 5. The right in marks continues with the trade undertaking for which the marks are intended; it expires therewith and changes owners therewith.

In the latter case, however, unless the business be carried on by the widow or an heir under age, or on account of inheritors or creditors, the new owner must have the mark transferred to his name within three months; otherwise the right in them expires.

SEC. 6. No one must arbitrarily appropriate to himself the name, style, arms, or designation of the establishment of another inland trader or producer, for the denotation of goods.

SEC. 7. All that is said in this law about the denotation of goods also applies to the denotation affixed to the packing, the receptacles, wrappers, &c.

SEC. 8. The present law makes no alteration in the existing regulations respecting the special distinguishing marks prescribed for certain goods, particularly the stamping regulations.

II. *Registration of the Marks.*

SEC. 9. The mark for which a trader wishes to secure to himself the exclusive right of use (§ 2) must be delivered in two copies to the Chamber of Commerce and Industry in the district whercof the industrial undertaking is situated, where-

in use is to be made of it; one copy is to be inserted in the Register of Marks, which is to be kept by the Chamber of Commerce and Industry; the other is to be returned to the party with the certification directed in the following section.

SEC. 10. The appointed functionary of the Chamber of Commerce and Industry is to set down on each copy—(a.) the running number of the register. (b.) The day and hour of delivery. (c.) The name in which the mark has been registered. (d.) The designation of the industrial enterprise for which it is intended. And he is to sign this notification and to affix the official seal thereto.

SEC. 11. The registration is subject to a duty of 5 fl., which goes into the chest of the Chamber of Commerce.

SEC. 12. With the day and the hour of the delivery of the mark at the Chamber of Commerce and Industry, the sole right to the use of the mark begins for the depositor, and the priority of the claim will be adjudged according thereto, if the same mark should be deposited by several tradesmen at the same or different Chambers of Commerce and Industry.

SEC. 13. To transfer the right to a mark, as mentioned in section 5, the applicant must produce proof of the acquisition of the industrial undertaking concerned. The transfer is subject to the same duty as the first registration.

SEC. 14. The Registers of Marks are to be open to every one's inspection at the Chambers of Commerce and Industry.

III. *Encroachments, Infringements and Penalties.*

SEC. 15. Every encroachment on the right to a mark, whether by the illegal appropriation or imitation of a mark, or by the consumption of goods thus illegally marked, gives the injured party the right to insist on the stoppage of the further use of the illegal mark and on the removal thereof from the goods marked therewith, so far as they are intended for sale. He may also demand that the tools and apparatus exclusively or especially used for this purpose be made unserviceable.

Claims by the injured party for compensation for the injury suffered through the encroachment on his right in a mark, are to be decided according to the civil law.

SEC. 16. It is to be considered an imitation if the marks in question cannot be distinguished without more than the ordinary attention.

SEC. 17. The provisions contained in section 15 are also applicable to any one who (a) illegally appropriates the name, style, arms, or the special designation of another inland trader or producer, for the denotation of goods intended for sale; (b) introduces into commerce productions or articles for sale which are furnished with an unauthorized denotation of this kind.

SEC. 18. If the encroachment (sections 15 and 17) has been knowingly committed, a fine of from 25 to 500 fl. is to be imposed on the offender, besides any punishment incurred according to the general penal law.

SEC. 19. The punishment may be doubled on a repetition. On a further repetition the offender is to be imprisoned for from a week to three months, besides the fine.

SEC. 20. If the fine should seriously affect the circumstances or the means of subsistence of the delinquent or his family, or prevent him from making the compensation due for the criminal act, it is to be converted into one day's imprisonment for every 5 fl.

SEC. 21. The punishing authority can also direct that the sentence be published.

SEC. 22. The amounts of the fines go to the poor fund of the place where the transgression has been committed.

VI. *Authorities and Proceedings.*

SEC. 23. The procedure and decision respecting encroachments (sections 15 and 17), as well as the investigation and punishments of the transgressions described in sections 18 and 19, belong to the political administrative authorities of first instance, according to the existing regulations for the proceedings and the course from court to court in industrial disturbances and industrial transgressions. The political authority also decides disputes respecting the right in marks, the priority and transfer thereof, and respecting the question of identity of marks. But the decision of the claims for compensation, mentioned in section 15, belongs to the civil judge.

SEC. 24. Criminal proceedings on account of the transgres-

sions of law described in this law can only be commenced on the application of the injured party, unless there be a criminal act involved, which, according to the general criminal law must be officially prosecuted by the criminal court.

If, however, the injured party withdraws his application for punishment before the official decision is made known to the defendant, then he has, without prejudice to his private claims to compensation, also to relinquish the demand for any punishment, as well as any further investigation for the purpose of punishment.

SEC. 25. Whenever the question of an encroachment rests on a comparison of two marks, the authority is to obtain a report from unprejudiced professional persons. At the reception of the report the parties are also to be present and to be heard with their explanations and objections of any kind. A report can only be opposed on account of objections against the professional persons, or on account of want of form. If it is deficient or indistinct its completion may be insisted upon. An inspection is not allowed.

SEC. 26. The injured party is entitled, even before the decision of his complaint, to require the seizure or other custody of the goods marked contrary to the provisions of this law, and the tools used for the purpose. The political authority is immediately to order the same on production of the copy of the mark issued and attested according to section 10. It is left, however, to the judgment of the said authority to require a preliminary security for the affront and damages of the defendant.

V. Transitory Provisions.

SEC. 27. Even the traders who at present use a mark can only acquire the exclusive right to it on the conditions of this law.

SEC. 28. For this purpose the interval to the end of the month of June, 1859 is granted to them, to the effect that by the registration of the mark during this interval the right is secured to every one of maintaining the priority of his mark used before the appearance of this law, even against any one who may have anticipated him in the registration of the said mark, but has not actually made use of it up to the introduction of this law.

SEC. 29. If, however, before the operation of this law, several have used the same mark, then of those who have this mark registered within the interval fixed in section 28 he acquires the exclusive right in the mark who proves that he has used it earlier than the rest. Any dispute is to be decided by the police authorities, after hearing the contending parties, on the evidence of the proofs brought forward by them as to the earlier commencement of the previous use of the mark.

In those provinces where mark registers (sign rolls, &c.) were kept with public attestation before the appearance of this law, the contents thereof, when no objection prevails to the contrary, are to settle the question. If, however, none of the contending parties can produce proof of the longer use of such mark than the rest, then the question must be decided by lot.

Sec. 30. With regard to marks that are first brought for registration after the 30th June, 1859, no claim of priority can be derived from any application of them before the appearance of this law.

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