

*Thursday,
18th October, 1888*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

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ABSTRACT OF THE PROCEEDINGS

OF

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ASSEMBLED FOR THE PURPOSE OF MAKING

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 18th October, 1888.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.

The Hon'ble J. Westland, C.S.I.

The Hon'ble Nawáb Sir Nawázish Ali Khán, K.C.I.E.

The Hon'ble G. R. Elsmie.

MERCHANDISE MARKS BILL.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to amend the Law relating to Fraudulent Marks on Merchandise. He said:—

“I do not think much argument is needed in support of the principle of this Bill, although considerable criticism of its details may be expected and will, I hope, be afforded by the mercantile community. It is good law, as well as common sense, that no man has a right to put off his goods for sale as the goods of a rival trader, and with that object to use names, marks, letters or other indications by which he may induce purchasers to believe that the goods which he is selling are the manufacture of another person. Still less is he entitled to use marks containing a falsehood on their face, for the purpose of deceiving purchasers, and palming off upon them an article other than that which they believed they were contracting to buy.

“The same reasons which have led to the passing of the Merchandise Marks Act in England apply to this country; and the Bill which I ask leave to introduce has been framed upon the opinion of the recognized organs of the commercial classes in India. The Chairman of the Chamber of Commerce at Madras writes—‘The increase in the importation of goods of foreign manufacture bearing fraudulent British trade marks points to the necessity of early legislation against

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an abuse that exposes honest traders to unmerited loss and discredit.' The Committee of the Chamber of Commerce at Bombay 'would welcome prompt legislation on the lines of the English Act, alike in the interests of legitimate traders and of native consumers; the existing position affording every inducement to the direct importation of fraudulently marked foreign goods.' The Millowners Association at Bombay approve of special legislation with a view to check the practice of marking false lengths on cloth goods, and are prepared to accept the provisions of the English Act in regard to false trade descriptions. The Bengal Chamber of Commerce, while reserving their views as to details, 'approve generally of the principle of protection to honest trade upon which the Act is based'; and the Trades Association of Calcutta 'would be glad to see an Act of a similar character introduced into this country.' The Honorary Secretary of the Bengal National Chamber of Commerce writes—'The fraudulent practice that has sprung up of late of putting false marks on piecegoods is a growing evil. It results in causing material loss to the ignorant retail dealer and the buyer in this country, and tends to shake public confidence in the honesty and good faith of English traders and manufacturers, and thus deters the expansion of this branch of the trade. My Committee, therefore, fully appreciates the necessity for adopting stringent legislative action for putting down such an injurious and demoralizing practice.' The Chamber of Commerce at Karáchi is of opinion that it would be sufficient to pass a short Act 'making the false stamping of lengths and the false labelling of quantities punishable,' and that 'to legislate further than this at present would be a mistake'. And the Chamber of Commerce at Rangoon 'is of opinion that it would be better to make no change in the existing law at least until some further experience has been gained of the working of the new Act in England.'

"This summary of recent correspondence shows that the great bulk of mercantile opinion in India is in favour of early legislation, and this is certainly the view of the mercantile community in Great Britain who are interested in Indian trade. It was recently stated in the House of Commons that falsely-marked goods which were precluded from shipment in British vessels were being shipped to India from foreign ports in foreign bottoms, and this statement receives singular confirmation from an article in the Austrian *Archiv für Gesetzgebung und Statistik* for June last. Discussing the probable effect of the English Merchandise Marks Act if applied to British India the writer says:—

'One of the objects aimed at by this law is to do away with foreign marks calculated to mislead as to the foreign origin of goods. From the earliest days of the existence of this law the English customs-authorities have dealt strictly and summarily with all

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attempted infringements, such as marking of imports with such English words as "patented", "registered", "yard", "number", "Co.", &c. Such rigid enforcing of the new law came as a surprise even in English circles, and gave rise to a movement, headed by the London Chamber of Commerce, in favour of a less stringent enforcement of this Act, but as far as we know without success. Austro-Hungarian trade is now threatened by the proposed application of the Merchandise Marks Act to British colonies, and especially to British India, whither Austro-Hungary annually exports goods exceeding the value of 50,000,000 florins, some of which have English superscriptions, others fictitious English names of firms, simply because they are so ordered. Any hasty application of this law to British India would jeopardise our trade interests to an enormous extent; for not only do we import into that colony, but we also carry on a considerable export trade from it; besides, we have goods to the value of hundreds of thousands of gulden lying at the custom-houses there which would be in daily danger of seizure, to say nothing of the hundreds of thousands worth of goods which are on their way and doomed to meet a similar fate, since it would be impossible to send back goods made a certain specified pattern and consigned to a specified place in case of any sudden application of this law to the country, so as to alter them in accordance with the law. The situation is the more serious from the fact that Austro-Hungary manufactures goods only to order, which orders it sometimes take months to execute; from this would result further enormous losses, for the goods would probably be half manufactured, the manufacturers still fearing confiscation in case of their being completed and sent. The orderer of the goods in India would not be the loser, for he could truly plead that he never received the goods, while the manufacturer dare not make any alterations in the goods on his own responsibility, as he is bound to deliver the goods manufactured as per order. His position, therefore, is awkward and unenviable, as he is bound to lose either way. It is well then for all manufacturers to take warning of the dangers threatening their trade with British colonies in case the Merchandise Marks Act be applied as is contemplated.'

"It would be impossible to state the case of the counterfeiters with greater frankness. 'English superscriptions' and 'fictitious English names of firms' are applied to goods 'simply because they are so ordered.' I need only say, in answer to their representation that, while putting a stop to practices of this kind, the Government of India will gladly welcome the manufactures of Austro-Hungary if they come on their own merits and not under false pretences, and that the trade need not suffer by being more honestly conducted.

"There is another form of counterfeiting which, while more hypocritical, is scarcely less deceptive. Let me illustrate it by two examples. Messrs. Curtis and Harvey are well-known manufacturers of gunpowder, who pack their powder in canisters of a particular shape, upon which are placed labels printed in an old fashioned type. The canisters and labels are closely imitated, but the name of the firm is printed Cubtis and Marvey, by which ingenious device the

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counterfeiter seeks to shelter himself against a prosecution or the confiscation of his goods. In like manner 'Calvert's' soap becomes 'Galbert's' soap, and similar immunity is obtained.

"A more mischievous form of fraudulent marking is defended on the ground of a so-called custom of trade. Piecegoods are made up in certain nominal lengths, which are marked sometimes on the cloth itself, sometimes on a label; but the length marked and the actual length seldom correspond. The Deputy Collector of Manbhoon, who made a local enquiry to ascertain how far piecegoods sold in the markets of the interior are really of the quantity marked upon them, reports,—

'The shopkeepers say that, unless specially questioned, they do not, while selling the goods, disclose the shortness of length and breadth. It is evident that much deception is thus practised. The generality of people regard a yard as equal to two *haths*. When a customer demands a *panchgasi* piece, wishing for a piece of 10 *haths*, a piece marked five yards but really less than five yards is handed to him. If he unsuspectingly receives it, as he frequently does, he ultimately finds that he has been cheated.'

"There is unfortunately no doubt that this is not an exceptional state of things, but that a system of selling by false lengths is widely prevalent in India. The importer knows the lengths are falsely marked. So does the wholesale merchant. So frequently does the retail dealer. The victim is the up-country customer, who, when he gets home, finds he has paid for more than he has got, and is too poor and ignorant to obtain redress.

"In this matter of short measure the blame cannot be transferred to foreign shoulders. The evidence taken before the Committee of the House of Commons in 1887 discloses the existence of a system of false marking in England for the Indian market. Shirtings marked 39 are, it is stated, very often found to run 'one, two and even more yards short of the length indicated by the figures, which figures are generally accepted to mean yards.' Hanks of yarn which should be 840 yards really contain only 720 yards, and often much less. Piecegoods are exported to India marked 50 and 6, meaning 50 inches wide and 6 yards in length, which are found to measure only $47\frac{1}{2}$ inches and $5\frac{1}{2}$ yards. Accordingly, a Madras merchant, writing to a Manchester manufacturer, regrets that he cannot order such goods as his correspondent offers, adding:—'There is nothing wrong with them, excepting that they are too honest both as to width and length.' Another Indian merchant writes:—'False stamping is still being extensively carried on. We saw 200 bales of grey dhoties the other day, measuring from $7\frac{1}{2}$ yards to 9 yards, all stamped

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10, without yards: they were stamped in this way at the special request of the buyer.' Instances of this sort might be multiplied. Indeed, the evidence of the Manchester witnesses showed clearly enough that the marks of length and width were affixed with intent to deceive, the words 'yards' and 'inches' being purposely omitted.

"Nor is it only in regard to imported goods that this fraud occurs. Local manufacturers have followed the bad example, and some of the Bombay mills are, I am sorry to say, known to be special offenders in this respect.

"In endeavouring to deal with these and other forms of fraudulent marking of goods, I have sought as far as possible to proceed upon the lines of the existing law, and to frame the new provisions of the Bill with a careful regard to the circumstances of the people of this country.

"The old Acts relating to the subject are the Penal Code and the Sea Customs Act. The former makes the forgery of a trade mark and the use of forged trade marks penal; the latter forbids the importation of goods bearing forged trade marks of manufacturers resident in the United Kingdom or British India. It is obvious that these enactments are insufficient to prevent the evils complained of. The policy of the law is now to introduce an entirely new offence which to some extent is independent of trade marks properly so called, namely, the offence of applying any false description to goods whereby purchasers may be deceived, and to extend the protection now afforded to British and Indian manufacturers to the manufacturers of all countries with which we have reciprocal relations.

"Looking at the matter in the light of facts, it appears to me that the main thing to be done is to prevent the introduction into this country of falsely marked merchandise. The simplest way of accomplishing this is by an extension of the provisions of the Sea Customs Act, VIII of 1878. And in order to prevent the dealing in such goods, when imported into or manufactured in this country, I propose certain necessary amendments in the Penal Code, and to put the use of false trade descriptions very much on the same level of criminality as the use of forged trade marks.

"The definition of trade mark in section 478 of the Indian Penal Code, as 'a mark used for denoting that goods have been made or manufactured by a particular person or at a particular time or place, or that they are of a particular quality,' though very wide, is practically insufficient. I propose to amend it so as to include 'any trade mark which is registered in the register of trade marks

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kept under the Patents, Designs and Trade Marks Act, 1883, and any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable.' And I adopt the definitions of 'trade description' and 'false trade description' given in the English Act.

"Proceeding upon this basis, while retaining the existing provisions of the law in their full severity against persons who fraudulently use or counterfeit trade marks, I propose that persons dealing with goods bearing false trade marks shall escape punishment if they are able to prove that after taking reasonable precautions they had no ground to suspect the genuineness of the mark, and that they gave all the information in their power as to the source from which the goods were obtained, or that otherwise they had acted innocently in the matter. In this way it will be possible to trace the goods to the importer or manufacturer, who is the real culprit deserving punishment.

"Similar provisions are proposed in regard to false trade descriptions. Other sections provide for unintentional contravention of the law, and for the forfeiture of goods after conviction.

"The amendment of the Sea Customs Act will, however, as I have already observed, afford the most effectual remedy against the trade in fraudulently marked goods. By section 18 (*d*) of the existing Act, the importation, by sea or land, into British India of articles bearing any names, brands or marks being or purporting to be the names, brands or marks of manufacturers resident in the United Kingdom or British India, and not made by such manufacturers, is prohibited. It is proposed to amend the section by extending the prohibition to goods having applied thereto a counterfeit trade mark within the meaning of the Indian Penal Code, or a false trade description within the meaning of the Indian Merchandise Marks Act, 1889; and also to goods made or produced beyond the limits of the United Kingdom and British India and having applied thereto any name or trade mark being, or purporting to be, or being a colourable imitation of, the name or trade mark of any person who is a manufacturer, dealer or trader in the United Kingdom or in British India, unless—

- (i) the name or trade mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the United Kingdom and British India, and

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- (ii) that place and the country in which it is situated are in that indication indicated in letters as large and conspicuous as any letter in the name or trade mark.

Of course, the successful working of these provisions of the Act will depend on the extent to which the mercantile classes co-operate with the Custom-house authorities. The difficulty is likely to be greater here than at home. The Custom-house in England still deals with many dutiable articles of vast importance to the revenue, and has a stringent system of examination and a large staff. In India the same agency has to deal with very few dutiable articles, and the examining staff is small. It is therefore provided that—

‘The Governor General in Council may make, revoke and vary regulations, either general or special, respecting the detention and confiscation of goods the importation of which is prohibited, and the conditions, if any, to be fulfilled before such detention and confiscation, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.’

“Under these regulations the rights of all parties will be safeguarded, and it is not likely that the authorities will be put in motion without sufficient cause.

“These are the principal provisions of the Bill, which I propose to submit for consideration by a Select Committee in Calcutta, and which I commend meanwhile to the careful attention of the mercantile community. I ought to add that in dealing with the provisions of the English Act I have derived much valuable assistance from a communication with which I have been favoured by Mr. Follett, Solicitor to the Commissioners of Customs in England, pointing out various particulars in which that Act has been found, in practice, to be susceptible of improvement.”

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

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SHAN STATES BILL.

The Hon'ble MR. SCOBLE also moved that the Bill to supplement the provisions of the Upper Burma Laws Act, 1886, with respect to the Shan States be referred to a Select Committee consisting of the Hon'ble Sir Charles Aitchison, the Hon'ble Mr. Elsmie and the Mover, with instructions to report at the next meeting of Council.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 25th October, 1888.

SIMLA ;	}	S. HARVEY JAMES,
<i>The 19th October, 1888.</i>	}	<i>Secretary to the Government of India,</i>
		<i>Legislative Department.</i>