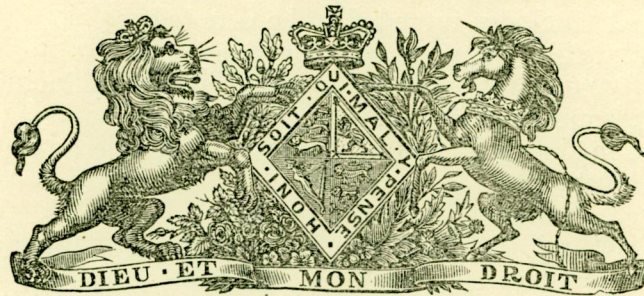


New South Wales.



ANNO SEXAGESIMO QUARTO

VICTORIÆ REGINÆ.

Act No. 19, 1900.

An Act to consolidate the Acts relating to Trade Marks and fraudulent marks. [Assented to, 22nd September, 1900.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

Preliminary.

1. This Act may be cited as the "Trade Marks Act, 1900," and Short title. contains the following Parts:—

PART I.—*Preliminary.*—ss. 1-4.

PART II.—*Registration and transfer.*—ss. 5-9.

PART III.—*Offences.*—ss. 10-29.

PART IV.—*Warranty.*—ss. 30, 31.

PART V.—*Proceedings in suits.*—ss. 32-36.

A

2.

Trade Marks.

Repeal.

2. The Acts mentioned in the Schedule hereto are hereby repealed.

Interpretation.

28 Vic. No. 9, s. 1.

3. In this Act, unless the context or subject-matter otherwise indicates or requires,—

“Apply” and “applied” respectively include attach, attached, and cause or procure to be applied or attached.

“Cover” includes any cask, bottle, stopper, vessel, case, wrapper, band, reel, ticket, or label.

“Denoted” includes intended to be denoted.

“Goods” includes any chattel or article.

“Forge,” “forging,” and “forged” respectively include counterfeit, counterfeiting, and counterfeited.

“Intent to defraud” includes intent to enable any other person to defraud.

“Justice” means justice of the peace.

“Manufacture” includes workmanship, and production.

“Mark” includes any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark of any other description.

“Trade mark” includes any mark lawfully used by any person to denote any goods to be goods of the manufacture or merchandise of such person, or to be goods of any particular description made or sold by such person.

“Person” includes any person whether a subject of Her Majesty or not, and any body corporate or body of the like nature, company, association, or society of persons, whether the same is established or carries on business within or without Her Majesty’s dominions, and whether the members thereof are or are not subjects of Her Majesty.

“Registrar” means the registrar of trade marks.

Saving.

4. Nothing in this Act shall be deemed to affect the operation of the “International Patents and Trade-marks Arrangements Act, 1897.”

PART II.

Registration and transfer.

Appointment of registrar.

Ibid. s. 3.

5. (1) The Governor may appoint a registrar of trade marks and an office to be the place of registration for the purposes of this Act. Any such appointment made under any Act hereby repealed shall have the same force and effect as it would have had if this Act had been in force when such appointment was made and it had been made hereunder.

(2)

Trade Marks.

(2) The registrar shall keep a proper register of all certificates issued and of all acts done by him in pursuance of this Act, and such register shall be open to the inspection of any person during office hours on payment of the sum of sixpence. Register to be kept. 28 Vic. No. 9, s. 5.

6. Any person desirous of registering a trade mark shall deliver to the registrar two copies thereof, and shall at the same time pay to the registrar for the public uses of New South Wales a sum of three pounds and three shillings, and shall also state in writing the nature of the article to which it is proposed that such trade mark shall apply. The registrar shall within fourteen days of the payment of such fee publish in the Gazette a notice stating— Registration of trade mark. Ibid. s. 4.

- (a) the name of the applicant ;
- (b) a description of the trade mark as nearly as may be ; and
- (c) the nature of the article to which it is proposed that such trade mark shall apply ;

and after the expiration of fourteen days from the publication aforesaid the registrar shall, unless it is shown to his satisfaction

- (d) that such trade mark has been previously registered ; or
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issue to the applicant a certificate setting forth that such trade mark to be described in such certificate has been duly registered, and that the person named in such certificate is entitled to the use of the trade mark described therein.

7. Any certificate may be transferred either wholly or in part by any document in writing signed by the transferor, but no transfer shall be valid against the person named in such certificate until after such transfer has been duly registered, and the registrar shall register such transfer on payment of the sum of one pound one shilling. Transfer. Ibid. s. 6.

8. A mark shall not be recognised or considered to be the trade mark of any person until it has been registered by or on behalf of the person claiming to be entitled thereto as his trade mark. Trade mark must be registered. Ibid. s. 2.

9. The registration of any trade mark shall not confer any patent right over, or any sole right to manufacture, any article to which it is proposed to apply such trade mark, but the certificate of the registration of any trade mark shall be a proof of the right of the person named in such certificate, or of the registered transferee of such certificate, to use such trade mark, except in case of any suit instituted to try the right of any person to have had such trade mark registered. Effect of registration. Ibid. s. 7.

Trade Marks.

PART III.

Offences.

Forging or
fraudulently
applying trade mark
to goods.

28 Vic. No. 9, s. 8.

10. Whosoever with intent to defraud—

- (a) forges or procures to be forged any trade mark ; or
- (b) applies any trade mark or any forged trade mark to any goods, not being the manufacture or merchandise of any person denoted by such trade mark or whose trade mark is so forged ; or
- (c) applies any trade mark or forged trade mark to any goods not being the particular description of manufacture or merchandise denoted by such trade mark or forged trade mark,

shall be guilty of a misdemeanour, and shall also forfeit to Her Majesty all goods belonging to him to which he shall have so applied any such trade mark or forged trade mark.

Applying forged
trade mark to cover,
&c.

Ibid. s. 9.

11. Whosoever with intent to defraud—

- (a) applies any trade mark or forged trade mark to any cover or other thing in or with which any goods are intended to be sold, or are sold, or uttered or exposed for sale, or for any purpose of trade or manufacture ; or
- (b) places, or causes or procures to be enclosed or placed, any goods in or with, or applies to any goods, any cover or other thing to which any trade mark has been falsely applied, or to which any forged trade mark has been applied, or having thereon any trade mark of any other person,

shall be guilty of a misdemeanour, and shall also forfeit to Her Majesty all such goods, and also every such cover or other thing in his possession or power, and every other similar cover or other thing made to be used in like manner.

Forfeiture of certain
instruments.

Ibid. ss. 8, 9.

12. Any person who commits any of the misdemeanours under the tenth and eleventh sections hereof, shall also forfeit to Her Majesty every instrument in his possession or power which has been, or is fitted to be, used for applying any such trade mark or forged trade mark, and the Court before which any such misdemeanour is tried may order all goods, instruments, and things forfeited under this or the said sections to be destroyed or otherwise disposed of as such Court thinks fit.

False description of
goods.

Ibid. s. 13.

13. Whosoever with intent to defraud puts or causes or procures to be put upon any goods, or upon any cover, case, frame, or other thing, with or in or by means of which any goods are intended to be or are sold, or uttered, or exposed for any purpose of trade or manufacture—

- (a) any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such goods,

Trade Marks.

goods, or any part thereof, or of the place or country in which such goods have been made, manufactured, or produced; or,

- (b) any word, letter, figure, signature, or mark for the purpose of falsely indicating such goods, or the mode of manufacturing or producing the same, or the ornamentation, shape, or configuration thereof, to be the subject of any existing patent, privilege, or copyright,

shall, for every such offence, forfeit and pay a sum of money equal to the value of the goods so falsely described or indicated, and a further sum not exceeding five pounds and not less than ten shillings.

14. At the trial of any person charged with an offence under sections ten, eleven, or thirteen, it shall not be necessary to prove that the acts complained of were done with intent to defraud, but the burden of proving that they were done without intent to defraud shall be on the person so charged.

Burden of proof under ss. 10, 11, and 13.

56 Vic. No. 13, s. 2.

15. (1) Whosoever sells, utters, or exposes for sale or for any purpose of trade or manufacture, or causes or procures to be sold, uttered, or exposed for sale or such purpose any goods—

Selling goods bearing forged trade mark.

23 Vic. No. 9, s. 10.

- (a) with any forged trade mark knowing the same to be forged; or,

- (b) with the trade mark of any other person used falsely or wrongfully or without lawful authority or excuse, knowing such trade mark to be so used,

shall, for every such offence, forfeit and pay a sum equal to the value of the goods so sold, uttered, or exposed, and a further sum not exceeding five pounds and not less than ten shillings.

(2) Any such goods shall be deemed to be sold, uttered, or exposed with such forged or other trade mark, if the same—

Definition. Ibid.

- (a) is in or with such goods; or,

- (b) is in or with any cover or other thing used with such goods.

16. At the trial of any person charged with an offence under the last preceding section, it shall not be necessary to prove that he knew that the trade mark was forged, or knew that the trade mark of another person had been applied or used falsely, wrongfully, or without lawful authority or excuse, as the case may be, but the burden of proving the absence of such knowledge shall be on the person so charged.

Burden of proof under s. 15.

56 Vic. No. 13, s. 3.

17. Every addition to and alteration of, and also every imitation of any trade mark made, applied, or used with intent to defraud, or which causes a trade mark with such alteration or addition, or such imitation of a trade mark to resemble any genuine trade mark so as to be calculated or likely to deceive, shall be deemed to be a false and forged trade mark within the meaning of this Act: And every act of

Definition of forging.

23 Vic. No. 9, s. 11.

Trade Marks.

of making, applying, or otherwise using any such addition to or alteration or imitation of a trade mark as aforesaid, done by any person with intent to defraud, shall be deemed to be forging a trade mark within the meaning of this Act.

Any person selling goods with forged trade mark may be required to state where he obtained them.

28 Vic. No. 9, s. 12.

18. Any person who has sold, uttered, or exposed for sale or for any purpose of trade or manufacture, or has caused or procured to be so sold, uttered, or exposed, any goods with any forged trade mark, or with the trade mark of any other person used without lawful authority or excuse (whether such forged or other trade mark is upon or with such goods, or upon or with any cover or other thing with which such goods have been so sold, uttered, or exposed), shall be bound upon demand in writing, delivered to him or left for him at his last known dwelling-house, or at the place of sale, uttering, or exposure, by or on behalf of any person whose trade mark has been so forged or used, to give to the person requiring the same, or his attorney or agent, within forty-eight hours after such demand, full information in writing of the name and address of the person from whom, and of the time when, he obtained such goods, and if he refuses so to do, any justice, on information on oath of such demand and refusal, may summon before him the party refusing, and on being satisfied that such demand ought to be complied with, may order such information to be given within a certain time to be appointed by him, and any party who refuses or neglects to comply with such order shall, for every such offence, forfeit and pay the sum of five pounds, and such refusal or neglect shall be evidence that such party knew that the trade mark with which such goods were so sold, uttered, or exposed, was a forged trade mark, or a trade mark used without lawful authority or excuse, as the case may be.

Selling goods with false description.

Ibid. s. 14.

19. Whosoever, knowing that any false description, statement, or other indication of or respecting—

- (a) the number, quantity, measure or weight of any goods or of any part thereof; or
- (b) the place or country where such goods have been manufactured or produced;

has been put upon—

- (c) any such goods; or
 - (d) any cover or other thing containing or with such goods; or
 - (e) any case, frame, or thing used to expose such goods for sale,
- sells, utters, or exposes any such goods for sale or any purpose of trade or manufacture, or causes or procures any such goods to be so sold, uttered, or exposed shall, for every such offence, be liable to a penalty not exceeding five pounds and not less than ten shillings.

Burden of proof under s. 19.

56 Vic. No. 13 s. 4.

20. At the trial of any person charged with an offence under the last preceding section it shall not be necessary to prove that the said person knew that any false description, statement, or other indication

Trade Marks.

indication of or respecting any of the matters mentioned in the said section had been put upon any of the goods, articles, or things in the said section mentioned, but the burden of proving the absence of such knowledge shall be on the person so charged.

21. The provisions of this Act shall not be construed to make it an offence for any person—

Class of goods may be indicated by word in general use.

28 Vic. No. 9, s. 15.

- (a) to apply to any goods or to any cover or other thing with which such goods are sold or intended to be sold, any name, word, or expression generally used for indicating such goods to be of some particular description of manufacture; or
- (b) to sell, utter, or expose for sale any goods to which, or to any cover or other thing sold therewith, any such generally used name, word, or expression has been applied.

22. In every indictment, pleading, proceeding, and document whatsoever in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient to state the same to be a trade mark or forged trade mark, as the case may be, without further describing such trade mark or forged trade mark, or setting forth any copy or fac-simile thereof.

Description of trade mark in indictment. *Ibid.* s. 16.

23. The provisions of this Act concerning any offence under this Act shall not affect any right or remedy which any person aggrieved by such act is entitled to at law, or in equity, and shall not excuse any person from answering or making discovery upon examination as a witness or upon interrogatories or otherwise in any suit or other civil proceeding.

Civil rights not affected by this Act. *Ibid.* s. 17.

Provided always that no evidence, statement, or discovery, which any person is compelled to give or make, shall be admissible in evidence against such person in support of any indictment or of any proceeding under this Act.

Proviso.

24. In every case where it is necessary to allege an intent to defraud, it shall be sufficient to allege that the person accused did the act with intent to defraud without alleging an intent to defraud any particular person.

Intent to defraud. *Ibid.* s. 18.

25. Every person convicted of any offence which is by this Act made a misdemeanour shall be liable to imprisonment, with or without hard labour, for not more than two years, or to a fine, or to imprisonment with or without hard labour and a fine, and also to imprisonment until the fine, if any, has been paid.

Punishment for misdemeanour. *Ibid.* s. 20.

26. (1) Where any person has committed any offence whereby he has forfeited or become liable to pay any of the penalties or sums mentioned in this Act, every such penalty or sum may be recovered in an action of debt which any person may, as plaintiff for and on behalf of Her Majesty, commence in any Court of Record; and the amount of every such penalty or sum shall be determined by the jury (if any), and if there is no jury, then by the Court, or some other jury as the Court thinks fit.

Recovery of penalties. *Ibid.* s. 21.

Trade Marks.

(2) In lieu of such proceeding such penalty or sum may be recovered by a summary proceeding before two justices having jurisdiction in the district or place where the offender resides or has any place of business, or in the district or place in which the offence was committed.

Execution and costs.
28 Vic. No. 9, s. 23.

27. In every case in which judgment is obtained in any such action for the amount of any such penalty or sum, such amount shall be paid by the defendant to the sheriff or the officer of the Court who shall account for the same to the Colonial Treasurer, and if it is not paid may be recovered, or the amount thereof levied, or the payment thereof enforced, by execution or other proper proceeding as money due to Her Majesty; and the plaintiff suing on behalf of Her Majesty shall, upon obtaining judgment, be entitled to have execution for all his costs of suit which shall include all costs and charges which he has expended or incurred in, about, or for the purposes of the action, unless the Court or a Judge thereof directs that costs of the ordinary amount only shall be allowed.

Summary
proceedings.
Ibid. s. 22.

28. All penalties and forfeitures under this Act may be recovered and adjudged, and all offences, except misdemeanours, may be prosecuted before and heard and determined by any two justices in accordance with the Acts in force for the time being relating to summary proceedings before justices.

Search warrants.
56 Vic. No. 13, s. 5.

29. Where, upon information of an offence against this Act, a justice has issued a summons requiring the defendant to appear, or a warrant for the arrest of the defendant, and either the said or any other justice is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of, or in relation to, which the said offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, the said justice may issue a warrant under his hand, by virtue of which any constable named may enter the said house, premises, or place at any reasonable time by day, and there search for and seize and take away such goods and things, and any goods or things seized under any such warrant shall be brought before a justice who shall thereupon determine whether the same are or are not liable to forfeiture under this Act.

Trade Marks.

PART IV.

Warranty.

30. If any person sells or contracts to sell, whether by writing or not, to any other person any goods upon which, or upon any cover or other thing, with which such goods are sold, or contracted to be sold, there is any trade mark, the sale, or contract to sell, shall in every such case be deemed to be made with a warranty or contract by the vendor with the vendee that such trade mark is genuine, and not wrongfully used, unless the contrary is expressed in some writing, signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

Warranty of trade
mark.
28 Vic. No. 9, s. 25.

31. If any person sells or contracts to sell, whether by writing or not, to any other person, any goods upon which, or upon any cover or other thing with which such goods are sold, or contracted to be sold, any description, statement, or other indication of or respecting the number, quantity, measure, or weight of such goods, or the place or country in which such goods have been made, manufactured, or produced appears, the sale or contract to sell shall in every such case be deemed to be made with a warranty or contract by the vendor, to or with the vendee, that no such description, statement, or other indication is in any material respect untrue, unless the contrary is expressed in some writing, signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

Warranty of
description.
Ibid. s. 26.

PART V.

Proceedings in suits.

32. (1) In any suit at law or in equity against any person for forging any trade mark, or for fraudulently applying any trade mark to any goods, or for selling, exposing for sale, or uttering any goods with any trade mark falsely or wrongfully applied thereto, or with any forged trade mark applied thereto, or for preventing the repetition or continuance of any such wrongful act, or the committal of any similar act, in which the plaintiff obtains a judgment or decree against the defendant, the Court may direct such goods to be destroyed or otherwise disposed of.

Powers of Court.
Ibid. s. 27.

(2) In any such suit the Court or Judge may make an order as such Court or Judge thinks fit for the inspection of—

Inspection.

- (a) any manufacture or process carried on by the defendant in which any such forged trade mark or any such trade mark as aforesaid shall be alleged to be so used or applied; and

B

(b)

Trade Marks.

(b) all goods in the possession or power of the defendant, alleged to have thereon, or in any way attached thereto, any forged trade mark, or any trade mark falsely or wrongfully applied; and

(c) every instrument in the possession or power of the defendant used, or intended to be, or capable of being used for making any forged trade mark or trade mark alleged to be forged, or falsely or wrongfully applying any trade mark;

and any person who refuses or neglects to obey any such order shall be guilty of a contempt of Court.

Injunction.

(3) In any such suit at law the Court may, upon giving judgment for the plaintiff, award a writ of injunction against the defendant commanding him to forbear from committing, and not, by himself or otherwise, to repeat or commit, any offence or wrongful act of the like nature as that of which he has been convicted by such judgment, and any disobedience of any such writ of injunction shall be punished as a contempt of Court.

Action for damages in respect of certain wrongful acts.

28 Vic. No. 9, s. 28.

33. Whenever any person,—

(a) forges any trade mark; or,

(b) for the purpose of sale or for any purpose of trade or manufacture applies any forged trade mark to any goods or to any cover or other thing used with any goods; or,

(c) encloses or places any goods in or with any cover or other thing, to which any trade mark has been falsely applied or to which any forged trade mark has been applied; or,

(d) applies to any goods, any cover or other thing to which any trade mark has been falsely applied, or to which any forged trade mark has been applied; or,

(e) encloses, or places any goods in or with any cover or other thing having thereon any trade mark of any other person;

every person aggrieved thereby may maintain an action or suit for damages in respect thereof, and for preventing the repetition or continuance of the wrongful act and the committal of any similar act.

Costs on verdict for defendant.

Ibid. s. 29.

34. In every action which any person under the provisions of this Act commences as plaintiff, for or on behalf of Her Majesty, for recovering any penalty or sum, if the defendant obtains judgment he shall be entitled to recover his costs of suit which shall include a full indemnity for all the costs, charges, and expenses by him expended or incurred in, about, or for the purposes of the action, unless the Court or a Judge thereof directs that costs of the ordinary amount only shall be allowed.

Security for costs may be ordered.
Ibid. s. 30.

35. In any action which any person under the provisions of this Act commences as plaintiff, for or on behalf of Her Majesty, to recover any penalty or sum, if it is shown to the satisfaction of the Court or a Judge thereof that such person has no ground for alleging that

Trade Marks.

that he has been aggrieved by the committing of the alleged offence in respect of which the penalty or sum is alleged to have become payable, and also that such person is not resident within the jurisdiction of the Court, or not a person of sufficient property to be able to pay any costs which the defendant may recover in the action, the Court or Judge may order that the plaintiff shall give security by the bond or recognizance of himself and a surety, or by the deposit of a sum of money, or otherwise as the Court or Judge thinks fit, for the payment to the defendant of any costs which he may be entitled to recover in the action.

36. No person shall commence any action or proceeding for the recovery of any penalty, or for procuring the conviction of any offender, in manner hereinbefore provided, after the expiration of one year next after the committing of the offence, or one year next after the first discovery thereof by the person proceeding.

Limitation of
actions.

28 Vic. No. 9, s. 24.

SCHEDULE.

Reference to Acts.	Title or short title.	Extent of repeal.
28 Vic. No. 9 ...	The Trades Marks Act, 1865	The whole.
56 Vic. No. 13 ...	Trades Marks Act Amendment Act	The whole.

By Authority : WILLIAM APPLEGATE GULLICK, Government Printer, Sydney, 1900.

[9d.]

Article I

Section 1. The legislative power of the Territory shall be vested in a Senate and House of Representatives, which shall be styled the Legislature of the Territory.

Section 2. The Senate shall be composed of six members, who shall be elected by the qualified electors of the Territory, and shall hold office for two years.

Article II

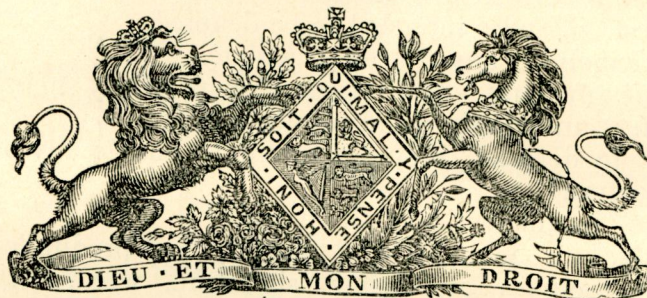
Section 1. The executive power of the Territory shall be vested in the Governor, who shall hold office for two years.

I Certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Legislative Council Chamber,
Sydney, 12th September, 1900. }*

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO SEXAGESIMO QUARTO

VICTORIÆ REGINÆ.

Act No. 19, 1900.

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Trade Marks.

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2. The Acts mentioned in the Schedule hereto are hereby repealed.

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“Forge,” “forging,” and “forged” respectively include counterfeit, counterfeiting, and counterfeited.

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“Trade mark” includes any mark lawfully used by any person to denote any goods to be goods of the manufacture or merchandise of such person, or to be goods of any particular description made or sold by such person.

“Person” includes any person whether a subject of Her Majesty or not, and any body corporate or body of the like nature, company, association, or society of persons, whether the same is established or carries on business within or without Her Majesty’s dominions, and whether the members thereof are or are not subjects of Her Majesty.

“Registrar” means the registrar of trade marks.

Saving.

4. Nothing in this Act shall be deemed to affect the operation of the “International Patents and Trade-marks Arrangements Act, 1897.”

PART II.

Registration and transfer.

Appointment of registrar.

Ibid. s. 3.

5. (1) The Governor may appoint a registrar of trade marks and an office to be the place of registration for the purposes of this Act. Any such appointment made under any Act hereby repealed shall have the same force and effect as it would have had if this Act had been in force when such appointment was made and it had been made hereunder.

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Trade Marks.

(2) The registrar shall keep a proper register of all certificates issued and of all acts done by him in pursuance of this Act, and such register shall be open to the inspection of any person during office hours on payment of the sum of sixpence. Register to be kept. 28 Vic. No. 9, s. 5.

6. Any person desirous of registering a trade mark shall deliver to the registrar two copies thereof, and shall at the same time pay to the registrar for the public uses of New South Wales a sum of three pounds and three shillings, and shall also state in writing the nature of the article to which it is proposed that such trade mark shall apply. The registrar shall within fourteen days of the payment of such fee publish in the Gazette a notice stating— Registration of trade mark. Ibid. s. 4.

- (a) the name of the applicant ;
- (b) a description of the trade mark as nearly as may be ; and
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- (d) that such trade mark has been previously registered ; or
- (e) that some other person is entitled to such trade mark ; or
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8. A mark shall not be recognised or considered to be the trade mark of any person until it has been registered by or on behalf of the person claiming to be entitled thereto as his trade mark. Trade mark must be registered. Ibid. s. 2.

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Trade Marks.

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- (b) applies any trade mark or any forged trade mark to any goods, not being the manufacture or merchandise of any person denoted by such trade mark or whose trade mark is so forged ; or
- (c) applies any trade mark or forged trade mark to any goods not being the particular description of manufacture or merchandise denoted by such trade mark or forged trade mark,

shall be guilty of a misdemeanour, and shall also forfeit to Her Majesty all goods belonging to him to which he shall have so applied any such trade mark or forged trade mark.

Applying forged
trade mark to cover,
&c.

Ibid. s. 9.

11. Whosoever with intent to defraud—

- (a) applies any trade mark or forged trade mark to any cover or other thing in or with which any goods are intended to be sold, or are sold, or uttered or exposed for sale, or for any purpose of trade or manufacture ; or
- (b) places, or causes or procures to be enclosed or placed, any goods in or with, or applies to any goods, any cover or other thing to which any trade mark has been falsely applied, or to which any forged trade mark has been applied, or having thereon any trade mark of any other person,

shall be guilty of a misdemeanour, and shall also forfeit to Her Majesty all such goods, and also every such cover or other thing in his possession or power, and every other similar cover or other thing made to be used in like manner.

Forfeiture of certain
instruments.

Ibid. ss. 8, 9.

12. Any person who commits any of the misdemeanours under the tenth and eleventh sections hereof, shall also forfeit to Her Majesty every instrument in his possession or power which has been, or is fitted to be, used for applying any such trade mark or forged trade mark, and the Court before which any such misdemeanour is tried may order all goods, instruments, and things forfeited under this or the said sections to be destroyed or otherwise disposed of as such Court thinks fit.

False description of
goods.

Ibid. s. 13.

13. Whosoever with intent to defraud puts or causes or procures to be put upon any goods, or upon any cover, case, frame, or other thing, with or in or by means of which any goods are intended to be or are sold, or uttered, or exposed for any purpose of trade or manufacture—

- (a) any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such goods,

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goods, or any part thereof, or of the place or country in which such goods have been made, manufactured, or produced; or,

- (b) any word, letter, figure, signature, or mark for the purpose of falsely indicating such goods, or the mode of manufacturing or producing the same, or the ornamentation, shape, or configuration thereof, to be the subject of any existing patent, privilege, or copyright,

shall, for every such offence, forfeit and pay a sum of money equal to the value of the goods so falsely described or indicated, and a further sum not exceeding five pounds and not less than ten shillings.

14. At the trial of any person charged with an offence under sections ten, eleven, or thirteen, it shall not be necessary to prove that the acts complained of were done with intent to defraud, but the burden of proving that they were done without intent to defraud shall be on the person so charged.

Burden of proof under ss. 10, 11, and 13.
56 Vic. No. 13, s. 2.

15. (1) Whosoever sells, utters, or exposes for sale or for any purpose of trade or manufacture, or causes or procures to be sold, uttered, or exposed for sale or such purpose any goods—

Selling goods bearing forged trade mark.
23 Vic. No. 9, s. 10.

- (a) with any forged trade mark knowing the same to be forged; or,

- (b) with the trade mark of any other person used falsely or wrongfully or without lawful authority or excuse, knowing such trade mark to be so used,

shall, for every such offence, forfeit and pay a sum equal to the value of the goods so sold, uttered, or exposed, and a further sum not exceeding five pounds and not less than ten shillings.

(2) Any such goods shall be deemed to be sold, uttered, or exposed with such forged or other trade mark, if the same—

Definition.
Ibid.

- (a) is in or with such goods; or,

- (b) is in or with any cover or other thing used with such goods.

16. At the trial of any person charged with an offence under the last preceding section, it shall not be necessary to prove that he knew that the trade mark was forged, or knew that the trade mark of another person had been applied or used falsely, wrongfully, or without lawful authority or excuse, as the case may be, but the burden of proving the absence of such knowledge shall be on the person so charged.

Burden of proof under s. 15.
56 Vic. No. 13, s. 3.

17. Every addition to and alteration of, and also every imitation of any trade mark made, applied, or used with intent to defraud, or which causes a trade mark with such alteration or addition, or such imitation of a trade mark to resemble any genuine trade mark so as to be calculated or likely to deceive, shall be deemed to be a false and forged trade mark within the meaning of this Act: And every act of

Definition of forging
23 Vic. No. 9, s. 11.

Trade Marks.

of making, applying, or otherwise using any such addition to or alteration or imitation of a trade mark as aforesaid, done by any person with intent to defraud, shall be deemed to be forging a trade mark within the meaning of this Act.

Any person selling goods with forged trade mark may be required to state where he obtained them.

28 Vic. No. 9, s. 12.

18. Any person who has sold, uttered, or exposed for sale or for any purpose of trade or manufacture, or has caused or procured to be so sold, uttered, or exposed, any goods with any forged trade mark, or with the trade mark of any other person used without lawful authority or excuse (whether such forged or other trade mark is upon or with such goods, or upon or with any cover or other thing with which such goods have been so sold, uttered, or exposed), shall be bound upon demand in writing, delivered to him or left for him at his last known dwelling-house, or at the place of sale, uttering, or exposure, by or on behalf of any person whose trade mark has been so forged or used, to give to the person requiring the same, or his attorney or agent, within forty-eight hours after such demand, full information in writing of the name and address of the person from whom, and of the time when, he obtained such goods, and if he refuses so to do, any justice, on information on oath of such demand and refusal, may summon before him the party refusing, and on being satisfied that such demand ought to be complied with, may order such information to be given within a certain time to be appointed by him, and any party who refuses or neglects to comply with such order shall, for every such offence, forfeit and pay the sum of five pounds, and such refusal or neglect shall be evidence that such party knew that the trade mark with which such goods were so sold, uttered, or exposed, was a forged trade mark, or a trade mark used without lawful authority or excuse, as the case may be.

Selling goods with false description.

Ibid. s. 14.

19. Whosoever, knowing that any false description, statement, or other indication of or respecting—

- (a) the number, quantity, measure or weight of any goods or of any part thereof; or
- (b) the place or country where such goods have been manufactured or produced;

has been put upon—

- (c) any such goods; or
- (d) any cover or other thing containing or with such goods; or
- (e) any case, frame, or thing used to expose such goods for sale,

sells, utters, or exposes any such goods for sale or any purpose of trade or manufacture, or causes or procures any such goods to be so sold, uttered, or exposed shall, for every such offence, be liable to a penalty not exceeding five pounds and not less than ten shillings.

Burden of proof under s. 19.

56 Vic. No. 13 s. 4.

20. At the trial of any person charged with an offence under the last preceding section it shall not be necessary to prove that the said person knew that any false description, statement, or other indication

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indication of or respecting any of the matters mentioned in the said section had been put upon any of the goods, articles, or things in the said section mentioned, but the burden of proving the absence of such knowledge shall be on the person so charged.

21. The provisions of this Act shall not be construed to make it an offence for any person—

- (a) to apply to any goods or to any cover or other thing with which such goods are sold or intended to be sold, any name, word, or expression generally used for indicating such goods to be of some particular description of manufacture; or
- (b) to sell, utter, or expose for sale any goods to which, or to any cover or other thing sold therewith, any such generally used name, word, or expression has been applied.

Class of goods may be indicated by word in general use.

28 Vic. No. 9, s. 15.

22. In every indictment, pleading, proceeding, and document whatsoever in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient to state the same to be a trade mark or forged trade mark, as the case may be, without further describing such trade mark or forged trade mark, or setting forth any copy or fac-simile thereof.

Description of trade mark in indictment. *Ibid.* s. 16.

23. The provisions of this Act concerning any offence under this Act shall not affect any right or remedy which any person aggrieved by such act is entitled to at law, or in equity, and shall not excuse any person from answering or making discovery upon examination as a witness or upon interrogatories or otherwise in any suit or other civil proceeding.

Civil rights not affected by this Act. *Ibid.* s. 17.

Provided always that no evidence, statement, or discovery, which any person is compelled to give or make, shall be admissible in evidence against such person in support of any indictment or of any proceeding under this Act.

Proviso.

24. In every case where it is necessary to allege an intent to defraud, it shall be sufficient to allege that the person accused did the act with intent to defraud without alleging an intent to defraud any particular person.

Intent to defraud. *Ibid.* s. 18.

25. Every person convicted of any offence which is by this Act made a misdemeanour shall be liable to imprisonment, with or without hard labour, for not more than two years, or to a fine, or to imprisonment with or without hard labour and a fine, and also to imprisonment until the fine, if any, has been paid.

Punishment for misdemeanour. *Ibid.* s. 20.

26. (1) Where any person has committed any offence whereby he has forfeited or become liable to pay any of the penalties or sums mentioned in this Act, every such penalty or sum may be recovered in an action of debt which any person may, as plaintiff for and on behalf of Her Majesty, commence in any Court of Record; and the amount of every such penalty or sum shall be determined by the jury (if any), and if there is no jury, then by the Court, or some other jury as the Court thinks fit.

Recovery of penalties. *Ibid.* s. 21.

(2)

Trade Marks.

(2) In lieu of such proceeding such penalty or sum may be recovered by a summary proceeding before two justices having jurisdiction in the district or place where the offender resides or has any place of business, or in the district or place in which the offence was committed.

Execution and costs.

28 Vic. No. 9, s. 23.

27. In every case in which judgment is obtained in any such action for the amount of any such penalty or sum, such amount shall be paid by the defendant to the sheriff or the officer of the Court who shall account for the same to the Colonial Treasurer, and if it is not paid may be recovered, or the amount thereof levied, or the payment thereof enforced, by execution or other proper proceeding as money due to Her Majesty; and the plaintiff suing on behalf of Her Majesty shall, upon obtaining judgment, be entitled to have execution for all his costs of suit which shall include all costs and charges which he has expended or incurred in, about, or for the purposes of the action, unless the Court or a Judge thereof directs that costs of the ordinary amount only shall be allowed.

Summary proceedings.

Ibid. s. 22.

28. All penalties and forfeitures under this Act may be recovered and adjudged, and all offences, except misdemeanours, may be prosecuted before and heard and determined by any two justices in accordance with the Acts in force for the time being relating to summary proceedings before justices.

Search warrants.

56 Vic. No. 13, s. 5.

29. Where, upon information of an offence against this Act, a justice has issued a summons requiring the defendant to appear, or a warrant for the arrest of the defendant, and either the said or any other justice is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of, or in relation to, which the said offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, the said justice may issue a warrant under his hand, by virtue of which any constable named may enter the said house, premises, or place at any reasonable time by day, and there search for and seize and take away such goods and things, and any goods or things seized under any such warrant shall be brought before a justice who shall thereupon determine whether the same are or are not liable to forfeiture under this Act.

Trade Marks.

PART IV.

Warranty.

30. If any person sells or contracts to sell, whether by writing or not, to any other person any goods upon which, or upon any cover or other thing, with which such goods are sold, or contracted to be sold, there is any trade mark, the sale, or contract to sell, shall in every such case be deemed to be made with a warranty or contract by the vendor with the vendee that such trade mark is genuine, and not wrongfully used, unless the contrary is expressed in some writing, signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

Warranty of trade mark.
28 Vic. No. 9, s. 25.

31. If any person sells or contracts to sell, whether by writing or not, to any other person, any goods upon which, or upon any cover or other thing with which such goods are sold, or contracted to be sold, any description, statement, or other indication of or respecting the number, quantity, measure, or weight of such goods, or the place or country in which such goods have been made, manufactured, or produced appears, the sale or contract to sell shall in every such case be deemed to be made with a warranty or contract by the vendor, to or with the vendee, that no such description, statement, or other indication is in any material respect untrue, unless the contrary is expressed in some writing, signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

Warranty of description.
Ibid. s. 26.

PART V.

Proceedings in suits.

32. (1) In any suit at law or in equity against any person for forging any trade mark, or for fraudulently applying any trade mark to any goods, or for selling, exposing for sale, or uttering any goods with any trade mark falsely or wrongfully applied thereto, or with any forged trade mark applied thereto, or for preventing the repetition or continuance of any such wrongful act, or the committal of any similar act, in which the plaintiff obtains a judgment or decree against the defendant, the Court may direct such goods to be destroyed or otherwise disposed of.

Powers of Court.
Ibid. s. 27.

(2) In any such suit the Court or Judge may make an inspection, order as such Court or Judge thinks fit for the inspection of—

- (a) any manufacture or process carried on by the defendant in which any such forged trade mark or any such trade mark as aforesaid shall be alleged to be so used or applied; and

(b)

Trade Marks.

(b) all goods in the possession or power of the defendant, alleged to have thereon, or in any way attached thereto, any forged trade mark, or any trade mark falsely or wrongfully applied; and

(c) every instrument in the possession or power of the defendant used, or intended to be, or capable of being used for making any forged trade mark or trade mark alleged to be forged, or falsely or wrongfully applying any trade mark;

and any person who refuses or neglects to obey any such order shall be guilty of a contempt of Court.

Injunction.

(3) In any such suit at law the Court may, upon giving judgment for the plaintiff, award a writ of injunction against the defendant commanding him to forbear from committing, and not, by himself or otherwise, to repeat or commit, any offence or wrongful act of the like nature as that of which he has been convicted by such judgment, and any disobedience of any such writ of injunction shall be punished as a contempt of Court.

Action for damages
in respect of certain
wrongful acts.

28 Vic. No. 9, s. 28.

33. Whenever any person,—

(a) forges any trade mark; or,

(b) for the purpose of sale or for any purpose of trade or manufacture applies any forged trade mark to any goods or to any cover or other thing used with any goods; or,

(c) encloses or places any goods in or with any cover or other thing, to which any trade mark has been falsely applied or to which any forged trade mark has been applied; or,

(d) applies to any goods, any cover or other thing to which any trade mark has been falsely applied, or to which any forged trade mark has been applied; or,

(e) encloses, or places any goods in or with any cover or other thing having thereon any trade mark of any other person;

every person aggrieved thereby may maintain an action or suit for damages in respect thereof, and for preventing the repetition or continuance of the wrongful act and the committal of any similar act.

Costs on verdict
for defendant.

Ibid. s. 29.

34. In every action which any person under the provisions of this Act commences as plaintiff, for or on behalf of Her Majesty, for recovering any penalty or sum, if the defendant obtains judgment he shall be entitled to recover his costs of suit which shall include a full indemnity for all the costs, charges, and expenses by him expended or incurred in, about, or for the purposes of the action, unless the Court or a Judge thereof directs that costs of the ordinary amount only shall be allowed.

Security for costs
may be ordered.

Ibid. s. 30.

35. In any action which any person under the provisions of this Act commences as plaintiff, for or on behalf of Her Majesty, to recover any penalty or sum, if it is shown to the satisfaction of the Court or a Judge thereof that such person has no ground for alleging that

Trade Marks.

that he has been aggrieved by the committing of the alleged offence in respect of which the penalty or sum is alleged to have become payable, and also that such person is not resident within the jurisdiction of the Court, or not a person of sufficient property to be able to pay any costs which the defendant may recover in the action, the Court or Judge may order that the plaintiff shall give security by the bond or recognizance of himself and a surety, or by the deposit of a sum of money, or otherwise as the Court or Judge thinks fit, for the payment to the defendant of any costs which he may be entitled to recover in the action.

36. No person shall commence any action or proceeding for the recovery of any penalty, or for procuring the conviction of any offender, in manner hereinbefore provided, after the expiration of one year next after the committing of the offence, or one year next after the first discovery thereof by the person proceeding.

Limitation of
actions.

28 Vic. No. 9, s. 24.

SCHEDULE.

Reference to Acts.	Title or short title.	Extent of repeal.
28 Vic. No. 9 ...	The Trades Marks Act, 1865 ...	The whole.
56 Vic. No. 13 ...	Trades Marks Act Amendment Act ...	The whole.

In the name and on the behalf of Her Majesty I assent to this Act.

BEAUCHAMP,
Governor.

Government House,
Sydney, 22nd September, 1900.

The first of these is the fact that the
the second is the fact that the
the third is the fact that the

the fourth is the fact that the
the fifth is the fact that the
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the seventh is the fact that the
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the tenth is the fact that the
the eleventh is the fact that the
the twelfth is the fact that the

In the name and on the behalf of His Majesty I reserve to this day
BEUCHAMPTON
18th day of January 1890

1890

Memo. and Certificate to accompany the Trade Marks Bill.

THIS Bill consolidates the Acts:—

28 Vic. No. 9;

56 Vic. No. 13.

Clause 10. A difficult question has had to be decided here. In the Schedule to the Criminal Law Amendment Act so much of section 8, 28 Vic. No. 9, "as relates to punishment" is repealed. It is very hard to see what this means. If it means that the offences created by the section shall not be punished at all, it really repeals the whole section. But it does not say so, and the later Act, 56 Vic. No. 13, section 2, recognises that section 8 is in force, and contains valuable provisions for facilitating prosecutions, which apply to section 8 but not to section 267 of the Criminal Law Amendment Act. Section 8 must, therefore, be considered to be still in force. If it is contended that the repeal means that the provisions as to forfeiture are to be done away with, the most anomalous result follows that if a forged trade mark is put upon goods the goods cannot be forfeited, but if it is put on any label or cover of the goods, the goods *can* be forfeited. (*See* clause 11, section 9, of 28 Vic. No. 9.) It seems quite clear that this cannot have been the intention of the Legislature. Section 20 of 28 Vic. No. 9 limits the term of imprisonment for the misdemeanours mentioned in sections 8, 9, and 19 (there are no others in the Act) to two years. When the Criminal Law Amendment Act was passed it had been decided that a longer term than two years could legally be imposed for misdemeanours. It may, therefore, have been intended to abolish this limitation. But if so, why was section 9 not included, or why was not section 20 repealed? Where no course is free from difficulty, the most reasonable and the least objectionable has, on the whole, appeared to be to treat section 8 as still in force, and this has accordingly been done.

Many changes in wording have been made to shorten the interminable and involved verbiage and appalling repetitions of the original Act, with the result that this Bill is much shorter, and is thought to be much clearer than the Acts consolidated. None of these changes have affected the meaning.

I certify that, save as aforesaid, this Bill solely consolidates, and in no way alters, adds to, or amends the law as contained in the Acts thereby consolidated.

CHAS. G. HEYDON,
Commissioner for the Consolidation of the Statute Law.

Trade Marks Act.

TABLE showing how the sections of Acts consolidated have been dealt with.

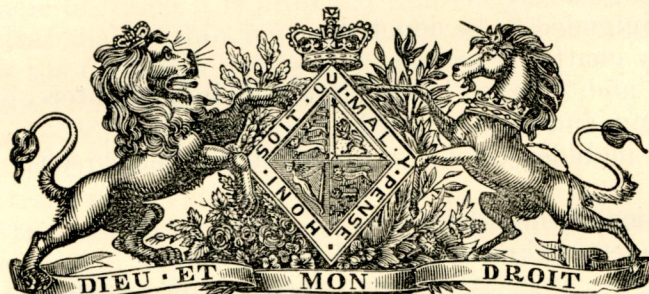
Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
28 VICTORIA No. 9.		
1	3	
2	8	
3	5 (1)	
4	6	
5	5 (2)	
6	7	
7	9	
8	10, 12	
9	11, 12	
10	15	
11	17	
12	18	
13	13	
14	19	
15	21	
16	22	
17	23	
18	Part 24 ...	Part repealed by 56 Vic. No. 13, s. 2
19	.....	Superseded by 46 Vic. No. 17. See now s. 351, Crimes Act.
20	25	
21	26	
22	28	
23	27	
24	36	
25	30	
26	31	
27	32	
28	33	
29	34	
30	35	
31	.....	Short title.
56 VICTORIA No. 13.		
1	.....	Short title.
2	14	
3	16	
4	20	
5	29	

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

*Legislative Council Chamber,
Sydney, 30th August, 1900. }*

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO SEXAGESIMO QUARTO

VICTORIÆ REGINÆ.

Act No. , 1900.

An Act to consolidate the Acts relating to Trade Marks
and fraudulent marks.

BE it enacted by the Queen's Most Excellent Majesty, by and with
the advice and consent of the Legislative Council and Legislative
Assembly of New South Wales in Parliament assembled, and by the
authority of the same, as follows:—

PART I.

Preliminary.

1. This Act may be cited as the "Trade Marks Act, 1900," and short title.
contains the following Parts:—

PART I.—*Preliminary.*—ss. 1–4.

PART II.—*Registration and transfer.*—ss. 5–9.

PART III.—*Offences.*—ss. 10–29.

PART IV.—*Warranty.*—ss. 30, 31.

PART V.—*Proceedings in suits.*—ss. 32–36.

Trade Marks.

2. The Acts mentioned in the Schedule hereto are hereby Repealed.
repealed.

3. In this Act, unless the context or subject-matter otherwise Interpretation.
indicates or requires,— 28 Vic. No. 9, s. 1.

“Apply” and “applied” respectively include attach, attached, and cause or procure to be applied or attached.

“Cover” includes any cask, bottle, stopper, vessel, case, wrapper, band, reel, ticket, or label.

“Denoted” includes intended to be denoted.

“Goods” includes any chattel or article.

“Forge,” “forging,” and “forged” respectively include counterfeit, counterfeiting, and counterfeited.

“Intent to defraud” includes intent to enable any other person to defraud.

“Justice” means justice of the peace.

“Manufacture” includes workmanship, and production.

“Mark” includes any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark of any other description.

“Trade mark” includes any mark lawfully used by any person to denote any goods to be goods of the manufacture or merchandise of such person, or to be goods of any particular description made or sold by such person.

“Person” includes any person whether a subject of Her Majesty or not, and any body corporate or body of the like nature, company, association, or society of persons, whether the same is established or carries on business within or without Her Majesty’s dominions, and whether the members thereof are or are not subjects of Her Majesty.

“Registrar” means the registrar of trade marks.

4. Nothing in this Act shall be deemed to affect the operation Saving.
of the “International Patents and Trade-marks Arrangements Act,
1897.”

PART II.

Registration and transfer.

5. (1) The Governor may appoint a registrar of trade marks Appointment of
and an office to be the place of registration for the purposes of this registrar.
Act. Any such appointment made under any Act hereby repealed Ibid. s. 3.
shall have the same force and effect as it would have had if this Act
had been in force when such appointment was made and it had been
made hereunder.

(2)

Trade Marks.

(2) The registrar shall keep a proper register of all certificates issued and of all acts done by him in pursuance of this Act, and such register shall be open to the inspection of any person during office hours on payment of the sum of sixpence. Register to be kept. 28 Vic. No. 9, s. 5.

6. Any person desirous of registering a trade mark shall deliver to the registrar two copies thereof, and shall at the same time pay to the registrar for the public uses of New South Wales a sum of three pounds and three shillings, and shall also state in writing the nature of the article to which it is proposed that such trade mark shall apply. The registrar shall within fourteen days of the payment of such fee publish in the Gazette a notice stating— Registration of trade mark. Ibid. s. 4.

- (a) the name of the applicant;
- (b) a description of the trade mark as nearly as may be; and
- (c) the nature of the article to which it is proposed that such trade mark shall apply;

and after the expiration of fourteen days from the publication aforesaid the registrar shall, unless it is shown to his satisfaction

- (d) that such trade mark has been previously registered; or
- (e) that some other person is entitled to such trade mark; or
- (f) that such trade mark is so like some other trade mark that it may be mistaken for the same,

issue to the applicant a certificate setting forth that such trade mark to be described in such certificate has been duly registered, and that the person named in such certificate is entitled to the use of the trade mark described therein.

7. Any certificate may be transferred either wholly or in part by any document in writing signed by the transferee, but no transfer shall be valid against the person named in such certificate until after such transfer has been duly registered, and the registrar shall register such transfer on payment of the sum of one pound one shilling. Transfer. Ibid. s. 6.

8. A mark shall not be recognised or considered to be the trade mark of any person until it has been registered by or on behalf of the person claiming to be entitled thereto as his trade mark. Trade mark must be registered. Ibid. s. 2.

9. The registration of any trade mark shall not confer any patent right over, or any sole right to manufacture, any article to which it is proposed to apply such trade mark, but the certificate of the registration of any trade mark shall be a proof of the right of the person named in such certificate, or of the registered transferee of such certificate, to use such trade mark, except in case of any suit instituted to try the right of any person to have had such trade mark registered. Effect of registration. Ibid. s. 7.

Trade Marks.

PART III.

Offences.

10. Whosoever with intent to defraud—

- (a) forges or procures to be forged any trade mark ; or
- (b) applies any trade mark or any forged trade mark to any goods, not being the manufacture or merchandise of any person denoted by such trade mark or whose trade mark is so forged ; or
- (c) applies any trade mark or forged trade mark to any goods not being the particular description of manufacture or merchandise denoted by such trade mark or forged trade mark,

Forging or fraudulently applying trade mark to goods.
28 Vic. No. 9, s. 8.

shall be guilty of a misdemeanour, and shall also forfeit to Her Majesty all goods belonging to him to which he shall have so applied any such trade mark or forged trade mark.

11. Whosoever with intent to defraud—

- (a) applies any trade mark or forged trade mark to any cover or other thing in or with which any goods are intended to be sold, or are sold, or uttered or exposed for sale, or for any purpose of trade or manufacture ; or
- (b) places, or causes or procures to be enclosed or placed, any goods in or with, or applies to any goods, any cover or other thing to which any trade mark has been falsely applied, or to which any forged trade mark has been applied, or having thereon any trade mark of any other person,

Applying forged trade mark to cover, &c.
Ibid. s. 9.

shall be guilty of a misdemeanour, and shall also forfeit to Her Majesty all such goods, and also every such cover or other thing in his possession or power, and every other similar cover or other thing made to be used in like manner.

12. Any person who commits any of the misdemeanours under the tenth and eleventh sections hereof, shall also forfeit to Her Majesty every instrument in his possession or power which has been, or is fitted to be, used for applying any such trade mark or forged trade mark, and the Court before which any such misdemeanour is tried may order all goods, instruments, and things forfeited under this or the said sections to be destroyed or otherwise disposed of as such Court thinks fit.

Forfeiture of certain instruments.
Ibid. ss. 8, 9.

13. Whosoever with intent to defraud puts or causes or procures to be put upon any goods, or upon any cover, case, frame, or other thing, with or in or by means of which any goods are intended to be sold, or are sold, or uttered, or exposed for any purpose of trade or manufacture—

False description of goods.
Ibid. s. 13.

- (a) any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such goods,

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goods, or any part thereof, or of the place or country in which such goods have been made, manufactured, or produced; or,

- (b) any word, letter, figure, signature, or mark for the purpose of falsely indicating such goods, or the mode of manufacturing or producing the same, or the ornamentation, shape, or configuration thereof, to be the subject of any existing patent, privilege, or copyright,

shall, for every such offence, forfeit and pay a sum of money equal to the value of the goods so falsely described or indicated, and a further sum not exceeding five pounds and not less than ten shillings.

14. At the trial of any person charged with an offence under sections ten, eleven, or thirteen, it shall not be necessary to prove that the acts complained of were done with intent to defraud, but the burden of proving that they were done without intent to defraud shall be on the person so charged.

Burden of proof
under ss. 10, 11, and
13.
56 Vic. No. 13, s. 2.

15. (1) Whosoever sells, utters, or exposes for sale or for any purpose of trade or manufacture, or causes or procures to be sold, uttered, or exposed for sale or such purpose any goods—

Selling goods
bearing forged trade
mark.

- (a) with any forged trade mark knowing the same to be forged; or,

28 Vic. No. 9, s. 10.

- (b) with the trade mark of any other person used falsely or wrongfully or without lawful authority or excuse, knowing such trade mark to be so used,

shall, for every such offence, forfeit and pay a sum equal to the value of the goods so sold, uttered, or exposed, and a further sum not exceeding five pounds and not less than ten shillings.

(2) Any such goods shall be deemed to be sold, uttered, or exposed with such forged or other trade mark, if the same—

Definition.
Ibid.

- (a) is in or with such goods; or,

- (b) is in or with any cover or other thing used with such goods.

16. At the trial of any person charged with an offence under the last preceding section, it shall not be necessary to prove that he knew that the trade mark was forged, or knew that the trade mark of another person had been applied or used falsely, wrongfully, or without lawful authority or excuse, as the case may be, but the burden of proving the absence of such knowledge shall be on the person so charged.

Burden of proof
under s. 15.
56 Vic. No. 13, s. 3.

17. Every addition to and alteration of, and also every imitation of any trade mark made, applied, or used with intent to defraud, or which causes a trade mark with such alteration or addition, or such imitation of a trade mark to resemble any genuine trade mark so as to be calculated or likely to deceive, shall be deemed to be a false and forged trade mark within the meaning of this Act: And every act of

Definition of forging
28 Vic. No. 9, s. 11.

Trade Marks.

of making, applying, or otherwise using any such addition to or alteration or imitation of a trade mark as aforesaid, done by any person with intent to defraud, shall be deemed to be forging a trade mark within the meaning of this Act.

18. Any person who has sold, uttered, or exposed for sale or for any purpose of trade or manufacture, or has caused or procured to be so sold, uttered, or exposed, any goods with any forged trade mark, or with the trade mark of any other person used without lawful authority or excuse (whether such forged or other trade mark is upon or with such goods, or upon or with any cover or other thing with which such goods have been so sold, uttered, or exposed), shall be bound upon demand in writing, delivered to him or left for him at his last known dwelling-house, or at the place of sale, uttering, or exposure, by or on behalf of any person whose trade mark has been so forged or used, to give to the person requiring the same, or his attorney or agent, within forty-eight hours after such demand, full information in writing of the name and address of the person from whom, and of the time when, he obtained such goods, and if he refuses so to do, any justice, on information on oath of such demand and refusal, may summon before him the party refusing, and on being satisfied that such demand ought to be complied with, may order such information to be given within a certain time to be appointed by him, and any party who refuses or neglects to comply with such order shall, for every such offence, forfeit and pay the sum of five pounds, and such refusal or neglect shall be evidence that such party knew that the trade mark with which such goods were so sold, uttered, or exposed, was a forged trade mark, or a trade mark used without lawful authority or excuse, as the case may be.

Any person selling goods with forged trade mark may be required to state where he obtained them.

28 Vic. No. 9, s. 12.

19. Whosoever, knowing that any false description, statement, or other indication of or respecting—

Selling goods with false description.

Ibid. s. 14.

- (a) the number, quantity, measure or weight of any goods or of any part thereof; or
- (b) the place or country where such goods have been manufactured or produced;

has been put upon—

- (c) any such goods; or
 - (d) any cover or other thing containing or with such goods; or
 - (e) any case, frame, or thing used to expose such goods for sale,
- sells, utters, or exposes any such goods for sale or any purpose of trade or manufacture, or causes or procures any such goods to be so sold, uttered, or exposed shall, for every such offence, be liable to a penalty not exceeding five pounds and not less than ten shillings.

20. At the trial of any person charged with an offence under the last preceding section it shall not be necessary to prove that the said person knew that any false description, statement, or other indication

Barden of proof under s. 19.

56 Vic. No. 13 s. 4.

Trade Marks.

indication of or respecting any of the matters mentioned in the said section had been put upon any of the goods, articles, or things in the said section mentioned, but the burden of proving the absence of such knowledge shall be on the person so charged.

21. The provisions of this Act shall not be construed to make it an offence for any person—

Class of goods may be indicated by word in general use.
23 Vic. No. 9, s. 15.

- (a) to apply to any goods or to any cover or other thing with which such goods are sold or intended to be sold, any name, word, or expression generally used for indicating such goods to be of some particular description of manufacture; or
- (b) to sell, utter, or expose for sale any goods to which, or to any cover or other thing sold therewith, any such generally used name, word, or expression has been applied.

22. In every indictment, pleading, proceeding, and document whatsoever in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient to state the same to be a trade mark or forged trade mark, as the case may be, without further describing such trade mark or forged trade mark, or setting forth any copy or fac-simile thereof.

Description of trade mark in indictment.
Ibid. s. 16.

23. The provisions of this Act concerning any offence under this Act shall not affect any right or remedy which any person aggrieved by such act is entitled to at law, or in equity, and shall not excuse any person from answering or making discovery upon examination as a witness or upon interrogatories or otherwise in any suit or other civil proceeding.

Civil rights not affected by this Act.
Ibid. s. 17.

Provided always that no evidence, statement, or discovery, which any person is compelled to give or make, shall be admissible in evidence against such person in support of any indictment or of any proceeding under this Act.

Proviso.

24. In every case where it is necessary to allege an intent to defraud, it shall be sufficient to allege that the person accused did the act with intent to defraud without alleging an intent to defraud any particular person.

Intent to defraud.
Ibid. s. 18.

25. Every person convicted of any offence which is by this Act made a misdemeanour shall be liable to imprisonment, with or without hard labour, for not more than two years, or to a fine, or to imprisonment with or without hard labour and a fine, and also to imprisonment until the fine, if any, has been paid.

Punishment for misdemeanour.
Ibid. s. 20.

26. (1) Where any person has committed any offence whereby he has forfeited or become liable to pay any of the penalties or sums mentioned in this Act, every such penalty or sum may be recovered in an action of debt which any person may, as plaintiff for and on behalf of Her Majesty, commence in any Court of Record; and the amount of every such penalty or sum shall be determined by the jury (if any), and if there is no jury, then by the Court, or some other jury as the Court thinks fit.

Recovery of penalties.
Ibid. s. 21.

Trade Marks.

(2) In lieu of such proceeding such penalty or sum may be recovered by a summary proceeding before two justices having jurisdiction in the district or place where the offender resides or has any place of business, or in the district or place in which the offence was committed.

27. In every case in which judgment is obtained in any such action for the amount of any such penalty or sum, such amount shall be paid by the defendant to the sheriff or the officer of the Court who shall account for the same to the Colonial Treasurer, and if it is not paid may be recovered, or the amount thereof levied, or the payment thereof enforced, by execution or other proper proceeding as money due to Her Majesty ; and the plaintiff suing on behalf of Her Majesty shall, upon obtaining judgment, be entitled to have execution for all his costs of suit which shall include all costs and charges which he has expended or incurred in, about, or for the purposes of the action, unless the Court or a Judge thereof directs that costs of the ordinary amount only shall be allowed. Execution and costs. 28 Vic. No. 9, s. 23.

28. All penalties and forfeitures under this Act may be recovered and adjudged, and all offences, except misdemeanours, may be prosecuted before and heard and determined by any two justices in accordance with the Acts in force for the time being relating to summary proceedings before justices. Summary proceedings. Ibid. s. 22.

29. Where, upon information of an offence against this Act, a justice has issued a summons requiring the defendant to appear, or a warrant for the arrest of the defendant, and either the said or any other justice is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of, or in relation to, which the said offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, the said justice may issue a warrant under his hand, by virtue of which any constable named may enter the said house, premises, or place at any reasonable time by day, and there search for and seize and take away such goods and things, and any goods or things seized under any such warrant shall be brought before a justice who shall thereupon determine whether the same are or are not liable to forfeiture under this Act. Search warrants. 56 Vic. No. 13, s. 5.

Trade Marks.

PART IV.

Warranty.

30. If any person sells or contracts to sell, whether by writing or not, to any other person any goods upon which, or upon any cover or other thing, with which such goods are sold, or contracted to be sold, there is any trade mark, the sale, or contract to sell, shall in every such case be deemed to be made with a warranty or contract by the vendor with the vendee that such trade mark is genuine, and not wrongfully used, unless the contrary is expressed in some writing, signed by or on behalf of the vendor, and delivered to and accepted by the vendee. Warranty of trade mark.
28 Vic. No. 9, s. 25.

31. If any person sells or contracts to sell, whether by writing or not, to any other person, any goods upon which, or upon any cover or other thing with which such goods are sold, or contracted to be sold, any description, statement, or other indication of or respecting the number, quantity, measure, or weight of such goods, or the place or country in which such goods have been made, manufactured, or produced appears, the sale or contract to sell shall in every such case be deemed to be made with a warranty or contract by the vendor, to or with the vendee, that no such description, statement, or other indication is in any material respect untrue, unless the contrary is expressed in some writing, signed by or on behalf of the vendor, and delivered to and accepted by the vendee. Warranty of description.
Ibid. s. 26.

PART V.

Proceedings in suits.

32. (1) In any suit at law or in equity against any person for forging any trade mark, or for fraudulently applying any trade mark to any goods, or for selling, exposing for sale, or uttering any goods with any trade mark falsely or wrongfully applied thereto, or with any forged trade mark applied thereto, or for preventing the repetition or continuance of any such wrongful act, or the committal of any similar act, in which the plaintiff obtains a judgment or decree against the defendant, the Court may direct such goods to be destroyed or otherwise disposed of. Powers of Court.
Ibid. s. 27.

(2) In any such suit the Court or Judge may make an order as such Court or Judge thinks fit for the inspection of— Inspection.

- (a) any manufacture or process carried on by the defendant in which any such forged trade mark or any such trade mark as aforesaid shall be alleged to be so used or applied ; and

(b)

Trade Marks.

- (b) all goods in the possession or power of the defendant, alleged to have thereon, or in any way attached thereto, any forged trade mark, or any trade mark falsely or wrongfully applied; and
- (c) every instrument in the possession or power of the defendant used, or intended to be, or capable of being used for making any forged trade mark or trade mark alleged to be forged, or falsely or wrongfully applying any trade mark;

and any person who refuses or neglects to obey any such order shall be guilty of a contempt of Court.

(3) In any such suit at law the Court may, upon giving Injunction. judgment for the plaintiff, award a writ of injunction against the defendant commanding him to forbear from committing, and not, by himself or otherwise, to repeat or commit, any offence or wrongful act of the like nature as that of which he has been convicted by such judgment, and any disobedience of any such writ of injunction shall be punished as a contempt of Court.

33. Whenever any person,—

- (a) forges any trade mark; or,
- (b) for the purpose of sale or for any purpose of trade or manufacture applies any forged trade mark to any goods or to any cover or other thing used with any goods; or,
- (c) encloses or places any goods in or with any cover or other thing, to which any trade mark has been falsely applied or to which any forged trade mark has been applied; or,
- (d) applies to any goods, any cover or other thing to which any trade mark has been falsely applied, or to which any forged trade mark has been applied; or,
- (e) encloses, or places any goods in or with any cover or other thing having thereon any trade mark of any other person;

every person aggrieved thereby may maintain an action or suit for damages in respect thereof, and for preventing the repetition or continuance of the wrongful act and the committal of any similar act.

34. In every action which any person under the provisions of this Act commences as plaintiff, for or on behalf of Her Majesty, for recovering any penalty or sum, if the defendant obtains judgment he shall be entitled to recover his costs of suit which shall include a full indemnity for all the costs, charges, and expenses by him expended or incurred in, about, or for the purposes of the action, unless the Court or a Judge thereof directs that costs of the ordinary amount only shall be allowed.

Action for damages
in respect of certain
wrongful acts.

28 Vic. No. 9, s. 28.

Costs on verdict
for defendant.
Ibid. s. 29.

35. In any action which any person under the provisions of this Act commences as plaintiff, for or on behalf of Her Majesty, to recover any penalty or sum, if it is shown to the satisfaction of the Court or a Judge thereof that such person has no ground for alleging

Security for costs
may be ordered.
Ibid. s. 30.

that

Trade Marks.

that he has been aggrieved by the committing of the alleged offence in respect of which the penalty or sum is alleged to have become payable, and also that such person is not resident within the jurisdiction of the Court, or not a person of sufficient property to be able to pay any costs which the defendant may recover in the action, the Court or Judge may order that the plaintiff shall give security by the bond or recognizance of himself and a surety, or by the deposit of a sum of money, or otherwise as the Court or Judge thinks fit, for the payment to the defendant of any costs which he may be entitled to recover in the action.

36. No person shall commence any action or proceeding for the recovery of any penalty, or for procuring the conviction of any offender, in manner hereinbefore provided, after the expiration of one year next after the committing of the offence, or one year next after the first discovery thereof by the person proceeding.

Limitation of
actions.
28 Vic. No. 9, s. 24.

SCHEDULE.

Reference to Acts.	Title or short title.	Extent of repeal.
28 Vic. No. 9 ..	The Trades Marks Act, 1865	The whole.
56 Vic. No. 13 ...	Trades Marks Act Amendment Act	The whole.

Yacht Club

It is the intention of the Yacht Club to have a regatta in August in which the trophy of gold is to be presented to the winner and the trophy of silver to the runner up. The trophy of gold is to be presented to the winner of the regatta and the trophy of silver to the runner up. The trophy of gold is to be presented to the winner of the regatta and the trophy of silver to the runner up.

The regatta is to be held on the 15th of August and the trophy of gold is to be presented to the winner of the regatta and the trophy of silver to the runner up. The trophy of gold is to be presented to the winner of the regatta and the trophy of silver to the runner up.

Yacht Club

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Yacht Club

Memo. and Certificate to accompany the Trade Marks Bill.

THIS Bill consolidates the Acts :—

28 Vic. No. 9 ;

56 Vic. No. 13.

Clause 10. A difficult question has had to be decided here. In the Schedule to the Criminal Law Amendment Act so much of section 8, 28 Vic. No. 9, "as relates to punishment" is repealed. It is very hard to see what this means. If it means that the offences created by the section shall not be punished at all, it really repeals the whole section. But it does not say so, and the later Act, 56 Vic. No. 13, section 2, recognises that section 8 is in force, and contains valuable provisions for facilitating prosecutions, which apply to section 8 but not to section 267 of the Criminal Law Amendment Act. Section 8 must, therefore, be considered to be still in force. If it is contended that the repeal means that the provisions as to forfeiture are to be done away with, the most anomalous result follows that if a forged trade mark is put upon goods the goods cannot be forfeited, but if it is put on any label or cover of the goods, the goods *can* be forfeited. (*See* clause 11, section 9, of 28 Vic. No. 9.) It seems quite clear that this cannot have been the intention of the Legislature. Section 20 of 28 Vic. No. 9 limits the term of imprisonment for the misdemeanours mentioned in sections 8, 9, and 19 (there are no others in the Act) to two years. When the Criminal Law Amendment Act was passed it had been decided that a longer term than two years could legally be imposed for misdemeanours. It may, therefore, have been intended to abolish this limitation. But if so, why was section 9 not included, or why was not section 20 repealed? Where no course is free from difficulty, the most reasonable and the least objectionable has, on the whole, appeared to be to treat section 8 as still in force, and this has accordingly been done.

Many changes in wording have been made to shorten the interminable and involved verbiage and appalling repetitions of the original Act, with the result that this Bill is much shorter, and is thought to be much clearer than the Acts consolidated. None of these changes have affected the meaning.

I certify that, save as aforesaid, this Bill solely consolidates, and in no way alters, adds to, or amends the law as contained in the Acts thereby consolidated.

CHAS. G. HEYDON,
Commissioner for the Consolidation of the Statute Law.

Index of Names

The following is a list of the names of the persons who have been named in the records of the Court of Sessions for the year 1881.

The names are arranged in alphabetical order.

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Trade Marks Act.

TABLE showing how the sections of Acts consolidated have been dealt with.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
28 VICTORIA No. 9.		
1	3	
2	8	
3	5 (1)	
4	6	
5	5 (2)	
6	7	
7	9	
8	10, 12	
9	11, 12	
10	15	
11	17	
12	18	
13	13	
14	19	
15	21	
16	22	
17	23	
18	Part 24 ...	Part repealed by 56 Vic. No. 13, s. 2.
19	.....	Superseded by 46 Vic. No. 17. See now s. 351, Crimes Act.
20	25	
21	26	
22	28	
23	27	
24	36	
25	30	
26	31	
27	32	
28	33	
29	34	
30	35	
31	.....	Short title.
56 VICTORIA No. 13.		
1	.....	Short title.
2	14	
3	16	
4	20	
5	29	

1870

1871

A BILL

for the relief of the State of New York

and for other purposes

Enacted by the Senate and Assembly of the State of New York, in the year of our Lord one thousand eight hundred and seventy-one.

PART I

Section 1

That the State of New York be and it is the duty of the State of New York to

Section 2

Section 3

Section 4

Section 5

Legislative Council.

No. , 1900.

A BILL

To consolidate the Acts relating to Trade Marks
and fraudulent marks.

[MR. F. B. SUTTON ;—23 August, 1900.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

Preliminary.

1. This Act may be cited as the "Trade Marks Act, 1900," and **Short title.** contains the following Parts:—

PART I.—*Preliminary.*—ss. 1-4.

PART II.—*Registration and transfer.*—ss. 5-9.

PART III.—*Offences.*—ss. 10-29.

PART IV.—*Warranty.*—ss. 30, 31.

PART V.—*Proceedings in suits.*—ss. 32-36.

Repeal.

Interpretation.

28 Vic. No. 9, s. 1.

2. The Acts mentioned in the Schedule hereto are hereby repealed.

3. In this Act, unless the context or subject-matter otherwise indicates or requires,—

“Apply” and “applied” respectively include attach, attached, and cause or procure to be applied or attached.

“Cover” includes any cask, bottle, stopper, vessel, case, wrapper, band, reel, ticket, or label.

“Denoted” includes intended to be denoted.

“Goods” includes any chattel or article.

“Forge,” “forging,” and “forged” respectively include counterfeit, counterfeiting, and counterfeited.

“Intent to defraud” includes intent to enable any other person to defraud.

“Justice” means justice of the peace.

“Manufacture” includes workmanship, and production.

“Mark” includes any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark of any other description.

“Trade mark” includes any mark lawfully used by any person to denote any goods to be goods of the manufacture or merchandise of such person, or to be goods of any particular description made or sold by such person.

“Person” includes any person whether a subject of Her Majesty or not, and any body corporate or body of the like nature, company, association, or society of persons, whether the same is established or carries on business within or without Her Majesty’s dominions, and whether the members thereof are or are not subjects of Her Majesty.

“Registrar” means the registrar of trade marks.

Saving.

4. Nothing in this Act shall be deemed to affect the operation of the “International Patents and Trade-marks Arrangements Act, 1897.”

PART II.

Registration and transfer.

Appointment of registrar.

Ibid. s. 3.

5. (1) The Governor may appoint a registrar of trade marks and an office to be the place of registration for the purposes of this Act. Any such appointment made under any Act hereby repealed shall have the same force and effect as it would have had if this Act had been in force when such appointment was made and it had been made hereunder.

(2)

(2) The registrar shall keep a proper register of all certificates issued and of all acts done by him in pursuance of this Act, and such register shall be open to the inspection of any person during office hours on payment of the sum of sixpence. Register to be kept. 28 Vic. No. 9, s. 5.

6. Any person desirous of registering a trade mark shall deliver to the registrar two copies thereof, and shall at the same time pay to the registrar for the public uses of New South Wales a sum of three pounds and three shillings, and shall also state in writing the nature of the article to which it is proposed that such trade mark shall apply. The registrar shall within fourteen days of the payment of such fee publish in the Gazette a notice stating— Registration of trade mark. Ibid. s. 4.

- (a) the name of the applicant ;
- (b) a description of the trade mark as nearly as may be ; and
- (c) the nature of the article to which it is proposed that such trade mark shall apply ;

and after the expiration of fourteen days from the publication aforesaid the registrar shall, unless it is shown to his satisfaction

- (d) that such trade mark has been previously registered ; or
- (e) that some other person is entitled to such trade mark ; or
- (f) that such trade mark is so like some other trade mark that it may be mistaken for the same,

issue to the applicant a certificate setting forth that such trade mark to be described in such certificate has been duly registered, and that the person named in such certificate is entitled to the use of the trade mark described therein.

7. Any certificate may be transferred either wholly or in part by any document in writing signed by the transferror, but no transfer shall be valid against the person named in such certificate until after such transfer has been duly registered, and the registrar shall register such transfer on payment of the sum of one pound one shilling. Transfer. Ibid. s. 6.

8. A mark shall not be recognised or considered to be the trade mark of any person until it has been registered by or on behalf of the person claiming to be entitled thereto as his trade mark. Trade mark must be registered. Ibid. s. 2.

9. The registration of any trade mark shall not confer any patent right over, or any sole right to manufacture, any article to which it is proposed to apply such trade mark, but the certificate of the registration of any trade mark shall be a proof of the right of the person named in such certificate, or of the registered transferee of such certificate, to use such trade mark, except in case of any suit instituted to try the right of any person to have had such trade mark registered. Effect of registration. Ibid. s. 7.

PART III.

Offences.

Forging or
fraudulently
applying trade mark
to goods.
23 Vic. No. 9, s. 8.

10. Whosoever with intent to defraud—

- (a) forges or procures to be forged any trade mark ; or
- (b) applies any trade mark or any forged trade mark to any goods, not being the manufacture or merchandise of any person denoted by such trade mark or whose trade mark is so forged ; or
- (c) applies any trade mark or forged trade mark to any goods not being the particular description of manufacture or merchandise denoted by such trade mark or forged trade mark,

shall be guilty of a misdemeanour, and shall also forfeit to Her Majesty all goods belonging to him to which he shall have so applied any such trade mark or forged trade mark.

Applying forged
trade mark to cover,
&c.
Ibid. s. 9.

11. Whosoever with intent to defraud—

- (a) applies any trade mark or forged trade mark to any cover or other thing in or with which any goods are intended to be sold, or are sold, or uttered or exposed for sale, or for any purpose of trade or manufacture ; or
- (b) places, or causes or procures to be enclosed or placed, any goods in or with, or applies to any goods, any cover or other thing to which any trade mark has been falsely applied, or to which any forged trade mark has been applied, or having thereon any trade mark of any other person,

shall be guilty of a misdemeanour, and shall also forfeit to Her Majesty all such goods, and also every such cover or other thing in his possession or power, and every other similar cover or other thing made to be used in like manner.

Forfeiture of certain
instruments.
Ibid. ss. 8, 9.

12. Any person who commits any of the misdemeanours under the tenth and eleventh sections hereof, shall also forfeit to Her Majesty every instrument in his possession or power which has been, or is fitted to be, used for applying any such trade mark or forged trade mark, and the Court before which any such misdemeanour is tried may order all goods, instruments, and things forfeited under this or the said sections to be destroyed or otherwise disposed of as such Court thinks fit.

False description of
goods.
Ibid. s. 13.

13. Whosoever with intent to defraud puts or causes or procures to be put upon any goods, or upon any cover, case, frame, or other thing, with or in or by means of which any goods are intended to be or are sold, or uttered, or exposed for any purpose of trade or manufacture—

- (a) any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such goods,

goods, or any part thereof, or of the place or country in which such goods have been made, manufactured, or produced; or,

- (b) any word, letter, figure, signature, or mark for the purpose of falsely indicating such goods, or the mode of manufacturing or producing the same, or the ornamentation, shape, or configuration thereof, to be the subject of any existing patent, privilege, or copyright,

shall, for every such offence, forfeit and pay a sum of money equal to the value of the goods so falsely described or indicated, and a further sum not exceeding five pounds and not less than ten shillings.

14. At the trial of any person charged with an offence under sections ten, eleven, or thirteen, it shall not be necessary to prove that the acts complained of were done with intent to defraud, but the burden of proving that they were done without intent to defraud shall be on the person so charged.

Burden of proof
under ss. 10, 11, and
13.
56 Vic. No. 13, s. 2.

15. (1) Whosoever sells, utters, or exposes for sale or for any purpose of trade or manufacture, or causes or procures to be sold, uttered, or exposed for sale or such purpose any goods—

Selling goods
bearing forged trade
mark.
28 Vic. No. 9, s. 10.

- (a) with any forged trade mark knowing the same to be forged; or,
(b) with the trade mark of any other person used falsely or wrongfully or without lawful authority or excuse, knowing such trade mark to be so used,

shall, for every such offence, forfeit and pay a sum equal to the value of the goods so sold, uttered, or exposed, and a further sum not exceeding five pounds and not less than ten shillings.

(2) Any such goods shall be deemed to be sold, uttered, or exposed with such forged or other trade mark, if the same—

Definition.
Ibid.

- (a) is in or with such goods; or,
(b) is in or with any cover or other thing used with such goods.

16. At the trial of any person charged with an offence under the last preceding section, it shall not be necessary to prove that he knew that the trade mark was forged, or knew that the trade mark of another person had been applied or used falsely, wrongfully, or without lawful authority or excuse, as the case may be, but the burden of proving the absence of such knowledge shall be on the person so charged.

Burden of proof
under s. 15.
56 Vic. No. 13, s. 3.

17. Every addition to and alteration of, and also every imitation of any trade mark made, applied, or used with intent to defraud, or which causes a trade mark with such alteration or addition, or such imitation of a trade mark to resemble any genuine trade mark so as to be calculated or likely to deceive, shall be deemed to be a false and forged trade mark within the meaning of this Act: And every act of

Definition of forging
28 Vic. No. 9, s. 11.

of making, applying, or otherwise using any such addition to or alteration or imitation of a trade mark as aforesaid, done by any person with intent to defraud, shall be deemed to be forging a trade mark within the meaning of this Act.

Any person selling goods with forged trade mark may be required to state where he obtained them.

23 Vic. No. 9, s. 12.

18. Any person who has sold, uttered, or exposed for sale or for any purpose of trade or manufacture, or has caused or procured to be so sold, uttered, or exposed, any goods with any forged trade mark, or with the trade mark of any other person used without lawful authority or excuse (whether such forged or other trade mark is upon or with such goods, or upon or with any cover or other thing with which such goods have been so sold, uttered, or exposed), shall be bound upon demand in writing, delivered to him or left for him at his last known dwelling-house, or at the place of sale, uttering, or exposure, by or on behalf of any person whose trade mark has been so forged or used, to give to the person requiring the same, or his attorney or agent, within forty-eight hours after such demand, full information in writing of the name and address of the person from whom, and of the time when, he obtained such goods, and if he refuses so to do, any justice, on information on oath of such demand and refusal, may summon before him the party refusing, and on being satisfied that such demand ought to be complied with, may order such information to be given within a certain time to be appointed by him, and any party who refuses or neglects to comply with such order shall, for every such offence, forfeit and pay the sum of five pounds, and such refusal or neglect shall be evidence that such party knew that the trade mark with which such goods were so sold, uttered, or exposed, was a forged trade mark, or a trade mark used without lawful authority or excuse, as the case may be.

Selling goods with false description.

Ibid. s. 14.

19. Whosoever, knowing that any false description, statement, or other indication of or respecting—

- (a) the number, quantity, measure or weight of any goods or of any part thereof; or
- (b) the place or country where such goods have been manufactured or produced;

has been put upon—

- (c) any such goods; or
- (d) any cover or other thing containing or with such goods; or
- (e) any case, frame, or thing used to expose such goods for sale, sells, utters, or exposes any such goods for sale or any purpose of trade or manufacture, or causes or procures any such goods to be so sold, uttered, or exposed shall, for every such offence, be liable to a penalty not exceeding five pounds and not less than ten shillings.

Burden of proof under s. 19.

56 Vic. No. 13 s. 4.

20. At the trial of any person charged with an offence under the last preceding section it shall not be necessary to prove that the said person knew that any false description, statement, or other indication

indication of or respecting any of the matters mentioned in the said section had been put upon any of the goods, articles, or things in the said section mentioned, but the burden of proving the absence of such knowledge shall be on the person so charged.

21. The provisions of this Act shall not be construed to make it an offence for any person—

- (a) to apply to any goods or to any cover or other thing with which such goods are sold or intended to be sold, any name, word, or expression generally used for indicating such goods to be of some particular description of manufacture; or
- (b) to sell, utter, or expose for sale any goods to which, or to any cover or other thing sold therewith, any such generally used name, word, or expression has been applied.

22. In every indictment, pleading, proceeding, and document whatsoever in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient to state the same to be a trade mark or forged trade mark, as the case may be, without further describing such trade mark or forged trade mark, or setting forth any copy or fac-simile thereof.

23. The provisions of this Act concerning any offence under this Act shall not affect any right or remedy which any person aggrieved by such act is entitled to at law, or in equity, and shall not excuse any person from answering or making discovery upon examination as a witness or upon interrogatories or otherwise in any suit or other civil proceeding.

Provided always that no evidence, statement, or discovery, which any person is compelled to give or make, shall be admissible in evidence against such person in support of any indictment or of any proceeding under this Act.

24. In every case where it is necessary to allege an intent to defraud, it shall be sufficient to allege that the person accused did the act with intent to defraud without alleging an intent to defraud any particular person.

25. Every person convicted of any offence which is by this Act made a misdemeanour shall be liable to imprisonment, with or without hard labour, for not more than two years, or to a fine, or to imprisonment with or without hard labour and a fine, and also to imprisonment until the fine, if any, has been paid.

26. (1) Where any person has committed any offence whereby he has forfeited or become liable to pay any of the penalties or sums mentioned in this Act, every such penalty or sum may be recovered in an action of debt which any person may, as plaintiff for and on behalf of Her Majesty, commence in any Court of Record; and the amount of every such penalty or sum shall be determined by the jury (if any), and if there is no jury, then by the Court, or some other jury as the Court thinks fit.

(2)

Class of goods may be indicated by word in general use.

28 Vic. No. 9, s. 15.

Description of trade mark in indictment. *Ibid.* s. 16.

Civil rights not affected by this Act. *Ibid.* s. 17.

Pr. viso.

Intent to defraud. *Ibid.* s. 18.

Punishment for misdemeanour. *Ibid.* s. 20.

Recovery of penalties. *Ibid.* s. 21.

(2) In lieu of such proceeding such penalty or sum may be recovered by a summary proceeding before two justices having jurisdiction in the district or place where the offender resides or has any place of business, or in the district or place in which the offence was committed.

Execution and costs.
28 Vic. No. 9, s. 23.

27. In every case in which judgment is obtained in any such action for the amount of any such penalty or sum, such amount shall be paid by the defendant to the sheriff or the officer of the Court who shall account for the same to the Colonial Treasurer, and if it is not paid may be recovered, or the amount thereof levied, or the payment thereof enforced, by execution or other proper proceeding as money due to Her Majesty; and the plaintiff suing on behalf of Her Majesty shall, upon obtaining judgment, be entitled to have execution for all his costs of suit which shall include all costs and charges which he has expended or incurred in, about, or for the purposes of the action, unless the Court or a Judge thereof directs that costs of the ordinary amount only shall be allowed.

Summary
proceedings.
Ibid. s. 22.

28. All penalties and forfeitures under this Act may be recovered and adjudged, and all offences, except misdemeanours, may be prosecuted before and heard and determined by any two justices in accordance with the Acts in force for the time being relating to summary proceedings before justices.

Search warrants.
56 Vic. No. 13, s. 5.

29. Where, upon information of an offence against this Act, a justice has issued a summons requiring the defendant to appear, or a warrant for the arrest of the defendant, and either the said or any other justice is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of, or in relation to, which the said offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, the said justice may issue a warrant under his hand, by virtue of which any constable named may enter the said house, premises, or place at any reasonable time by day, and there search for and seize and take away such goods and things, and any goods or things seized under any such warrant shall be brought before a justice who shall thereupon determine whether the same are or are not liable to forfeiture under this Act.

PART IV.

Warranty.

30. If any person sells or contracts to sell, whether by writing or not, to any other person any goods upon which, or upon any cover or other thing, with which such goods are sold, or contracted to be sold, there is any trade mark, the sale, or contract to sell, shall in every such case be deemed to be made with a warranty or contract by the vendor with the vendee that such trade mark is genuine, and not wrongfully used, unless the contrary is expressed in some writing, signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

Warranty of trade mark.
28 Vic. No. 9, s. 25.

31. If any person sells or contracts to sell, whether by writing or not, to any other person, any goods upon which, or upon any cover or other thing with which such goods are sold, or contracted to be sold, any description, statement, or other indication of or respecting the number, quantity, measure, or weight of such goods, or the place or country in which such goods have been made, manufactured, or produced appears, the sale or contract to sell shall in every such case be deemed to be made with a warranty or contract by the vendor, to or with the vendee, that no such description, statement, or other indication is in any material respect untrue, unless the contrary is expressed in some writing, signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

Warranty of description.
Ibid. s. 26.

PART V.

Proceedings in suits.

32. (1) In any suit at law or in equity against any person for forging any trade mark, or for fraudulently applying any trade mark to any goods, or for selling, exposing for sale, or uttering any goods with any trade mark falsely or wrongfully applied thereto, or with any forged trade mark applied thereto, or for preventing the repetition or continuance of any such wrongful act, or the committal of any similar act, in which the plaintiff obtains a judgment or decree against the defendant, the Court may direct such goods to be destroyed or otherwise disposed of.

Powers of Court.
Ibid. s. 27.

(2) In any such suit the Court or Judge may make an order as such Court or Judge thinks fit for the inspection of—

- (a) any manufacture or process carried on by the defendant in which any such forged trade mark or any such trade mark as aforesaid shall be alleged to be so used or applied ; and

(b)

- (b) all goods in the possession or power of the defendant, alleged to have thereon, or in any way attached thereto, any forged trade mark, or any trade mark falsely or wrongfully applied; and
 - (c) every instrument in the possession or power of the defendant used, or intended to be, or capable of being used for making any forged trade mark or trade mark alleged to be forged, or falsely or wrongfully applying any trade mark;
- and any person who refuses or neglects to obey any such order shall be guilty of a contempt of Court.

Injunction.

(3) In any such suit at law the Court may, upon giving judgment for the plaintiff, award a writ of injunction against the defendant commanding him to forbear from committing, and not, by himself or otherwise, to repeat or commit, any offence or wrongful act of the like nature as that of which he has been convicted by such judgment, and any disobedience of any such writ of injunction shall be punished as a contempt of Court.

Action for damages
in respect of certain
wrongful acts.

28 Vic. No. 9, s. 28.

33. Whenever any person,—

- (a) forges any trade mark; or,
 - (b) for the purpose of sale or for any purpose of trade or manufacture applies any forged trade mark to any goods or to any cover or other thing used with any goods; or,
 - (c) encloses or places any goods in or with any cover or other thing, to which any trade mark has been falsely applied or to which any forged trade mark has been applied; or,
 - (d) applies to any goods, any cover or other thing to which any trade mark has been falsely applied, or to which any forged trade mark has been applied; or,
 - (e) encloses, or places any goods in or with any cover or other thing having thereon any trade mark of any other person;
- every person aggrieved thereby may maintain an action or suit for damages in respect thereof, and for preventing the repetition or continuance of the wrongful act and the committal of any similar act.

Costs on verdict
for defendant.

Ibid. s. 29.

34. In every action which any person under the provisions of this Act commences as plaintiff, for or on behalf of Her Majesty, for recovering any penalty or sum, if the defendant obtains judgment he shall be entitled to recover his costs of suit which shall include a full indemnity for all the costs, charges, and expenses by him expended or incurred in, about, or for the purposes of the action, unless the Court or a Judge thereof directs that costs of the ordinary amount only shall be allowed.

Security for costs
may be ordered.

Ibid. s. 30.

35. In any action which any person under the provisions of this Act commences as plaintiff, for or on behalf of Her Majesty, to recover any penalty or sum, if it is shown to the satisfaction of the Court or a Judge thereof that such person has no ground for alleging that

that he has been aggrieved by the committing of the alleged offence in respect of which the penalty or sum is alleged to have become payable, and also that such person is not resident within the jurisdiction of the Court, or not a person of sufficient property to be able to pay any costs which the defendant may recover in the action, the Court or Judge may order that the plaintiff shall give security by the bond or recognizance of himself and a surety, or by the deposit of a sum of money, or otherwise as the Court or Judge thinks fit, for the payment to the defendant of any costs which he may be entitled to recover in the action.

36. No person shall commence any action or proceeding for the recovery of any penalty, or for procuring the conviction of any offender, in manner hereinbefore provided, after the expiration of one year next after the committing of the offence, or one year next after the first discovery thereof by the person proceeding.

Limitation of
actions.
28 Vic. No. 9, s. 24.

SCHEDULE.

Reference to Acts.	Title or short title.	Extent of repeal.
28 Vic. No. 9 ...	The Trades Marks Act, 1865	The whole.
56 Vic. No. 13 ...	Trades Marks Act Amendment Act	The whole.

