



Bombay Government Gazette.

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Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st May 1879, and was referred to a Select Committee:—

Bill No. 5 of 1879.

A Bill to provide for the registration of Trade-marks.

WHEREAS it is expedient to provide for the

Preamble. registration of trade-marks; It is hereby enacted as follows:—

Short title. 1. This Act may be called "The Indian Trade-marks Act, 1879":

Local extent. It extends to the whole of British India;

Commencement. and it shall come into force at once.

2. In this Act, unless there be something repugnant in the subject or context,—

"trade-mark" means a mark consisting of one or more of the following essential particulars (namely):

(a) a name of an individual or firm printed, impressed or woven in some particular and distinctive manner, or

(b) a written signature or copy of a written signature of an individual or firm, or

(c) a distinctive device, mark, heading, label or ticket:

provided that there may be added to any one or more of the said particulars any letters, words or numerals, or combination of letters, words or numerals:

it includes also any special and distinctive word or words, or combination of numerals or letters, used as a trade-mark before the passing of this Act:

"Registered" and "registration." "registered" and "registration" respectively mean registered and registration under this Act and the rules made hereunder and for the time being in force:

"The Court." "the Court" means the High Court of Judicature at Fort William.

3. An officer (hereinafter called "the Registrar") shall be appointed from time to time, by name or in virtue of his office, by the Governor General in Council to register trade-marks and the proprietors thereof.

4. From and after the first day of January 1880, no person shall be entitled to institute any suit or other proceeding to prevent, or to recover damages for, the infringement of any trade-mark, unless such trade-mark is registered; but nothing in this section shall apply to any device, mark, name, combination of words, or other matter or thing which has been in use as a

trade-mark before the passing of this Act, and which the Registrar has refused to register under this Act.

5. A trade-mark must be registered as belonging to particular goods or classes of goods; and, when registered, shall be assigned and transmitted only in connexion with the good-will of the business concerned in such particular goods or classes of goods, and shall be determinable with such good-will.

Registration of a trade-mark shall be deemed to be equivalent to public use of such mark.

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

7. Every person registered as proprietor of a trade-mark subsequently claiming by transmitted proprietorship to the first person so registered shall, as respects his title to such trade-mark, stand in the same position as if his title were a continuation of the title of the first person so registered.

8. If any person who is not for the time being entitled, in accordance with this Act or otherwise in accordance with law, to the exclusive use of a trade-mark is registered as a proprietor of such trade-mark, or

if the Registrar refuses to register, as proprietor of a trade-mark, the name of any person who is for the time being entitled in accordance with this Act or otherwise in accordance with law to the exclusive use of such trade-mark, or

if any mark is registered as a trade-mark which is not authorized to be so registered,

any person aggrieved by such registration or refusal may apply by motion, or in such other manner as the Court may direct, for an order of the Court that the register may be rectified.

The Court may either refuse such application, or it may, if satisfied of the justice of the case, make an order for the rectification of the register and award damages to the party aggrieved.

9. When each of several persons claims to be registered as proprietor of the same trade-mark, the Registrar may refuse to comply with the claims of any of such persons until their rights have been determined by the Court.

The Registrar may himself submit, or require the claimants to submit, their rights to the Court, by stating a case under section 527 of the Code of Civil Procedure, or in such other manner as the Court may direct.

10. The Court may, in any proceeding under section eight or section nine, decide—

(a) whether a mark is or is not such a trade-mark as is authorized to be registered under this Act;

(b) any question as to the right of any person who is party to such proceeding to have his name entered on the register of trade-marks, or to have the name of some other person removed from such register; and

(c) any other question that it may be necessary or expedient to decide for the rectification of the register.

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

11. The Registrar shall not, without the special leave of the Court, to be given on motion or in such other manner as the Court may direct, register in respect of the same goods or classes of goods—

(a) a trade-mark identical with one which is already registered with respect to such goods or classes of goods; or

(b) a trade-mark so nearly resembling a trade-mark already registered with respect to such goods or classes of goods as to be calculated to deceive.

12. The Registrar shall not register, as part of, or in combination with, a trade-mark, any scandalous designs, or any words, if the exclusive use of such words would not, by reason of their being calculated to deceive or otherwise, be deemed entitled to protection in a Court.

13. The Governor General in Council may from time to time make rules consistent with this Act as to—

(a) the manner in which applications for registration of trade-marks shall be made;

(b) the notices to be given by advertisement before the registration of trade-marks;

(c) the classification of goods for the purposes of this Act;

(d) the registration of first and subsequent proprietors of trade-marks;

(e) the fees to be charged for registration of trade-marks, for the continuance of a trade-mark on the register and for granting certificates of refusal to register any thing as a trade-mark;

(f) the removal from the register of any trade-mark;

(g) the form of notices under this Act, the mode of addressing and serving such notices, and the proof of such service.

(h) the persons entitled to inspect the register; and

(i) generally for the purpose of carrying this Act into effect.

Such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

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

15. When an application by any person to register as a trade-mark a device, mark, name, word, combination of words, or other matter or thing which has been in use as a trade-mark before the passing of this Act, has been refused, the Registrar shall, at the request of the applicant and on payment by him of the fee prescribed by the rules made under section thirteen, grant him a certificate of such refusal.

A certificate so granted shall be conclusive proof of such refusal.

16. The provisions of this Act conferring a special jurisdiction on the said High Court shall not, except so far as such jurisdiction extends, affect the jurisdiction of any other Court in suits or proceedings relating to trade-marks.

If the register requires to be rectified in consequence of any proceedings in any such other Court, due notice of such requirement shall be given to the Registrar, and he shall rectify the register accordingly.

STATEMENT OF OBJECTS AND REASONS.

THIS Bill has been prepared, at the request of the Government of Bombay, to meet the wishes of the Mill-owners Association and the Bombay Chamber of Commerce. Both these bodies call the attention of the Local Government to the provisions of the English Trade-marks Registration Acts of 1875 and 1876 (which have been held by the High Court of Bombay not to apply to India), and state that it seems desirable, having regard to the increase of manufactures in this country, and especially of the cotton-manufactures of Bombay, that there should be a law of a similar nature in India.

2. The Bill is nothing more than a reproduction, with the changes required to fit them to the different circumstances of this country, of the provisions of the Statutes 38 & 39 Vic., chapter 91 (An Act to establish a register of Trade-marks), and 39 & 40 Vic., chapter 33 (An Act for the amendment of the Trade-marks Registration Act, 1875). It seems desirable (more especially in the case of laws dealing with large commercial interests), when the object of one of our Acts is merely to extend the provisions of an Imperial Statute to this country, to follow closely the lines of such Statute, so as to make the law in this country as nearly as possible identical with that in England.

3. The Bill provides for the appointment of a Registrar and the registration of trade-marks, and enacts that, after a certain fixed date, no suit shall be brought for the infringement of a trade-mark,

unless such trade-mark is registered in accordance with the provisions of the Bill; it further defines the essential particulars of which a trade-mark must hereafter consist; but it saves from the operation of these provisions the trade-marks which are at present in use and entitled to protection as such. The other provisions of the Bill are subsidiary to these, and the only one of them calling for notice here is that by which the High Court at Fort William is appointed the Court for the purposes of the Act. As it is understood that the registry-office will be situate at Calcutta (where alone proprietorship in copyright and specifications of inventions are registered), that Court is obviously the most convenient one to appoint.

(Signed) WHITLEY STOKES.

The 29th March 1879.

D. FITZPATRICK,

Secy. to the Govt. of India,
Legislative Department.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st May 1879, and was referred to a Select Committee:—

Bill No. 7 of 1879.

A Bill to provide for the revision of proceedings in trials held under the Military Cantonments Act, 1864, Section 20.

WHEREAS it is expedient to provide for the revision of the proceedings in trials held under the twentieth section of Act No. XXII. of 1864 (to make provision for the Administration of Military Cantonments); It is hereby enacted as follows:—

1. For the last clause of the said section, the following shall be substituted (that is to say):—
New clause substituted in Act XXII. of 1864, Section 20.
"There shall be no appeal in any case tried under this section; but every person trying any such case shall, for the purposes of chapter XXII. of the Code of Criminal Procedure, be deemed to be subordinate to the High Court, the Court of Session and the Magistrate of the District."

STATEMENT OF OBJECTS AND REASONS.

IN a case tried some months ago by an officer specially invested, under section 20 of Act XXII. of 1864, with power to try breaches of Cantonment rules, the Judges of the Chief Court of the Panjáb, to whom the officer's order was submitted for revision, expressed a doubt as to whether the twenty-second chapter of the Code of Criminal Procedure gave them any power of revision in such a case. They, at the same time, expressed an opinion to the effect that such a power ought to be provided. The Governor General in Council concurs as to the need of such a power, and the present Bill has been drafted to provide it.

(Signed) WHITLEY STOKES.

The 17th April 1879.

D. FITZPATRICK,

Secy. to the Govt. of India,
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[Published with the "Bombay Government Gazette" on the 5th June 1879.]

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provided that there may be added to any one or more of the said particulars any letters, words or numerals, or combination of letters, words or numerals;

it includes also any special and distinctive word or words, or combination of numerals or letters, used as a trade-mark before the passing of this Act:

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Case of several persons claiming to be registered in respect of same mark.

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The Registrar may himself submit, or require the claimants to submit, their rights to the Court, by stating a case under section 527 of the Code of Civil Procedure, or in such other manner as the Court may direct.

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D. FITZPATRICK,
 Secy. to the Govt. of India.
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[Published with the "Bombay Government Gazette" on the 12th June 1879.]

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Registration not to be granted without leave of Court in certain cases.

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2. The Bill is nothing more than a reproduction, with the changes required to fit them to the different circumstances of this country, of the provisions of the Statutes 38 & 39 Vic., chapter 91 (An Act to establish a register of Trade-marks), and 39 & 40 Vic., chapter 33 (An Act for the amendment of the Trade-marks Registration Act, 1875). It seems desirable (more especially in the case of laws dealing with large commercial interests), when the object of one of our Acts is merely to extend the provisions of an Imperial Statute to this country, to follow closely the lines of such Statute, so as to make the law in this country as nearly as possible identical with that in England.

3. The Bill provides for the appointment of a Registrar and the registration of trade-marks, and enacts that, after a certain fixed date, no suit shall

be brought for the infringement of a trade-mark, unless such trade-mark is registered in accordance with the provisions of the Bill; it further defines the essential particulars of which a trade-mark must hereafter consist; but it saves from the operation of these provisions the trade-marks which are at present in use and entitled to protection as such. The other provisions of the Bill are subsidiary to these, and the only one of them calling for notice here is that by which the High Court at Fort William is appointed the Court for the purposes of the Act. As it is understood that the registry-office will be situate at Calcutta (where alone proprietorship in copyright and specifications of inventions are registered), that Court is obviously the most convenient one to appoint.

(Signed) WHITLEY STOKES.

The 29th March 1879.

D. FITZPATRICK,
*Secy. to the Govt. of India,
Legislative Department.*

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st May 1879, and was referred to a Select Committee:—

Bill No. 7 of 1879.

A Bill to provide for the revision of proceedings in trials held under the Military Cantonments Act, 1864, Section 20.

WHEREAS it is expedient to provide for the revision of the proceedings in trials held under the twentieth section of Act No. XXII. of 1864 (to make provision for the Administration of Military Cantonments); It is hereby enacted as follows:—

1. For the last clause of the said section, the following shall be substituted (that is to say):—
 New clause substituted in Act XXII. of 1864, Section 20. "There shall be no appeal in any case tried under this section; but every person trying any such case shall, for the purposes of chapter XXII.

of the Code of Criminal Procedure, be deemed to be subordinate to the High Court, the Court of Session and the Magistrate of the District."

STATEMENT OF OBJECTS AND REASONS.

IN a case tried some months ago by an officer specially invested, under section 20 of Act XXII. of 1864, with power to try breaches of Cantonment rules, the Judges of the Chief Court of the Panjáb, to whom the officer's order was submitted for revision, expressed a doubt as to whether the twenty-second chapter of the Code of Criminal Procedure gave them any power of revision in such a case. They, at the same time, expressed an opinion to the effect that such a power ought to be provided. The Governor General in Council concurs as to the need of such a power, and the present Bill has been drafted to provide it.

(Signed) WHITLEY STOKES.

The 17th April 1879.

D. FITZPATRICK,
Secy. to the Govt. of India.
Legislative Department.