the material of the goods, or as to their being subject to an existing patent, privilege or copyright; conventional or customary descriptions lawfully in use in August 1887 to indicate that the goods are of a particular class or method of manufacture are allowed to be continued; but if they contain the name of a place and are calculated to mislead as to the real place of production, the name of the latter must be added. The test of what is a trade description depends upon the understanding of the trade and not on scientific correctness *{Fowler v. Cripps,* 1906, 1 K.B. 16).

On a prosecution for any of these offences, there is a power to forfeit the things found although no one is convicted. If the offender is indicted (it is in his option to be tried in this way) the punishment is fine and imprisonment, the latter not to exceed two years. On summary conviction the punishment is not to exceed, for a first offence, four months’ imprisonment, with or without hard labour, and a fine of £20; and for any subsequent offence six months’ im- prisonment and a fine of £50. The importation is forbidden of goods by means of or in relation to which an offence against the acts has been committed, and also of all goods of foreign manufacture bearing any name or trade name being or purporting to be that of a manufacturer or trader within the country, unless it be accom­panied by a definite indication of the country where the goods were made or produced. There are also special provisions with regard to the marking of catch-cases. The commissioners of customs have power to make general orders for carrying out the Merchandise Marks Acts. (See Regulations of the 1st of December 1887, Stat. R. & O. Revised, 1904, vol. viii. tit. Merchandise Marks.) Prosecu­tions may be undertaken by the board of trade in cases appearing to affect the general interests of the country or of a section of the community, or of a trade, subject to regulations made on the 21st of May 1892; and the board of agriculture and fisheries has a like power in the case of the produce of agriculture, horticulture and fisheries [act of 1894, s. 1; Board of Agriculture and Fisheries Act 1903, s. 1 (8); see the regulations of the 27th of October 1894, Stat. R. & O. Revised, vol. viii. tit. Merchandise Marks.]. Under the Sale of Food and Drugs Act 1899, and the Butter and Margarine Act 1907, the importation, except in containers showing their character, of margarine, margarine cheese, adulterated or impoverished butter, milk-blended butter or condensed, separated or skimmed milk, is penalized, and it is provided that the commissioners of customs, in accordance with directions given by the treasury after consultation with the board of agriculture, shall take such samples of consignments of imported articles of food as may be necessary for the enforcement of the law.

*V. International Arrangements.—*(The Trade Marks Act 1905 applies to the British Islands.) By the international conven- tion for the protection of industrial property (see Patents), which was signed at Paris in 1883, the signatory states (others have since acceded) agreed that the subjects or citizens of each state should, in all the other states, enjoy as regards trade marks and trade names the advantages that their respective laws then granted, or should thereafter grant, to their own subjects or citizens. So far as Great Britain is concerned the provisions made for carrying out this convention are contained in s. 65 of the Trade Marks Act 1905 and in s. 91 of the Patents and Designs Act 1907.@@1 The effect of that section is to confer on an applicant for the protection of a trade mark in one of the other contracting states a priority over other applicants for registration in the United Kingdom during the space of four months. The section does not, however, exempt the applicant from the conditions and formalities incumbent on ordinary applicants for registration in Great Britain; nor does the fact that the foreign application has been successful of itself give the applicant a right to have his mark accepted for registration. Under the Convention of Madrid of the 14th of April 1891 (to which Great Britain is not a party) a trade mark may be registered as the result of a single application in the countries of all the signatory powers. Besides the general international conventions there are also particular arrangements between many states, *e.g.* Germany and Italy (Italian law of the 24th of December 1903). Guatemala and Salvador, also signatory parties, have withdrawn from the convention.

The following is a list of the British orders in council that have been issued, applying to foreign countries, s. 103 of the Patents, &c., Act 1883 :—

|  |  |
| --- | --- |
| Foreign State. | Date of Order in Council. |
| Belgium | June 26, 1884. |
| Brazil | June 26, 1884. |
| Cuba | January 12, 1905. |
| Denmark (including the Faroe Islands) | November 20, 1894. |
| Dominican Republic | October 21, 1890. |
| Ecuador | May 16, 1893. |
| France | June 26, 1884. |
| Germany | October 9, 1903. |
| Greece | October 15, 1894. |
| Honduras | September 26,1901. |
| Italy | June 26, 1884. |
| Japan | October 7, 1899. |
| Mexico | May 28, 1889. |
| Netherlands | June 26, 1884. |
| ,, (East Indian Colonies). | November 17, 1888. |
| ,, (Curaçoa and Surinam) | May 17, 1890. |
| Norway (and Sweden) | July 9, 1885.  September 24, 1886. |
| Paraguay |
| Portugal | June 26, 1884. |
| Rumania | August 5, 1892.  June 26, 1884. |
| Servia |
| Spain | June 26, 1884. |
| Sweden (and Norway) | July 9, 1885. |
| Switzerland | June 26, 1884. |
| Tunis | June 26, 1884. |
| United States | July 12, 1887.@@2 |
| Uruguay | September 24, 1886. |

All these orders in council are printed in the Statutory Rules and Orders Revised (ed. 1904), vol. ix., under the title “ Patents, &c.” By orders in council, made under the provisions of the Foreign Jurisdiction Acts, penalties have been imposed on British subjects committing offences against the Patents, &c., Act 1883-1888 (now represented by the Trade Marks Act 1905, and the Patents and Designs Act 1907) and the orders in council issued thereunder, and the Merchandise Marks Act 1887: China and Corea (1904), Egypt (1899), Morocco (1889), Muscat (1904), Ottoman Empire (1899), Persia, Persian coast and islands (1889-1901), Siam (1906) and Zanzibar (1906).

By s. 91 of the Patents and Designs Act 1907,@@i and s. 65 of the Trade Marks Act 1905, the king is empowered by order in council to apply the provisions of s.91 above mentioned, with such variations or additions as may seem fit, to any British possession. The following is a list of the orders in council that have been issued :—

|  |  |
| --- | --- |
| British Possessions. | Date of Order in Council. |
| Ceylon | August 7, 1905. |
| New Zealand | February 8, 1890. |
| Trinidad and Tobago | August 12, 1907. |
| Australia (Commonwealth) | August 12, 1907. |

The orders in council up to 1903 are printed in the Statutory Rules and Orders Revised (ed. 1904), vol. ix., under the title“ Patents, &c.” It should be added that the protection of the Merchandise Marks Act 1887, extends to any trade mark which, either with or without registration, is protected by law in any British possession or foreign state to which the provisions of s. 103 of the act of 1883 or s. 91 of the act of 1907 are, under order in council, for the time being applicable.

A foreigner suing in the United Kingdom for infringement of a trade mark, or for “ passing off,” is in the same position as a subject.

VI. *Colonial and Foreign Trade Mark Laws.—*The British colonies generally follow the model of the English Trade Marks Acts (1883-1888).

*Australia.—*Legislation on trade marks is one of the subjects which the Commonwealth of Australia Constitution Act 1900 (s. 9, pt. V. 51, xviii.) places within the exclusive competence of the Federal Parliament. By the Commonwealth Trade Marks Act 1905, s. 20, provision is made for registration of trade marks throughout the Commonwealth, and subject to this act and other Commonwealth legislation the common law of England as to trade marks is applied throughout the Common­wealth. Prior to this act most of the states had their own trade mark law (New South Wales, No. 19 of 1900; Tasmania, No. 9 of 1893; Victoria, No. 1146, 1890; Western Australia, Nos. 7

@@@1 This section supersedes ss. 103, 104 of the Patents, &c., Act 1883. The references to these sections in the Trade Marks Act 1905 must now be read as applying to s. 91 of the Patents, &c., Act 1907.

*@@@2* Α treaty was also concluded between Great Britain and the United States on the 24th of October 1877, for the protection of trade marks.

@@@3 This section re-enacts the provisions of ss. 103,104 of the Patents, &c., Act 1883.