

GOVERNMENT NOTIFICATION.--No. 476.

The following Bills, which were read a first time at a Meeting of the Legislative Council held this day, are published for general information.

ARATHOON SETH,
Clerk of Councils.

Council Chamber, Hongkong, 20th November, 1889.

A BILL

ENTITLED

An Ordinance enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, to authorise the Appropriation of a Supplementary Sum of Two hundred and Ninety-five thousand and Eighty-seven Dollars and Ninety-nine Cents to defray the Charges of the Year 1888.

WHEREAS it has become necessary to make further provision for the public service of the Colony for the year 1888, in addition to the charge upon the revenue for the service of the said year already provided for: Be it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

1. A sum of Two hundred and Ninety-five thousand and Eighty-seven Dollars and Ninety-nine Cents is hereby charged upon the revenue of this Colony for the service of the year 1888, the said sum so charged being expended as hereinafter specified; that is to say:—

ESTABLISHMENTS.

Treasurer, - - -	\$ 194.72
Postmaster General, - - -	1,320.14
Observatory, - - -	151.48
Collector of Stamp Revenue, - - -	14.40
Government Gardens and Plantations, - - -	89.06
Judicial, - - -	1,583.58
Medical, - - -	8.37
Gaol, - - -	47.17
Fire Brigade, - - -	171.55
	----- \$ 3,580.47

SERVICES EXCLUSIVE OF ESTABLISHMENTS.

Treasurer, - - -	\$ 532.96
Postmaster General, - - -	60,044.56
Medical, - - -	8,387.95
Police Magistrates, - - -	130.50
Police, - - -	3,697.51
Gaols, - - -	3,371.00
Fire Brigade, - - -	7,874.32
Works and Buildings, - - -	13,231.48
Roads, Streets and Bridges, - - -	22,040.64
Miscellaneous Services, - - -	34,035.58
Interest on Loan, and Sinking Fund, - - -	256.95
	----- \$153,603.45

EXTRAORDINARY EXPENDITURE.

Extraordinary Public Works, - - -	137,904.07

Total, - - -	\$295,087.99

A BILL

ENTITLED

Title.

An Ordinance to provide for certain expenses in relation to persons natives of or ordinarily resident in the Colony who have been convicted, or acquitted on the ground of insanity, before Courts exercising jurisdiction under the Imperial Foreign Jurisdiction Acts in foreign countries.

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

Expenses of trial, etc. of Criminal Lunatics.

1. Where any person who is a native of or ordinarily resides in Hongkong has committed an offence in any country or place out of Her Majesty's Dominions and such person has been tried and either convicted, or acquitted on the ground of insanity, before any Court, Judge, Magistrate or Officer acting or exercising jurisdiction within or in relation to any such country or place over such person by virtue of the Foreign Jurisdiction Acts 1843 to 1878 or any order of Her Majesty in Council made in pursuance thereof, the expenses of the removal of the prisoner to this Colony or to the place where he is to undergo his sentence or be confined as a criminal lunatic, and of his maintenance during imprisonment or confinement and any other expenses properly incident to his conviction or acquittal as aforesaid shall, except in so far as the prisoner's effects under the order of the Court before whom he is tried are sufficient to meet the same, be borne and paid out of the Colonial Treasury: Provided always that no such payment shall be made until a certificate of the amount of such expenses after deducting the proceeds (if any) of the prisoner's effects shall have been transmitted to the Colonial Secretary under the hand and seal of the Judge, Magistrate, or Officer acting or exercising jurisdiction in the country or place where the criminal lunatic was tried, and in the case of expenses incurred in the maintenance of such lunatic during imprisonment or confinement, under the hand of the head Officer of the prison or place of confinement.

A BILL

ENTITLED

Title.

An Ordinance to amend the Law relating to the Registration of Trade Marks.

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

PART I.

Preliminary.

Short Title.

1. This Ordinance may be cited for all purposes as *The Trade Marks Ordinance, 1889.*

Repeals.

2. Ordinances No. 16 of 1873 and No. 8 of 1886 are hereby repealed, but such repeal shall not affect the past operation of either of the enactments hereby repealed or any right to use a trade mark granted or acquired on application pending or order or direction given or right privilege obligation or liability acquired accrued or incurred under or by either of the said Ordinances before or at the commencement of this Ordinance nor shall it interfere with the institution or prosecution of any suit in respect thereof and any such proceedings may be carried on as if this Ordinance had not been passed nor shall it take away or abridge any protection or benefit in relation to any such suit or proceeding.

Interpretation.
(46 and 47
V. c. 57, s. 117.)

3. In and for the purposes of this Ordinance unless the context otherwise requires,—

“The Court” means the Supreme Court of Hongkong in its original jurisdiction.

“The Registry” means the Registry of the Court.

“Comptroller” means the Registrar of the Court.

“Prescribed” means prescribed by this Ordinance or any rules made in pursuance of this Ordinance.

“Person” shall include body corporate.

“Old Trade Mark” means a trade mark registered under the Ordinances hereby repealed the registration of which is valid and effectual at the date of the coming into operation of this Ordinance.

“Pre-registered Trade Mark” means a trade mark already registered in the United Kingdom, the registration of which is valid and effectual at the date of the application to register under this Ordinance.

“New Trade Mark” means any trade mark other than an “Old Trade Mark” or “Pre-registered Trade Mark” the proprietor whereof or whose agent resides in the Colony.

4. The Registrar for the time being shall be the Comptroller and any act directed to be done by or to him may in his absence be done by or to either of the Deputy Registrars of the Court.

Who to be
Comptroller.
[46 and 47,
V. c. 57, s. 22,
(4.)]

5. (1.) The Governor may at any time after the coming into operation of this Ordinance and from time to time appoint so many examiners and other officers and clerks with such designations and duties as the Governor thinks fit and may from time to time remove any of those officers and clerks.

Officers and
Clerks.
Ibid., s. 23 (1.)

(2.) The salaries of such officers and clerks shall be determined by the Governor and the same and the other expenses of the execution of this Ordinance shall be paid out of the Colonial Treasury.

6. The Governor in Council may from time to time make such general rules and forms and do such other things as he thinks expedient

Power to
make rules.
(46 and 47,
V. c. 57,
s. 101.)

(a.) for regulating the practice of registration,

(b.) for classifying goods,

(c.) generally for regulating the business of the Registry in relation to trade marks and all things by this Ordinance placed under the direction and control of the Comptroller.

(2.) The Governor in Council may alter amend or revoke any rules or forms made under this Ordinance.

(3.) All rules and forms made under this Ordinance and any alteration amendment and revocation thereof shall be published in the *Gazette*.

7. The Registers of old trade marks kept under any enactment hereby repealed shall respectively be transferred to the Registry and shall be deemed parts of the same book as the Register of Trade Marks kept under this Ordinance as hereinafter provided.

Former
Registers to
be transferred
to Com-
ptroller.

PART II.

Pre-registered Trade Marks.

8. Any person claiming the right to the exclusive use of a pre-registered trade mark either solely or jointly with others may apply to the Comptroller to register the same.

Application
to register
to whom
made.
(Ord. No. 16
of 1873, s. 2.)

9. All applications to register any such Trade Mark may at the option of the applicant be made either direct to the Comptroller or transmitted through Her Majesty's Principal Secretary of State for the Colonies and any such application shall be accompanied by a *fac simile* or specimen in duplicate of the Trade Mark sought to be registered and shall be made and verified on oath in the prescribed manner.

Application
how made.

10. Upon compliance with the formalities prescribed to the satisfaction of the Comptroller he may register such trade mark and shall cause notice of such registration to be published in the *Gazette*.

Registration
when granted.
(Ord. No. 16 of
1873, s. 4 & 5.)

PART III.

New Trade Marks.

11. (1.) The Comptroller may, on application by or on behalf of the person claiming to be the proprietor of a new trade mark register the same.

Application
for registra-
tion.
(46 and 47, V.
c. 57, s. 62.)

(2.) The application shall be made in such form as may be from time to time be prescribed, and must be left at, or sent by post to the Registry in the prescribed manner.

(3.) The application must be accompanied by the prescribed number of representations of the trade mark, and must state the particular goods or classes of goods in connection with which the applicant desires the trade mark to be registered.

(4.) The Comptroller may, if he thinks fit, refuse to register a trade mark, but any such refusal shall be subject to appeal to the Court, who shall thereupon have jurisdiction to hear and determine the appeal, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

Limit of time for proceeding with application. (46 and 47, V. c. 57, s. 63, 51, & 52 V. c. 50, s. 9.)

Conditions of registration of trade mark. (46 and 47, V. c. 57, s. 64, 51 and 52 V. c. 50, s. 10.)

Connection of trade mark with goods. (46 and 47, V. c. 57, s. 65.)

Registration of a series of marks. (46 and 47, V. c. 57, s. 66.)

Trade marks may be registered in any colour. (46 and 47, V. c. 57, s. 67, 51 and 52 V. c. 50, s. 11.)

Advertisement of application. (46 and 47, V. c. 57, s. 68, 51 and 52 V. c. 50, s. 12.)

Opposition to registration. (46 and 47, V. c. 57 and 60, 51 and 52 V. c. 50, s. 13.)

12. Where registration of any such trade mark has not been or shall not be completed within twelve months from the date of the application, by reason of default on the part of the applicant, the Comptroller shall give notice of the non-completion to the applicant or his agent within the Colony and if at the expiration of one month from that notice the registration is not completed, the application shall be deemed to be abandoned.

13. (1.) For the purposes of this Ordinance a new trade mark must consist of or contain at least one of the following essential particulars:—

- (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 the individual or firm applying for registration thereof as a trade mark; or
- (c.) A distinctive device, mark, brand heading, label, or ticket.
- (d.) An invented word or words;
- (e.) A word or words having no reference to the character or quality of the goods and not being a geographical name.

(2.) There may be added to any one or more of the essential particulars mentioned in this section any letters, words or figures, or combination of letters, words or figures, or of any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter and a copy of this statement and disclaimer shall be entered on the register.

(3.) Provided always that a person need not under this section disclaim his own name or the foreign equivalent thereof or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

14. A new trade mark must be registered for particular goods, or classes of goods.

15. When a person claiming to be the proprietor of several new trade marks which, while resembling each other in the material particulars thereof, yet differ in respect of (a) the statement of the goods for which they are respectively used or proposed to be used, or (b) statements of numbers, or (c) statements of price, or (d) statements of quality, or (e) statements of names or places, seeks to register such trade marks, they may be registered as a series in one registration. A series of new trade marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade marks composing a series shall be deemed and treated as registered separately.

16. A new trade mark may be registered in any colour or colours, and such registration shall (subject to the provisions of this Ordinance) confer on the registered owner the exclusive right to use the same in that or any other colour or colours.

17. Every application for registration of a new trade mark under this Ordinance shall as soon as may be after its receipt be advertised by the Comptroller, unless he refused to entertain the application, in such manner as may be from time to time prescribed.

18. (1.) Any person may within one month or such further time not exceeding three months as the Comptroller may allow, of the advertisement of the application, give notice in duplicate to the Comptroller of opposition to registration of the trade mark, and the Comptroller shall send one copy of such notice to the applicant.

(2.) Within one month after receipt of such notice or such further time as the Comptroller may allow, the applicant may send to the Comptroller a counter statement in duplicate of the grounds on which he relies for his application, and if he does not do so, shall be deemed to have abandoned his application.

(3.) If the applicant sends such counter statement, the Comptroller shall furnish a copy thereof to the person who gave notice of opposition, and shall after hearing the applicant and the opponent, if so required, decide whether the trade mark is to be registered, but his decision shall be subject to appeal to the Court who shall if required hear the applicant and the opponent and the Comptroller and may make an order determining whether and subject to what conditions (if any) registration is to be permitted.

(4.) If the applicant abandons his application after notice of opposition in pursuance of this section, he shall be liable to pay to the opponent such costs in respect of the opposition as the Comptroller may determine to be reasonable.

(5.) Where the opponent is out of the Colony he shall give the Comptroller an address for service within the Colony.

19. Where each of several persons claims to be registered as proprietor of the same new trade mark, the Comptroller may refuse to register any of them until their rights have been determined according to law, and the Comptroller may himself submit or require the claimants, to submit their rights to the Court.

Conflicting claims to registration. (46 and 47, V. c. 57, s. 71.)

20. (1.) Except where the Court has decided that two or more persons are entitled to be registered as proprietors of the same new trade mark, the Comptroller shall not register in respect of the same goods or description of goods a new trade mark identical with one already on the register with respect to such goods or description of goods.

Restrictions on registrations. (46 and 47, V. c. 57, s. 72, 51 & 52, V. c. 50, s. 14.)

(2.) Except as aforesaid the Comptroller shall not register with respect to the same goods or description of goods a new trade mark having such resemblance to a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive.

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

Further restriction on registration. (46 and 47, V. c. 57, s. 73, 51 & 52, V. c. 50, s. 15.)

22. Nothing in this Ordinance shall be construed to prevent the Comptroller entering on the register, in the prescribed manner, and subject to the prescribed conditions as an addition to any new trade mark any distinctive word or combination of words, though the same is common to the trade in the goods with respect to which the application is made, provided the applicant for entry of any such addition state in his application the essential particulars of the trade mark and disclaim in his application any right to the exclusive use of the added matter and a copy of the statement and disclaimer be entered on the register, but a person need not under this section disclaim his own name or the foreign equivalent thereof or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

Saving for power to provide for entry on register of common marks as additions to trade marks. (46 and 47, V. c. 57, s. 74, 51 & 52, V. c. 50, s. 16.)

23. Any trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.

Assignment and transmission of trade mark. (46 and 47, V. c. 57, s. 70.)

PART IV.

General. Effect of Registration.

24. Application for Registration of a trade mark shall be deemed to be equivalent to public use of the trade mark, and the date of the application shall for the purposes of this Ordinance be deemed to be the date of registration.

Registration equivalent to public use. (46 and 47, V. c. 57, s. 75, 51 & 52, V. c. 50, s. 17.)

25. The registration of a person as proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of the trade mark, and shall after the expiration of five years from the date of the registration in this Colony whether under this Ordinance or any enactment hereby repealed be conclusive evidence of his right to the exclusive use of the trade mark, subject to the provisions of this Ordinance.

Right of first proprietor to exclusive use of trade mark. (46 and 47, V. c. 57, s. 76.)

26. A person shall not be entitled to institute any proceeding in this Colony to prevent or to recover damages for the infringement of a trade mark unless, in the case of a trade mark capable of being registered under this Ordinance it has been registered in pursuance of this Ordinance, or of an enactment repealed by this Ordinance.

Restrictions on actions for infringement, and on defence to action in certain cases. (46 and 47, V. c. 57, s. 77.)

27. In a suit or action for infringement of a registered trade mark the Court or a Judge may certify that the right to the exclusive use of the trade mark came into question and if the Court or Judge so certifies, then in any subsequent suit or action for infringement the Plaintiff in such suit or action, on obtaining a final order or judgment in his favour, shall have his full costs charges and expenses as between solicitor and client, unless the Court or Judge trying the subsequent suit or action certifies to the contrary.

Certificate as to exclusive use and costs thereon. (51 & 52, V. c. 50, s. 18.)

Register of Trade Marks.

Register.
(46 & 47 V.
c. 57.)

28. The Comptroller shall keep at the Registry one or more books to be called the Register of Trade Marks wherein shall be entered the names and addresses of registered proprietors of trade marks, notifications of assignments and of transmissions of trade marks and such other matters as may from time to time be prescribed.

Removal of
trade marks,
(46 & 47 V.
c. 57, s. 79,
51 & 52 V.
c. 50, s. 19.)

29. At a time not being less than three months and not more than four months before the expiration of fourteen years from the date of registration of any trade mark under this Ordinance, the Comptroller shall send notice to the registered proprietor or his agent in the Colony that the trade mark will be removed from the Register unless the proprietor pays or causes to be paid to the Comptroller before the expiration of such fourteen years (such notice to name the date at which the same will expire) the prescribed fee; if such fee be not previously paid, he shall at the expiry of one month from the date of the giving of the first notice send a second notice to the same effect.

(2.) If such fee be not paid before the expiry of such fourteen years the Comptroller may after the end of three months from such expiry remove the mark from the register and so on from time to time at the expiry of every period of fourteen years.

(3.) If before the expiration of the said last mentioned three months the registered proprietor pays or causes to be paid the said fee together with the additional prescribed fee, the Comptroller may without removing such trade mark from the register accept the said fee as if it had been paid before the expiry of the said fourteen years.

(4.) Where after the said three months a trade mark has been removed from the register for non-payment of the prescribed fee, the Comptroller may if satisfied that it is just so to do return such trade mark to the register on payment of the original and additional prescribed fees.

(5.) Where a trade mark has been removed for non-payment of the fee or otherwise, such trade mark shall nevertheless for the purpose of any application for registration during one year next after the date of such removal be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Comptroller that the non-payment of the fee arises from the death or bankruptcy of the registered proprietor or from his having ceased to carry on business, and that no person claiming under that proprietor or under his bankruptcy is using the trade mark.

Trust not to
be entered in
registers.
(46 and 47,
V. c. 57, s. 85.)

30. There shall not be entered in any register kept under this Ordinance, or be receivable by the Comptroller, any notice of any trust expressed, implied or constructive.

Refusal to
register in
certain cases.
(46 and 47,
V. c. 57, s. 86.)

31. The Comptroller may refuse to register any new trade mark, of which the use would, in his opinion, be contrary to law or morality.

Entry of
assignments
and transmis-
sions in
registers.
(46 and 47,
V. c. 57, s. 87,
51 & 52 V.
c. 50, s. 21.)

32. Where a person becomes entitled by assignment, transmission, or other operation of law to any registered trade mark, the Comptroller shall on request, and on proof of title to his satisfaction cause the name of such person to be entered as proprietor of the trade mark, in the register of trade marks. The person for the time being entered in the register of trade marks, as proprietor of a trade mark shall, subject to the provisions of this Ordinance and to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the same and to give effectual receipts for any consideration for such assignment, licence, or dealing: Provided that any equities in respect of such trade mark may be enforced in like manner as in respect of any other personal property.

Inspection of
and extracts
from registers.
(46 and 47,
V. c. 57, s. 88,
51 & 52 V.
c. 50, s. 22.)

33. Every register kept under this Ordinance shall at all convenient times be open to the inspection of the public, subject to the provisions of this Ordinance and to such regulations as may be prescribed, and certified copies, sealed with the Comptroller's official seal of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Sealed copies
to be received
in evidence.
(46 and 47,
V. c. 57, s. 89.)

34. Printed or written copies or extracts, purporting to be certified by the Comptroller and sealed with his official seal of or from disclaimers and other documents and of or from registers and other books kept in the Registry shall be admitted in evidence in all Courts in the Colony and in all proceedings, without further proof or production of the originals.

PART VI.

Powers of the Court.

35. (1.) The Court may on the application of any person aggrieved by the omission without sufficient cause of the name of any person or of any other particulars from any register kept under this Ordinance, or by any entry made without sufficient cause in any such register, make such order for making, expunging or varying the entry, as the Court thinks fit, or the Court may refuse the application, and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

Rectification of registers by Court. (46 and 47, V. c. 57, s. 90, 51 & 52 V. c. 50, s. 23.)

(2.) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3.) Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the Comptroller.

36. The Comptroller may, on request in writing accompanied by the prescribed fee,—

Power for Comptroller to correct clerical errors. (46 and 47, V. c. 57, s. 91, 51 & 52 V. c. 50, s. 24.)

(a.) Correct any clerical error in or in connection with an application for registration of a trade mark; or

(b.) Correct any clerical error in the name style or address of the registered proprietor of a trade mark.

(c.) Cancel the entry or part of the entry of a trade mark on the register: Provided that the applicant accompanies his request by a statutory declaration made by himself, stating his name, address, and calling, and that he is the person whose name appears on the register as the proprietor of the trade mark.

(d.) Permit an applicant for registration of a trade mark to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the trade mark to be registered.

37. (1.) The registered proprietor of any registered trade mark may apply to the Court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Ordinance, and the Court may refuse or grant leave on such terms as it may think fit.

Alteration of registered mark. (46 and 47, V. c. 57, s. 92.)

(2.) Notice of any intended application to the Court under this section shall be given to the Comptroller by the applicant; and the Comptroller shall be entitled to be heard on the application.

(3.) If the Court grants leave, the Comptroller shall, on proof thereof and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

38. If any person makes or causes to be made a false entry in any register kept under this Ordinance, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanour.

Falsification of entries in registers. (46 and 47, V. c. 57, s. 93.)

39. Where any discretionary power is by this Ordinance given to the Comptroller, he shall not exercise that power adversely to the applicant for registration of a trade mark, without (if so required by the applicant within the prescribed time) giving the applicant an opportunity of being heard personally or by his agent.

Exercise of discretionary power by Comptroller. (46 and 47, V. c. 57, s. 94.)

40. The Comptroller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Ordinance, apply to the Attorney General for directions in the matter.

Power of Comptroller to take directions of law officers. (46 and 47, V. c. 57, s. 95.)

41. A certificate purporting to be under the hand of the Comptroller as to any entry, matter, or thing which he is authorised by this Ordinance, or any general rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Certificate of Comptroller to be evidence. (46 and 47, V. c. 57, s. 96.)

42. (1.) Any application, notice, or other document authorised or required to be left made or given to the Comptroller, or to any other person under this Ordinance, may be sent by a prepaid letter through the post, and if so sent by post shall be deemed to have been left made or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

Applications and notices by post. (46 and 47, V. c. 57, s. 97.)

(2.) In proving such service or sending by post it shall be sufficient to prove that the letter was properly addressed and put into the post.

Provision as to days for leaving documents at office. (46 and 47, V. c. 57, s. 98.) (See 6 of 1875.)

43. Whenever the last day fixed by this Ordinance, or by any rule for the time being in force, for leaving any document or paying any fee to the Comptroller shall fall on a Public Holiday, or on a Saturday, or Sunday, or any day observed as a day of public feast or thanksgiving in the Colony or any Bank Holiday herein referred to as excluded days, it shall be lawful to leave such document or to pay such fee on the day next following such excluded day, or days if two or more of them occur consecutively.

Declaration by Infant, Lunatic, &c. (46 and 47, V. c. 57, s. 99.)

44. If any person is, by reason of infancy, lunacy or other inability, incapable of making any declaration or doing anything required or permitted by this Ordinance or by any rules made in pursuance of this Ordinance, then the guardian or committee (if any) of such incapable person, or if there be none, any person appointed by any Court or Judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purposes of this Ordinance be as effectual as if done by the person for whom he is substituted.

Comptroller's report. (46 and 47, V. c. 57, s. 102.)

45. The Comptroller shall before the first day of June in every year, cause a report respecting the execution by or under him of this Ordinance to be laid before the Executive Council and therein shall include for the year to which such report relates an account of all fees, salaries and allowances and other money received and paid under this Ordinance.

Offences.

Penalty on falsely representing articles to be patented. (46 and 47, V. c. 57, s. 105.)

46. (1.) Any person who describes any trade mark applied to any article sold by him as registered which is not so shall be liable for every offence on summary conviction before a Magistrate to a fine not exceeding twenty-five dollars.

(2.) A person shall be deemed, for the purposes of this enactment, to represent that a trade mark is registered, if he sells the article with the word "registered," or any word or words expressing or implying that registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to the article.

Penalty on unauthorised assumption of Royal arms. (46 and 47, V. c. 57, s. 106.)

47. Any person who, without the authority of Her Majesty, or any of the Royal Family, or of any Government Department, assumes or uses in connection with any trade, business, calling, or profession, the Royal Arms, or arms so nearly resembling the same as to be calculated to deceive, in such a manner as to be calculated to lead other persons to believe that he is carrying on his trade, business, calling, or profession by or under such authority as aforesaid, shall be liable on summary conviction as aforesaid to a fine not exceeding one hundred dollars.

Commencement.

Commencement.

48. This Ordinance shall come into operation on the 1st day of January, 1890.

A BILL

ENTITLED

Title.

An Ordinance for the naturalization of LEUNG SHŪ (梁緒) otherwise LEUNG ÜN (梁遠) or LEUNG YUK (梁沃) or YUK SHANG (沃生).

Preamble.

WHEREAS LEUNG SHŪ *otherwise* LEUNG ÜN or LEUNG YUK or YUK SHANG, a native of the Heung Shan District in the Kwong-chau Prefecture of the Kwong-tung Province in the Empire of China, now residing at the Shun Lung Bank No. 87 Wing Lok Street in this Colony gentleman, has petitioned to be naturalized as a British subject within the limits of this Colony, and whereas it is expedient that he should be so naturalized: Be it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

Naturalization of Leung Shū otherwise Leung Ün or Leung Yuk or Yuk Shang.

LEUNG SHŪ *otherwise* LEUNG ÜN or LEUNG YUK or YUK SHANG shall be, and he is hereby naturalized a British subject within this Colony, and shall enjoy therein but not elsewhere all the rights, advantages, and privileges of a British subject, on his taking the oath of allegiance under the provisions of the *Promissory Oaths Ordinance, 1869.*

A BILL

ENTITLED

*An Ordinance to amend the Law relating to
Fraudulent Marks on Merchandise.*

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as *The Merchandise Marks Ordinance, 1889.*

Short title.

2. (1.) Every person who

- (a.) forges any trade mark; or
- (b.) falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive; or
- (c.) makes any die, block, machine, or other instruments for the purpose of forging, or of being used for forging, a trade mark; or
- (d.) applies any false trade description to goods; or
- (e.) disposes of, or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade mark; or
- (f.) causes any of the things above in this section mentioned to be done, shall, subject to the provisions of this Ordinance, and unless he proves that he acted without intent to defraud, be guilty of an offence against this Ordinance.

Offences as to trade marks and trade descriptions. (50 & 51, V. c. 23, s. 2.)

(2.) Every person who sells, or exposes for, or has in his possession for sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves:

- (a.) that having taken all reasonable precautions against committing an offence against this Ordinance, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description; and
- (b.) that on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or
- (c.) that otherwise he had acted innocently; be guilty of an offence against this Ordinance.

(3.) Every person guilty of an offence against this Ordinance shall be liable

- (i.) on conviction before the Supreme Court to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine, or to both imprisonment and fine; and
- (ii.) on summary conviction before a Magistrate to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding one hundred dollars, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding two hundred and fifty dollars; and
- (iii.) in any case, to forfeit to Her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed.

(4.) The Court or Magistrate before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the Court or Magistrate thinks fit: Provided that a person charged with an offence under this section before a Magistrate shall, on appearing before such Magistrate, and before the charge is gone into, be informed of his right to be tried on information before the Supreme Court, and if he requires to be so tried, be committed for trial and be so tried accordingly.

3. (1.) For the purposes of this Ordinance; The expression "trade mark" means a trade mark registered in the Register of trade marks kept under *The Trade Marks Ordinance, 1889*, and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the Patents, Designs and Trade Marks Act, 1883 section 103 are, under Order in Council, for the time being applicable.

Interpretation. (Ibid. sec. 3.)

The expression "trade description" means any description, statement, or other indication, direct or indirect,

- (a.) weight of any goods, or as to the number, quantity, measure, gauge, or
- (b.) as to the place or country in which any goods were made or produced, or
- (c.) as to the mode of manufacturing or producing any goods, or
- (d.) as to the material of which any goods are composed, or
- (e.) as to any goods being the subject of an existing patent, privilege, or copyright,

and the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Ordinance.

The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Ordinance.

The expression "goods" means anything which is the subject of trade, manufacture, or merchandise.

The expressions "person," "manufacturer," "dealer," or "trader" and "proprietor" include any body of persons corporate or unincorporate.

The expression "name" includes any abbreviation of a name.

(2.) The provisions of this Ordinance respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3.) The provisions of this Ordinance respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression "false name" or "initials" means as applied to any goods, any name or initials of a person which

- (a.) are not a trade mark, or part of a trade mark, and
- (b.) are identical with, or a colourable imitation of the name or initials of a person carrying on business in connection with goods of the same description, and not having authorised the use of such name or initials, and
- (c.) are either those of a fictitious person or of some person not *bonâ fide* carrying on business in connection with such goods.

4. A person shall be deemed to forge a trade mark who either

- (a.) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or
- (b.) falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise;

and any trade mark or mark so made or falsified is in this Ordinance referred to as a forged trade mark:

Provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

5. (1.) A person shall be deemed to apply a trade mark or mark or trade description to goods who

- (a.) applies it to goods themselves; or
- (b.) applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or

Forging trade marks.
(*Ibid.*, s. 4.)

Applying marks and descriptions.
(*Ibid.*, s. 5.)

- (c.) places, encloses, or annexes any goods which are sold, or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or
- (d.) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connexion with which it is used are designated or described by that trade mark or mark or trade description.

(2.) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression "label" includes any band or ticket.

A trade mark, or mark, or trade description, shall be deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing.

(3.) A person shall be deemed to falsely apply to goods a trade mark or mark, who without the assent of the proprietor of a trade mark, applies such trade mark or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

6. Where a defendant is charged with making any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves

- (a.) that in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for making, or being used in making, trade marks, or as the case may be to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the Colony, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and
- (b.) that he took reasonable precautions against committing the offence charged; and
- (c.) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and
- (d.) that he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or description was applied,

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

7. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall *primâ facie* be deemed to be a description of that country within the meaning of this Ordinance, and the provisions of this Ordinance with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case.

8. In any information, pleading, proceeding, or document, in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

9. In any prosecution for an offence against this Ordinance,—

Exemption of certain persons employed in ordinary course of business. (*Ibid.*, s. 6.)

Application of Ordinance to watches. (*Ibid.*, s. 7.)

Trade mark, how described in pleading. (*Ibid.*, s. 8.)

Rules as to evidence. (*Ibid.*, s. 10.)

- (1.) A defendant, and his wife or her husband, as the case may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness.
- (2.) In the case of imported goods, evidence of the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced.

Punishment
of accessories.
(*Ibid.* s. 11.)

10. Any person who, being within the Colony, procures, counsels, aids, abets, or is accessory to the commission, without the Colony, of any act, which, if committed in the Colony would under this Ordinance be a misdemeanour, shall be guilty of that misdemeanour as a principal, and be liable to be proceeded against, tried, and convicted in the Colony as if the misdemeanour had been there committed.

Search
Warrant.
(*Ibid.* s. 12.)

11. (1.) Where, upon information or complaint laid for an offence against this Ordinance, a Magistrate has issued either a summons requiring the defendant charged by such information or complaint to appear to answer to the same, or has issued a warrant for the arrest of such defendant, and either the said Magistrate on or after issuing the summons or warrant, or any other Magistrate 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 such 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, such Magistrate may issue a warrant under his hand by virtue of which it shall be lawful for any constable named or referred to in the warrant, to enter such houses, premises, or place at any reasonable time by day, and to search therefor and seize and take away those goods or things; and any goods or things seized under any such warrant shall be brought before a Magistrate for the purpose of its being determined whether the same are or are not liable to forfeiture under this Ordinance.

(2.) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Ordinance, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a Magistrate may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the Magistrate, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.

(3.) Any goods or things forfeited under this section, or under any other provision of this Ordinance, may be destroyed or otherwise disposed of, in such manner as the Magistrate by which the same are forfeited may direct, and the Magistrate may, out of any proceeds which may be realised by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

Costs of de-
fence or prose-
cution.
(*Ibid.* s. 14.)

12. On any prosecution under this Ordinance the Magistrate may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

Limitation of
prosecution.
(*Ibid.* s. 15.)

13. No prosecution for an offence against this Ordinance shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

Prohibition
on importa-
tion.
(*Ibid.* s. 16.)

14. Whereas it is expedient to make further provision for prohibiting the importation of goods which, if sold, would be liable to forfeiture under this Ordinance; be, it therefore enacted as follows:—

- (1.) All such goods, and also all goods of foreign manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in the Colony, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into the Colony and if any such goods shall be im-

ported or brought into the Colony contrary to the prohibition herein contained such goods shall be forfeited and may be destroyed or otherwise disposed of as the Superintendent of Imports and Exports may direct.

- (2.) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under this Ordinance the Superintendent of Imports and Exports may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy himself in accordance with those regulations that the goods are such as are prohibited by this section to be imported.
- (3.) The Governor in Council may from time to time make, revoke, and vary regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.
- (4.) Where there is on any goods a name which is identical with or a colourable imitation of the name of a place in the Colony, that name, unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if it were the name of a place in the Colony.
- (5.) Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.
- (6.) The regulations may provide for the informant reimbursing the Superintendent of Imports and Exports all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.
- (7.) All regulations under this Section shall be published in the *Gazette*.

15. On the sale or in the contract for the sale of any goods to which a trade mark, or mark, or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Ordinance, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

16. Where, at the passing of this Ordinance, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Ordinance with respect to false trade descriptions shall not apply to such trade description when so applied: Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

17. This Ordinance shall not exempt any person from any suit, action, or other proceeding which might, but for the provisions of this Ordinance, be brought against him.

(2.) Nothing in this Ordinance shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any suit or action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Ordinance.

Implied warranty on sale of marked goods (*Ibid.*, s. 17.)

Provisions of Ordinance as to false description not to apply in certain cases. (*Ibid.*, s. 18.)

Savings. (*Ibid.*, s. 19.)

(3.) Nothing in this Ordinance shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the Colony who *bonâ fide* acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

False representation as to Royal Warrant. (*Ibid.*, s. 20.)

18. Any person who falsely represents that any goods are made by a person holding a Royal Warrant, or for the Service of Her Majesty, or any of the Royal Family, or any Government department Colonial or otherwise shall be liable, on summary conviction, to a penalty not exceeding One hundred dollars.

Repeal of Ordinance No. 8 of 1863.

19. Ordinance No. 8 of 1863 is hereby repealed, and any unrepealed enactment referring to any enactment so repealed shall be construed to apply to the corresponding provision of this Ordinance; provided that this repeal shall not affect

(a.) any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; nor

(b.) the institution or continuance of any proceeding or other remedy under any enactment so repealed for the recovery of any penalty incurred, or for the punishment of any offence committed, before the commencement of this Ordinance; nor

(c.) any right, privilege, liability, or obligation acquired, accrued, or incurred under any enactment hereby repealed.

Commencement of Ordinance.

20. This Ordinance shall come into operation on the day of 1890.

A BILL

ENTITLED

Title.

An Ordinance to amend The Police Force Consolidation Ordinance, 1887.

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

Amendment of No. 14 of 1887, sect. 22.

1. Section twenty-two of *The Police Force Consolidation Ordinance, 1887*, is hereby amended by inserting after the words *in a summary manner* the words *be liable to imprisonment with or without hard labour for any term not exceeding one year, or in the Magistrate's discretion shall*; and in the same section by substituting for the words *not exceeding six months* the words *not exceeding one year*.

A BILL

ENTITLED

Title.

An Ordinance to amend Ordinance No. 14 of 1862 entitled An Ordinance for granting Patents for Inventions within this Colony.

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

Amendment of Ordinance No. 14 of 1862.

1. The words *the Patent Law Amendment Act 1852 of the Imperial Parliament* in section three of Ordinance No. 14 of 1862 are hereby repealed and instead thereof there shall be substituted and read the words *The Patents Designs and Trade Marks Acts 1883 or any rules made thereunder*.

Additional formalities for declarations.

2. Every declaration to be made pursuant to section one of Ordinance No. 14 of 1862 shall be made before some person duly authorised to administer an oath in the country where it is made and every person who shall knowingly make any untrue or false statement in any such declaration shall upon conviction be liable to the penalties of perjury.