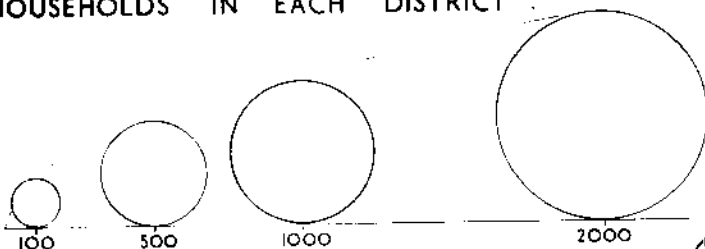


DEPENDENCE ON HARRIS TWEED.

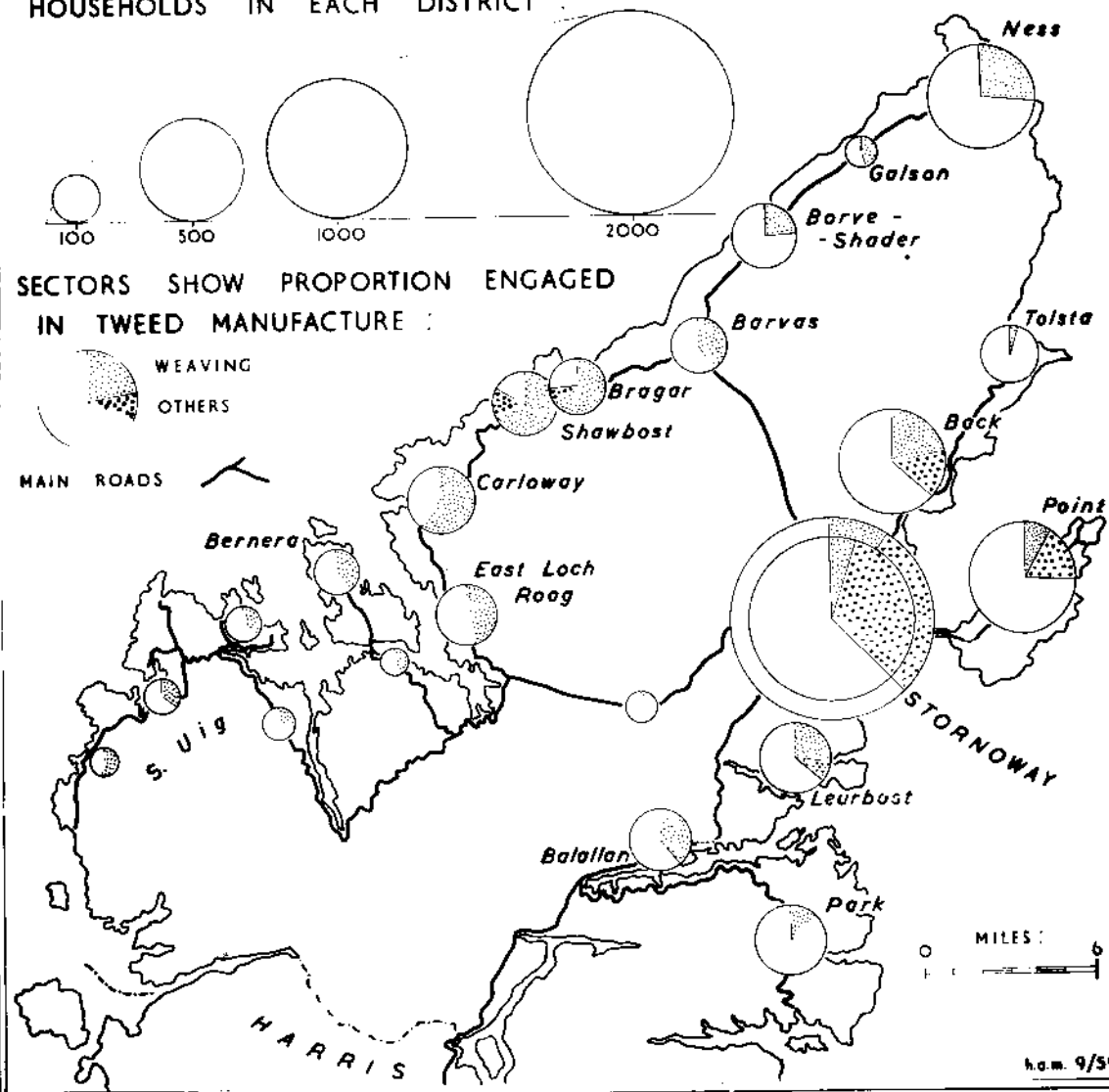
CIRCLES ARE PROPORTIONATE TO NUMBER OF HOUSEHOLDS IN EACH DISTRICT :



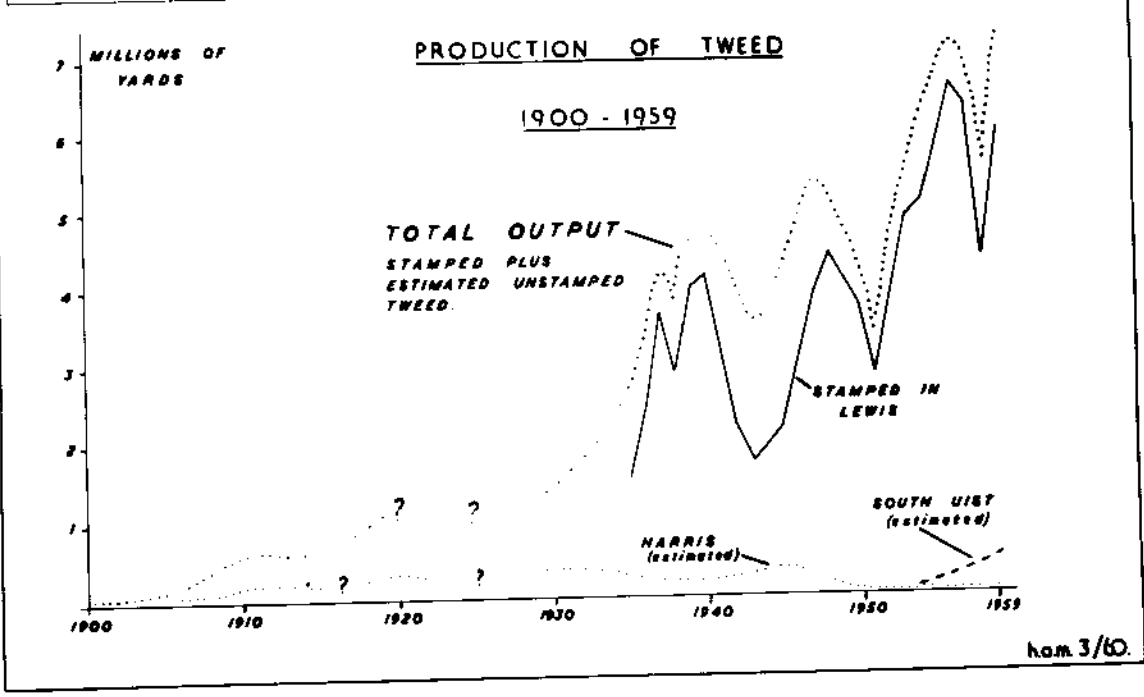
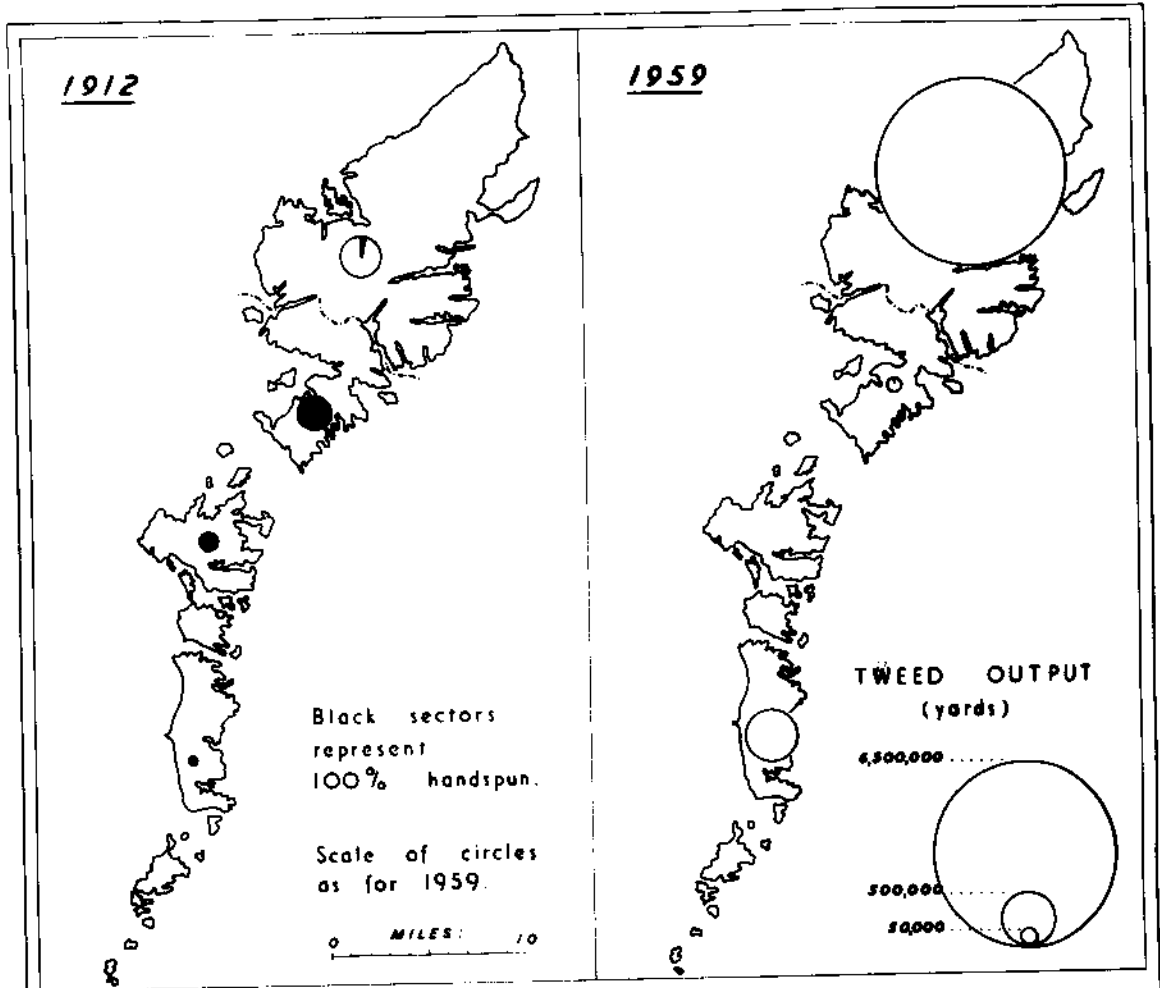
SECTORS SHOW PROPORTION ENGAGED IN TWEED MANUFACTURE :



MAIN ROADS



h.o.m. 9/59.



~~SECRET~~
YES

NOTES ON THE HISTORICAL DEVELOPMENT OF
THE HARRIS TWEED INDUSTRY AND THE PART
PLAYED BY THE HARRIS TWEED ASSOCIATION
LTD.

INTRODUCTION

In this memorandum - and its inordinate length is regretted but it is difficult to compress the variety of matters that have to be touched on - no attempt is made to deal with the critical question, namely, the meaning of Harris Tweed to the trade and public today. The main purpose of the memorandum is to describe the development of the industry, particularly with a view to placing it in proper perspective the allegation made by Independent Harris Tweed Producers Ltd. and its supporters that - to quote from the Condescendence in the Scottish Proceedings - "for at least sixty years the mainland spinning of the yarn and the mainland finishing of the cloth have played an important part in the production of cloth marketed under the name "Harris Tweed"."

In addition - only because it has been raised by the mainland producers - the memorandum describes how the disclaimer of the word "HARRIS" in the United States registration came to be made.

Further, some light is thrown on the proceedings before the Lord Lyon.

It has been found convenient to divide the memorandum into three sections:

- I. - 1844 - 1914: The Beginning of an Industry, commencing at Page 1
- II. - 1918 - 1939: Order out of Chaos, commencing at Page 19
- III. - 1945 - 1959: The Menace from the Mainland, commencing at Page 55.

Up to 1914 the facts are largely drawn from the Government publications and the newspapers of the time. After 1918 it is possible to rely on the memory of living persons as well as official documents and correspondence.

The memorandum can therefore be supported by a mass of documentary evidence and it is hoped that the nature of this evidence will be clear from the memorandum itself. It is probable that those in charge of the Scottish proceedings will need to see some of the documents and, on a request being made, copies can be made and forwarded - it is hoped with the minimum of delay.

*These notes were written at the time of the Lord Hunter
Harris Tweed Case in 1964 - putting forward the oral
H. T. A. and Spinnery side*

1844 - 1914 : THE BEGINNINGS OF AN INDUSTRY

(NOTE : References to the Report to the Board of Agriculture for Scotland on "Home Industries in the Highlands and Islands" by Dr. Scott, Lecturer on Political Economy in the University of St. Andrews (Cd. 7564 Edinburgh 1914) are shown as "S.R." with the page number. This is an authoritative report dealing inter alia, with the state of the Harris Tweed Industry up to the beginning of the First World War and therefore covers a period which will shortly be outside the ambit of living memory. A few references are taken from the evidence taken in connection with the "Report of Her Majesty's Commissioners of Inquiry into the conditions of the Crofters and Cottars in the Highlands and Islands of Scotland" known as the "Napier Commission" issued in 1884. In these cases the letters "N.C" the volume, and paragraph number are given. Some references are taken from the Highland News, the only newspaper circulating in the Outer Hebrides until the Stornoway Gazette appeared after the First World War. These references are given as "H.N." with the date)

1. From time immemorial the inhabitants of the West of Scotland, including the Outer Hebrides had made cloth entirely by hand. As the Industrial Revolution reached Scotland, the mainland turned to mechanisation, but the Outer Islands retained their primitive processes.

"The Long Island, and particularly Harris, had long been known for the excellence of the weaving done there. Up to the middle of the nineteenth century, the cloth was produced mainly for home use or for a purely local market". (S.R.p.33).

In 1844 the Earl of Dunmore the proprietor of South Harris, had the Murray tartan copied by Harris Weavers in "tweed". This proved so successful that Lady Dunmore "devoted much time and thought to the introducing of the tweed to her friends, and then to improving of the process of production". This was the beginning of the Harris Tweed industry (S.R.p.33).

2. At that time the method of making this hand-made tweed was as follows : the raw material was locally produced wool, which was then subjected to a number of processes, the principal being the following :-

(i) dyeing: this was done in the wool state and not in the yarn. This led to the dye having a more lasting effect: hence the expression "dyed in the Wool" (see Shorter Oxford English Dictionary, 3rd edition page 575). It was normal for part of the wool to be used in its natural uncoloured state.

In the nineteenth century vegetable dyes were used : the lichen, called crottle, yielded a distinctive brown dye; dyes from dandelion, heather, bracken and vegetable roots were also obtained. The dyeing process consisted of boiling the wool with the dye in a pot (S.R.p.57).

Following dyeing the wool was mixed: the depth of the shade could be regulated by the amount of uncoloured wool added. Then it was oiled and teased; the last process involves pulling the wool apart so as to open out the fibres, for at this stage the wool is in a tangled state.

(ii) carding: this process results in the fibres of wool being drawn out preparatory to spinning. The manual process was tedious and was said to take as much time as all the other processes (S.R.p.55).

(iii) spinning: this process was carried out on the familiar spinning wheel/

wheel by women. This process was also time consuming.

"Many spinners say that, on an average, it takes a day to spin 1 lb. of yarn - that for the warp takes longer, that for the woof less, and thus these workers could produce 3 lbs. of warp yarn and 3 lbs. of woof yarn in a week" (S.R.187). Another estimate suggested that the handwork involved in producing 44 yards of tweed (excluding weaving time) took 400 hours with a return of 2¹/₂ per hour or, on an 8-hour day, rather more than 10/- per week. (S.R.187)

When one considers that 3 lbs. of woof and warp yarn is enough to produce under 4 yards of tweed and that the energetic weavers of today produces two "tweeds", each of about 78 yards, in a week, the comparison is fantastic: about 25 women, dyeing, carding and spinning the yarn would be needed to keep the weaver employed.

- Loom*
- (iv) weaving: until the turn of the century a primitive hand loom, with a manually operated shuttle consisting of a sheep bone had been in use. This was light and could be used by women. (S.R.9.60-61).
 - (v) finishing: the primitive method was called "waulking" and was carried out by women. This tended to give the cloth a raised and compact finish, a process "which has a certain picturesqueness, and has been described by many of those who have made a study of the social life of the islanders" (S.R.p.56), being often accompanied by songs in Gaelic. When the waulking was finished, the web of tweed was stretched and hung out in the air to dry (S.R.p.56)

These were the methods used in the Outer Hebrides, particularly Harris, until the turn of the century.

3.

The encouragement given to the Harris Crofter by Lady Dunmore resulted in increasing sales of tweed; she is described as having paid out £1,235 for webs of cloth in one year (N.C. Vol.33 (Harris) paras. 13329-13333). Her work was taken up by Mrs. Thomas, the wife of a naval captain, who visited Harris in 1857 and who thereafter set up a depot in Edinburgh for the sale of the tweeds, which was removed in 1888 to Berners Street in London (N.C.Vol.34(Harris) paras. 17897-9 and S.R.p.34). In addition a trade was established with cloth merchants in large towns in England and Scotland (S.R.p.35).

In the seventies and eighties there were some indications that the Highland hand-made tweed industry might have a future. (S.R.p.35). Other parts of the Outer Hebrides became interested: in 1877 the making of tweed in South Uist for sale in London was begun (S.R.p.34) and it appears that the first web of tweed to be offered for outside sale from Lewis was made in 1881 (S.R.p.35). Tweed from St.Kilda was being sold in small quantities (S.R.p.36).

In 1889 the Scottish Home Industries Association was formed under Royal patronage: its object was to find a market for the products of home industries and its northern Counties Branch aided the workers in tweed in Uist, Harris, Lewis & Sutherland. It opened a depot at 14, Lower Grosvenor Place, London (S.R.p.42 and 43). This Association was incorporated with a nominal capital of £10,000 in 1896 (S.R.p.45). An offshoot of this was the formation of the Highland Home Industries & Arts Association, embracing the six Northern Counties of the Scottish mainland, including Rosshire and Invernesshire in which the Outer Hebrides lie. The purpose of this Association was to hold exhibitions of the products of home industries, including tweed (S.R.pp.43 and 44).

The efforts of the Scottish Home Industries Association before its incorporation were hampered by lack of working capital, as the following extract from the Scott report shows:-

"On the one side, events had shown the need for a commercial organisation and also for a considerable working capital. The people who made tweed/

tweed were unable to procure either of these for themselves; if they were left wholly in the hands of the local merchants, they sold at a disadvantage, partly in being unable to hold out for a good price, partly in becoming involved in truck. On the other hand, it could be contended that, at the usual price of tweed, the people received little enough for their work; and, if an elaborate commercial organisation were called into existence, there must be a deduction from the retail price of the tweed to pay the expenses of selling it" (S.R.p.45).

Partly because of this inadequacy in the organisation of the Scottish Home Industries Association, another selling organisation came into being, namely the Crofters Agency, founded by Mrs. Stewart Mackenzie of Seaforth which lies in North Harris (S.R.p.45).

In the nineties some of those making Harris "were so poor that they were often in want of wool or necessaries between the time they began to make a web of cloth and the finishing of it, and it was judged necessary to advance such commodities which comprised wool, dyes, meal, sugar" (S.R.p.45)

The Scottish Home Industries Association came under fire for breaches of the Truck Acts. Its board directed its managers "to pay for all purchases of tweed in cash, leaving it entirely to the option of the crofters whether they will or not make purchases of groceries, wool and other commodities which the stores offer for sale". (S.R.45)

The Crofters Agency also bought for cash and limited its advances to wool. The policy of providing working capital for the industry justified itself. The Scottish Home Industries Association's sales of tweed exceeded £10,000 in 1897 and 1898 (S.R.46).

4.

In Gaelic the hand-made tweed was called 'Clo Mor' meaning 'the great cloth'. It became known as Harris Tweed, because it was Lady Dunmore who was its first advocate and the first commercial sales emanated from that part of the Long Island.

The earliest reference yet found is contained in an answer from a witness giving evidence before the Napier Commission :

"One man a country tailor, will know best, at Dunvegan, called all the fine clothing women wear "South country rags" as distinguished from their fine home - your cloth. I agree with the tailor they are proverbial in Harris for their good spinning and weaving, and their good making of clothes for themselves, not only over Gt. Britain but over the whole Continent. You hear of Harris Tweeds, here, there and everywhere. My coat was grown on the farm, woven on the farm, and made on the farm." (N.C.Vol.33 (Harris) para. 13342)

The term 'Harris Tweed' or its alternative 'Harris Homespun' (according to Mr. B.W. Bill a London wool Merchant) was used in the early nineteenth century to indicate the handmade product not merely of Harris but also of Lewis and the Uists, though (as will be mentioned later) for some years the inhabitants of Harris resented its application to the product of other localities.

5.

The first step towards mechanisation was taken in 1900 when Sir Samuel Scott, a banker and the proprietor of North Harris, set up a carding mill outside Tarbert. The reason for this development is explained in the Scott Report as follows:

"..... A practice had grown up of sending the wool to the mills on the mainland to be carded. But there was a great temptation to have it spun also and returned in the form of yarn. Thus the only hand-work in the tweed made of such yarn was the weaving; and in fact a different fabric, as compared/

compared with the original Harris Tweed, would be produced. It was thought that the erection of a carding mill (which did not spin the carded wool) in the Islands would prevent the introduction of mill spun yarn,...." (S.R.p.46)

By 1903 another carding mill had been started at Stornoway by Mr. Aeneas Mackenzie (S.R.p.46) and a few years later a further carding mill was set up in the Tarbert district (S.R.p.57)

6. In addition to the new carding mills, various factors were at work to improve the production of Harris Tweed and the output of those producing it. A year or two before 1900 the Scottish Home Industries Association appointed a travelling inspector with a view to improving the quality (S.R.p.45).

Following the passing of the Congested Districts (Scotland) Act in 1897, the Board constituted by the Act, set apart a sum for giving practical instruction in Lewis of tweed making. A Mr. Alexander Lamont was appointed instructor (S.R.p.46).

In the nineties the production of Harris Tweed had been extended to North Uist by Lady Gordon Cathcart, but the webs were of poor quality. In 1902 the Congested Districts Board made a grant of £300 to the Scottish Home Industries Association towards providing instruction in North Uist and the opening of a depot at Lochmaddy. Further depots were opened in 1903 at Uig in Lewis, Obbe in South Harris, Lochboisdale in South Uist and at Creagorry Pier in Benbecula, the latter at Lady Cathcart's expense. (S.R.pp.47-8)

One technical problem that arose was that the workers either had to make small webs of tweed or else run the risk of having the colours irregular through being compelled to use small pots for dyeing. To remedy this two large boilers of 30 gallons were sent to Uig in Lewis by the Congested Districts Board (S.R.p.46) and to other townships (S.R.p.48). Some of these can be seen lying by the roadside at the present day.

At about the turn of the century the primitive small loom which had been widely used in Lewis began to be replaced by the improved "fly-shuttle" loom: this increased output per hour. It was also made of wood, but was much heavier and its introduction tended to make weaving an occupation for men instead of women. (S.R.p.61) It was originally imported from Galashiels, but in 1903 Mr. Archibald Macrae, a joiner and turner of 65 Keith Street, Stornoway, started making the new type of loom (H.N.23.1.04)

These looms cost £6 to £8 each and the Congested Districts Board advanced funds free of interest for their purchase. This seems to have resulted in a substantial increase in the number of looms in work in Lewis: in 1899 there had been 55 looms, in 1906 there were 161 and in 1911 it was estimated there were between 250 and 300. (S.R.p.48)

In Harris the primitive loom continued in use with the result that 9 out of 10 weavers were women, whereas in Lewis the weavers were nearly all men (S.R.p.78).

7. Another fillip to the growing industry in Lewis dates from the visit of King Edward VII to Stornoway in the summer of 1902. The Harris Tweed depot of the Crofters Agency at 15 Bayhead Street received an order from Their Majesties (H.N. 20.9.02.) and the depot of the Scottish Home Industries in Stornoway also received an order (H.N. 27.9.02). It is interesting to observe that the first reference is headed "Royal patronage for Lewis Tweeds" and the second speaks of "a consignment of selected Lewis Tweeds", as if there was some doubt in the mind of the editor as to whether tweeds in Lewis could properly be termed Harris Tweeds.

8. There is no doubt that between 1903 and 1906 the tweed making industry in Lewis increased rapidly but this in itself brought a new problem:

"The rapid increase in output in Lewis suggests the reflection, which is confirmed by other evidence, that mill-spun yarn was being/

being introduced in considerable quantities.In 1907 the Scottish Home Industries Association began to find that the amount of tweed made of hand-spun yarn, obtainable in Lewis, did not justify the expense of the depots there, and steps were taken to close these gradually. The Crofters Agency, on the other hand, kept one of its depots, at Balallan, open. The available evidence tends to show that the production of tweed in Lewis kept on increasing, but that hand-spinning was declining." (S.R.p.49)

It appears that Mr. Aeneas Mackenzie's carding mill at Stornoway added spinning machinery at about that time "and a second mill of similar character was started" (S.R.p.49). This refers to the mill of Mr. Kenneth Mackenzie which was opened in about 1908 and from whom one of the largest producing companies in existence today takes its name.

It follows that by about 1906 most of the tweed that was being made in Lewis was made from mill-spun yarn, which, until the introduction of spinning machinery into Stornoway a year or two later, must have come from the mainland; but the tweed made in Harris continued to be for the most part hand-made.

9.

At this point the Board of Trade instituted a prosecution under the Merchandise Marks Act 1887 against one, Henry Lyons, a tailor carrying on business at Minories in the City of London. Mt. T. G. Horridge K.C. led for the prosecution which came before Mr. Mead at the Thames Police Court. In the report of the case in the Daily News of the 11th August 1906 it was stated that the matter affected very seriously

"the trade carried on by the crofters of the outlying islands of Scotland. One of these islands was named Harris from which the tweed took its name. The work was done by very poor people with hand-loom, and the tweed was dyed with natural products. A layer of wool was first put in a vessel and then a layer of dye. After being dyed in that way it was teased and carded, after which it was passed through a spinning-wheel and became wool yarn. It was also passed through the loom and was put on a frame. When it came out of the loom it was 32 in. in length but after the shrinkage it was not more than 28 in."

A reference was then made to the work of Mrs. Thomas and the Duchess of Sutherland and other ladies, and it was stated that "now a considerable trade was done in the cloth". The report added that "the price of the tweed was high and it was difficult to get enough of it".

The defendant was selling so-called Harris Tweed suits to order for 32/6d under advertisements which said "Our Harris Tweed suits cannot be beaten. The ordinary tailor's price is 55s. We have now made arrangements with the Highland peasants". The defendant admitted that the material was made at his mills in Huddersfield.

The magistrate took the view that it was a clear case of fraud and he sentenced the defendant to two months' imprisonment, whereupon (according to the Daily Mail report of the 11th August 1906) "the defendant fell down in a fit".

The case attracted a great deal of publicity, as much on account of the severity of the sentence as of the fraud perpetrated. It was clearly not the wish of the Board of Trade that the magistrate should impose a prison sentence and on October 12, 1906 the sentence was reduced on appeal to a fine of £20 and costs.

10.

The Lyons case was widely reported in the Outer Hebrides (see H.N.25.8.06) and seems to have stirred public opinion there as to the dangers of mill-spun yarn.

Shortly/

Shortly afterwards there was a report of a meeting of Stornoway dealers in home-made tweeds to consider what steps should be taken "for placing the industry in the island on a more satisfactory footing. The meeting was a very harmonious one, and, if the resolutions arrived at are honourably carried out, will doubtless result in much good." (H.N. 1.9.06).

It appears that the merchants in Stornoway became so concerned with the amount of mill-spun tweed which was being offered to them as hand-spun that they started calling for declarations certifying that the tweed was entirely hand-spun, hand-woven and home-dyed Harris Tweed (S.R.p.49), but this system was found to be only partially satisfactory (S.R.p.50).

11. Meantime the Trade Marks Act 1905 had been passed. For the first time there was provision for registration of "standardisation marks", a term changed to "certification marks" in the Amending Act of 1919.

It seemed to some that this novel provision might serve to stem the increasing practice of offering mill-spun tweed as the genuine Harris. A system whereby the tweed was inspected, and, if passed, was given a certifying stamp would give confidence to the trade and public.

Between 1906 and 1909 three different trade mark applications were made. One application was filed by the Harris Tweed Association of Tarbert; one assumes that this sought to confine the use of the term Harris Tweed to the parish of Harris. There was another application by Mr. Roderick Smith, a former Secretary of the same Association. There was a third application by Scottish Home Industries Association Limited.

There is little detailed information about these applications. One assumes that the delay in their progress was due to the Board of Trade having to approve the regulations governing the use of the marks. In addition the Board may have had to consider whether the term "Harris Tweed" should be confined to the produce of Harris or should be allowed to cover the produce of Lewis and the neighbouring islands as well.

It has since been ascertained that the applications were for ordinary trade marks, not certification marks.

Mr. Horridge K.C. had opened the Lyons case on the basis of the latter alternative. A correspondent to the Highland News suggests that it was Mrs. Stewart Mackenzie of Seaforth who was responsible for the wider definition (H.N. 2.3.07). A year later there was some correspondence in the Highland News on the question of tweeds made in Lewis being called Harris Tweeds. It was pointed out that the localities then making Harris Tweed in Lewis, namely, Uig and Balallan, were close to Harris (H.N. 25.4.08, 2.5.08 and 23.5.08).

At all events none of the three original applications ever reached registration, since in the end the various interests combined to form a company limited by guarantee with a registered office in London under the title The Harris Tweed Association, Limited. The fact that the Company was based in London rather than in the Hebrides suggests the grant of a certification mark was its principal object.

At its incorporation the Articles of Association provided that the Committee of Management should be nominated, as to two members by Scottish Home Industries Association, Ltd. as to two by the Crofters Agency and to two by the Harris Tweed Association of Tarbert.

As soon as the company was formed steps were taken to register a Certification Mark. An application was filed under No. 319214 on the 15th December 1909 to register the well-known Harris Tweed trade mark consisting of the orb and cross and the words "Harris Tweed" beneath. The application was in respect of "Harris Tweed" in Class 24.

It appears from the terms of the Statement of Case that one of the objects in obtaining a certification mark was to protect the industry from the competition of the spinning mills.

The/

The original definition of Harris Tweed in the Regulations read as follows:-

"'Harris Tweed' means a tweed hand spun, hand woven and dyed by the crofters and cottars in the Outer Hebrides." It is interesting to observe that the definition permitted machine-carding, but not mill-spinning or mill-dyeing. It was silent as to the source of the wool. The term "cottar" referred to the existence of a class whose tenure of land depended on squatters' rights.

The certification mark reached registration in October 1910 and stamping began early in 1911. Originally the Association had three inspectors one based on Tarbert in Harris, another in South Uist and Bernera, an island off North Uist (S.R.p.I99).

The fact that no inspector was appointed for Lewis is an indication as to its lack of importance in the production of the hand made tweed. The short-lived enthusiasm brought about by the formation of the Association seems to have spread to the Stornoway merchants in 1912. Negotiations followed and the Association altered its Articles to allow two members of the committee of Management to be appointed by the Lewis Harris Tweed Association. An inspector was thereafter appointed in Stornoway.

12. In 1911 125, 318 yards were stamped by the Association's inspectors in Harris, Uist and Bernera. In 1912, after the Lewis inspector had been appointed 132, 936 yards were stamped. Of these only 6,428 yards were produced in Lewis. (S.R.I99). In 1913 101,708 yards were stamped and in 1914 only 67,814 yards. Thereafter between 1915 and 1932 the figures varied between a high of 47,294 in 1932 and a low of 19563 in 1920 (H.T.A. records).

However, there was a large production of tweed that was not stamped. In 1911 some 233,840 were produced outside Lewis: Harris accounted for 180,900 yards, North Uist for 46,440 yards and South Uist for 6,500 yards. Most of this was made from hand-spun yarn and therefore true "Harris Tweed" (S.R.p.I82)

The tweed production in Lewis is estimated in 1911 as reaching 350,000 yards, nearly all of which was made from machine-spun yarn (S.R.p.I83), much of it, one suspects, emanating from the two island spinning mills. Whether it was all sold as Harris Tweed is not known, but much of it was probably held out as being the hand-made article (see para.I5 below)

13. In 1911 the Association brought a prosecution against a tailor called Clayton in London. It is understood that he was selling as Harris Tweed a cloth handwoven in and made from yarn mill-spun in the Islands. The case was dismissed. (The information regarding this case is fragmentary, but some research may elicit further details).

It is since learnt that the case failed because the Defendant established the tweed was hand made.

The Association's costs amounted to £130. As its total income in 1911 amounted to £261 (based on a stamping fee of a half-penny per yard) and its total expenses (excluding the prosecution) amounted to £243, it is clear that the resort to legal procedure was a luxury which could seldom be afforded. In this particular instance it seems that the Association was able partly to set off the costs of the case against the payment of £100 which it received from "John Bull", presumably for libel. (S.R.pp.200 and 201). After the payment of inspectors salaries and other administration expenditure, there was little over for advertising. As the stamping fees declined in subsequent years the Association had to exist on a shoestring.

14. The Association's attempt to confine the use of the term "Harris Tweed" to the hand-made article was doomed to failure for reasons other than poverty.

In the first place it came into existence too late. Had the act of 1905 been passed ten years earlier and had a certification mark been granted in 1900, it is not unreasonable to assume that prompt action (such as that taken in the 1911 prosecution) would have secured a ruling that mill-spun yarn was incompatible with the use of the term "Harris Tweed".

In/

In that case the Association would have been condemned for ever to the role of guardian to a small and primitive industry which the ensuing years would have contributed comparatively little to the prosperity of the Islands.

Secondly, by the time the Association began to operate in 1910, the Lewismen were wedded to the use of mill-spun yarn whether it came from the mainland or from the island mills. It was futile for the Duchess of Sutherland and her well-meaning helpers to try and turn back the clock by insisting on hand-spun yarn; to do so was to ignore the essential difference between the women of Harris and the men of Lewis.

On the other hand, the tweed making in Harris was carried out in the main by women. It was a task for the winter months to bring in some much needed shillings to the croft. It was a cottage industry in the true sense.

On the other hand, in Lewis the weaving was done by men. This was traditional long before tweed was made for commercial sale. Mr. C.J. Macdonald, one of the Association's present senior inspectors in Stornoway, comes from a weaving family, tracing its descent from the time when Lewis townships (as the small villages or even cluster of crofts are euphemistically called) had its tradesman-weaver who wove the crofters wool and played a role in the community, if more primitive, yet not unlike that of the small tailor in the English town. It was from these roots that the Lewis weaver developed.

Dyeing and spinning remained the task of the Lewis women. It would have probably needed at least half-a-dozen women to spin enough to keep the weaver employed. The Lewis man was originally a crofter-fisherman with a sense of sturdy independence. As the fishing declined with the turn of the century he turned to weaving and he had to have the yarn to ply his new found trade. Only the mills could supply enough of it.

I5. Nevertheless Dr. Scott, if not the Association, recognised that there was a place for tweed made from mill-spun yarn. What concerned him was the fact that such tweed was passed off as genuine hand-made Harris Tweed. The views which he expressed in the Report have, it is thought, such relevance to the situation that arises at the present time that they merit full quotation.

First of all, he pointed out that at the date of his report there were three types of tweed made in the Outer Hebrides:-

- (i) Harris tweed, hand-made in all processes save for machine carding.
- (ii) a tweed made in Lewis, "where the wool is machine-carded, and that for the warp machine-spun, while the wool is hand-spun, and the whole yarn is hand-woven!"
- (iii) "a tweed, also largely produced in Lewis, in which all the yarn is machine-spun and hand-woven" (S.R.p.I38)

From the Technical aspect there were in Dr. Scott's view three advantages in the hand-spun, hand-woven article:-

(i) the durability of a cloth depended on the amount of "twist" given to the yarn. While machine-spinning could produce any amount of twist, the tendency was to skimp it. But in hand-spinning it was convenient to give a large amount of twist and thereby the yarn was stronger.

(ii) one had to "compare pure wool tweeds, some machine-spun and some hand-spun, but also power loom fabrics which contain shoddy". Hand-spinning precluded the use of shoddy (reconstituted wool) because of the impossibility of turning it into yarn.

(iii) hand-woven cloth had greater elasticity as the power loom's thrust in automatic (S.R.p.I39).

It is this last point which in Dr. Scott's view is decisive in favour of the production of "the Lewis tweed, hand-woven from machine-spun yarn," but it lays itself open to the use of shoddy:-

"At/

"At the same time, this branch of the industry may encounter serious difficulties in the future, since there can be no absolute certainty that a tweed produced in this way may not contain shoddy. If at any time manufacturers on the mainland began to supply yarn for hand-weaving in the Hebrides, the spinner who introduced shoddy could undersell all his competitors, and once this element made its appearance it would be difficult to eradicate it." (S.R. p. 140).

On the other hand Dr. Scott saw no objection to the importation of mainland Scottish wool:-

"The problem in the Hebrides is, in some ways, more pressing. A very large part of the wool used in the Long Island in the tweed trade is imported, since there is not enough wool produced locally, nor is the quality of that coming from the crofts good enough for the best kinds of Harris Tweed. There appears to have been a steady deterioration since, in 1794, the wool was described as being fine, of the general character of Shetland, though, like it, short in fibre". ((S.R.p.148)

He then points out here the Lewis tweed was being passed off as Harris Tweed:-

"It has already been shown that some of those who are acquainted with the characteristics of Highland tweeds lay stress on hand-carding, others again upon hand-spinning. In Lewis there is a type of opinion which "professes to prefer machine spun yarn, according to one point of view, for the warp in order to strengthen it, or, according to another, for both warp and woof. But in ordinary trade, tweeds made in Lewis, by either of these methods, are rarely sold as containing machine-spun yarn; and most of them find their market, somewhere or other, as "Harris Tweed." The temptation towards misdescription is apparent. It may be calculated that the cost of production of a tweed, made altogether of machine-spun yarn, but hand-woven and hand-finished, is at present (i.e. 1911-12) between 1s.9d. and 1s.10d. a yard. If it passes as Harris tweed, there is a profit of 1s. a yard or nearly £3 on a web. Great ingenuity is exercised in fostering this impression. One method is particularly despicable, namely, to induce two persons to sign a form of guarantee, which is attached to the web, specifying that it is both hand-spun and hand-woven - in one case such a guarantee was noticed where it was even declared that the wool, was hand-carded as well. Assuming - as it is to be feared is too often the case - that these guarantees are attached to webs which are composed altogether of mill-spun yarn, those who sign such documents lay themselves open to serious consequences, and it is likely that they obtain only a small part of the shilling which remained at one time (after paying all labour) as the earnings through the misdescription. In fact, it was this large gain which wrecked the system. The crofters have been complaining that they started and developed the industry and that of late the profits have been going to others. And the reasons for this are obvious, since those who were prepared to take part in this phase of the trade began to make arrangements for having several webs woven at once, which involved an expenditure, or a use of credit, more than the average crofter could command. The spinning machines in Stornoway and on the mainland supplied the demand for yarn; but more weavers were required, and the combination of machine-spun yarn with bad weaving seriously injured the sale of tweeds. Amongst the wholesale merchants in London, the deterioration in quality has given rise to a new trade term, namely, "Stornoway tweeds", which covers all those produced in Lewis. If, as seems probable, a considerable quantity of inferior cloth has been sold as "Harris tweed" during the time when demand was good, it is only to be expected that this will injure, for a time, the reputation of real hand-made tweeds. Altogether apart from the appearance of bad workmanship, the disparity between the selling price and the cost of production would have been reduced by competition; indeed, through the two causes acting together, there are signs of a marked decline in the value of tweeds coming from Lewis.

The/

The inevitable tendency was that the wholesale price should fall to a level which approximated to the expense of making the cloth, after allowing a normal profit on the process. Indeed, where the weaving was bad, it might fall below this. This result was reached in practice where sales had to be pressed at the end of 1911 and early in 1912. It was only avoided, in other cases, by merchants holding their stock of tweed, or else through a web being sold as genuine Harris tweed; which, of course, it was not." (S.R. pp.61-2).

Finally he considers the question whether Lewis tweeds are likely to stay:-

" The solution which was found in this difficult situation was to attempt to reinstate hand-spinning; and in 1912, the merchants at Stornoway decided to join the Harris Tweed Association and to adopt its trade mark. In other words, this movement aims at causing Lewis to return to the position it occupied about ten years ago, when true Harris tweed was largely made there. It would have the obvious advantage of restoring the geographical unity in a uniform tweed being made in the Outer Hebrides. In view of the circumstances which had to be faced, this action is in the right direction, but it may well be doubted whether it will offer the elements necessary for a complete solution. If it succeeded, it would cut off a great part of the trade of the local mills; and, to prevent this, the owners of these would naturally do all in their power to secure an outlet for machine-spun yarn. Yet, a further consideration of this intricate situation reveals that there is no necessary opposition between these different interests. Even if those who are in favour of hand-spinning could overcome the opposition of the Stornoway mills they cannot afford to crush them, for local machine-carding would still be required. Nor, in the end, could these mills do without hand-spinning in their vicinity. What is required is a "live and let live" policy on either side. Events have shown that Lewis has been making a bad use of its machinery. A comparatively recent development of the hand-woven tweed industry has been the discovery of new uses for machine-spun yarn for certain demands which were not fully met by Harris tweed. A lighter material, or rather one with a finer yarn, which will "hang better" for ladies' wear, is required. There is room for great taste and ingenuity in the dyeing of it. In this case the colouring and texture are of special importance. Hand-weaving has an advantage in so far as diversity of shades and patterns is required, and the change from one to another can be secured without extra expense. Tweeds which comply with these conditions sell at sufficient wholesale prices to pay for the extra care and work required to produce them. In fact, in this way, the Lewis industry (in making cloth from mill-spun yarn by hand-loom weaving) could earn a better price for its tweed of this character than that which it has been getting recently by various indirect devices. Instances in point of tweeds of this character are the Sutherland and Carrick tweeds. It cannot be too strongly insisted that, if tweed of this type were seriously attempted, it would have to be sold on its merits. Indeed, the masquerading of Lewis tweed as Harris tweed has already gone on too long. In the second place, for this new development to succeed, instruction of the workers would be necessary, which could be combined with the teaching of those who were giving their attention to the making of real Harris tweed in Lewis. The solution of the problem of the Lewis tweed industry which has been suggested presents several advantages. It would substitute a fair and healthy competition, as between the new Lewis tweed and the Harris tweed made there, for that which previously existed between inferior "Stornoway tweed" and real Harris tweed, and which involved dishonesty sooner or later. If nothing else were gained, the improvement in commercial morality would be an end to some value. Healthy competition would compel the workers to use their best efforts to bring out the respective merits of hand-spun and machine-spun yarns. Labour in the tweed industry would acquire a greater degree of mobility; as the demand for one type of tweed increased, while that for the other declined, workers could easily change from the latter work to the former. In this way, labour in this occupation would be secured against some of the more extreme fluctuations in employment to which it would be otherwise subjected." (S.R.63/4).

From/

II.

I6. From the above it is obvious that just before the war much of the Tweed offered for sale was in fact Lewis Tweed or "Stornoway tweed". There seems to have been a fraud of substantial proportions.

The claim made by witnesses in Crofters Hand Woven Harris Tweed Co. Ltd. v. Veitch, which will be referred to later and by the members of the "Shield" group today that mainland yarn has been used since the turn of the century is of slight weight when viewed in its context. True such yarn was used, but it was dressed up as hand-spun yarn and the present day opponents of the Harris Tweed Association are claiming to derive title from what was originally a dishonest practice.

II. 1918 - 1939 ORDER OUT OF CHAOS.

I7. At the end of the first world war, there were two businesses which were to dominate the Stornoway tweed industry during the next fifteen years. (They still remain in the forefront, but in 1934 were joined by the additional millowning producers). There was, first, Kenneth MacKenzie Ltd., the successor company of the spinning mill opened in 1908. Originally the business concentrated on spinning, but as time went by it became a producer, buying in the hand-made tweed or distributing machine-spun yarn for weaving on commission.

There was secondly S. A. Newall & Sons Ltd. the successor company of Mr. S. A. Newall, a farmer and flesher of Stornoway, of Yorkshire origin, who had entered the business as a producer five or six years before the beginning of the first world war. In 1918 an associate company purchased the business founded in 1903 by Mr. Aeneas MacKenzie as a carding mill with spinning machinery added later (as mentioned in the Scott report). Mr. Aeneas Mackenzie became bankrupt in 1910 and the business was taken over by a Mr. Morrison. It is understood that at the time of the purchase by Newalls neither carding nor spinning had been carried on for a few years. As a result Newalls became, like Kenneth MacKenzie Ltd. mill-owning producers.

I8. Both of these businesses had the merit that their transactions with the Islanders were based on cash rather than truck, as was the case of the merchants.

Mr. C.J. MacDonald, one of the Association's senior inspectors at Stornoway, was brought up in Balallan, a large township about 12 miles south of Stornoway, which for many years previously had been well-known as one of the/

the principal weaving localities in Lewis; he has a clear recollection of the pattern of the trade at that time, first as a boy in a crofting family and later as a clerk to one of the local merchants:-

"In my young days the practice was for the crofters to process their own wool. They would shear the sheep, wash and dye the wool and thereafter tease the wool by hand, mainly in wintertime. They would then place the wool into bags marked "weft" and "warp".

These bags were then handed to the merchant who had a contract with one of the island mills to convert the dyed and teased wool into yarn. After the first World War there were two spinning mills in Stornoway and another at Tarbert, if I recollect rightly. The merchants would use one or more of these mills for converting the wool into yarn.

When we got the yarn back from the merchant, we would send it to a local weaver. After the weaving had been done the cloth came back to us in the greasy state. My mother would then get in some women friends to carry out the waulking process - that is to say the shrinking, washing and cleaning of the cloth.

The practice was then for the merchant to pay the weaver and then after deducting the costs of carriage, weaving and cleaning, the balance went to my mother's account".

The term "merchant", as used by Mr. MacDonald in this passage, denotes the trader who in a sparsely populated area deals in all types of goods and keeps a general store: they are to be found throughout Highlands and Islands to this day.

Small Producers With the growth of the industry there were also tweed merchants. Mr. C. J. MacDonald entered in 1928 into the employment of one, Mr. Kenneth MacLeod (trading as Malcolm Macleod) of Balallan. This was in its own way quite a complex organisation. Mr. MacDonald describes his duties as designing the patterns for the tweed, - indicating that the merchant dictated the designs to the weaver and not vice versa -, issuing the yarn to the weavers and invoicing and baling the cloth to the purchaser.

This type of business has been known for many years as that of "an independent producer". The term denotes that the producer has no plant of his own, but relies on the dyeing and spinning mills and finishing plants of others; he is essentially an entrepreneur, buying in yarn, having it woven on commission, arranging for its finishing and finding a customer. To do all this was quite beyond the ability and finance of the average crofter or crofter-weaver.

From the twenties until the present day there have thus been two main classes of producer: the mill-owning producer, such as MacKenzie and Newalls, on the one hand and the independent producer, such as the MacLeod firm of Balallan/

Balallan, on the other. As will be shown later, a third type of producer, the mainland producer, comes into prominence in the early thirties and, although eradicated by the amendment of the definition of the Certification Trade Mark Regulations in 1934, it reappears in the fifties as a serious menace to the economic welfare of the Long Island.

The only other type of producer is the crofter-weaver-producer who still exists in some numbers in Harris; there are also a few in Lewis. But their production is comparatively small.

19. Lord Leverhulme purchased Lewis from Colonel Duncan Matheson in May 1918 (the son of James Matheson, a founder of the famous firm of Ersterm merchants, Jardine Matheson & Co. and who had acquired Lewis in 1844); he purchased South Harris and St. Kilda from Earl Of Dunmore in May 1919 and North Harris from Sir Samuel Scott a month later.

Leverhulme thus became one of the largest landowners in the Kingdom and between the date of its acquisition and his death, he spent vast sums on various schemes designed to bring prosperity to the Long Island. The story of the attempt and its failure is described and explained in Mr. Nigel Nicolson's "Lord of the Isles" (published by Weidenfeld and Nicolson in 1960).

Like many brilliant men of commerce Leverhulme gave full rein to his imagination and produced a stream of ideas, some good, some bad, for the commercial rehabilitation of the inhabitants. His main endeavour was to re-instate Stornoway as a centre of the fishing industry; later, when he transferred his allegiance to Harris, he tried to create a new fishing industry and harbour at Leverburgh. The founding of the well-known Mac Fisheries company during this period is about the only asset on the credit side of this experiment.

Although the fisheries were his main consideration, Leverhulme was also interested in the growing tweed industry and he left his mark in a variety of ways, some of which survive to the present day.

First, he purchased the MacKenzie firm (and would have purchased Newalls too, had the owner been willing to sell) and by so doing introduced the methods of big business into the tweed industry. The Harris homespun tweed had for many years enjoyed a reputation outside the confines of the Kingdom; now the machine-spun product began to enjoy an increasing export trade.

A MacKenzie brochure of 1921 bears the legend: "Export Agents : LEVER BROS LTD.". The Lever empire extended throughout the World and this contributed to the pattern of the future trade: for a number of years past, the ratio between the export and home sales of Harris Tweed has been 70 : 30.

Secondly, Leverhulme decided that his wool "would be machine-dyed, machine-carded, machine-spun, only the weaving and the finishing would be carried out in the people's homes" (Lord of the Isles" p.120). He had no patience for the hand-spun product, as £4 per week could be earned by a good weaver, but only 12/- per week by a good spinner.

Leverhulme's attitude was described in a speech he made to the Philosophical Institute of Edinburgh 1919:-

"all the labour available in Lewis and Harris can be concentrated on hand-loom weaving, undiluted by time spent on the starvation earnings to be made by hand-spinning. My intention is to erect at convenient centres in Lewis and Harris small power-driven dyeing, carding and spinning industries to prepare the crofters' wool for the handloom weaver to work into cloth in or near their own homes. (Lord of the Isles" p.120).

In this respect Leverhulme put his finger on th nub of the problem. However picturesque the homespun product, it did not yield a living wage. In this respect he showed an understanding of the economic needs of the Lond Island that had escaped the civil servants. In the Confidential Report by the Scottish Education Department, the Scottish Board of Health, the Board of Agriculture for the Scotland and the Fishery Board for Scotland on the "Social Conditions in the Highlands and Islands (Congested Districts in Scotalnd)" printed in Edinburgh in 1924 one finds this passage:-

"In Harris the tweed making is on a sound basis, but not in Lewis - there is too much machine-spun yarn in Lewis. The weavers will not get a market for homespun until they weave homespun".

In pursuance of his policy Leverhulme set up a carding and spinning mill at Tarbert in Harris - this is today the Harris Handwoven Tweed Co. Ltd. a MacKenzie subsidiary. He also set up another carding and spinning mill at Geocrab in the Bay's District of Harris. Old habits died hard and the Geocrab mill was never much used. The Mackenzie Mill in Stornoway increased its spinning mules so as to give a production of 30,000 lbs of yarn annually, sufficient for 350,000 yards of tweed. (Lord of the Isles" p.121.)

Thirdly, Leverhulme was responsible for the extended use of the "Domestic Hattersley Loom".

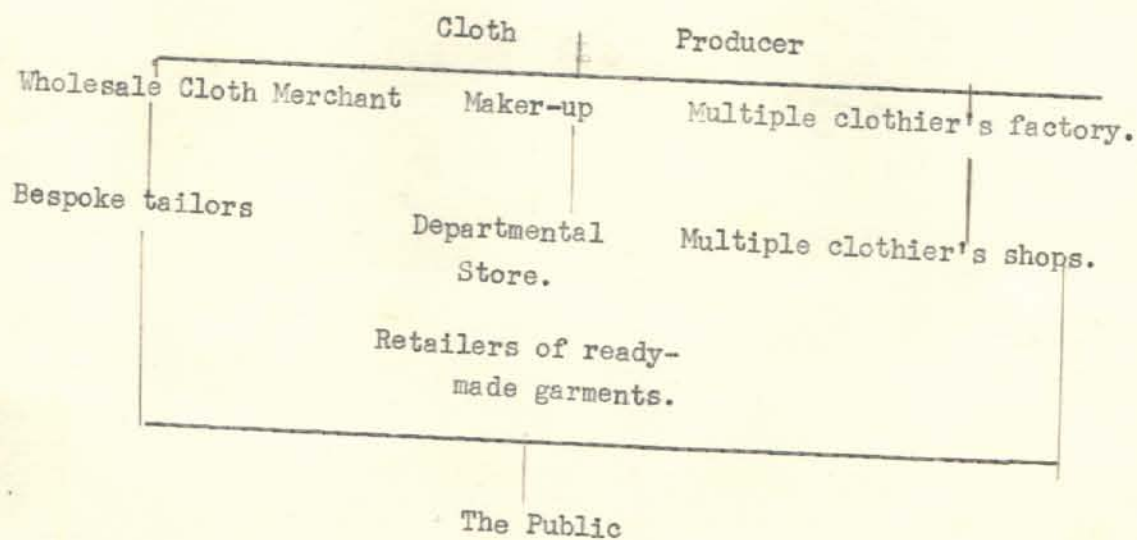
This/

This was manufactured in Keighley in Yorkshire and differed from the "big" wooden loom in that it was worked by the feet and the mechanism threw the shuttle to and fro across the web. It was originally introduced after the first World War to assist ex-service men who had lost a hand - in both wars Lewis' contribution to the armed forces was far above average. The description of tweed, as for instance in the 1934 Certification Mark definition, as "hand-woven" is open to the humerous criticism, expressed by H.R.H. Prince Phillip on a recent Royal visit to the Long Island, that it would be more accurate to say "foot-woven". The Hatterley loom is now used almost universally: it gives an increased output so that two "tweeds" of about 78 yards a week are well within the energetic weaver's compass. The use of the "big" wooden loom is confined to pattern-making.

Leverhulme loaned the new Hatterley looms to the crofters free of charge on condition that they bought their yarn from Mackenzies and sold back the woven and finished cloth. This was a sound commercial move: it insured an output for the Mackenzie spinning mules and created a class of tied weavers.

This in turn leads to the fourth innovation introduced during the Leverhulme regime, that of catering for the "bunch" trade. In the past it had been the practice of the Hebridean tweed producer to send his customer a swatch (or cutting) from the web of tweed he wanted to sell (a point made by Mr. Bill, a London cloth merchant who for the last fifty years has dealt largely with the crofter-weaver-producer in Harris). Even to-day one sees these swatches on exhibition at the hotels in Harris.

The clothing industry in the twenties was developing as follows:-



Those at the wholesale level required to be able to purchase several webs of identical/

identical pattern and, if necessary, to supply repeat orders. Hence we find in Mackenzie's 1921 Brochure a reference to the standardisation of certain designs and to the supply free of charge of bunches of patterns. This new departure brought Harris Tweed to the masses in addition to the more limited public who used the bespoke tailor or bought tweed by the length.

Fifthly, Mackenzies started advertising their tweed far more extensively than ever before. Advertisements appeared in many trade papers and later were extended to the national press, where the advertisements were inserted jointly with the large departmental store which was offering a particular stock of Harris Tweed garments.

All these innovations were on the credit side, but the sixth and last was of doubtful value. Leverhulme had little use for the croft and he saw no reason why the weaving should be done on the croft itself. He therefore proposed to set up sheds in each township capable of holding four to six looms apiece, heated by peat stoves. Such sheds were constructed in the Ness, Barvas and Carloway districts (" Lord of the Isles" p.120). At about the same time the mill-owning producers are believed to have introduced looms to part of their premises and employ weavers.

As a result Mackenzies became a very much larger business. To their credit Newalls, without a Midas to back them, kept abreast of the times and their business expanded similarly.

After Leverhulme's death in 1925, Mr. Kenneth Mackenzie bought back the business from the executors.

20. Was the machine spun tweed being sold as "Harris Tweed" in the years immediately following the first world war? It is clear from the Scott report that in 1914 the term Harris Tweed was understood to mean the handspun article, even though in Lewis much of the machine-spun tweed was dressed up as genuine Harris.

The position after the war is somewhat obscure and requires further study. It would seem that the upper end of the trade used the term "Harris Tweed" for the hand-spun article and "Lewis Tweed" for the machine spun article.

There appeared in the "Overseas Daily Mail" of November, 29th 1919, an article entitled "HARRIS TWEED" - Crofters as hand loom weavers."

This/

This article, written by a Mr. Walter Wilson, deals in detail with the Tweed Industry of Lewis and Harris. It traced the evolution of the tweed from a purely hand-made article to one in which the wool was machine-carded and later machine spun in Stornoway. (The article ignores the spinning mill of Mr. Aeneas Mackenzie and also the existence of the Newall firm, all of which suggests that it was editorially inspired.)

The interesting thing about this article is that it is the first known occasion on which the producer of a tweed from Lewis has admitted that the tweed was made from machine-spun yarn, as the following paragraph shows the opening of the Mackenzie spinning mill as having taken place in 1909:-

"There was a still further development of the industry ten years ago, when a spinning mill was erected at Stornoway, to which the crofters throughout the islands of Lewis and Harris and Uist and other remoter parts of the West of Scotland sent their wool to be manufactured in the yarn. This project has proved invaluable. It has enabled the weavers to rid themselves of some of the laborious and ill-paid work, and has made it possible for them to devote more time to weaving and finishing the tweed. Prior to the introduction of mill spun yarn the weavers were fortunate if they and their families could produce with their looms more than 20 yards of cloth per month, because the womenfolk had to card the wool, cleanse and dye it, and hand spin it before the weavers could commence their portion of the work. Now a weaver can produce from 60 to 80 yards a week from the same loom".

After some eulogistic comments about Mr. Kenneth Mackenzie and the formation of the company which was incorporated in 1919 with a share capital of £50,000, the article continues by stating that the new company "is busily engaged in endeavouring to meet the ever increasing demands for Harris Tweed....". The article continues by stating that the object "of Mr. Mackenzie and those associated with him" is to make the island more attractive to those who inhabit it. They are described as foreseeing "a great future for Harris Tweed".

Then after describing the new looms which were being loaned to crofters - this is a reference to the domestic Hatterley loom - the author of the article goes on to describe his visit to the homestead of a crofter in the Parish of Lochs. The crofter stated that he "sheared his own sheep and took the wool through every stage until it finally emerged from his loom as Lewis Tweed".

The article next slips back to the reputation of Harris Tweed. It states :

"Harris Tweeds have now reached a high standard of excellence, and in designing, dyeing and manufacture, the cloths being put on the market by Kenneth Mackenzie Limited have no superior."

The article goes on to explain that for some months the demand has exceeded

the supply. It suggests that there are

"four hundred to five hundred part time spinners in the islands of Harris and Lewis: they are engaged chiefly on heavy cloth, made of pure wool, of a type known throughout the world as Harris Tweeds".

Presumably at this point the article is referring to the hand made product. Then the article goes on to explain how the cloths are finding their way to export markets, and it states:

"There are features about the Lewis and Harris tweeds which are rarely met with in other materials, and the fabric appeals to all classes of wearers".

Then the article goes on to explain that there is

"one strong point in favour of the Lewis and Harris tweeds, and that is they are made of Pure Scotch wool. Being hand-woven, shoddy cannot enter into their composition".

Then in a final paragraph entitled "The Genuine Article" it is pointed out that

" the success of Lewis and Harris tweeds has brought many imitations, about which a word of warning should be uttered. Knowing that it has not been possible to meet all demands for Harris and Lewis tweeds, certain producers beyond the Scottish borders have devoted a number of their looms to the production of cloths which at first sight" possess the appearance of the original fabrics".

The article ends by pointing out that the imitations have not the slightest connection with the Hebrides, and it is misleading to describe them as "Harris Tweeds".

All this suggests that Mackenzies were in 1919 a little uncertain as to whether their machine-spun product could properly be described as Harris Tweed, and they therefore used the term "Lewis and Harris Tweeds" which, from other evidence, seems to have become fairly common amongst the producers in the Hebrides.

21. The Mackenzie Brochure of 1921 contained no reference to the name Harris Tweed at all. On the front page there is a reference to "Handwoven Tweeds" without mention of either Lewis or Harris. On the inside left page four different types of tweed are referred to, namely:

- (i) " Homespun Tweeds, guaranteed woven in the Isle of Lewis".
- (ii)" Homespun Tweeds, guaranteed woven in the Isle of Harris".
- (iii)" Superb tweeds, guaranteed handwoven in the Isle of Lewis".
- (iv)/

- (iv) "Lightweight tweeds, guaranteed handwoven in the Isle of Lewis".

Now it is known from the returns of the Harris Tweed Association and from information obtained from both Mackenzies and Newalls, that during this period a considerable quantity of hand-made tweed was still being produced in Harris, and to a smaller extent in Lewis. It was the policy of both Mackenzies and Newalls to buy in as much of this tweed as they could; and presumably the references to (i) and (ii) in the Brochure relate to the hand-spun article.

On the other hand, it is probable that the references to (iii) and (iv) relate to the tweed made from yarn spun in the Island Mills.

Nevertheless, it is probable that quite a number of producers were continuing to sell tweed made from mainland spun yarn as Harris Tweed.

There had been a boom in tweed after the end of the first world war and there is no doubt that the islands supplies of yarn were insufficient. After a year or two, however, conditions returned to normal: there was, as is common knowledge, a serious depression in England in the middle of the twenties.

Colonel Macarthur, today the senior partner of a prominent firm of Inverness solicitors and a member of the Harris Tweed Association, was at that time, practising in Stornoway. He acted for the Mackenzie family at the time that they purchased the shares in Kenneth Mackenzie Ltd. from Leverhulme's executors.

Colonel Macarthur's recollection is that at that time Mackenzie's were selling their machine spun yarn as "Mac Loom" tweeds. Apparently it had been the policy of Lord Leverhulme not to use the term "Harris Tweed" in connection with the machine-spun article. It is not unlikely that Leverhulme who had the habit of getting on terms with any new subject which interested him, had read the 1914 Scott Report; he conducted his business with integrity; that in itself was a reason why he should not wish the machine-spun article of Mackenzie to masquerade as the true "Harris Tweed".

22. The late twenties was a grey period both for the industry and the historian. The Outer Hebrides in the years preceding the first world war had been the depository of Royal Commissions and departmental reports designed to produce panaceas for the economic recovery of the inhabitants. In the twenties, however, the general depression throughout the Kingdom with its high unemployment made the Outer Hebrides less attractive as a social study.

The Harris Tweed Association had in the meanwhile been in a state of suspended animation for the best part of fifteen years. Its stamping fees seldom exceeded £100 and were often less: on such a small income it could do little in the way of advertising or the protection of the name "Harris" under the Merchandise Marks Act.

At that point the Association came out of its long sleep: it elected two new members, one a Mr. Wigglesworth, a London cloth merchant, who was to become its Chairman, and Mr. Ellis who was a director of Crofters Agency Limited.

With this new blood the Association was minded to re-assert its authority. At that time it seems that Mackenzies had ceased to describe their tweeds as "Mac Loom" tweeds or as "Lewis and Harris Tweeds" and both they and Newalls had gone over to selling their machine-spun production as Harris Tweed.

The Association accordingly threatened Mackenzies and Newalls with proceedings under the Merchandise Marks Act unless they desisted from this practice. Colonel Macarthur acting for Mackenzies, suggested that it was now too late to expect Lewis to return to hand spun yarn. Indeed Mackenzies and Newalls considered applying to the Board of Trade for the cancellation of the Certification Trade Mark as being entirely outdated.

However, it was clear to the Association and others that the term "Harris Tweed" was now so debased that it was in danger of becoming generic and from small beginnings a movement was started to amend the definition attaching to

amending

the Certification, so that it was more realistic.

23. At that time - in the late twenties and the early thirties - there was a boom in Harris Tweed, with the result that the demand outran the Islands' supply of machine spun yarn.

At this time, both Mackenzies and Newalls were spinning to capacity: their yarn was made from pure Scottish wool and the output was probably sufficient to produce about 600,000 yards of tweed in a year.

There were, however, a number of other businesses who were either dealing in mainland spun yarn or who were exploiting "Harris Tweed" from the mainland by sending their yarn to the Islands to be woven and buying it back. The chief of these were :-

(1) Mr. James Macdonald was the Long Island representative of Messrs. J.J. Tod, wholesale provision merchants of Leith, who did a considerable business in Stornoway. By 1930, Mr. Macdonald had worked up a personal business as an independent producer of Harris Tweed. Foreseeing the commercial possibilities, he persuaded Tods at the end of 1930, to set up a new company, James Macdonald Limited, in which he had a substantial interest. In the next two or three years, until the amendment of the certification mark in 1934, that company imported substantial quantities of mainland spun yarn. The poundage of imported yarn ran into six figures in 1932 and 1933.

(2) At about the same time, Thomas Smith & Son of Peterhead, had been sending their yarn to crofters in Lewis where it was woven into tweed. The yarn was sold on the understanding that Smiths would be prepared to buy back the cloth in the greasy state from the weaver. It was finished on the mainland and sold as Harris Tweed.

(3) A. & J. Macnaughton of Pitlochry, had been disposing of their yarn and buying back the cloth from the weaver in much the same way as Smiths of Peterhead.

In a protest to the Registrar of Trade Marks, contained in a letter of the 4th October, 1933, when the amendment of the definition and the regulations attaching to the Certification Mark were under consideration, Macnaughtons wrote:

"We have for several years been very large suppliers of yarn to independent weavers there, who previously had bought supplies from the local mills which proved unsatisfactory. The quantities we have shipped in recent years might be said to reach the huge figure of several hundreds of thousands of pounds weight".

The letter continued to point out that if the proposed amendment was carried there would be large unemployment amongst weavers because the Island looms would be unable to cope with the demand. Macnaughtons suggested that, if the new amendment went through, it would tend to create a monopoly and stifle healthy competition.

(4) Messrs. A. & J. Macnab Limited of Slateford, Edinburgh were also importers of mainland spun yarn. This company is mentioned in the Scott report as having fostered the production of tweed in Islay. It appears from the letter of objection written to the Registrar by their advisers, Messrs. Campbell Smith-Matheson & Oliphant, Writers to the Signet in Edinburgh, that they claimed to be "large manufacturers of Harris Tweed, chiefly manufactured in the Islands of Lewis and Harris from yarn spun on the mainland of Scotland....".

The letter goes on to point out that there were in 1933 about 2,000 people employed in the manufacture of tweeds made from yarns which were spun on the mainland, and about 30,000 pounds of machine spun yarn were imported into the Islands every month. It was suggested that the new definition would bear very hardly on the interests of the weavers.

It is thought the figure of 2,000 persons deriving their living from mainland spun yarn was an exaggeration, but the figure of 30,000 pounds of machine spun yarn being imported into the Islands every month was probably

not far short of the mark, indeed it may well have been more.

These then were the firms mainly interested in the importation of mainland spun yarn during the late twenties and early thirties. There were probably others as well: for instance, the name Lumb of Elland, Yorkshire, is often mentioned as a supplier of yarn of good quality, though not necessarily made from Scottish wool; another firm was Hunters of Brora and yet another Laidlaws of Keith - these two last firms probably did deal in Scottish wool.

If one were to make a guess as to the amount of mainland spun yarn imported into the islands in the early thirties, it would probably be in the neighbourhood of about five or six hundred thousand pounds: but it is not unlikely that the mills set up by Mackenzies and Newalls and the small mill in Tarbert, now owned by Mackenzies, were capable of an equal output.

24. There were other influences at work which drew the industry closer to the mainland. In the mid-twenties neither of the mill-owning producers possessed modern dyeing equipment or finishing plants.

Mainland wool was purchased and the mill-owners (and probably some of the independent producers) made arrangements for the dyeing of the wool at the factory of Kemp Blair & Co. Ltd. of Galashiels.

Again, while hand-finished tweed commanded a higher price, the labour available for that operation (as had been Leverhulme's intention) was insufficient and the rough finish it gave unsuitable for the large purchasers, such as makers-up and wholesale clothiers, who wanted a standardised cloth. Accordingly Mackenzies and Newalls sent the cloth in the greasy state to the Seedhill Company in Paisley.

Thus at that time there was much Harris Tweed in which all the processes, other than the hand weaving, such as dyeing, spinning and finishing was carried out on the mainland of Scotland.

25. The mainland influence did not end there - a more sinister feature was that some of the cloth selling as Harris Tweed had no association with the Islands at all.

In 1933, it seems that considerable propaganda was carried out on behalf of the Islanders, largely at the instigation of Mr. Wilson Ramsay, the then Member of Parliament for the Western Isles. There was frequent reference in the national press to the plight of the Harris Tweed industry. A few instances will suffice :-

- (1) In the Times of February 18th, 1933, it is stated that :

"In recent years the market has been flooded with cheap imitations, to the great detriment of the crofters.

"The crofter working in his own home cannot compete with the prices accepted by large mills outside the Highland area, which can produce a cloth indistinguishable from Harris Tweed to the eye of the layman. And today there are scores of looms lying idle in Lewis and Harris although more "Harris" tweed is being sold to the public than the Island could possibly produce".

- (2) The Scottish Daily Express of December 20th 1933 ran an article headed "Peats smell in tweed - for 2d". The article pointed out that crofters in the Outer Hebrides were now faced with a new source of competition: the latest Lancashire invention provided that for 2d a yard a person could now buy "Harris Tweed" from Midlands looms, sprayed with a synthetic essence which exactly copies the smell of peat smoke. The article went on to describe an interview it had had with a representative of the Harris Tweed Association. It pointed out that hundreds of thousands of yards of spurious Harris Tweed were manufactured every year by imitators.

- (3) A letter from Mr. Ramsay Wilson M.P. to the "Stornoway Gazette" dated 16th March 1934 referred to the fact the researches into

the problem went to show that:-

"a tweed passed-off as Harris Tweed is being made extensively in America, Japan, the Continent of Europe and the mainland of both England and Scotland with disastrous consequences to the makers of the genuine article in my constituency..."

Similar allusions to imitation appeared in other national newspapers.

As regards the production carried out wholly on the mainland of Scotland, an advertisement inserted by A. & J. Macnab Limited in the Outfitter of August 23rd 1933, suggests that that Company's "Harris Tweed" was of this type. The advertisement is captioned "World Famous Scotch Tweeds now supplied in cut lengths to the trade". The advertisement held out that "Scottish tweeds from latest sports bunch, the famous Scottish district checks, Harris and Lewis and Shetland tweeds" were now being supplied. There is not a word about the tweeds being woven or in any way produced in the Outer Hebrides. It seemed touch and go whether the term "Harris Tweed" was destined to have any continued association with the Outer Hebrides: it seemed more likely to come to mean a tweed resembling in appearance that which originally came from Harris but which at that time might be made by different methods anywhere in the world. (Such has been the fate, for instance, of Cheddar Cheese).

The movement to bring some order into the industry probably originated with the Association's threat of action against Mackenzies and Newalls.

According to a letter which he wrote to the Stornoway Gazette on the 27th April, 1934, Mr. James Macdonald took a leading part in bringing out a revision of the definition attaching to the certification trade mark regulations, since he convened in 1931.

"the first meeting which was held in the Caledonian Hotel, Stornoway, to consider ways and means of safeguarding our industry which was rapidly leaving our Island. This, of course, was long before I ever thought of being a local mill owner".

That the movement gathered impetus is shown by the lively correspondence which took place in the columns of the Stornoway Gazette in 1934.

Lord Fincastle, one of the Members for the Western Isles, had written on the 8th December 1933 drawing attention to the serious situation which had arisen in the industry. He pointed out :

"A vast quantity of so-called Harris Tweed is being sold at prices which the Outer Islands cannot possibly compete with; and the problem of meeting this competition is complicated by the fact that a great deal of the tweed produced in Lewis and Harris does not come within the conditions covering the existing Trade mark, in as much as it is not entirely hand-made. In addition to this there is a general neglect of the use of the stamp in the case of the tweeds which do comply.

"It may be said, therefore, that the bulk of the tweed which comes from the Outer Islands bears no stamp or mark of origin to distinguish it from tweeds which have been produced outside the area or, what is still worse, from tweeds manufactured abroad and imported into this country. In fact, the term "Harris Tweed" has almost become a generic one, and unless the tweed made in the Outer Islands can be distinguished by some revision of the regulations governing the present Board of Trade stamp, the industry, so far as the Outer Hebrides are concerned, is likely to become extinct."

Lord Fincastle then went on by describing the suggested remedy of the Harris Tweed Association, namely, to alter the definition so as to allow for the use of mill spun yarn and to have two stamps, one for hand woven, hand spun, and the other for hand woven, mill spun. (In fact the definition eventually reached omitted any need to stamp the word "mill spun" on the Tweed, but it did allow for a special "handspun" stamp).

Lord Fincastle also expressed the view that no stamp should be provided for imported yarn as he felt it was not in the best interests of the industry that such yarn should be used since "it would be very difficult to prevent foreign yarn and perhaps inferior yarn from being imported.....".

The columns of the Stornoway Gazette were full of letters in March and April 1934. The first was published on the 16th March 1934 by Mr. Wilson Ramsay, M.P. He pointed out that the Board of Trade was about to introduce a new Bill - this was the Merchandise Marks (Amendment) Bill which in fact never came into law - which would empower the making of orders defining particular trade descriptions. He pointed out that this new tribunal might deal

"the death blow to the industry, for foreign and mainland firms could call as witnesses weavers who use imported yarn or who send their tweed to be finished outside the Outer Hebrides".

He drew an analogy between the Trojan horse and the situation in the Islands and he pointed to the efforts of the Harris Tweed Association to bring some order into the industry.

Finally, he appealed to the weavers to resolve to make a "completely home-product" both as to the yarn and the finishing. He suggested that they should form themselves into branches of the Harris Tweed Association.

As the correspondence proceeds a number of different points of view become apparent.

First, there is that expressed by the gentleman using the nom-de-plume "Siarach" (Stornoway Gazette 30.3.34). He asks why Mr. Wilson Ramsay should invite the crofters to deliver themselves "into the hands of their mill-owning competitors". He refers to the fact that the island mills were at that time weaving the cloth as well - a point which has already been alluded to - and he expressed the fear that, if the crofter-weavers, accepted the proposals of the Harris Tweed Association, there would not be nearly sufficient yarn to go round, even if the mills discontinued their practice of employing weavers in their premises. In other words, Siarach was advocating the need for continued supplies of imported yarn.

In a further letter (Stornoway Gazette 13.4.34) Siarach sets out his proposals for a stamp :

"My proposal for a stamp would be something like this :

- (a) The wool shall be only Highland wool. (No one proposes that the wool should be limited to Lewis and Harris).
- (b) The wool must be fast dyed.
- (c) The wool shall be spun in the Highlands of Scotland.
- (d) The quality and cut of the yarn would be fixed. (Inferior yarn can be made and has been made in the Hebrides as well as in the mainland; we must guard against it).
- (e) Cloth shall be width 28 in. and weight 11 oz. (more or less).
- (f) THE TWEED SHALL BE HANDWOVEN BY THE CROFTERS IN LEWIS AND HARRIS AND NOT MILL-WOVEN".

Another point of view was expressed by the Rev. Murdoch Macrae who was the Minister of Kinloch, south of Stornoway. While agreeing with Mr. Ramsay that the importation of yarn should cease, he suggested that the amendment of the definition should require the dyeing, weaving and finishing processes to be done by hand and only the spinning process to be carried out by machinery. (In future the term "spinning" is used to include "carding", as it would be quite unrealistic to consider the one without the other).

At that time Mr. Macrae regarded the Island mills as being represented

by the Association and he proposed that the crofters should establish -

"a mill which will confine itself to spinning, and I have good authority for saying that in the event of our suggested "trade mark" being granted such a plant will be set up on the island".

This was an allusion to a proposal which had been made by Mr. David Colledge of Kemp Blair & Co. of Galashiels, which company as already stated, was providing dyeing facilities for the mills. Mr. Colledge's idea was that the independent producers should associate to set up a dyeing, spinning and finishing plant of their own. In fact, when it came to the point, the independent producers were unwilling to provide the necessary capital and as a result the next suggestion was that Kemp Blair, Mackenzies and Newalls should co-operate. Newalls, however, were unwilling to participate. Eventually Kemp & Co. (Stornoway) Ltd. was formed, of which Kemp Blair & Co. Mackenzies and Mr. Colledge personally were the shareholders and which Company constructed a dyeing and finishing plant in Stornoway.

While this company was used by Mackenzies, it was also used by other producers in the Islands, but it did not start operating until after the Board of Trade approved the amended definition in September 1934.

Another suggestion put forward (S.G. 6.4.34) by a correspondent who wrote under the nom-de-plume of "Beinn Bhan" was that there should be three stamps, as follows :

- "(1) Hand-made, i.e. Hand-spun, vegetable-dyed, hand-woven Harris Tweed.
- (2) Mill-made, i.e. mill-spun, mill-woven Harris Tweed.
- (3) Mill-spun, and hand-woven, vegetable-dyed Harris Tweed".

This, however, introduced mill weaving, which was a complete departure from the standard practice in the Islands.

The point of view of the mill owning producers was put forward by Mr. James Macdonald in his letters of the 13th and 27th April 1934 and by Mr. Cumming Skinner, the then secretary of Mackenzies, who wrote on the 13th April 1934 on behalf of that company and Newalls.

In view of Mr. Macdonald's mainland ventures in the fifties, it is interesting to observe the views which he presented at the time that he was associated with a mill-owning company in the Islands. In his letter of 27th April 1934 there appears the following passage :

"I am further accused of building up my business on imported yarn. I do not dispute the fact that the beginning of my Harris Tweed business was built up on imported yarn, but that is no argument on the present question. I soon realised the detrimental effect imported yarn had on my business and consequently made every possible effort to provide my own good quality".

He then appealed to the crofters in various districts to forward petitions to be presented to the Board of Trade in the following terms :-

"We the undersigned, being workers in the Harris Tweed Industry, resident in the Island of Lewis and Harris, respectfully petition the Board of Trade to approve of an authorise the following amended definition of "Harris Tweed" for the purpose of the Tweed Registered Trade Mark No. 319314, vide licet :-

"Harris Tweed" means a tweed from pure virgin wool produced in Scotland, spun, hand-warped, handwoven and finished in the Islands of Lewis, Harris, Uist, Barra, and their several purtenances and all known as the Outer Hebrides".

(This is getting very close to the definition in the form in which it was eventually amended but it contains no reference to the weaving being carried out at the Islanders' own homes and the definition adopted did not refer to the term 'hand-warped').

Mr. Macdonald then goes on to deal with the question where all the yarn is to come from. He states :

"The answer is that the present owners of spinning plant on the island would be only too pleased to have an opportunity of extending same and employing more local labour. Further, there is spinning plant lying idle with mainland concerns who would be too glad to have an opportunity of installing it on our island for the production of Harris Tweed yarn".

There were other letters beside, but those which have been quoted express sufficiently the different views and particularly the then attitude of Mr. James Macdonald.

27. At this point it may be of interest to take a look at certain correspondence, copies of which have been obtained from the Trade Marks Registry.

It starts with a letter from the Association dated 23rd June 1933 referring to a meeting which Mr. Brown, the previous secretary, had had with the Trade Marks Registry in August 1932. It went on to set out the terms of a resolution passed by the Association suggesting the following new definition :-

" 'Harris Tweed' means a Tweed made from pure virgin wool produced in Scotland, spun, handwoven, and finished in the Islands of Lewis, Harris, Uist, Barra and their several purtenances and all known as the Outer Hebrides".

The resolution also provided for the amendment of the regulations so as to allow two stamps, "Handwoven Handspun" or "Handwoven Mill Spun".

It appears that Mr. Martin, the new Secretary of the Association, had agreed to communicate his Association's proposals to various interested parties. In writing on the 29th August 1933 the Registrar remarked :

" I am to add that, since the Mark contains the words, and is registered for, "Harris Tweed", the Board will be required to be satisfied that any definition which is to be accepted is a definition of a material properly called "Harris Tweed".

He also asked whether it was proposed that tweed produced on the semi-automatic Hattersley looms would be entitled to bear the mark.

At that point letters of objection, to which reference has already been made, were forwarded to the Registrar by Campbell, Smith, Mathieson & Oliphant, W.S. (25th September 1933) on behalf of Messrs. A. & J. Macnab Ltd. of Slateford, Edinburgh, and on behalf of Messrs. A. & J. Macnaughton (4th October 1933).

The first letter is interesting because it proposes a definition which is not dissimilar to that propounded by Independent Harris Tweed Producers Ltd. today :-

" 'Harris Tweed' means tweed made from pure virgin wool produced in Scotland and from yarn spun on the Islands of Lewis, Harris, Uist, Barra and their several purtenances and all known as the Outer Hebrides, or on the mainland of Scotland, and hand-warped and handwoven in the said Islands".

The Board of Trade replied to the first letter by pointing out that this proposal would go very much further than that put forward by the registered proprietors and they suggested that they should get in touch with the persons particularly interested in the amendment.

A copy of this letter was sent to the Association and Mr. Martin made, amongst others, the following point :-

"The buying of so-called Harris Tweed made from a "Particular Yarn" spun on the mainland is exactly what my Association desires to eliminate. It will be readily appreciated that the importation of inferior yarn results in the production of low-priced tweeds against

which producers in the Islands cannot compete. Moreover, tweed of such poor quality offered as Harris Tweed detrimentally affects the reputation of the cloth and will eventually make it unpopular with the public, with disastrous results on the trade in the Islands".

There is later this sentence :

"Although I have referred to the question of yarn being imported into Harris, Lewis, Uist, etc. nothing the suggested amendments for the application of the Trade Mark can be interpreted as prohibiting such importation. Tweed can still be made in the Islands from such yarn, only these cannot bear the Trade Mark granted by the Board of Trade."

Although he does not say so in so many words, probably Mr. Martin intended that tweed made from imported yarn not only could not bear the stamp but could not properly be called Harris Tweed.

The Board of Trade took some time to make up its mind and on the 25th January 1934 wrote to the Secretary stating that it had given consideration to the amendments proposed and adding :

" In the result, the Board, having regard to the conflicting views that have been expressed to them by various interests concerned, and to the possibility that a Bill providing for the definition of Trade Terms" - this was the Merchandise Marks (Amendment) Bill - "will shortly be submitted to Parliament, are of opinion that a decision upon the amendment of the regulations in question should be deferred for the present".

It was also pointed out that important sections of the interests concerned were not represented by the Association.

The secretary replied on the 31st January pointing out that the present Committee of Management consisted of 6 persons, two representing the Isle of Harris, one representing the Isle of Lewis, and three members from London - two of whom were engaged in dealing with the output of genuine Harris Tweeds stamped with the present mark and the other a well-known businessman associated with the Association from its inception. There were two vacancies which would be filled as soon as possible. (It may conveniently be mentioned here that by Special Resolution passed on the 10th February 1932 the old provision that 2 members were to be elected from four interested parties (Crofters Agency Ltd., Scottish Home Industries Ltd., Harris and the Lewis-Harris Tweed Association) was revoked.)

It was requested that the Comptroller would receive a deputation and on the 2nd March 1934 he met Mr. Wigglesworth, the then Chairman, Mr. George Ellis, Colonel Neil Macarthur (representing the Lewis interests) and Mr. Martin the Secretary.

Nothing of note happened until the 4th June 1934 when Mr. Martin wrote once again the Registrar reporting that there had been a meeting of the crofters and cottars of Lewis and Harris held at Tarbert on the 2nd May 1934 and that following such meeting Mr. Macrae had written to the Registrar a letter in which was set out a definition which would cover "all the interests of the crofters and cottars in the Outer Hebrides". The letter further stated that the Committee of Management had held a meeting in London on the 1st June at which three Ministers were present - the Rev. Malcolm MacIver of the Free Church Manse, Lochs, the Rev. Murdoch Macrae of the Free Church Manse, Kinloch, Stornoway, and the Rev. Norman Macleod, the Manse, Kavaig, Lewis - and it was agreed by the Committee of Management and the deputation to propose the following definition :-

"Harris Tweed means a tweed made from pure virgin wool produced in Scotland, spun, dyed and finished in the Outer Hebrides and handwoven by the islanders at their own homes in the Islands of Lewis, Harris, Uist, Barra and their several parishes and all known as the Outer Hebrides".

It was also proposed that Regulation No. 8 should be amended to read :

"Wherever the Harris Tweed Trade Mark is used there shall be added in legible characters to the Harris Tweed Trade Mark the words "Made in Harris" or "Made in Lewis" or "Made in Uist" or "Made in Barra" as the case may be, and for the purpose of distinction there shall also be added the word "Handspun" in the case of tweeds made entirely from handspun yarn".

This letter reflects several important changes.

First, the definition itself now includes the word "dyed" after the word "spun". (Logically it should have read "dyed, spun" and not "spun, dyed" as that is the order of the processes).

Secondly, it requires that the tweed shall be handwoven "by the islanders at their own homes". It is understood that this suggestion was put forward by Newalls, who recognised that there was publicity value in retaining this aspect of a cottage industry. It meant that both Mackenzies and Newalls would have to cease employing weavers in their premises and represented a great advantage to the crofters.

Thirdly, the proposal to have a "mill spun" stamp was abandoned : only when the yarn was hand made would the words "handspun" appear.

The only other development that occurred was that on the 20th June, 1934 a meeting of weavers from the west coast of Lewis suggested that instead of the tweed being marked "Made in Lewis" or "Made in Harris" etc. a single mark "Made in the Outer Hebrides" should be used.

Mr. Martin also reported to the Controller on the 25th June that a meeting of the Lewis-Harris Tweed Association rejected the proposed definition by seven votes to four. He stated that he understood the seven who voted for the rejection were importers of yarn. Mr. Kenneth Macleod of Shawbost, However, who had originally voted against the definition, changed his mind and decided to support the Association.

Finally the Board of Trade confirmed the amended Regulations including the new definition put forward in Mr. Martin's letter of 4th June 1934 by an Order dated the 18th September 1934, but suspended its operation for two months. It therefore follows that the new amended definition came into force on the 18th November 1934, about 2½ years after the first approach to the Board of Trade.

The effect of the new definition on the firms who had hitherto been large importers of yarn was as follows :-

- (1) James Macdonald Limited had decided to set up their own mills and finishing plant a year or two before, and this plant, was ready and was in fact producing tweed in accordance with the new definition. It is understood that a very large quantity of tweed was held in the mill so that it could be stamped before sale.
- (2) Smiths of Peterhead felt they were morally bound to give effect to the new definition and they set up a new mill and finishing plant in Stornoway which was completed in 1935. They also formed a subsidiary Thomas Smith & Co. (Stornoway), Ltd. which has been carrying on business there ever since. Its Managing Director is Mr. A.P.C. Lawrence, a Plymouth Brother, and although the Company's tweed has always been stamped with the certification mark since 1935, it takes no part in the present litigation purely on account of the religious principles of its Managing Director.
- (3) A. & J. MacNab Limited disappeared from the scene, and as far as is known did not continue to import yarn into the Hebrides or make Harris Tweed on the mainland.
- (4) A. & J. Macnaughton of Pitlochry may have continued to sell yarn to a few small producers for a few years, but thereafter dropped out

of the picture until their interest in Harris Tweed revived in about 1955 or 1956;

As a result there were by the end of 1935, four carding and spinning mills in Stornoway (Macdonalds, Mackenzies, Newalls and Smiths); all but Mackenzies had their own dyeing and finishing plants; Mackenzies used Kemps for dyeing and finishing. In Harris, the Harris Handwoven Tweed Co. owned a carding and spinning mill (later to be taken over by Mackenzies) and there was a disused mill at Geocrab.

29. The amendment of the definition met with instant success. The yardage stamped in 1935 exceeded 1.4m. yards, in 1936 2.3m. yards, in 1937 3.6m.yards. The figure fell back in 1938 to 2.8m. yards, but in 1939 it reached nearly 4m. yards and in 1940 exceeded 4.1m. yards.

The Association now had a much more substantial income from the stamping fees. They received a penny a yard to which was added occasional voluntary donations made by the mill-owners.

At this point it seems reasonable to review the status of the Association. It has often been represented as being concerned with the interests of the Stornoway mill-owners. Nothing, however, could be further from the truth: the Association has at all times regarded itself, as the proprietor of the certification trade mark, as being a trustee for the Islanders. Whatever it has done, it has tried to do in the interests of all sections of the Island industry.

From time to time one sees references to the Association as having amongst it "members", the mill owning producers. This again is quite incorrect: if the Association has tended to favour the mill owning producers because of its insistence on the manufacture of tweed made from Island-spun yarn, it was only because it was firmly convinced that the interests of the Island as a whole were thereby best promoted.

The Committee of Management of the Association at the present time - and indeed at all times - has been composed of persons who were not directly interested in the production of Harris Tweed for their livelihood. The present committee consists of:

- (1) Mr. George Ellis, the Chairman, a cloth merchant in London, who sells many tweeds in addition to Harris Tweed; he originally was elected as a representative of Crofters Agency Ltd. which had had the right to nominate two persons to the Committee: In the early thirties Crofters Agency Ltd. was converted into an ordinary trading company, without any particular benevolent objects to help crofters and Mr. Ellis is the managing director;
- (2) Colonel Neil Macarthur, who in his capacity as the senior partner of a firm of Solicitors in Inverness, happens also to be a director of Kenneth Mackenzie Ltd. in a trustee capacity. He was originally elected as a nominee of the Lewis-Harris Tweed Association;
- (3) Mr. John Morrison of Northton Harris, a transport contractor in no way associated with the industry;
- (4) Mr. Alasdair Macleod, the Town Clerk of the Burgh of Stornoway;
- (5) The Reverend Murdoch Macrae of the Free Church Manse at Kinloch near Stornoway;
- (6) Colonel D.J. Macdonald, a dental surgeon in Stornoway;
- (7) Colonel Walker of Harris who on account of advanced age has not for some years attended meetings of the Association;
- (8) Mr. John Veitch, a retired trade union official who lives in Edinburgh - he was the first defender in the House of Lords case referred to later.

is Crofters Agency Ltd. associated with MKA

PP

Mr.W.H.Martin, a London Accountant, is also a member of the Association. He has been Secretary since 1933. There are no other members other than those on the Committee and Mr.Martin. *m 19.61*

30. The figures of advertising show that the sum of £3,452 was spent in 1935. This figure rose to £12,630 in 1940. The amount of advertising that could be achieved by these figures was probably only a third of that attained today, and the figure for 1959 amounted to £73,000. In the twenty five years to end of 1959, the sum of over £603,000 has been spent on advertising, most of it in the United Kingdom.

There have been occasional complaints about the Association's advertising. Thus, one or two of the witnesses in the Crofter handwoven Harris Tweed Co.Ltd. v. Veitch case (to be referred to later) suggested that some of the original brochures and advertising material put out by the Association gave the impression that all the stamped tweed was carried out by means of the primitive processes that had obtained many years previously. There may have been some substance in this criticism, since Rev. M.Macrae in his evidence admitted that the brochure had been altered. Nevertheless it is fair to point out that in the years before 1939 there was still a considerable amount of hand-made tweed produced, especially in Harris, and the Association owed some duty to that section of the industry.

Another criticism which was voiced, particularly by the Retail Trading Standards Association from 1956 onwards, was that the Association endeavoured to give the impression that the certification trade mark definition was more "official" than was the fact. Even the Board of Trade have been critical in recent years.

In the English advertising, the Association was prone to refer to the certification mark as being "registered by the Board of Trade". This was technically incorrect: the act of registration was by the Registrar of Trade Marks, but under the First Schedule to the Trade Marks Act, 1938 he was not permitted to register a certification mark unless he was directed so to do by the Board. The Board's objections will be dealt with later.

Some of the Association's American and Canadian advertisements probably went too far in this direction in that they have suggested that the definition was "a Government specification" and two or three advertisements which appeared in trade papers in the United States in the fifties went far beyond the facts and were rightly the subject of criticism. These were inserted through an over-zealous American Agent without the knowledge of the Association and will be referred to later.

On the credit side the guard books containing the Association's advertising suggest that about 70% of the copy has set out in full or in substance the 1934 definition of Harris Tweed. About 20% of the copy has referred to the stamped tweed as being "wholly produced in the Outer Hebrides". The remaining 10% has not directed the reader's attention to the definition or to the manufacturing source of the tweed.

It thus follows that for over 25 years past, considerable expense has been laid out by the Association in telling the trade where and how the tweed bearing the "stamp" was made. It seems too facile to argue that the advertisements referred only to the certified tweed and not to other Harris tweeds. None of those using mainland yarn or mainland finishing facilities or who were master-minding the whole operation from the mainland ever told the public what they were doing. One has yet to see an advertisement in which the members of Independent Harris Tweed Producers, Ltd. state, as in fact they state in paragraph 1 of the Condescence delivered in the proceedings recently instituted in Scotland, that

"they produce, process and market and dispose of "Harris Tweed" which is handwoven in the Outer Hebrides, but in respect of which all the other processes such as spinning and finishing are performed by their mills on the mainland".

A person looking at the mainland producers advertisements would have no means of knowing that the tweed was not identical as to methods of manufacturing

and geographical origin to the tweed bearing the Certification mark.

31. Between the date of the amendment in 1934 and 1938 there had been a considerable amount of friction between the various sections of the industry in the Islands. It will be recalled that assurances had been given publicly by the mill-owners in the correspondence columns of the "Stornoway Gazette" that the independent producers would be able to obtain all the yarn required.

The independent producers during these years fell into three sections: first, there was Kenneth Macleod (Shawbost) Ltd., which produced large quantities of tweed, made entirely from Island spun yarn and bearing the Certification mark: this company had a valuable clientele on the mainland and its production has at times approached, or even exceeded, that of certain of the mill-owning producers. This company has always staunchly supported the Certification mark.

Secondly, there were a number of independent producers who had for the main supported the Certification mark, but had become dissatisfied with the prices charged. They claimed that the mill-owners were making excessive profits on yarn due to their "monopoly". The mill-owners argued that in order to meet the yarn requirements of the Islands they had to bring in wool and the wool price was reflected in the yarn price. It seems that when the price of wool fell in the latter part of 1937, some of the independents began to purchase mainland yarn because they could get it so much cheaper. (One does not know whether it was made from pure Scottish Wool).

Thirdly, there were one or two independent producers who used almost exclusively mainland spun yarn. Crofter Handwoven Harris Tweed Co. Ltd. was one and the firm of Maclellan & Maclellan another. The latter claimed to use the Island yarn for two months after 1934 but found it "unsatisfactory".

32. The Transport & General Workers Union has always been the dominant trade union in the Islands counting mill-operatives and weavers amongst its members. It had come to an arrangement with the mill owners as to wages after 1934. It opposed (and still does) the use of mainland spun-yarn, because the firms using it were outside the arrangements made between the Union and the mill-owners and because the mill-owners were threatening a wage-reduction owing to the price-cutting policy of those using mainland yarn. Although the percentage of mainland spun yarn at that time was, according to the evidence of certain witnesses, "insignificant" being assessed at about 8% or 10% of the total amount of yarn used, it was increasing at the rate that the total production of Harris Tweed was increasing and the Union was worried at this development.

Mr. John Veitch was the union official in charge of the area. He rendered a report to Mr. Ernest Bevin, the then General Secretary, which tended (perhaps after some encouragement from the mill-owners) to magnify the importance of mainland spun yarn. He was granted plenipotentiary powers and early in 1938 imposed the now-famous embargo. As a result the Stornoway dockers were forbidden to handle incoming mainland yarn or outgoing tweed made from it. A number of independent producers brought an action against Mr. Veitch and another official, Mr. William Mackenzie.

33. The proceedings are reported under the title "The Crofter Handwoven Harris Tweed Co. Ltd. and Others v. John Veitch and Another" in 1942 A.C. at page 435. This is a well-known authority on trade union law and actionable conspiracy.

After considerable discussion of cases such as "Sorrell v. Smith" 1925 A.C. 700, "Mogul Steamship Co. v. McGregor Gow & Co." 1892 A.C. 25, "Allen v. Flood" 1898 A.C. 1 and "Quinn v. Leatham" 1901 A.C. 495, the producers failed in their action.

The case is relevant for present purposes owing to a passage in the judgement of Lord Simon (see page 437) where he stated :

"The officials of the Union desired that none but members of their Union should be employed, but when this was asked of the mill-owners in 1935, together with a rise in spinners' wages, the answer of the mills was that this was in existing circumstances impossible and that a reduction in wages was more likely owing (as was alleged) to the cut-throat competition of independent producers of cloth such as the appellants who obtained their supplies of yarn from the mainland

at a cheaper price than that charged by the mills. Cloth made out of mainland yarn could not carry "the stamp", though it could be sold as "Harris Tweed" as having been woven in the Island".

The question as to whether cloth made from mainland spun yarn could be sold as "Harris Tweed" seems to have been assumed from the pleadings and was never argued. The Trade Union was not sufficiently concerned to embark on such a discussion and neither the Association nor the mill-owners were party to the litigation.

Even if one accepts Lord Simon's dictum as a correct statement of the position in 1938, there are two points to be made: first, the pursuers were all Hebridean Producers and not mainland firms. In this respect it is relevant to refer to that part of Viscount Maugham's judgement where he describes them as follows:-

"The Appellants, who are small producers, carried on their somewhat humble business in the Isle of Lewis where they were weaving a tweed called Harris Tweed from yarn spun on the mainland".

Secondly, the meaning of a trade term in the minds of the trade and public may vary from period to period. Harris Tweed may have meant a particular type of cloth without much geographical significance in 1930, and it may mean in 1960 a cloth made in accordance with the 1934 definition. This is a question of fact which can only be determined by the evidence adduced at the time of the enquiry.

LII. 1945 - 1959 THE MENACE FROM THE MAINLAND.

34.

At this point it becomes necessary to refer to a number of events which, while at first may seem unconnected with the main story, eventually become threaded into it.

The first matter that arises is the Report of the Scottish Council of Development and Industry on the Crofter Woollen Industry published in 1946.

The Scottish Council of Development and Industry is a non-political body supported by local authorities, trade unions, banks and private enterprise to promote Scottish welfare.

The Committee responsible for the Report consisted of six members: Mr. H. B. Buchanan, a prominent Glasgow Solicitor; Mrs. E. Gooch, an Inverness shire J.P.; Major L. Kimball, another J.P.; Mr. W. P. Quinn, a civil servant from the Ministry of Transport and Civil Aviation in Edinburgh; Mr. J. L. Somerville, a chartered accountant; and Major M. Sprott, of a Scottish co-operative agricultural society. Evidence was taken from witnesses. One assumes that the work of the Committee might be compared to that of a committee of P.E.P. (Political and Economic Planning) which frequently tackles similar subjects.

The report is now out of print and probably never enjoyed a large circulation.

The Report represents a well meaning attempt to outline the main problems of the Harris Tweed industry. It makes a number of valid criticisms; but certain passages are relied on by the opponents of the Association.

In paragraph 13 the Report refers to the introduction of mill-spun yarn to the Harris Tweed Industry:-

"We have no exact data on the utilisation of handspun or millspun yarn in the Hebrides about that time" - at the beginning of the century" - but the increase in the number of looms in Lewis provides some indirect evidence. In 1899 there were 55. That number was perhaps kept supplied with yarn by the spinning-wheels of the Islands. In 1906 there were 161, and in 1911 the number was estimated at 250-300. It is clear, from the number of weavers and from certain other evidence, that a new stage in the development of the industry had then been reached. Substantial quantities of yarn were being obtained from the Scottish mainland (and later from the first spinning mill operated in the Hebrides) and this

yarn was being converted into tweed on the Islands' looms and marketed as "Harris".

The passage quoted above has elements of truth about it. But the authors of the report, by reason of the 1-st sentence, seem to have assumed that the first island spinning mill was not set up until after 1911, whereas the Scott report suggests that there were two in operation prior to 1910, one perhaps as early as 1906.

Then in paragraph 15 the Report states:

"An industry grew up in the Hebrides based on the use of imported mill-spun yarn which was woven in the Islands, and the article produced by these methods was sold as 'Harris Tweed'. It is worth noting that it was at this stage that Harris Tweed was enabled to enter a larger commercial market than had been open to the old handspun, home-dyed cloth, and that it then succeeded in establishing a high reputation for quality and design. It is proper to emphasize this development, for while Harris Tweed is certainly the 'birthright' of the Harris producer in an obvious sense, there was created subsequently a new type of industry, with new and greater commercial possibilities. This industry belonged to Lewis as well as Harris and was at first based on imported mill-spun yarn".

These two passages are open to criticisms, first, that not enough stress is given to the large quantities of island spun yarn produced between about 1907 and 1934. It is thought that except for the periods between 1918 and 1919 and between about 1929 and 1933 the island mills were able to keep abreast of the industry's yarn requirements, except for those producers who were minded to use inferior yarns (such as those made from "shoddy"). Secondly - and this is more important - the Report fails to grasp the point that the standard quantities of tweed made from machine spun yarn (either island or mainland) prior to 1914 were being sold as the genuine hand-made article. Hence, as the Scott report makes clear, this was a fraudulent trade.

35. For a year or two following 1948 or thereabouts there was a considerable importation of mainland spun yarn in connection with black market operations on the part of a number of weavers. One authority suggests that as much as $1\frac{1}{2}$ million lbs. of yarn were imported in a single year during this period.

The racket appears to have stemmed from the fact that crofter-weavers with an output of less than £500 per annum were exempt from purchase tax registration. A number of unscrupulous firms on the mainland devised the idea of having yarn (probably of doubtful quality) sent out to the Islands for weaving and for return in the "greasy state", i.e. before finishing. The responsible producers in the Islands had played no part in this operation which reached such proportions that the Association issued an advertisement in the Stornoway Gazette appealing to the weavers "to play the game".

After a time the Board of Trade strengthened its purchase tax procedures in the Islands. Some prosecutions followed and the trouble was stamped out.

Whether this cloth was sold as "Harris Tweed" can never be known with any certainty. This happened during the clothing coupon period and it is thought that the public were ready to accept any cloth outside the ration.

36. The Retail Trading-Standards Association ("R.T.S.A.") was founded in 1935 and incorporated in 1937. The objects for which it was established were, inter alia :-

To formulate and establish schemes for promoting and regulating uniformity in the standards of retail practice and in the conduct of persons engaged in the retail trades; and in particular for the purpose of ensuring the use by proprietors of an other companies and persons interested or concerned in retail distributing stores or shops or other retail trades or businesses of descriptions, terms and names corresponding with the quality, nature and value of the merchandise and goods to which the same relate.

The membership of the R.T.S.A. comprises many of the leading stores such as Selfridges, and textile manufacturers such as Courtaulds. Its formation was largely brought about by the fact that although the Merchandise Marks Acts exist, it was only in very rare cases that the Board of Trade could be persuaded to take action. It was therefore envisaged that the R.T.S.A. should fill a long felt want by instituting prosecutions.

The present Secretary of the R.T.S.A. is Mr. Roger Diplock.

The R.T.S.A. supported the Association's definition of Harris Tweed in its "Standards of Retail practice" in respect of Piece Goods. The first edition appeared in February 1949 and the copy in the Association's possession appeared in 1950.

The 1950 Piece Goods Standards contains an interesting opening paragraph on page 4 which reads as follows :-

" VIEWPOINT ADOPTED IN PREPARING THE STANDARDS

The Standards are intended for use by the retailer in his dealings with the public, and give effect to what is regarded as the public's understanding of the terms defined. It must be recognised that this interpretation cannot always coincide with the special meanings which certain terms have acquired in trade or technical use. Definitions used by manufacturers, wholesalers and retail distributors are very seriously taken into account with the help of the appropriate trade and technical organisations. Where, however, such trade definitions conflict with what is conceived as the public's understanding of a particular term, the latter is adopted in preference to the former".

Then there follows a further paragraph which is worth mentioning in view of the conflict later to develop between the R.T.S.A. and the Association :-

" An example of the conflict between technical and common usage is afforded by the word 'woollen'. In certain sections of the manufacturing trade this is regarded as a term distinguishing products of the wool textile industry, and does not necessarily define the material content of the article. In the mind of the public, however, 'woollen' is the adjective of 'wool', and an article described as 'woollen' is understood to be one made entirely of wool. In these Standards the latter meaning is therefore adopted".

On page 21 there is an interesting paragraph under the heading "General Description". This reads as follows:-

"Descriptions suggesting a Recognised Standard "

"8. Claims that a fabric conforms to a Government Specification or other recognised standard should not be made unless this is true in fact.

Example : The expression 'Government Serge' should not be applied to material not made in accordance with Government specifications. The expression 'Harris Tweed' should be used in accordance with the definition under the TradeMarks Act.

Then on page 28 is the definition of Harris Tweed. This reads as follows:-

"The following is the registered definition of Harris Tweed :

'Harris Tweed' means a Tweed made from pure virgin wool produced in Scotland, spun, dyed and finished in the Outer Hebrides and hand-woven by the Islanders at their own homes in the Islands of Lewis, Harris, Uist, Barra and their several purtenances and all known as the Outer Hebrides".

It is further provided that : "Wherever the Harris Tweed Trade Mark is used there shall be added in legible characters to the Harris Tweed

Trade Mark the words 'Woven in Harris', or 'Woven in Lewis', or 'Woven in Uist', or 'Woven in Barra', as the case may be, and for the purpose of distinction there shall also be added the word 'hand-spun' in the case of Tweeds made entirely from hand-spun yarn".

37. Mr. James Macdonald, as already mentioned was prominent in his efforts to bring about the 1934 amendment of the definition. He became managing director of James Macdonald Ltd., one of the four principal mill-owning producers in the Islands during the last 25 years.

In 1946 Mr. James Macdonald appears to have fallen out with his company and he left the islands and went to Oban. There he formed Macdonald's Tweeds Ltd. Mr. Macdonald and his family at that time held all the shares.

In 1952 Argyllshire Weavers Ltd. was formed with a capital of £100. It was not originally a subsidiary of Macdonald's Tweeds Ltd. but the shareholders were largely Macdonalds, although Mr. James Macdonald was neither a shareholder nor a director. W.B. Riddell was in 1956 Secretary to both companies.

In 1951 it was reported to the Association that Macdonald's Tweeds Ltd. was selling tweed and offering labels to its customers reading "Harris Tweed guaranteed Hand Woven Made in Scotland". Mr. Martin the Secretary of the Association wrote to him personally as he used to know Mr. Macdonald well when he was in Stornoway. He denied selling any of his Oban Handwoven tweeds but he stated that "we" - presumably Macdonald's Tweeds Ltd. - had taken premises in Lochboisdale where they were going to weave Harris Tweed, claiming as their authority for so doing the decision in the Crofter Hand Woven Harris Tweed case.

The Association's solicitors wrote to Mr. Macdonald on the 12th December 1951 but they received no reply.

Then some months later it was reported to the Association that Macdonald's Tweeds Ltd. was offering tweed to buyers under the name "Argyll Tweed" and was at the same time offering a similar tweed as Harris Tweed and was issuing labels bearing the words "Harris Tweed Guaranteed Hand Woven" as before. In other words, according to the report, they were offering the tweed to one customer as Argyll Tweed and to another as Harris Tweed. Unless the term 'Argyll' has acquired a secondary distinctive meaning, which is doubtful, it would seem that this was an obvious misnomer, because if the tweed really was made in the Outer Hebrides it could not be described as Argyll since no part of the Outer Hebrides falls within the County of Argyll. Similarly, if the tweed was made in Argyll it could not be described as Harris Tweed.

The Association's Solicitors wrote appropriately on the 13th May 1952 and received a curious letter from James Macdonald written on the notepaper of his private address in Oban. This letter sets out the views which no doubt are typical of those opposing the interests of the Harris Tweed Association:-

" I have received your letter of the 13th inst. and would like to make it clear from the outset that I am not selling tweed of any description on behalf of Messrs. Macdonald's Tweeds Ltd. Oban.

As a man who has had a lifetime experience in the tweed industry I feel that in the interests of your clients I should offer them some advice, in the matters which they are apparently seeking to make into contentious issues. As they know, an unchallenged and uninterrupted practice has existed over a long period of years long antecedent to the registration of their Orb Trade Mark (which incidentally I had a lot to do with) of selling tweed under the generic title of Harris Tweed which does not or attempt to interfere with the specifications of your clients certification Mark. Moreover your clients are very well aware of this as I have had many discussions with their Mr. Martin on this subject. This tweed is commonly known as unstamped Harris Tweed.

Further, in my opinion, the term Harris Tweed has now assumed a typical meaning rather than a purely geographical one".

The Solicitors wrote a further letter to this gentleman asking whether the specimen of tweed which they had sent with an earlier letter was tweed which Mr. Macdonald claimed to have the right to sell as Harris Tweed. He wrote back on the 30th May 1952 returning the pattern and stating -

" I acknowledge receipt of your letter and herewith return your pattern without any comment as I do not consider it my business to do so as it could be anybody's product and I would appreciate that this correspondence, over a matter which I am not interested in, would cease".

The letter on this occasion was written on the notepaper of MacDonald's Tweeds Ltd. and according to such notepaper Mr. James MacDonald was the first named director.

The Solicitors wrote further to this gentleman but received no reply and on reporting back it appears that the Association did not follow this matter up: they were under the impression that Mr. James MacDonald had fallen seriously ill.

It is perhaps pertinent to point out that the reference to the Lochboisdale premises did not suggest (as was ascertained later) that the carding, spinning and finishing processes were being carried out in Oban.

98. In the year 1951 when the inconclusive correspondence with Mr. James MacDonald began and after the black market operation previously referred to had ceased practically all the Harris Tweed which was being sold in England bore the Association's stamp. The Association appeared to have gone a long way towards establishing that Harris Tweed, to be so called, had to have all the processes of manufacture carried out in the Outer Hebrides. Moreover the retail section of the trade, having regard to the R.T.S.A.'s attitude appeared to support the Association to the hilt.

In the next year or two the Association's attention was called from time to time to clothing sold under labels indicating that the tweed was Harris Tweed but without bearing the Association's stamp or the labels which it distributes to those presenting stamped tweed. The Association found it difficult to understand why the vendors of such clothing did not use tweed the the Association's stamp as the powerful advertising campaign to make the mark known would obviously be a selling aid to those dealing in Harris Tweed. Accordingly, when tweed or clothing was seen without the stamp and was described as Harris Tweed, the Association suspected that it emanated from producers who were using mainland spun yarn or were carrying out other processes on the mainland and who therefore could not present the tweed for stamping.

Occasionally the matter would be raised by members of the public. The letter might state that the writer had purchased a coat which had not given good wear or which did not carry the Association's stamp and the Association would be asked whether in the circumstances the tweed was genuine Harris Tweed. Its normal course was to reply that to be Harris Tweed at all the tweed should be made in accordance with the Association's definition but that it was not compulsory for the tweed to be stamped. Occasionally when such letters were received the Association would follow the matter up with a letter to the supplier and at this point it is necessary to refer to two sets of correspondence which the Association had, first with Hepworths, Ltd., and secondly with Town Tailors, Ltd.,

On 9th August 1954 the Association wrote to Hepworths Ltd. pointing out that they were selling "Genuine Harris Tweed Sports Jackets" advertised at £5.15.0, in the Press. The letter commented that the jackets were not marked with the well known certification mark and raised a doubt in their minds whether the tweed could in fact be properly termed "Genuine Harris Tweed". They then set out the specification.

Hepworths replied that the cloth they were using could be termed "Genuine Harris Tweed" because they had the makers' guarantee that it was made from pure virgin wool produced in Scotland and "conforms in all ways

to use this term". The Association asked for the name of the supplier but did not receive a reply.

Then in 1955 a letter was received from a member of the public, Mr. Mennell, and he complained of a suit he had bought from Messrs. Weaver to Wearer of Kirksgate, Bradford, that being the trading title of Town Tailors Ltd. The Association then wrote to Town Tailors Ltd. on very much the same lines as they had written to Hepworths. Town Tailors Ltd. replied that they sold a large amount of tweed bearing the official stamp and they also sold tweed bearing a label supplied by the manufacturers and they enclosed a copy of the label. This had on it words "Harris Tweed. Guaranteed Handwoven. Made in Scotland".

Then the Association asked for the name of the suppliers and was told that it was Argyllshire Weavers. The Association did no more than to reply that, although the tweed supplied by Argyllshire Weavers might comply with the Association's definition of Harris Tweed, the name itself suggested that the cloth was woven not in the Hebrides but in Argyllshire.

39. At the end of February 1953 a curious incident arose: the Association had found that Selfridges were selling Harris Tweed jackets which did not bear the Association's stamp or label.

Mr. J. S. Gwatkin of McKenna & Co. who was on friendly terms with Mr. Diplock of the R.T.S.A. by reason of the work that his firm did for that organisation and who also knew that Selfridges were prominent supporters of the R.T.S.A. thought it advisable to make a tactful approach to Mr. Diplock to find out whether the tweed was entitled to be called "Harris Tweed".

After some delay Mr. Diplock replied that Northern Clothing Company obtained their Harris Tweed in Stornoway, and a little later that it was purchased "from a man with the not unlikely name of McPherson". As a matter of fact the Association knew no McPherson dealing in tweed in Stornoway.

This correspondence has been mentioned merely to show that Mr. Diplock made no claim at that date that the Harris Tweed definition was wrong.

40. It was not until two or three years after publication that McKenna & Co. became aware of the fact that the Bulletin, which the R.T.S.A. issues each month under the heading "Trade Information Service", contained in its issue of March 1955 the following entry:-

HARRIS TWEEDS

"The Association is constantly asked by its own members and by members of the public whether a tweed which does not bear the well-advertised mark of the Harris Tweed Association can be sold as "Harris Tweed". The short answer to this question is that any tweed which is manufactured in the Outer Hebrides can quite properly be described as a Harris Tweed. The addition of the mark of the Harris Tweed Association to such a cloth means that the cloth is made in accordance with the registered definition of the Harris Tweed Trade Mark. This Trade Mark is the mark of the Harris Tweed Association just as the "Kite" mark is the registered mark of the British Standards Institution.

While dealing with the subject of tweeds, it is perhaps interesting to relate that the Association was recently asked whether the Merchandise Marks Acts would be infringed if a Yorkshire-produced-machine-spun tweed material were given the trade-name "Lowland Homespun"!!

If this insertion had been noticed at the time, it is quite obvious that it would have been accepted as a perfectly accurate statement of the legal position. The proposition that "any tweed which is manufactured in the Outer Hebrides can quite properly be described as Harris Tweed" is not one from which the Association or its advisers would wish to dissent. But it would seem from what follows that the R.T.S.A. if it had given thought to the matter at all at that time, limited its interpretation of the term "manufacture" to the hand-weaving process, excluding all other processes.

41. At this point it is necessary, in order to thread the story together, to turn to certain correspondence which the ^{H.T.} Association had had with the Board of Trade from time to time prior to 1956 and to consider certain aspects of the H.T. Association's advertising.

The Board of Trade has at nearly all times taken a benevolent and sympathetic interest in the work of the Association.

By reason of the James MacDonald correspondence already referred to, ^{H.T.} the Association was getting anxious about the increasing use of mainland spun yarn and it asked the Board of Trade in 1952 to consider setting up some statutory definition. As might be expected the Board of Trade in reply stated that it was not empowered to do so, but the letter ends on an encouraging note: "... the best course appears to be for the Association to continue the campaign to publicise the mark which it has pursued so successfully in the past".

On the 29th December 1953 the Board of Trade complained that in the Association's advertising referring to the Harris Tweed label (which of course contains the Certification Mark) and there was a sentence in the text which read "The Harris Tweed Trade Mark has been granted by the Board of Trade". It pointed out that it was the Registrar of Trade Marks who granted the mark and that "the Board of Trade merely approves the regulations governing" the use of certification marks. They suggested an alteration but expressly did not ask for existing stocks to be scrapped.

Mr Martin then went to see Mr. Bradley of the Board of Trade. He stressed the importance that the Association placed on being able to state that the Certification Mark had the Board of Trade's approval and suggested that instead of the words complained of there should appear in reference to the Certification Mark the words "Applied in accordance with regulations approved by the Board of Trade", Mr Bradley agreed to this and wrote a letter of confirmation.

At about this time the Association was putting out a brochure under the title "Certificate of Pedigree". It was not a particularly well drafted document and contained some errors, In particular it contained the words "The Board of Trade definition reads as follows....."; strictly speaking this should have read "The definition approved by the Board of Trade.....".

Again, when referring to the amendment in the regulations effected in 1945 relating to the 18 picks and 18 ends per square inch, the pamphlet originally read "A further and more recent ruling by the Board of Trade stipulates ..."; this, more accurately, should have read "A further and more recent regulation approved by the Board of Trade stipulates ...". Apart from these points there seemed nothing in the brochure to merit adverse criticism.

42. Reverting to the chronological order of events, there next occurred an incident which set the spark to the present controversy.

In December 1955 Mr. Martin, the Secretary of the Association, received a letter from an agent of one of the Stornoway producers who reported that one of his friends had purchased a coat from Marshall & Snelgrove's branch in Leeds bearing a label reading as follows:-

HARRIS . TWEED
Guaranteed
Handwoven
in the Outer Hebrides
Made from
100% Pure Virgin Wool.

The purchaser had apparently been dissatisfied with the coat, which he considered badly finished, and he asked whether the coat was made from genuine Harris Tweed.

Mr Martin then wrote a letter (settled by McKenna & Co.) to Marshall & Snelgrove, which made the following points. It reported the receipt of a letter and set out the label; the official definition was set out; and the letter then contained the following sentence:

"I should, of course, make it clear that a trader is not compelled to use ~~use~~ my Association's mark and I am quite certain that a House of your reputation would not sell, as being made from Harris Tweed, a garment which did not come up to that description".

This statement therefore made it clear that the use of the certification mark was voluntary and that no charge was being made against the good faith of Marshall & Snelgrove.

The last point made in the letter was that, in the light of the large sums spent in advertising the certification mark, there might be some advantage in selling garments bearing the Association's trade mark since that might avoid the type of query the member of the public which had been received in the present case.

This led to a reply from Marshall & Snelgrove on the 6th January reading as follows:-

"We thank you for your letter dated December 28th, with reference to the label attached to some coats made from Harris Tweed.

We would ask you to forgive us for being rather a long time in replying. We quite understand the implications of your remarks and have considered it proper to send a copy of your letter, together with our comments, to the manufacturer of these coats.

We appreciate your remark that our Company would never under any circumstances knowingly sell a garment which was described inaccurately, and in this particular case we are not so doing. We should, of course, be happy to have the symbol of the Harris Tweed Association Ltd. on the garments that warrant it, but we must concede that it is more a matter for the manufacturer than ourselves".

It was thought that the reply meant that the cloth to which the label had been applied was Harris Tweed made in accordance with the Association's definition and no further steps were taken.

On the 18th January 1956 Mr. Gwatkin received a letter from Mr. Diplock. When he received this letter Mr. Gwatkin was somewhat puzzled as to why it had been written to him and he therefore telephoned Mr. Diplock pointing out that it was all very well to write a letter of this kind but was it the intention that Mr. Gwatkin should pass it on to the Association? Mr. Diplock said that was the whole point of his writing and that Mr. Gwatkin was at liberty to do so.

The letter is full of inaccuracies and is set out in full below:-

"I enclose copy of a letter which the Secretary of the Harris Tweed Association Limited wrote to our members - Marshall & Snelgrove of Bond St. Leeds. I am sure that when you read this letter you will share my view that it is a most improper letter to have written and that it is couched in terms which can only be taken to infer that no cloth coming out of the Hebrides is a Harris Tweed unless it bears the Ball and Sceptre label. You may recollect that I jokingly referred to the propoganda of the Harris Tweed Association when we lunched together recently at the Club, but I had no idea at all that this sort of correspondence was being sent from London Wall.

Worse still, I gather that on other occasions the Harris Tweed Association was inferred that R.T.S.A. agrees wholeheartedly with the attitude it has adopted over this matter.

As you yourself well know, I have on numerous occasions instructed enquirers that the description Harris Tweed could be given to any woollen cloth, hand woven in the Outer Hebrides.

The Harris Tweed Association, on the other hand, infers in its current publicity that the Board of Trade has itself defined the term Harris Tweed, although in fact that department has merely defined the meaning of a Certification Mark.

I think you will agree that the Harris Tweed Association seems to have gone well beyond proper bounds in the action which it has recently been taking - so much so, that I feel we must make some quite clear statement in a forthcoming bulletin so that our members know full well that it is possible to buy good quality Harris Tweed which does not bear the Certification Mark of the Harris Tweed Association.

I would also suggest that we should point out that this Certification Mark is not properly described as the Harris Tweed Trade Mark as is stated in the advertising pamphlets of the Harris Tweed Association and should not be disconnected from the full name of the Association."

It should be added that Mr. Gwatkin was not aware that Mr. Diplock has been advising the members of the R.T.S.A. that any woollen cloth handwoven in the Outer Hebrides could be called "Harris Tweed".

After receipt of the letter and the subsequent telephone conversations Mr. Gwatkin wrote to Mr. Diplock, suggesting a meeting between the officials of the Association and the R.T.S.A.

Meanwhile Mr. Diplock had sent to Mr. Gwatkin a proposed insertion in the R.T.S.A. bulletin which Mr Gwatkin's view was in some respects wholly inaccurate. He rang up Mr. Diplock suggesting that there were inaccuracies but the latter was adamant that he intended to put some such notice in the bulletin.

43. A meeting took place at the R.T.S.A. offices on the 10th February 1956. For the R.T.S.A. there was present Mr. Diplock, a Mr Whittaker who was then the chairman of the Piece Goods Committee and a man of great experience and integrity, having been for many years associated with Selfridges - he was probably in his middle sixties and may have since retired; finally here was Mr Macdonald from Oban, a young man of 27 years of age. The Association was represented by Mr. Ellis, the chairman, Mr Martin and Mr. Gwatkin.

At the outset Mr. MacDonald made it clear that his company was selling large quantities of tweed marked Harris Tweed which, so he said, was handwoven in Uist from yarn spun on the mainland. He produced figures which suggested that the present rate of production was $1\frac{1}{2}$ million yards a year he stated that for the two previous years it had been considerable, amounting to nearly $\frac{3}{4}$ million yards.

Then followed a long and acrimonious discussion on the various points in Mr. Diplock's letter.

The upshot was that the representative of the R.T.S.A. intimated that they were resolved to make an insertion in the bulletin. They would consider any minor amendments proposed, but they could agree to continue to support the Association's definition. Mr. Gwatkin advised the Association ^{account} no to take any part in editing this insertion as clearly it would be contrary to the definition for which the Association had fought for so many years.

Following the meeting Mr. Ellis wrote a letter to Mr. Sebastian Earl, the chairman of the R.T.S.A. as it was felt that Mr. Diplock might have been exceeding his duties in taking a line which was entirely opposed to another association. In this Mr. Ellis suggested that no notice should be inserted in the bulletin until Mr. Earl had seen Colonel MacArthur, who probably knew more about the history of Harris Tweed than any other member of the Association. Mr. Earl was polite in his reply and admitted that the R.T.S.A. had been at fault in not altering their "Standards of Retail Practice" earlier, but he stated that the bulletin had already gone to press and there was no question of changing it.

44 Shortly after the receipt of Mr. Earl's letter of 24th February 1956 the February issue of the R.T.S.A.'s bulletin appeared.

In this the R.T.S.A. announced that in its view tweeds, not marked with the Certification Mark, could be called "Harris Tweed", even though they had not been manufactured from yarns spun in the Outer Hebrides. It continued:-

"For many years such tweeds formed an integral part of the pre-war production of Harris Tweed, being made from virgin wool spun on the Scottish mainland and handwoven in the Outer Hebrides. Today the yardage of such cloth is again considerable - probably exceeding 1,250,000 single-width yards. R.T.S.A. recommends its members who are making purchases of such Harris Tweed made from mainland-spun yarn to ensure that invoices clearly state this products is made from Scottish mainland-spun yarn which has been hand-woven in the Outer Hebrides."

Then the R.T.S.A. gave four reasons for making the recommendations:-

- (a) Trade practice dating from pre-war period.
- (b) The views given in the report of the Scottish Council, already referred to.
- (c) The views expressed by the Parliamentary Secretary, Board of Trade, in a letter dated 21st. December 1954. (Parts of this had been quoted at the meeting, but the Association was not given this letter to read).
- (d) The judgment of Lord Simon in the House of Lords, already referred to.

A note was added to make it clear that the Association did not accept this definition and was seeking Counsel's opinion. It ended "R.T.S.A. has itself already been guided by an opinion of Queen's Counsel". This opinion had been mentioned at the meeting, but Mr. Diplock stated that he was not at liberty to give a copy to the Association.

The bulletin was answered by a statement by the Association which was given to the trade papers and the members of the R.T.S.A.

With the R.T.S.A. Bulletin for June 1956 there was a slip attached giving the new "definition" and requesting members to insert it in their copy of "Standards of Retail Practice".

The R.T.S.A. next issued its Chairman's Annual Report prior to the meeting held on the 24th July 1956, in which the Chairman sought to justify the action of the R.T.S.A. in the controversy. This was immediately followed by a statement from the Harris Tweed Association to the press and members of the R.T.S.A.

45. Although not apparently relevant either to the English or Scottish proceedings, some reference will have to be made, as briefly as possible, to the American situation, as it has been referred to in the proceedings by the mainland producers.

In the Bulletin No.128 of July 1957 the R.T.S.A. inserted a curious paragraph entitled "HARRIS TWEED" which read as follows:-

"Until recently it has not been possible to export to the United States of America any cloth described as Harris Tweed which has not borne the "Orb" mark of the Harris Tweed Association. R.T.S.A. has taken the view ^{that this} amounted to a serious restriction upon manufacturers of Harris Tweed whose products did not conform with the special requirements applicable to the "Orb" mark. As a result, there has been an exchange of views with the American authorities and we are glad to report that registration is now being accepted in the United States of Harris Tweed which had been hand-loomed in the Hebrides from yarn spun on the Scottish Mainland."

This garbled version of the true facts and to explain the background it will be necessary to go back some years.

From about 1934 until his death in 1959 the Association was represented in the United States by Mr. Stanley Brown, a man of energy and enthusiasm who did much to foster trade between the United States and the Outer Hebrides.

Once the definition had been amended in 1934, steps were taken to make it known in the United States.

The assistance of the Federal Trade Commission was canvassed, and in the proceedings against Miles L. Finch trading as Associate British Manufacturers the defendant consented to a decree which, inter alia, restrained him from representing or claiming in or by advertising of any character or otherwise that tweed or other woollen cloth "not handwoven and manufactured in the Outer Hebrides, Scotland" was Harris Tweed. The words "and manufactured" are notable. There were other injunctions relating to the advertisements that the defendant had used.

Subsequently other proceedings were taken against traders in the United States by the Federal Trade Commission. Between 1937 and 1942 four further consent stipulations were signed by other traders,

In 1941 the Federal Trade Commission issued a complaint against certain producers of Harris Tweed, their U.S. agents and Mr. Stanley Brown, on the ground of price fixing arrangements.

Mr. Stanley Brown was sued as an individual in his capacity as "general representative" of the producer respondents, which included the four largest companies in Stornoway, namely, James MacDonald Ltd., Kenneth MacKenzie Ltd., S.A. Newall & Sons Ltd. and Thomas Smith & Co.

In the end the respondents decided to submit to a cease and desist order. Meanwhile the trade mark in the same form as the British certification mark had been registered in the United States as an ordinary trade mark under No. 353757 dated January 18th 1938. The registration on this occasion required the disclaimer of the words "Harris Tweed".

At that time there was no provision for the registration of certification marks in the United States but this omission was rectified by ^{the} Lanham Act which was passed in 1946. Thereafter the Association registered its mark as a certification mark under No 527391 dated July 4th 1950. On this occasion the word "Tweed" was disclaimed, but not the word "Harris". The U.S. Attorneys advising the Association took the view that on the construction of the new Act the mark indicated geographical origin and that a disclaimer was unnecessary. The Controller Of U.S. Patents eventually took the view that the mark was a collective mark and that the owners were entitled to the exclusive use of the word "Harris".

After the mark had been registered Mr. Stanley Brown registered it with the Commissioners of U.S. Customs pursuant to Section 42 of the Lanham Act 1946 and the Customs were requested to prohibit the importation of tweed which infringed the mark of the Association. This meant in effect that if tweed was imported having a label with the words HARRIS TWEED but not in the form of the Certification Mark it was rejected.

46. At this point it may be convenient to deal briefly with correspondence between the Association and its Solicitors and the Board of Trade.

After the publication of the February 1956 bulletin the Association wrote on the 9th March 1956 to the Board of Trade complaining that the Parliamentary Secretary had apparently provided evidence to the R.T.S.A. justifying the recommendations the latter had made. After some delay a letter was received from Mr. King of the Board of Trade dated the 11th May

which is typical of the attitude which the department had taken up during the controversy: he stated that it was not for the Board to express an authoritative view on these matters but for the Courts. A little later in June and July there followed some further correspondence between the Association and Mr. King in which the latter sought to suggest that the certification mark had not been "Granted with the approval of the Board". This seemed in the Association's Solicitors' view to be taking an extremely narrow view of the Board's function under the Schedule to the 1938 Act, and this view was later fortified by the verbal opinion of Leading Counsel (Sir Lionel Heald, Q.C.). This letter was ignored.

In December 1957 Bulletin 132 of the R.T.S.A. contained under paragraph 3 categorical statement that it was not accurate to claim that the Board of Trade had approved the definition of Harris Tweed used by the Harris Tweed Association.

At that point Mr. Martin wrote to Mr. King of the Board of Trade and drew his attention to Mr. Diplock's statement, and on the 9th December Mr King replied to the effect that it was correct.

It should be mentioned here that the Board of Trade was to some extent beholden to the R.T.S.A: the latter had in effect been performing the statutory function of the Board of Trade in bringing a number of Merchandise Marks prosecutions against members of various trades who were misdescribing goods. There had been some comments in Parliament and the Press as to the lack of energy on the Board of Trade's part in bringing prosecutions themselves. Hence in the eyes of the Board of Trade the R.T.S.A. was a force to be respected and perhaps a little feared.

Following Mr. King's letter Mr. Gwatkin of MacKenna & Co. decided to get in touch with Sir Robert Speed, the Board of Trade's solicitor, with whom he had a slight acquaintance and he went to see him. Sir Robert Speed stated he would look into the matter.

The upshot of the ensuing correspondence was that Sir Robert argued that the Board of Trade had never approved the definition contained in the Regulations as an exclusive definition. To this no objection can be taken. He admits, however, in a letter of the 9th January 1958 that the definition in the Regulations is an appropriate definition.

When pressed further Sir Robert Speed suggested that the definition approved by the Board of Trade was approved only for the purpose of the Regulations governing the use of the trade mark. It seemed to McKenna & Co. that this was almost tantamount to saying that the definition of a term in a dictionary was not to be accepted as a true definition but only for the purposes of the dictionary and they said as much in their reply.

The R.T.S.A. offensive was by this time at the height of its fury. It next turned its attention to the Association's advertising agents, Dorland Advertising Ltd., who had acted for many years.

On the 15th October 1958 they received a letter from the R.T.S.A. which suggested that the Association's advertisements were "knocking Copy" inasmuch as they implied that "Harris Tweed which does not bear "non-orb" mark is spurious" (sic). The R.T.S.A. complained that members had received cancellations of orders. The letter went on to state that the R.T.S.A. would take legal action at the appropriate moment if its members continued to suffer damage and they enclosed a number of letters which they had received indicating the effect of the Association's advertising on members of the public.

Dorlands Advertising replied that the Association was of the opinion that only tweed made in accordance with the definition in the Regulations was entitled to be called Harris Tweed and if the R.T.S.A. were in a position to establish that all the processes entering into the manufacture of their members' tweed were in fact carried out in the Outer Hebrides, the Association would give the matter further consideration.

They also pointed out that, contrary to the impression given by the R.T.S.A. letter, there were no producing members of the Association.

R.T.S.A.'s reply of the 22nd October referred to the fact that the Association had had 60 years to prove its contentions in the Courts under the Merchandise Marks Act "but for very obvious reasons it has not taken advantage of this opportunity".

Dorland Advertising in their reply of the 31st October pointed out that the R.T.S.A. were silent on the question posed in the third paragraph of Dorland's previous letter as to the number of processes carried out by the R.T.S.A.'s members in the Outer Hebrides. This drew a somewhat disdainful reply dated 3rd November quoting a statement by Sir David Eccles the then President of the Board of Trade in the House of Commons, and to the views of Mr. King. Dorlands replied pointing out that Sir David Eccles' statement had been followed by another statement by Mr. Erroll, the then Parliamentary Secretary to the Board of Trade.

The Parliamentary battle will be referred to later.

48. In October 1957 Mr. Stanley Brown committed a blunder which the Association's opponents were quick to exploit.

About that time the quota for imported textiles was in the process of being cut down by the U.S. administration. So seriously did the Association take the matter that they sent out one of the executive committee, the Reverend Murdoch Macrae, to confront senators in Washington, which he duly did with great effect.

Mr. Stanley Brown, the Association's U.S. representative decided to insert at short notice a full page advertisement in the Daily News Record, the leading textile newspaper in New York.

Unhappily there were two purple patches in his copy: first, in a box on the right hand side appeared the sentence: -

"The term "Harris Tweed" has been defined by the British Government, Board of Trade and a specification has been made to ensure minimum standards".

This of course went much further than the Board of Trade would countenance. The reference to the "specification" was no doubt intended to refer to an

amendment of the regulations made in 1945 which governed the number of picks and ends per inch.

Secondly - and this was much worse - in a paragraph towards the bottom left hand corner appeared the sentence:-

"The Harris Tweed Association which owns and administers the Harris Tweed certification mark is established by Special Charter of the British Board of Trade."

There are, of course, no grounds for this statement.

It seems that two similar advertisements had appeared in "Daily News Record" in 1953 and 1954. Copies had been sent back to London and placed in the Association's advertising guard books kept by Dorlands Advertising Ltd. At that time nobody had noticed these mis-statements.

Before 1957 advertisements were placed, Mr. Stanley Brown submitted the copy to the Association's U.S. attorney, Mr. Graham, for approval. He passed the copy being in the belief, like Mr. Brown, that because the Association was a Company limited by guarantee, it had been granted a "Special Charter".

A similar full page advertisement was inserted in the Daily News Record about a month later. It too contained the same errors.

When this copy reached London, the Secretary of the Association at once disclosed it to their Solicitors who wrote appropriately to Mr. Brown. Thereafter all U.S. copy had to be approved in London.

The storm broke a few weeks later in a letter from Mr. Diplock dated 5th December 1957. Mr. Gwatkin replied explaining the circumstances.

Notwithstanding the explanation, the R.T.S.A. was bent on having its pound of flesh.

On 27th February 1958 Commander Donaldson (the member for Roxburgh, Selkirk & Peebles) asked the President of the Board of Trade "to what extent his Department was associated, by special charter or otherwise, in the creation of the Harris Tweed Association Limited", to which the President (Sir David Eccles) replied that no such association could be traced.

Next the U.S. advertisement was mentioned at which point Mr. Malcolm Macmillan (The Member for the Western Isles) came to the rescue with the explanation.

Commander Donaldson next asked whether the President "has officially authorised any particular definition of Harris Tweed" as the only description permitted, to which the President duly replied that the definition was only relevant to the use of the mark.

After a reference by Commander Donaldson to the U.S. advertisement, Mr. Macmillan then re-entered the fray and emphasised the dollar contribution made by "members of the Harris Tweed Association".

Then towards the end of the questions Mr. Malcolm Macmillan confidently asked whether it was not important that protection should be given to this industry from "pirating and competition from imitations from everywhere from Galashiels to Japan"? To this Sir David replied :-

"The description "Harris Tweed" is very like that of Bath buns. It covers the manufacture of articles not all made in the place to which the name refers".

However, Mr. Macmillan was not dispirited and on the 8th May 1958 the situation was retrieved. He asked the President "to what extent under his regulations tweed other than that entitled to the Orb Mark can be described as "Harris Tweed"? To which Mr. Erroll, for the President replied:-

"Tweed marked with the orb mark and the words "HARRIS TWEED" is unmistakably "HARRIS TWEED". Whether anything else is "HARRIS TWEED"

or not is a matter for the "Courts." My own opinion would be, however, that tweed produced in say England could not be legitimately be described as "Harris Tweed"

At least Mr. Erroll agreed with the views of Mr. Mead expressed over fifty years earlier in the Lyons case.

As was to be expected the R.T.S.A. was quick to publicise the President's criticism of the statements in the Daily News Record in its Bulletin 135 of March 1958. It made no mention of Mr. Erroll's statement and accordingly the Association publicised it in a statement published in May 1958.

49. Two further instances of the lengths to which the R.T.S.A. went to designate the Association are worth brief mention.

First with its Bulletin No. 142 R.T.S.A. sent out a mimeographed sheet which purported to set out five specific examples of statements made from time to time by the Association which the R.T.S.A. criticised. These statements were represented as the excuse for the R.T.S.A. Trade Terms Committee labouring under the misguided belief "that there really was an official (i.e. Government) definition of Harris Tweed". Then the sheet goes on to quote Lord Simon's statement in the House of Lords case.

Secondly, there is a final tailpiece to this particular phase: on November 21st Mr. Francis Noel Baker (member for Swindon) made an ill-informed, boring and ineffective attack on the advertisements of industry in the House of Commons.

In the course of his speech he referred to Harris Tweed Association's advertisements as a "racket". He also referred to the Association as "a private independent firm which competes with other people who make equally genuine Harris Tweed".

The Association was not slow to react and a day or two afterwards issued a challenge to Mr. Noel Baker in a press statement.

A few days later Mr. Ellis, the Chairman of the Association, sought an interview with Mr. Noel Baker (through the intervention of Mr. Macmillan, the member for the Western Isles). Mr. Diplock turned up at that meeting, presumably at Mr. Noel Baker's invitation and a heated discussion ensued.

50. Meanwhile three mainland producers had joined the R.T.S.A. not long after the issue of the February 1956 Bulletin.

The first was Argyllshire Weavers Limited, the Oban Company to which reference has already been made.

The second was A. & J. Macnaughton Ltd. of Pitlochry, to whom reference has been made as a supplier of mainland-spun yarn to the Islands prior to 1934.

Thirdly, there was Scottish Crofter-Weavers, Ltd. to which no reference has yet been made.

In the R.T.S.A. Bulletin No. 142 of November 1958 there appeared on the front page a paragraph headed "Harris Tweed Producers form an Independent Group".

This referred to the formation of Independent Harris Tweed Producers Ltd. which, according to the paragraph, had been formed by three mainland companies already mentioned. The article continued:-

"These three producers spin their own yarn on the mainland from pure virgin wool in accordance with a method employed in the Harris Tweed industry since the turn of the century when the industry was being developed commercially and the islanders relied almost entirely on mainland spinners for their yarn. Independent Harris Tweed Producers Ltd. however, is not restricted in an artificial or monopolistic manner and the Group is open to support equally from users of mainland or island spun yarn provided that the tweed is handwoven by the Islanders in the Outer Hebrides and the other operations are all carried out in the Outer Hebrides or on the Scottish mainland. In the view of R.T.S.A. this broadly covers the proper and factual definition of Harris Tweed

and it is only to be regretted that constant efforts to narrow the definition artificially have until now caused so much confusion".

There is then a reference to the Independent Group emblem consisting of a coat of arms, to which reference will be made later. The article ends by stating that the R.T.S.A. regards "a group" emblem as important

"not only to identify the products for the public and this to confirm their genuine nature but also because R.T.S.A. members and the public will appreciate that the registration of Independent Harris Tweed Producers Ltd. would not have been effected without careful consideration by the Board of Trade of the complex problems involved".

As regards this last sentence it is difficult to follow the argument: presumably if a number of firms care to form a company with the name Independent Harris Tweed Producers Ltd. the only question that concerns the Board of Trade is whether the name is too close to any other existing name or whether the title chosen is so grandiose as to mislead.

51. At this point it may be desirable to consider what is known about the activities in the fifties of the three companies which form Independent Harris Tweed Producers Ltd.

As regards Argyllshire Weavers Ltd. it was thought that this Company or its sister company, MacDonalds Tweed Ltd. of Oban had set up premises in Uist in 1952. It must be admitted that the Association was slow in following up the activities of this company.

At the meeting with Mr. Diplock in February 1956 one of Mr. MacDonald's sons stated that the then current rate of his company's production was at the rate of $1\frac{1}{4}$ million yards a year.

This statement (on the assumption it was true) came as a great surprise to the Association, who were quite unaware of the size of the production in South Uist. It may be mentioned here that the southern group of islands in the Outer Hebrides, namely, North Uist, Benbecula, South Uist and Barra, has little trade or traffic with the island of Lewis and Harris. While the MacBrayne steamers provide a service between Lewis and Harris and North Uist and South Uist about two or three times a week, the northern islanders regard Kyle of Lochalsh and Mallaig as their mainland ports, whereas the southern islanders use Oban. It follows, therefore, that although only 12 miles separates North Uist and the tip of Harris, the two islands are about as remote from each other as the Isle of Wight is from the Channel Islands. In addition, there had been little tweed production in South Uist for many years. No stamping had been done there and only a little in North Uist.

In these circumstances it was not altogether surprising that the Association had been ignorant of what had been going on around Lochboisdale in South Uist, and following the meeting with the R.T.S.A. the association decided to send one of its senior inspectors to investigate.

The Inspector reported that at Lochboisdale Argyllshire Weavers Ltd. had set up 18 looms in what was one a tea-room; at Eochar, a village some 20 miles north, he found 50-60 looms in a hall and two sheds. There were in addition some looms distributed amongst the weavers throughout South Uist and Benbecula; and he estimated the total as about 120 looms in all.

The Inspector ascertained that the warps were power warped in Oban and arrived in Lochboisdale beamed and ready for the loom. The weft was also fed on to bobbins in Oban. He learnt that the looms belonged to Argyllshire Weavers and were maintained by them.

The Inspector had a look each day at the Lochboisdale looms. He then thought there were about 12 working daily, the other 6 lying idle. He came to the conclusion that the tweed which he saw being woven was inferior to the cloth he was used to stamping. From his conversation with some of the weavers he felt that they were not nearly expert enough to make a good job: as he put it, "they just peddle away" and the fact that the warping and bobbing filling was done by power made the work very automatic. He learnt that the weavers were not members of any union and they told the Inspector that if they joined the Union

they would immediately be sacked.

He learnt that Argyllshire Weavers maintained a large van and a Land Rover in the Islands and the whole affair struck him as a very temporary undertaking but he was told that the weaving of tweed was no longer carried on in Oban.

All this was news to the Association and gave substance to the statement made by Mr. MacDonald's son present at the R.T.S.A. meeting that output was at the rate of $1\frac{1}{2}$ million yards a year. This struck the Association as an exaggeration because the Inspector learnt that a good week's output resulted in 160 pieces of tweed being shipped from Lochboisdale and this would only account for 800,000 yards of tweed in a full year. Nevertheless this was a sizeable quantity being not far short of one-fifth of the total output of tweed stamped by the Association.

At the end of 1959 the shares in MacDonald's Tweeds Ltd. and Argyllshire Weavers were taken over by Grampian Investments Ltd. a well-known Scottish investment company. The price paid was £500,000.

52. The second corporate member of Independent Harris Tweed Producers Ltd. was A. & J. Macnaughton Ltd. of Pitlochry, to which reference has been made earlier in the era prior to 1934.

The Association began to have some suspicions about the activities of this Company in 1956 and on their seeing a Macnaughton advertisement in "The Times" for individually made skirts, McKenna & Co. wrote for a bunch of patterns and received a printed brochure and the patterns, which were for the most part described as Pitlochry Tweed. Three patterns consisted of cloth not unlike Harris Tweed and these were described as "Pitlochry Highland Home Spun Tweed".

In September 1958 the Association received a letter from a Miss Swindin in which she referred to purchasing from Pontings what she understood to be a Harris Tweed Coat. The label on the coat read :-

Guaranteed
H A R R I S T W E E D
(then a monogram of two unicorns)
Handwoven
in the Islands of Lewis and Harris, Scotland
100% Pure New Wool

She asked the Association whether this was genuine Harris Tweed. The label in question contained the words "Harris Tweed" in a script very similar to that used by the Association on its labels and it was difficult to think that such a label could have been adopted except with the express purpose of leading purchases to believe that it was the Association's label. The Association was led to think that the label was issued by Macnaughton, but at this stage there is no proof.

53. The third member of Independent Harris Tweed Producers Ltd. was a company called Scottish Crofter Weavers Ltd. which carries on business in Aberdeen.

There is at the moment some doubt about the origins of this company: a search at the Companies Registry in Edinburgh shows that it was incorporated on the 30th December 1955 and is controlled by two gentlemen of the name of Laidlaw who are also Directors of Robert Laidlaw & Sons Ltd. of Keith, a well-known woollen manufacturing company.

Nevertheless it is clear that a firm or company of similar title was in existence before 30th December 1955. Possibly an earlier company was wound up and the new company purchased the assets from the Liquidator. This is a matter which will have to be further investigated.

The business is believed to have been started in 1937 but little, if anything, is directly known of its activities before and during the first part of the war.

In the summer of 1944 a curious incident arose. The Board of Trade wrote

to the Association informing it that it had received information through the local price regulation committee in Aberdeen that Scottish Crofter Weavers were selling tweed bearing the stamp "Handwoven Harris Tweed woven in Lewis" which was made from Yorkshire yarn and then woven by power at Smith's Kirkburn Mills at Peterhead. It was thereafter finished in Paisley.

The Association's Solicitors accordingly wrote to this company and received a somewhat evasive reply stating, amongst other things, that they could not from the information given acknowledge or dispute the origin of the sample which had been sent to them.

Then follows this paragraph :-

"While we did, some time ago, with the sanction of the Wool Controller divert for a short period an insignificant portion of our yarn ration to weaving by Messrs. T. Smith & Co. of Peterhead for a special need which could not at that time be met from our Hebridean production, we deny categorically the suggestion implicit in your letter that we have operated or are operating to our selling markets under false trade descriptions".

Subsequently the correspondence was taken up by Messrs. Burnett & Reid, the solicitors for the company, who categorically denied the suggestion made by the Board of Trade. Attempts were made to obtain proof of the facts stated in the Board of Trade's letter without success. It is curious that about that time the Board expressed some anxiety lest, if proceedings were taken, the findings might be unsatisfactory from the Association's point of view.

In 1952 there was some further correspondence between the Association's Solicitors and this company. On this occasion complaint was made that the company was selling a tweed described as Harris Tweed in South Africa and that such tweed was made from imported yarn. Once again Messrs. Burnett & Reid entered the picture and their replies were at first somewhat evasive but on the 16th May 1952 the following paragraph appeared in their letter :-

"May we mention that since its incorporation some 15 years ago our client company, in common with many others, has sold and continues to sell both in this country and its whole diffuse (sic) markets abroad Harris Tweed exactly in accordance with the description applied to it. In doing so our clients have infringed no law nor made any trade misrepresentation".

They presumably meant by this that the tweed was handwoven in the Outer Hebrides but that the other processes were carried out on the mainland of Scotland and in a later letter they referred to the Scottish Council's report which has been dealt with in detail earlier in this memorandum.

Therefore it would seem that, according to their solicitor's statements, this company has been selling cloth as Harris Tweed which has had all the processes carried out on the mainland with the exception of the handweaving process since its incorporation over 20 years ago.

In 1953 the Association had some correspondence with Mr. Barr, the Secretary of the National Association of Scottish Woollen Manufacturers. That gentleman had written a letter to a member in which he stated -

"I have no doubt whatever that tweed handwoven in the Outer Hebrides by crofters weavers from yarn machine spun on the mainland from pure raw wool may be and is described legally and correctly as Harris Tweed".

This gentleman was adamant in his opinion.

The Association later obtained copies of some correspondence which had passed between Mr. Barr, Macnaughtons of Pitlochry, Scottish Crofter Weavers Ltd. and another company, Robert Laidlaw & Sons Ltd. of Keith, on the same subject. It appears that these firms were considerably upset at the Association having obtained registration of its certification mark in Canada and the United States and in such letters not only Mr. Barr but also Messrs. Burnett & Reid (the solicitors for Scottish Crofter Weavers) expressed strongly the view that the Association was putting its case too high and that the term Harris Tweed could lawfully be used in connection with a tweed made from pure

Scottish wool which had been handwoven in the Hebrides.

It is presumably these opinions which give rise to the definition which was eventually propounded by the R.T.S.A. It is also thought that Scottish sectional interests played a part in the formulation of these opinions: quite obviously if the dyeing, spinning and finishing processes were to be carried out in the Outer Hebrides, it would mean a loss of business to the mainland firms and apparently none of the Hebridean producers was a member of the Scottish Woollen Manufacturers Association.

Nevertheless after this correspondence the Company started to submit tweed for stamping by the Association and some 15,000 yards were stamped in 1954 and 1955.

54. Independent Harris Tweed Producers Ltd. was incorporated in October 1958. The Company was limited by guarantee and in that respect was similar to the Association.

The Memorandum also purported to define the term "Harris Tweed" and "Harris Tweed Industry" as follows:-

- (i) "Harris Tweed" means cloth made from pure virgin wool dyed and spun in the Outer Hebrides or elsewhere in Scotland, hand-woven by the Islanders in the Outer Hebrides, and finished in the Outer Hebrides or elsewhere in Scotland.
- (ii) "Harris Tweed Industry" means the manufacture, processing, distribution and sale of Harris Tweed and includes any section or branch thereof.

Following the issue of the November 1958 bulletin of the R.T.S.A. which had announced the formation of Independent Harris Tweed Producers Ltd. the Association issued yet another statement to the press in which it pointed out the differences between the certification trade mark it had registered and the group emblem referred to by the R.T.S.A. It also pointed out that the definition of Harris Tweed in the Memorandum of Independent Harris Tweed Producers Ltd. did not require the use of pure Scottish wool and that there was nothing to prevent all the processes other than the handweaving being carried out on the mainland of Scotland.

No doubt as a result of this statement a special resolution was passed on the 29th January 1959 by Independent Harris Tweed Producers Ltd. amending the definition of "Harris Tweed" by inserting the words "produced in Scotland"

between the words "wool" and "dyed" in the first line of the definition appearing in the Memorandum.

55. The group emblem set out in the November 1958 bulletin of the R.T.S.A. was in fact an heraldic shield device which Argyllshire Weavers Ltd. had registered as a trade mark under No. 716396 in respect of "articles of clothing but not including boots or slippers" in Class 25 as of the 1st April 1953 (see Trade Marks Journal 3922 at page 676).

It so happened that this device had a remarkable similarity to the arms of the Chief of the Clan MacDonald and that fact became known to Lyon King of Arms, who at once raised objection.

This led to Independent Harris Tweed Producers Ltd. having to find a new group emblem and on this occasion they took pains to select a shield device which was first approved by the Lord Lyon. In due course they presented a petition for the adoption of such arms and Lord Lyon decided to give the Association an opportunity of opposing the grant of arms if it thought fit. This put the Association in some dilemma because they were advised that, as an English company, they had little or no standing in the proceedings but eventually, for what it was worth, they put in an Answer drafted by Scottish Council in which they pointed out that the definition in the Petitioners' memorandum would allow the use of any kind of wool and the majority of the processes being carried out on the mainland of Scotland. It was averred that the Petitioners "not being a virtuous and well deserving corporation are not entitled to the grant of arms craved" and they asked the Court in its discretion to refuse the Petition.

At this point the proceedings become somewhat confused. It seems that Independent Harris Tweed Producers Ltd. then filed a Memorial in which they repeated many of the criticisms of the Association which had already been published in the R.T.S.A. bulletins. They stated, for instance, that the island mills were controlled by the Association, which of course is completely untrue. They even tried to justify the absence of any requirement for the use of pure Scottish wool in paragraph 3 of the Memorial. This paragraph ends with the words :-

"In short, so far from merit attaching to the sole use of Scottish grown wool, the reverse is the case".

Now it seems that the Lord Lyon did not take kindly to the suggestion that wool other than Scottish wool should be used in the production of Harris Tweed and he made this point when members of Independent Harris Tweed Producers Ltd. went to see him. As a result they decided to change the definition in the Memorandum of the company so that Scottish wool should in future be used.

The fact that they were prepared to support in their Memorandum the use of non-Scottish wool perhaps accounts for the very much lower price of the so-called Harris Tweed sold by the three mainland firms up to that date.

On receiving this assurance Lord Lyon took a much better view of the Petitioners and he decided to issue a decision in their favour.

He had meanwhile received a request from the Association to receive a delegation and they arrived on the very afternoon of the day on which the decision had been issued. During the discussion that followed the Lord Lyon was taken aback to learn that a copy of the Memorial filed by the Petitioners had not been submitted to the Association and the Association pointed out that the Memorandum that they were now handing to the Lord Lyon could not possibly deal with a number of points raised in the Memorial which they had only seen for the first time when the delegation called upon him.

Apparently he then gave the Association to understand that he would give them some time to answer the points in the Memorial and he instructed his clerk to tell Independent Harris Tweed Producers Ltd. not to publish the decision which he had already given.

However, a few days later the Lord Lyon changed his mind and before the Association had time to prepare a new memorandum to deal with the points raised in the Memorial their agents were informed that the Lord Lyon saw no reason why the decision already issued should not stand and he was proceeding on that basis.

The decision, after dealing with certain heraldic matters, takes the view that so long as Scottish wool is used and the processing of Harris Tweed is

carried out either in the Outer Hebrides or on the mainland it would be right to make a grant of arms to the Petitioners in the hope that the Harris Tweed industry would be fostered thereby.

It is clear from the terms of the decision that the Lord Lyon accepted more or less all that he had been told by Independent Harris Tweed Producers Ltd. and, of course, he gave no opportunity to the Association to refute certain of the statements that were quite obviously incorrect.

After the issue of the decision there was a further article in the April 1959 edition of the R.T.S.A. Bulletin in which capital was made of the grant of arms by Lord Lyon and there was an appeal for co-operation within the industry.

After this the R.T.S.A. had dropped out of the picture presumably because the existence of Independent Harris Tweed Producers Ltd. meant that the mainland producers had their own association and no longer relied on the R.T.S.A. for publicity. Mr. Blair Macnaughton of A.&J. Macnaughton Ltd. had meanwhile been elected to the Council of the R.T.S.A.

56. On the 16th July 1959 Independent Harris Tweed Producers Ltd. applied to register two trade marks, which were duly advertised in the Trade Marks Journal No. 4238 of November 18th 1959. (The Association had suspected that this would be their next step and was watching the progress of these marks because it seemed that this might be a way of bringing the controversy into the open).

In both cases the marks consist of the shield device which was the subject of a grant of arms from Lord Lyon with the words "Independent Harris Tweed Producers Ltd." in a circle round the shield device. The first mark (No. 793404) was applied for in respect of "Harris Tweed" in Class 24 and the second (No. 793405) in respect of "Articles of clothing made of Harris Tweed" in Class 25. Both marks were stated in the Journal to be proceeding under Section 29 (1) (b) and one therefore assumes that the mainland producer members of Independent Harris Tweed Producers Ltd. will in the future be appointed registered users. The reference to Section 29 (1) (b) made it clear that there was no intention on the part of Independent Harris Tweed

Producers Ltd. to use the marks on goods of its own production.

A joint Notice of Opposition was filed to these Application as of 18th January 1960 by -

14 Hebridean producers,
Kemp & Co. (Stornoway) Ltd. who are finishers,
The Town Council of the Burgh of Stornoway,
Transport and General Workers Union,
The Harris Tweed Association,
The Shetland Woollen Industries Association and
The Donegal Handwoven Tweed Association Limited.

57. On the 21st December 1959 - shortly after the applications had been advertised in the Trade Marks Journal - a circular letter was sent to the shareholders of Grampian Holdings Ltd. announcing that on that day the entire issued share capital of MacDonald's Tweeds Ltd. had been purchased and that the latter Company in turn owned beneficially the whole of the issued share capital of Argyllshire Weavers Ltd. and MacDonald's of Oban Ltd. The consideration was stated to be £500,000, satisfied as to £355,000 in cash and as to £145,000 in shares.

Later in the circular appeared the following paragraphs confirming the report which had been received from the Association's Inspector following his visit in 1956:

"MacDonald's Tweeds Limited are manufacturers of Harris Tweed all of which is handwoven in the Outer Hebrides. It is identifiable by the Shield Mark recently granted by the Lord Lyon King of Arms to Independent Harris Tweed Producers Limited.

"Argyllshire Weavers Limited, a founder member of Independent Harris Tweed Producers Limited distributes the Harris Tweed manufactured by MacDonald's Tweeds Limited. The tweed is sold extensively throughout the United Kingdom and is also exported to Eire, Canada, France, Switzerland, Holland, Belgium, Germany, Austria, Sweden and Italy. It is also sold by MacDonalds of Oban Limited.

"There are approximately 200 persons engaged in the business, of whom about 110 are employed as weavers in the Outer Hebrides. There is also an Agent in Stornoway who distributes yarn to self-employed islanders in Lewis for weaving into Harris Tweed.

"MacDonald's Tweeds Limited started producing at the end of 1947 the business has developed rapidly over the past 12 years and continues to expand, both in the United Kingdom and in the export markets. Current turnover of MacDonald's Tweeds Limited is at a higher level than the corresponding period last year and order books are fuller than at any time since the commencement of business in 1947; subject to unforeseen circumstances therefore, profits for 1960 for the three Companies should not be less than the average of the two years ended 1st July, 1959".

Further light was thrown on the nature of the operations in Uist when the

premises, plant and machinery of the Companies were described:

- "1. Training Establishments for Weavers of Harris Tweed in the Outer Hebrides at BRAEHEAD, LOCHBOISDALE, covering a floor area of approximately 1,600 square feet. The rateable value is £32 per annum and the annual feu duty is £1.10.0d.
2. Three large Sheds at EOCHAR in the Outer Hebrides covering a floor area of approximately 4,600 square feet, where Harris Tweed is also woven and weavers are trained. The rateable value of these subjects is £140 per annum and the annual feu duty £3.
3. Factory premises (including a large Showroom) fronting on to SOROBA ROAD, OBAN, and built in 1947, erected on a site extending to approximately 3½ acres and comprising a range of one-storey buildings covering a floor area of 71,685 square feet. The assessed rental is £818 per annum and the annual feu duty is £71. 3. 7d.
4. Premises at 94/96 GEORGE STREET, OBAN, ARGYLLSHIRE, covering an area of approximately 2,200 square feet, held on a 21 year lease from 21st December, 1959 at an annual rental of £1,400 per annum.

Over a hundred hand looms for weaving Harris Tweed are owned by the Company and distributed throughout the Outer Hebrides and the Factory Premises are equipped with the necessary machinery for the spinning of yarn and finishing of tweed".

Finally, the combined profits of the Companies were set out and at the end of June in each year are given as follows:-

"1950	£1,253 Loss
	Profits before Taxation
1951	25,409
1952	14,467
1953	22,455
1954	73,811
1955	77,732
1956	54,140
1957	84,232
1958	76,359
1959	108,647
17 weeks to 28th October 1959	29,589"

One does not know what warranties were given by the Vendors of the Companies at the time of the sale, but they or their agents should have known by the 21st December 1959 that the opponents had applied to the Registrar for an extension of time in which to file Notice of Opposition.

58. After Independent Harris Tweed Producers was formed the Association became more aggressive in its advertising. The public were advised to be on their guard against imitation. (These advertisements ceased with the commencement of the High Court Proceedings).

In the first part of 1960 Independent Harris Tweed Producers ran a

modest advertising campaign. Press advertisement about that time is estimated to have cost about £5,000.

The advertisements all show the new label adopted by Independent Harris Tweed Producers Ltd. which has the trade mark in the form applied for in the centre and above it the words "Genuine Harris Tweed", at the side of it "100% Scottish Pure Wool" and at the bottom "Handwoven by Islanders in the Outer Hebrides" and thereunder "Label issued by authority of Independent Harris Tweed Producers Ltd.".

The letterpress is as aggressive as that of the Association. For instance, one reads -

"Look for this new label in the shops NOW. It is your guarantee of genuine Harris Tweed. You will find it only on authentic Harris Tweed garments. Made by Independent producers these lovely Harris Tweeds are handwoven in the Outer Hebrides".

The comment that can be made - and it is thought to be of some importance throughout this case - is that at no time do the members of Independent Harris Tweed Producers come out into the open and admit that their tweed is any different in origin from that stamped by the Association.

It is a half truth to say that the tweed is handwoven in the Outer Hebrides. Few members of the public and probably of the distributing trade have any idea as to the processes necessary for the manufacture of Harris Tweed and the question arises whether the public, at least, would buy these garments as Harris Tweed if they knew that about 60% of the cost of processing was carried out on the mainland, and only 40% on the Outer Hebrides.

It follows that while the Association's cloth - the stamping figures exceeded 6m. yards p.a. in the late fifties - is wholly produced in the Outer Hebrides and has been described as such in advertisements put out during the last quarter of a century, the mainland producers are putting their cloth out in a way that would lead the public to the belief that it was also made in the Outer Hebrides. They claim the right to do so on the ground that mainland yarn has been used for 60 years notwithstanding that at no time has any attempt been made

to present Harris Tweed to the public as a product partly made on the ^mainland.

59. Reference was made to the fact that the certification mark had been registered under the Lanham Act of 1946 in the United States and that the U.S. Controller of Patents had taken the view that this was a collective mark and that, accordingly, the word "Harris" need not be disclaimed.

It remains only to deal with the events that lead up to the disclaimer of the word "Harris" in the American registration which was advertised in the Official Gazette of the U.S. Patent Office of 22nd March, 1960.

The provision for registering collective and certification marks is contained Section 4 of the American Act of 1946 and the appropriate part of the section reads as follows :-

"Subject to the provisions relating to the registration of trade-mark, so far as they are applicable, collective and certification marks, including indications of regional origin used in commerce, shall be registrable under this Act. in the same manner and with the same effect as are trade marks, by persons and nations, states, municipalities, and the like exercising legitimate control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment".

In Section 45 "certification mark" is defined as

"a mark used upon or in connection with the products or Services or one or more persons other than the owner of the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy or other characteristic of such goods or services or that the work or labour on the goods or services was performed by members of a union or other organisation".

The term "Collective mark" was defined as

"a trade mark or service mark used by the members of a co-operative, an association or other collective group or organisation and includes marks used to indicate membership within a union, an association or other organisation".

It is not surprising that there should be some doubt as to whether the term "Harris" should or should not have been disclaimed. The view of the American attorney representing the Association (A different Attorney from that acting at the time of registration) has been that if Harris Tweed is a trade description which any party may lawfully use subject to his conforming to whatever definition may in law attach to such description, the Association should not be able to claim an exclusive right to the use of the word "Harris" by reason of the registration of the certification mark. This seemed logical.

Following the unfortunate advertisement which had been inserted by Mr. Stanley Brown in the Daily News Record the Federal Trade Commission were brought into the matter, presumably on representations made by R.T.S.A. or those firms which now belong to Independent Harris Tweed Producers Ltd.

The Association's attorney Mr. Graham, went to Washington in December 1957 and explained the position as best he could. After some delay the Commission wrote on March 3rd pointing out that it had received information from the British Board of Trade that the Association's definition had not been approved by it, the letter adding -

"It appears that ^{the} said description is limited to a particular Harris Tweed produced by members of the Harris Tweed Association".

The letter goes on to point out that only the earlier stipulations made by the Federal Trade Commission had required tweed to be made from yarn spun in the Islands: in the other stipulations it was stated that "Harris Tweed is a handwoven woollen cloth manufactured in the Outer Hebrides-Scotland". They also drew attention to the statement made in the advertisements that the Association had been formed "by special charter of the British Board of Trade".

Mr. Graham replied to this letter on March 7th and, as he pointed out in a long letter, he was to some extent handicapped by the sudden death of Mr. Brown some 2 months earlier.

There was then a delay of about 15 months before anything further happened. By this time Mr. Graham was aware that the Commission were looking into the matter.

The Correspondence between the Association's U.S. Attorney and the Federal Trade Commission was resumed in August 1959 when the latter raised the question of the amendment of the Association's certification registration No. 527391 so that it would not be open to the Association in future to use its registration in such a manner as would claim rights in the words "Harris Tweed" per se and thereby require the Customs to bar entry to goods bearing those words without the certification mark as a whole.

In the subsequent correspondence Mr. Graham endeavoured to divert the Commission from insisting on the amendment of the mark but the Commission was not to be diverted and on December 23, 1959 the Commission sent Mr. Graham a

stipulation which he required the Association to enter into as an alternative to the commencement of trade mark proceedings for the rectification or cancellation of the U.S. certification mark. The stipulation was in terms wholly unacceptable to the Association and eventually it was decided, rather than to enter into the stipulation or to fight the Commission in trade mark proceedings which would inevitably be lost, voluntarily to amend the U.S. mark by disclosing the word "Harris."

As soon as this had been done and the amendment published in the U.S.A. Independent Harris Tweed Producers Ltd. came out with a press statement which was published in a number of British newspapers implying that by entering the disclaimer the Association now recognised that the tweed marketed by members of Independent Harris Tweed Producers Ltd. could lawfully be sold as Harris Tweed. This in turn brought forth a further statement from the Association.

At about the same time as the amendment was filed, Mr. Graham wrote to the Commissioner of Customs, informing him of the amendment and making it clear that in future the Customs were not required to bar entry of Harris Tweed not bearing the Association's mark.

The official of the Federal Trade Commission was very irked that the Association had refused to enter into a stipulation and threatened judicial proceedings before the Commission.

This was staved off until Mr. Ellis, the Chairman, and Colonel Macarthur of the Association visited Washington in the Autumn of 1960 with Mr. Graham and called upon the Commission. They received a hostile reception from a Colonel Radnor who had been dealing with the matter, but there was also present a senior official, a Mr. Williams, who listened and said little.

At that time Mr. Graham had been informed that the file had been passed to the prosecuting branch and had been given to understand that at that late stage no discussions between the investigating branch of the Commission and the Association could possibly deter the prosecuting department from taking such action as was thought fit.

It was some weeks after this visit that it was learnt that in fact the file had been passed back before the visit of the Association's representatives from the prosecuting branch to the investigating branch. This rather suggests that the prosecuting branch was not too sure of its ground.

Finally towards the end of 1960 the U.S. Consul-General in Glasgow arrived unannounced in Stornoway and expressed a desire to see something of the Islands and the Harris Tweed industry. His visit happily coincided with the visit of Mr. Martin; the Secretary of the Association, and as a result he was given V.I.P. treatment by the Island producers.

Nothing further has been heard from the Commission and it is hoped that the Consul General's visit was the outcome of the Washington visit and was undertaken at the behest of the Commission; and that his report was such that the Commission had decided to take no further action, at least for the time being.

60. In conclusion, there are three aspects which have not been considered at any length in this memorandum:-

First, there is the importance from the economic and social standpoint of retaining within the Islands all the processes that enter into the production of Harris Tweed. In the last five years a survey has been carried out by a team under Mr. Moisley, a lecturer at Glasgow University and a paper which he has written stresses the extent to which the Long Island depends on the industry. The conclusion reached suggests that nearly a third of the working population relies on Harris Tweed for a livelihood.

Secondly, while some reference has been made to the trade mark opposition proceedings, none has been made to the English High Court proceedings commenced on the 6th July 1960 and of the Scottish proceedings commenced on 10th February 1961. Any account of these proceedings, as they stand today, would no sooner be written than out of date.

Lately, it may be suggested by the mainland producers that the island producers and the Association have been guilty of laches and acquiescence in not bringing proceedings in the English High Court before 1960. There is much

that can be said in answer, but as it has not yet been raised, there seems little point in discussing this matter at the present time.

10.3.61.

J.S.G.