

The present sections of the County Courts Act as to jurisdiction must be read so as to harmonize the 1st and 8th sub-sections of sec. 23. . . .

ANGLIN, J., gave reasons in writing for the same conclusion.

MAGEE, J., also concurred.

MAY 28TH, 1907.

DIVISIONAL COURT.

NATIONAL CASKET CO. v. ECKHARDT.

Trade Name—Infringement—Similarity—Distinction — Advertisements—Absence of Fraud or Deception—Passing off Goods.

Appeal by plaintiffs from judgment of MACMAHON, J., 9 O. W. R. 313, dismissing an action brought to restrain defendant from using the name "National Casket Company" to the prejudice of plaintiffs.

E. F. B. Johnston, K.C., and R. McKay, for plaintiffs.

G. H. Watson, K.C., for defendant.

The judgment of the Court (BOYD, C., ANGLIN, J., MAGEE, J.), was delivered by

BOYD, C.:—Having read all the evidence, I find a conspicuous absence of testimony to indicate that any one has been misled or confused in regard to any relation or connection between the American and the Canadian company. Theories are broached and hypothetical questions are asked as to whether the name and manner of advertising adopted by defendant would not suggest that the National Casket Co., the plaintiffs, were doing business in Ontario under the conduct of defendant as agent and manager; but no witness declares that such was the action of his mind, and many witnesses negative such result and say that it would never have occurred to them. That this last estimate is the correct one I cannot bring myself to doubt, upon consideration