

of all meaning, so that if you had a word written in a distinctive form registered as a design mark only, anybody else could come along and use the same word in ordinary block printing without infringing the design mark. I may add, Mr. Chairman and gentlemen, that Canada is the only country in the world that made that artificial distinction between word marks and design marks. In all other jurisdictions, including the United States and the United Kingdom, a registration applies to the trade mark as actually used and to all its essential features, and these composite marks were registerable in their essential particulars.

*By Mr. Macdonnell:*

Q. Why do you use the phrase: the words have to be emptied of meaning? I understand by that they had to have something more than their ordinary significance?—A. Perhaps I have not made myself clear, Mr. Macdonnell. What I am speaking of is a trade mark consisting of letters or, in part, of letters registered as a design mark, and that is registered in respect of their particular form rather than any idea suggested by the sequence of letters. The mark in the Magazine Repeating Razor case was the word "Schick"—you all know the Schick razor—the word "Schick" in a distinctive form. The question came up as to its protection as a design mark, and Chief Justice Duff pointed out, and the words he used were something as follows: "That in examining the protection to be accorded to a word written in a distinctive meaning you must look only at the design and form of arrangement and that the letters of the word had to be emptied of all meaning."

I cannot explain what he meant by that other than, that it only was the arrangement and the script or particular form of the letters which could be regarded and not the meaning of the word itself.

Q. What did the judgment turn on in that case?—A. The judgment really turned on a question of licence.

Mr. JEFFERY: I think there is one question that we might have settled, so that we will be able to evaluate what is being set. Is this legislation going to be retroactive in any way to upset any marks, etc., that are now registered or any trade marks now being processed?

The WITNESS: No, no. All marks previously registered whether under the old Trade Mark and Design Act or under the Unfair Competition Act, and in effect, are preserved in the status they have up to the time of the passing of the bill. There is no retroactivity here at all.

The CHAIRMAN: And will registration under the new Act give them additional benefits?

The WITNESS: I would not say additional benefits, Mr. Chairman. There may be some of these composite marks that people may like to re-register in one single mark rather than two as they had them before, but it is not necessary for protection.

Mr. RICHARD: Under this new Act will the old trade marks be renewable under the old provisions?

The WITNESS: Yes, they will be renewable under the old provisions, which are imported into the present bill. Mr. Stein calls my attention to that provision in the bill, which you will find in section 26 (3) of the bill.

(3) The register kept under *The Unfair Competition Act, 1932*, of the *Unfair Competition Act*, chapter 274 of the Revised Statutes of Canada, 1952, forms part of the register kept under this Act and, subject to subsection (2) of section 43, no entry made therein, if properly made according to the law in force at the time it was made, is subject to be expunged or amended only because it might not properly have been made pursuant to this Act.