

TOWING CONTRACT.

See CONTRACT.

TRADEMARK.

1. *Descriptive Letters—Registration—Secondary Meaning—Proof of Acquisition—Fraud—Deception.*]—The letters C.A.P., standing for the words "cream acid phosphates," being descriptive merely, are not the proper subject of a trademark, and registration of them as a trademark, under the Trade Mark and Design Act, will not give a right to the conclusive use of them.

Partlo v. Todd (1888), 17 S.C. R. 196, followed.

Words or letters which are primarily merely descriptive may come to have in the trade a secondary meaning signifying to persons dealing in the articles described that when branded with such words or letters the articles are of the manufacture of a particular person.

But where the plaintiffs used the letters C.A.P., standing for "cream acid phosphates," in connection with acid phosphates manufactured by them, and the defendants used the same letters, signifying "calcium acid phosphates," in connection with acid phosphates manufactured by them, and prominently stated

thereon to be manufactured by them and the evidence did not show that there was on the part of the defendants any fraud, or any intention of appropriating any part of the plaintiff's trade, or that any purchaser or person invited to purchase was deceived or misled, or that the letters have come to mean in the trade, acid phosphates of the plaintiffs manufacture:—

Held, that the plaintiffs could not complain of the use of the letters by the defendants.

Reddaway v. Banham (1896), A.C. 199, applied.

Provident Chemical Works v. Canada Chemical Manufacturing Co. (1914), 63.

N.B.—The above decision was reversed by the Court of Appeal.

2. *Infringement—Use of Corporate Name—Proof of Intent.*]—"The Boston Rubber Shoe Company" registered its name as a trade mark in Canada about a year after "The Boston Rubber Company of Montreal, Ltd.," had obtained incorporation as such. In an action brought by the former company to restrain the latter from using what was, in effect, its corporate name upon its goods (which were of the same nature as those manufactured and sold by the plaintiff company), it was *held* that