

McEwan Applications case (or perhaps one should say of the statutory rule there applied: *L.J. Weekly*, 1912, p. 142 and 28 T.L.R. 258), where marks in use for half a century were refused registration, a case which under our law would be decided in the opposite sense. But why, it may be asked, call attention to such a peculiarity, if the old French law as introduced in Canada is the same? The reason is that our law has developed and broadened and a defendant who has caused damage to a plaintiff by introducing confusion into his trade subjects himself to responsibility in damages just as he would by commission of any other tort (art. 1053, C.C.). It is upon that footing that the decision in *La Nationale v. La Societe Nationale*, cited to us from 3 Couhin, p. 493, and the citations from Pouillet and from Fuzier-Herman, Rep. "Concurrence Déloyale," No. 459, and Sirey, 91-1-165, in so far as not affected by statutory legislation are seen to be reasonable."

When it becomes necessary to consider "the essentials necessary to constitute a trade-mark," as called for in sec. 11 of the Canadian Act, many of the English cases are valuable.

TRADE NAMES.—Actions to restrain imitations of trade names used as such, and not as trade-marks on goods, differ from trade-mark cases proper. A trader has much the same right in respect of his tradename as he has to his trade-mark, or to his get-up and other distinctive badges. The representation made is, usually, that a certain firm or undertaking is a certain other firm or undertaking with a view to the one firm obtaining the custom of the other. The principle upon which the Court acts in protecting a trade name was stated by James, L.J., in *Levy v. Walker* (1879), 10 Ch. D., p. 447:

"It should never be forgotten that in those cases the sole right to restrain anybody from using any name he likes in the course of any business he chooses to carry on is a right in the nature of a trade-mark, that is to say a man has a right to say: 'You must not use a name—whether fictitious or real—you must not use a description, whether true or not, which is to represent or calculated to represent, to the world that your business is my business, and so by a fraudulent misstatement deprive me of the profits of the business which otherwise come to me.' An individual plaintiff can only proceed on the ground that, having established a business reputation under a particular name, he has a right to restrain anyone else from injuring his business by using that name."

NO RIGHT TO NAME APART FROM BUSINESS.—There can be no absolute right in a trade name apart from a trade or business. The right to the exclusive use of a name in connection with a trade or business is recognized, and an invasion of that right by another is good ground for an action for an injunction. But the name must have been actually adopted and used by the plaintiff. *Du Boulay v. Du Boulay* (1869), L.R. 2 P.C. 441; *Beasley v. Soares* (1882), 22 Ch. D. 660; and Canadian cases: *Robinson v. Bogle*, 18 O.R. 387; *Love v. Latimer*, 32 O.R. 231; *Carey v. Goss*, 11 O.R. 619.

TRADE NAME AS APPLIED TO GOODS.—Another kind of a trade name is that which is applied to the goods themselves, instances of which are to be found in the Canadian cases of *Pabst v. Ekers*, 20 Que. S.C. 20; *Boston Rubber Shoe Co. v. Boston Rubber Co.*, 7 Can. Ex. 9; and *Thompson v. McKinnon*, 21 L.C.J. 355. Dealing with this class, Lord Blackburn, in *Singer Mfg. Co. v. Loog* (1882), 8 App. Cas., said: