
REPORTS AND NOTES OF CASES.

Dominion of Canada.

EXCHEQUER COURT.

Burbidge, J.]

[Nov. 15, 1900.

BOSTON RUBBER SHOE COMPANY *v.* BOSTON RUBBER SHOE COMPANY, OF
MONTREAL.

Trade mark—Infringement—Trade name—Statement of claim—Sufficiency of—Demurrer.

In an action for infringement of a trade-mark, it is a sufficient allegation that the trade-mark used by the defendants is the registered trade-mark of the plaintiff to charge in the statement of claim that registered trade-mark of the plaintiff and the mark used by the defendants are in their essential features the same.

It is not necessary in such statement of claim to allege that the imitation by the defendants of the plaintiffs' trade-mark is a fraudulent imitation.

It is not necessary to allege that the defendants used the mark with intent to deceive and to induce a belief that the goods on which their mark was used were made by the plaintiffs.

A. McGowan, K.C., for demurrer. R. V. Sinclair, contra.

Burbidge, J.]

THE QUEEN *v.* O'BRYAN.

[Nov. 15, 1900.

Subrogation—Essential of—Volunteer—Evidence.

1. The doctrine of subrogation is part of the law of the Province of Nova Scotia.

2. Subrogation arises either upon convention or by-law, but in the Province of Nova Scotia the creditor must be a party to the convention. It is not sufficient that it be with the debtor only.

3. Subrogation by operation of law is recognized not only by the civil law, but it has been adopted and followed by Courts administering the law of England.

4. It is an incident of the doctrine of subrogation that an obligation extinguished by a payment made by a third party is treated as still subsisting for his benefit.

5. Where one is entitled to be subrogated to the rights of a judgment creditor he is to be subrogated to all and not to part only of the latter's rights in such judgment.