

**The**  
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APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

DECEMBER 11TH, 1916.

PRESTOLITE CO. v. LONDON ENGINE SUPPLIES CO.

*Sale of Goods—Gas-tanks—Out-and-out Purchase—Filling with Gas other than that Manufactured by Vendors—Unfair Competition—Passing off—Action for Injunction—Evidence—Findings of Fact of Trial Judge—Appeal.*

Appeal by the plaintiffs from the judgment of FALCONBRIDGE, C.J.K.B., 10 O.W.N. 454.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, KELLY, and MASTEN, JJ.

S. F. Washington, K.C., and J. G. Gauld, K.C., for the appellants.

G. S. Gibbons, for the defendants, respondents.

MEREDITH, C.J.C.P., in a written judgment, said that the single ground upon which the plaintiffs could succeed, if at all, in this action, upon the case made at the trial, was that the defendants had been guilty of that which may be called "unfair competition" with the plaintiffs, or had been injuring the plaintiffs in their trade by passing off upon purchasers their (the defendants') goods as if they were the goods of the plaintiffs.

One of the defendants' advertisements gave an impression of their purpose, at the least, to sail close to the wind of taking an unfair advantage of the plaintiffs' trade. But, if the defendants had been guilty, there could not have been any great difficulty in proving it, directly; and there was no direct evidence of it; all the witnesses shewed that, in one way or another, they were made aware of the fact that they were buying the acetylene gas of the defendants, not of the plaintiffs, though contained in the