

MAY 19TH, 1913

*“MY VALET” LIMITED v. WINTERS.

Trade-name—Infringement—Colourable Imitation — Intention to Deceive—Injunction.

Appeal by the defendant from the judgment of MIDDLETON, J., ante 348, 27 O.L.R. 286.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

J. H. Cooke, for the defendant.

R. McKay, K.C., for the plaintiffs.

The judgment of the Court was delivered by MACLAREN, J. A.:— . . . Evidence was given to shew that four of the plaintiffs' customers had given work to the defendant, thinking that they were dealing with the plaintiffs. The orders were all given by telephone, and it appears that 75 per cent. of the plaintiffs' orders came over the telephone. In the telephone directory "My New Valet" is above "My Valet"—a single line intervening. In two instances, the customers say that they asked if it was "My Valet" and received an affirmative reply. In a third, the customer put her name on the parcel with a memorandum that it was "to be called for by 'My Valet.'" . . . The defendant does not use the word "Valet" on his sign; nor is it in the city directory. The entry there is "Winters, Nathan, tailor, 599 Queen W."

The trial Judge found, on the evidence, that there was a deliberate attempt on the part of the defendant to trade unfairly, and that he intended to represent his business as being the plaintiffs' business.

These findings were challenged before us, and it was contended that the insertion of the word "New" in the name was quite sufficient to notify the public that it was a different business from that of the plaintiffs.

The word "Valet" being descriptive of the business, the plaintiffs could not acquire a monopoly of it or the right to its exclusive use. Having adopted it with the prefix "My" as his trade-name, and it being an assumed name, the utmost he can require is, that the defendant, in using the word "Valet," shall use it in such a way and with such other distinctive words

*To be reported in the Ontario Law Reports.