

Mr. Justice Brooks, Judge of the Superior Court for the district of St. Francis, has obtained leave of absence. The learned judge succeeded to the vacancy at Sherbrooke caused by the transfer of Judge Marcus Doherty from Sherbrooke to Montreal in 1882. Few members of the bench have been worked harder than Judge Brooks during the past twelve years, and we join sincerely in the hope that the well earned rest may be beneficial to him.

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EXCHEQUER COURT OF CANADA.

OTTAWA, February 19, 1894.

Present BURBIDGE, J.

JOHN DEKUYPER & SON v. VAN DULKEN, WIELAND & CO.

*Trade Mark—Registered and unregistered mark—Jurisdiction of Court to restrain infringement—Exactness of description of device or mark—Use of same by trade before registration—Effect of—Rectification of register.*

1. The Exchequer Court has no jurisdiction to restrain one person from selling his goods as those of another, or to give damages in such a case, or to prevent him from adopting the trade label or device of another, notwithstanding the fact that he may thereby deceive or mislead the public, unless the use of such label or device constitutes an infringement of a registered trade-mark.

2. In such a case the question is not whether there has been an infringement of a mark which the plaintiff has used in his business, but whether there has been an infringement of a mark as actually registered.

3. When any one comes to register a trade-mark as his own and to say to the rest of the world "here is something that you may not use," he ought to make clear to everyone what the thing is that may not be used.

4. In the certificate of registration the plaintiff's trade-mark was described as consisting of "the representation of an anchor, with the letters "J. D. K & Z," or the words "John DeKuyper & Son, Rotterdam, &c., as per the annexed drawings and application. In the application the trade-mark was claimed to consist