

trade-marks only come into Court in England in "passing off" and "unfair competition" actions where other facts than the character of the trade-mark influence the decision.

(2) The Canadian Act not merely makes the registration *prima facie* evidence of ownership and right to use but states (sec. 13), that after registration the proprietor "shall have the exclusive right to use the trade-mark to designate articles manufactured or sold by him."

(3) The Canadian statute provides no statutory classification. It provides a general division, however, between "general" and "specific" trade-marks. The former endure perpetually.

(4) The provisions of the Canadian statute with respect to assignments do not require the assignment to be only made in connection with the goodwill as under the English enactments.

The Province of Quebec derives considerable of its common law from France, and it is necessary to give consideration to this point as affecting cases within that province.

Cross, J., in *Lambert Pharmacal Co. v. Palmer & Sons, Ltd.*, 2 D.L.R. 358, has pointed out that Canadian trade-mark law is a development from both French and English law.

"With reference to the authorities cited to us from the law of France, it may be opportune, that, speaking for myself, a few observations be added: The law of France upon the subject of trade-marks and designs is a creation of modern legislation which was not extended to this country. As the law of France stood when it prevailed in this part of Canada, it was possible to say of it, in the words of the treatise in Dalloz, Rep.:—

Industrie et Commerce No. 252: "Mais jusqu' à cette époque n'est-a-dire la réorganisation du régime industriel les noms et les marques de fabrique restèrent, malgré leur importance, sans protection et en quelque sorte à la merci des usurpateurs."

That would indicate a statement of our law much like the English common law, under which it could be said: "A man cannot give to his own wares a name which has been adopted by a rival manufacturer, so as to make his wares pass as being manufactured by the other. But there is nothing to prevent him giving his own house the same name as his neighbour's house, though the result may be to cause inconvenience and loss to the latter": Mayne, *Damages*, 8th ed., p. 9, citing *Johnston v. Orr Ewing*, 7 App. Cas. 219; *Day v. Brownrigg*, 10 Ch. D. 294; *Keeble v. Hickeringill*, 11 East 574n., 103 E.R. 1127.

And I take it that in England to this day, a trader who is put in peril of ruin by a supplanter in the way indicated can publish his feeble protest of "no connection with the establishment of the name next door." When it is realized that this peculiarity of English common law or case law lies at the very foundation of trade-mark or trade-name law, another reason can be seen why we should hesitate to be guided by decisions given in England otherwise than as mere illustrations of the statutory construction. Civil law responsibility for wrongful interference with the plaintiff's trade is to be determined by our law and not by English law, except in so far as it depends upon statutory construction. The same peculiarity of English law above referred to would seem to constitute the ground of decision in the *Lea &*