HON. MR. JUSTICE MIDDLETON:—I think that Burgess is within his rights.

Upon the argument, it was stated that the Canadian union have registered a label under the statute, and that this alone would indicate there is such an issue to be tried as to render it unreasonable to suppose that any interim injunction will be granted. Besides this, a very serious legal question arises at the threshold of the plaintiffs' case. There is a wide divergence of view in American cases as to the status of a union label.

In many States the view entertained by Mr. Justice Thayer, in *Carson* v. *Ury,* 39 Fed. Rep. 777, is accepted. He says: "It is, no doubt, true that the union label does not answer to the definition ordinarily given of a technical trade mark, because it does not indicate with any degree of certainty by what particular person or persoms or firm the cigars to which it may be affixed were manufactured, or serve to distinguish the goods of one cigar manufacturer from the goods of another manufacturer, and because the plaintiff appears to have no vendible interest in the label, but only a right to use it on cigars of his own make so long, and only so long, as he remains a member of the union. In each of these respects the label lacks the characteristics of a valid trade mark."

There is also another difficulty. The American Trade Union does not appear to be an incorporated body, and it is hard to see how any property right in a trade label could be vested in such a loose aggregation. On the other hand, the principles upon which equitable relief is granted to prevent unfair competition may be found to reach far enough to afford the plaintiffs some redress, if the label adopted by the Canadian Union is an unfair imitation of the American label. No Canadian case has yet determined a question of this kind; and, according to established principles, a novel and difficult legal question ought not to be dealt with upon a motion for an interim injunction.

All these considerations point to the impracticability of success upon the motion, and emphasize the vexatious nature of the course adopted by the plaintiffs.

Since the argument, the learned counsel for the plaintiffs has, I think, justified the suspicion that the plaintiffs' course is oppressive, by a memorandum which he has handed in, as follows: