

4. *De Kuyper v. Van Dulken.*]—246.

See PRIOR USER(3).

5. *Trade Marks—Resemblance Between—Refusal to Register Both—Grounds of.*]—The object of section 11 of the Act respecting Trade Marks and Industrial Designs (R.S.C. ch. 63), as enacted in 54-55 Vict. ch. 35, is to prevent the registration of a trade mark bearing such a resemblance to one already registered as to mislead the public, and to render it possible that goods bearing the trade mark proposed to be registered may be sold as the goods of the owner of the registered trade mark.

2. The resemblance between the two trade marks, justifying a refusal by the Minister of Agriculture in refusing to register the second trade mark, or the Court in declining to make an order for its registration, need not be so close as would be necessary to entitle the owner of the registered trade mark to obtain an injunction against the applicant in an action of infringement.

3. It is the duty of the Minister to refuse to register a trade mark when it is not clear that deception may not result from such registration.

*Melchers and De Kuyper*, 301.

6. *Wright v. Royal Baking Powder Co.*]—334.

See ACTION(1).

7. *User Before Registration—Representations of the King and the Royal Arms—Validity—R.S.C. ch. 63, sec. 8—Declaration Signed by Agent.*]—A label, as applied to boxes containing cigars, bearing upon it "in an oval form, a vignette of King Edward VII., with a coat of arms on one side, and a marine view on the other, surmounted by the words 'Our King,' and with the words 'Edward VII.' underneath," constitutes a good trade mark in Canada, and may be infringed by the impression, upon boxes containing cigars, of a *facsimile* of the Royal Arms surmounted by the words "King Edward."

2. The English rule prohibiting the use of the Royal Arms, representations of His Majesty, or any member of the Royal family, of the Royal Crown, or of the national arms or flags of Great Britain, as the subjects of trade marks, is not in force in Canada.

3. It is not essential to the validity of a trade mark registered in Canada that the person registering the same should have used it before obtaining registration. The registration must, however, in such a case, be followed by use, if the proprietor wishes to retain his right to the trade mark. In this respect there is no difference between the law