

MIDDLETON, J.:—In the year 1896 William Fountain, a tailor, carrying on business in Toronto, conceived the idea that a business could be profitably conducted by an establishment which would undertake to look after the customers' clothing, establishing a system of collecting, cleaning, pressing, and returning garments, and of making minor repairs; in short, of performing for each customer the services which would be rendered by a gentleman's valet, save the personal attendance. This business was established, and was extensively advertised under the name of "My Valet," coupled in many instances with the words "Fountain, the Cleaner."

This business was very successful, and for a considerable time Fountain enjoyed what was practically a monopoly. His success induced rivals to establish opposition businesses; and this they undoubtedly had a right to do. In the case of some of these businesses the rivals have used the word "valet," and this I also think they have a right to do, as the word is descriptive of the kind of business which is being carried on. I do not think that Fountain could acquire a proprietary interest in this word which would entitle him to monopolize it. As said by Cozens-Hardy, M.R., in *Re Crossfield*, [1910] 1 Ch. 118, at page 141: "Wealthy traders are habitually eager to enclose a part of the great common of the English language and to exclude the general public of the present day and of the future from access to the inclosure,"—a statement even more true of the successful trader than the wealthy trader.

While this is so, it is equally well-established that a trader may not so use a word which another has attempted to appropriate, as to hold out to the public his business as being that of his rival.

[Reference to judgment of James, L.J., in *Levy v. Walker*, 10 C.B. 447; and to *Standard Paint Co. v. Trinidad Asphalt Manufacturing Co.* (1910), 220 U.S. 446. The judgment proceeds:]

In this case the facts developed at the trial, I think, would shew a deliberate attempt on the part of the defendant to trade unfairly in the sense indicated. I think he intended to represent his business as being the plaintiff's business, and to unfairly divert to his own pocket that which was lawfully the plaintiff's; and that what he did was not merely calculated to deceive, but did actually deceive, and bring about, at least in some cases, the result intended. Had he used some such name as "Winters, the Valet," his course would have been unobjectionable. I do