object is to build the *Bridge*, and make it a good and fair paying dividend for those who may embark their money in it.

T. CHILTON MEWBURN,
Secretary Q. & L. S. B. Co.

Hamilton, 14th Jan., 1873.

TRADE MARKS.

IN CHANCERY, BEFORE V. C. STRONG.—Tuckett v. Parke.—Blake, Q.C., with him Malone (Hamilton), moved for an injunction restraining the defendant from infringing the trade mark of the plaintiffs. This was the letters T. & B. (Tuckett and Billings) stamped in bronze powder upon plugs of tobacco of a particular size, called "Myrtle Navy Tobacco." The defendant's alleged imitation was the letters D. T. C. (Dominion Tobacco Company) the same in number and similar in character, stamped upon plugs of a similar size in bronze powder. The piracy was first noticed in September last from the decrease in demand. The retail dealers who purchased by the box or tin were not, of course, deceived; the complaint was that the ultimate consumers who purchased by the plug were deceived by the similarity of the stamp and the shape of the plug. This was at the time of the manufacture a plug of an uusual size in Ontario. There were several different sizes of navy tobacco, and the plaintiffs had adopted this unusual size to obtain a reputation, and called it "Myrtle Navy Tobacco;" when it had obtained a certain degree of reputation, they added a stamp. The defendants, when this size had become particularly saleable, with a view to pass off their tobacco as "Myrtle Navy," began to manufacture tobacco of this particular size, and stamp it in a similar manner; and it was a notable circumstnnce that the defendant Lewis, who was the partner who desired this description of tobacco, did not deny by his oath what the plaintiffs charged to be the defendant's design, and his partner could not swear positively. The defendants appeared to have made at this time 1,500 caddies of different sorts and sizes of tobacco, but they only selected for stamping that tobacco which was the same size as the "Myrtle Navy," which was a suspicious circumstance; and the defendant's words on cross-examination were that they made it "as like the 'Myrtle Navy' as they could." The D. T. C. tobacco also was shewn to be lighter in weight and inferior in quality, enabling the retailer to sell it at a lower price per plug, or, if at the same price, to give less value for the money, thus subjecting the plaintiff to a double liability to be damnified by the inducements thus held out for the substitution of the defendant's tobacco for theirs. The evidence afforded two instances of persons who had been deceived, so that it was idle for witnesses to aver that no one could be deceived. No plugs had been stamped in Ontario before the plaintiff's began the practice, although cigars had previously been similarly stamped as in the case of *Davis* v. *Reid*, 17 Gr. 69. There it was shewn that stamping had been practiced before the plaintiffs, and the present case was thus a stronger case. In *Davis* v. *Reid* it was said by the Vice-Chancellor that it was immaterial whether the trade mark was copied or not if it was calculated to mislead purchasers. He rested his case if necessary also upon 31 Vict., c. 55, but mainly upon the grounds that to a casual observer there was the same sort of tobacco in size, shape, stamp, in letters and material, and the tendency of the bronze lettering to rub off increased the resemblance, and caused a purchaser to be misled, besides on account of the inferiority of the defendant's tobacco, the plaintiff's chance of reaping the benefit of his patent was less, the character of the tobacco was damaged, and they were entitled to an injunction. Moss, Q. C., contra, cited Blackwell v. Crab, 36 L. J. N. S. 504, where in two labels the same words were equally conspicuous, but the name of the seller was different. In Davis *v.* Reid too, he said that the resemblance consisted in an ellipse round the name and a line under it, and not as regards the letters at all. The plaintiffs under cross-examination say that the stamp comes off after a short time, and no matter what letters were stamped they could not be distinguished. They did not contend that the letters, if properly stamped, would be undistinguishable. They sought to make a virtue of having chosen such bad material that it leaves a blurred mark which is no trade mark at all. It was their duty to adopt a trade mark which would preserve is individuality. There was no dispute as to their right to call their tobacco "Myrtle Navy" as the defendant called theirs "D.T.C. Threes," and in their advertisement the plaintiff warned the public to look to the stamp and if they did this they would find different letters. The defendants gave their reasons for stamping this particular tobacco, viz., tha it was their *best* and it would enhance the reputation of their tobacco. He disputed that any persons had been deceived. Of the two instances adduced, each asked for "Myrtle Navy," one received the tobacco in a piece of paper and the other never looked at it. They each had trusted Schroeder who sold it to them and were deceived by him and not by the trade-mark. No case went further than to say that if a purchaser looking at the letters is deceived this is an infringement of trade-mark, but no blame can be imputed for putting on a trade-mark which at the time is distinct from another. The defendants thought that tabacco of that size was going to be saleable, and therefore made some, but stamped it only to gain a reputation for themselves, and they stamped it with bronze, because that did not injure the tobacco. The plaintiff did not claim any special property in bronze, but only required a different mark to be used, and this the defendant had done by using different letters. The whole qnestion must be whether they had a right to stamp D. T. C., on tobacco at the time they did, and he thought they had, though they might not stamp T. & B. without infringement. He also cited Moet v. Couston, 33 Beav. 578, and Colliday v. Baird, 7 U. C. L. J. 132, and called the attention of the Court to the delay in moving when the case might have been disposed of during the autumn sittings. Blake, Q. C., replied that the two stamps were sufficiently similar in general appearance to deceive general purchasers and cause loss, and that the defendants ought to have used a mark which would not be confounded with the plaintiff's, as they were the first to use one. The Vice-Chancellor also thought they should have done this, but reserved judgement to consider the question of delay, as well as other points.