

parties, and further correspondence, during which the defendants asked the plaintiffs for delay. On the 5th October, 1900, the defendants' solicitors wrote that their clients declined to abandon the use of the letters "C. A. P.," and claimed that they had a right to use them, notwithstanding the plaintiffs' registration of their mark; and on the 25th October, 1900, this action commenced. The plaintiffs seem to have actively asserted their rights from the time they became aware that they were being infringed. It could not be pretended that there was such delay or acquiescence as to deprive the plaintiffs of their rights. In any case, it could only bear on the question of the nature and extent of the relief to be given. But I think there is nothing in this case to deprive the plaintiffs of their right to the usual judgment for an injunction. Ordinarily they would also be entitled to an inquiry as to damages or profits, at their election. But, inasmuch as it does appear from the evidence that no purchaser has been misled into buying the defendants' product instead of the plaintiffs', I think we may adopt the course taken by Romer, J., in *Hodgson v. Kynoch*, 15 R. P. C. 465, and restrict the plaintiffs to an inquiry as to damages, if they insist upon more than nominal damages, reserving the costs of the inquiry.

The appeal should be allowed with costs.

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SEPTEMBER 19TH, 1902.

C. A.

STEVENS v. DALY.

*Chattel Mortgage—Possession of Goods till Default—Absence of Redemption Clause—Seizure without Default—Collateral Security—Covenant to Keep up Stock in Trade to Value of Amount Secured—Arrears—Unpaid Interest—Issue of Writ of Summons—Condition against Selling—Damages.*

Appeal by defendant from judgment of FALCONBRIDGE, C.J., in favour of plaintiff for \$200 damages and costs in an action for maliciously and without reasonable and probable cause issuing a writ of summons against plaintiff, and falsely and maliciously and without reasonable and probable cause seizing and taking the plaintiff's goods under a chattel mortgage. The chattel mortgage was collateral to a land mortgage made by plaintiff to defendant, and the writ was indorsed with a claim to recover the moneys secured by the land mortgage.