

## DECISIONS IN COMMERCIAL LAW.

**ALEXANDER MCKAY V. THE TOWN OF HINCHINBROOKE.**—Held by the Supreme Court of Canada, that a judgment in an action by a ratepayer contesting the validity of an homologated valuation roll is not a judgment appealable to the Supreme Court of Canada under the Supreme and Exchequer Courts Act, and does not relate to the future rights within the meaning of sub-section (b), of section 29, of the Supreme and Exchequer Courts Act. Held, also, that as the valuation roll sought to be set aside in this case had been duly homologated and not appealed against within the delay provided in art. 1061 (M. C.), the only matter in dispute between the parties was a mere question of costs, and therefore the court would not entertain the appeal.

**ALEXANDER G. MCPHEE AND HENRY F. DONALDSON V. PATRICK DOYLE.**—A specific lot of land was conveyed by deed, and also "a strip of land twenty-five links wide, running from the eastern side of the aforesaid lot along the northern side of the railway station about twelve rods, unto the western end of the railway station ground, the said lot and strip together containing one acre, more or less." Held, by the Supreme Court of Canada, reversing the decision of the Supreme Court of Nova Scotia, that the strip conveyed was not limited to twelve rods length, but extended to the western end of the station, which was more than twelve rods from the starting point.

**FERRIER V. TREPANNIER.**—The owner of the property abutting on a highway is under a positive duty to keep it from being a cause of danger to the public by reason of any defect, either in structure, repair, or use and management, which reasonable care can guard against.

**Dame A. T. sued J. F. and M. W. F. personally,** as well as in their quality of testamentary executors and trustees of the will of the late J. F., claiming \$4,000 damages for the death of her husband, who was killed by a window falling on him from the third storey of a building which formed part of the general estate of the late J. F.; but which had been specifically bequeathed to one G. F. and his children, for whom the said J. F. and M. W. F. were also trustees. The judgments of the courts below held the appellants liable in their capacity of executors of the general estate, and trustees under the will. Held, by the Supreme Court of Canada, that the appellants were responsible for the damages resulting from their negligence in not keeping the building in repair, as well personally, as in their quality of trustees (*d'heritiers fiduciaires*) for the benefit of G. F.'s children; but were not liable as executors for the general estate.

**JOHN DEKUYPER & SON V. VANDULKEN, WEILAND & CO.**—In the certificate of registration, the plaintiffs' trade mark was described as consisting of "The representation of an anchor with the letters J. D. K. & Z.," or the words "John DeKuyper & Son, Rotterdam & Co., as per the annexed drawings and application." In the application, the trade mark was claimed to consist of a device or representation of an anchor inclined from right to left in combination with the letters "J. D. K. & Z." or the words "John DeKuyper & Co., Rotterdam," which it was stated might be branded or stamped upon barrels, kegs, cases, boxes, capsules, casks, labels, and other packages containing Geneva sold by plaintiff. It was also stated in the application that on bottles was to be affixed a printed label, a copy or fac-simile of which was attached to the application, but

there was no express claim of the label itself as a trade-mark. The label was white, and in the shape of a heart with an ornamental border of the same shape, and on the label was printed the device or representation of the anchor with the letters "J. D. K. & Z.," and the words "John DeKuyper & Son, Rotterdam," and also the words "Genuine Hollands Geneva," which it was admitted were common to the trade. The defendants' trade mark was, in the certificate of registration, described as consisting of an eagle having at the feet "V.D.W. & Co.," above the eagle being written the words "Finest Hollands Geneva"; on each side are two faces of a medal, underneath on a scroll the name of the firm, "Van Dulken, Weiland & Co." and the word "Schiedam," and lastly at the bottom the two faces of a third medal on a label in the shape of a heart (*le tout sur une etiquette en forme de coeur*). The color of the label was white. Held, by the Supreme Court of Canada, affirming the judgment of the Exchequer Court, that the label did not form an essential part of the plaintiffs' trade mark as registered, but that, in view of the plaintiffs' prior use of the white heart-shaped label in Canada, the defendants had no exclusive right to the use of the said label, and that the entry of registration of their trade mark should be so rectified as to make it clear that the heart-shaped label formed no part of such trade mark. *Taschereau and Gwynne, J. J.*, dissent on the ground that the white heart-shaped label with the scroll and its constituents was the trade mark which was protected by registration and that the defendants' trade mark was an infringement of such trade mark.

**WILLIAM ANGUS AND FRANK B. HOWARD V. UNION GAS AND OIL STOVE CO.**—The chief object of an agreement between A. and B. was

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