

court which held the Royal Insurance Company liable and considered that under the circumstances B could not recover against either company.

Appeal allowed with costs.

*J. S. Tupper, K.C., Haggart, K.C., Munson, K.C., Lewis and Phippen*, for various parties.

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EXCHEQUER COURT OF CANADA.

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Burbidge, J.] *GORHAM MANUFACTURING CO. v. ELLIS & CO.* [Mar. 7.

*Trade mark—Infringement—Sterling silver "hall mark"—Right to register goods bearing mark on Canadian market.*

If by the laws of any country the makers of certain goods are required to put thereon certain prescribed marks to denote the standard or character of such goods, and goods bearing the prescribed marks are exported to Canada and put upon the market here, it is not possible thereafter, and while such goods are to be found in the Canadian market, for any one to acquire in Canada a right to the exclusive use of such prescribed marks to be applied to the same class of goods, or to the exclusive use of any mark so closely resembling the prescribed marks as to be calculated to deceive or mislead the public.

*Quære* : Whether any one would, in such a case, be precluded from acquiring a right in Canada to the exclusive use of such a trade mark where there was no importation into Canada of goods bearing the prescribed foreign marks.

The plaintiffs brought an action for the infringement of their registered specific trade mark to be applied to goods manufactured by them from sterling silver which it was thought so resembled the Birmingham 'Hall-mark or a hall-mark, as to be calculated to deceive or mislead the public, and it appeared that during the time that the plaintiff's goods, bearing such mark, were upon the Canadian market, goods bearing the Birmingham Hall-mark, were also upon the market here.

*Held*, that the plaintiff could not, under the circumstances, acquire the exclusive right to the use as a trade mark of the mark that he had been so using.

*Aylestworth, K.C.*, for plaintiffs. *Blackstock, K.C.*, for defendants.