

Lord Cranworth in *Leather Cloth Co. v. American Leather Cloth Co.*, 11 H.L.C. 523, 11 E.R. 1435, 35 L.J., Ch. 61, gives the following definition:—

"A trade-mark, properly so-called, may be described as a particular mark or symbol, used by a person for the purpose of denoting that the article to which it is affixed is sold or manufactured by him or by his authority or that he carries on business at a particular place."

Clifford, J., in *McLean v. Fleming*, 69 U.S. 245, 254, said: "A trade-mark may consist of a name, symbol, letter, form or device, if adapted and used by a manufacturer or merchant in order to designate the goods he manufactures or sells, to distinguish the same from those manufactured or sold by another, to the end that the goods may be known in the market as his and to enable him to secure such profits as result from his reputation for skill, industry, and fidelity."

ENGLISH ACT OF 1905.—Sec. 9 of the present English Act. that of 1905, reads in part:—

9. A registrable trade-mark must contain or consist of at least one of the following essential particulars:—

- (1) The name of a company, individual or firm represented in a special or particular manner;
- (2) The signature of the applicant for registration or some predecessor in business;
- (3) An invented word or invented words;
- (4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification, a geographical name or a surname;
- (5) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the description in the above paragraphs 1, 2, 3. and 4 shall not, except by order of the Board of Trade, or the Court, be deemed a distinctive mark.

DISTINCTIONS BETWEEN ENGLISH AND CANADIAN ACTS.—It is clear that the above definition imposes limitations not in the Canadian statute. In the Supreme Court in *New York Herald v. Ottawa Citizen* (1908), 41 Can. S.C.R. 229, affirming 12 Can. Ex. 229, Idington, J., said: "Our statutes and the English Acts are so different that, except for the fundamental purpose of determining whether any device used, may in its manner of use, be or not be a subject of such property as exists in law in trade-mark, the English cases are not very helpful."

Distinctions between the Canadian and English statutes have been pointed out in *Smith v. Fair*, 14 O.R. 729; *Provident Chemical Works v. Canadian Chemical Co.*, 4 O.L.R., at p. 549; *Fruitatives v. La Compagnie Pharmaceutique de La Croix Rouge* (1912), 8 D.L.R. 917, 14 Can. Ex. 30.

The more important distinctions are:—

- (1) The Canadian Act makes all marks, names, labels, brands, packages, or other business devices "which contain the essentials necessary to constitute a trade-mark" registrable. The English Registration Acts define what trade-marks are registrable. Most of the English decisions are concerned with the interpretation of the definition of the Act and not with the broad question of what constitutes the essentials of a trade-mark. Unregistered