

RECENT ENGLISH DECISIONS—THOMPSON V. THE OTTAWA TEMPERANCE COFFEE HOUSE CO.

soap, pickles, hats, etc., could not impede the acquisition of an exclusive right to it as a trade mark for cigarettes, and that the respondents should be restrained from using for cigarettes a copy of the mark with colourable variations, such copy being likely, even if not intended, to deceive purchasers into the belief that such cigarettes were manufactured by the appellants' firm.

PRACTICE—CRIMINAL PROCEEDINGS—CONVICTION SET ASIDE BY PRIVY COUNCIL—ORDER STRIKING OFF ROLLS REVERSED.

In *re Dillet*, 12 App. Cas. 459, is the concluding case in the appeal reports, and is somewhat remarkable as being an appeal to the Judicial Committee in a criminal case from the Supreme Court of Honduras, brought by special leave of the Privy Council—happily for British justice—on grounds that are not often assigned as reasons of appeal. The appellant was a solicitor, and, it appeared, had incurred the displeasure of the Chief Justice of Honduras, who directed him to be indicted for perjury, and on the trial of the case secured his conviction by directions to the jury, which were, as the Privy Council found, improper and grievously unjust to the appellant; and thereafter, as a consequence of his conviction, made an order striking him off the rolls. The appeal was brought both from the conviction and the consequent order striking him off the rolls, and both the conviction and the order were reversed.

REPORTS.

ONTARIO:

DIVISION COURT.

GEORGE F. THOMPSON V. THE OTTAWA TEMPERANCE COFFEE HOUSE COMPANY (LIMITED).

Creditor—Deed of composition—Dividend sheet—Liability.

The plaintiff, Thompson, a coal merchant, sued the company for \$95, the value of coal supplied.

The defendants acknowledged the debt, but pleaded that the plaintiff had bound himself to take payment therefor in small monthly instalments.

It was proved at the hearing, that in March, 1887, the coffee house company, finding that they owed about \$2,000, authorized their president to make the best terms possible with the creditors. As a result, creditors to the amount of nearly \$1,800, signed an agreement in the nature of a deed of composition. By the terms of this deed the creditors promised not to sue or molest the company, provided, and so long as a monthly dividend was regularly paid them. A dividend sheet was prepared by the treasurer in accordance with the terms of the agreement. The plaintiff creditor, Thompson, refused to sign the agreement of composition; but signed three monthly dividend sheets and received the dividends in cash. The plaintiff then brought suit to recover the debt less the amount of cash received from the treasurer of the company as dividend.

Dr. R. J. Wicksteed, for the company, contended that although the plaintiff had in words refused to sign the composition agreement, he had, in fact and in deed, adopted it by signing the dividend sheets. The composition deed, and its schedules—the dividend sheets—could not be separated; although there was no direct reference in either to the other. The dividend sheet was an accessory to the agreement. *Accessorium sequitur naturam rei cui accedit*. (Abbott's Law Dictionary, Verbo Accessory). The plaintiff knew of the signing of the agreement by a large majority in value of the creditors. He deliberately signed the dividend sheets prepared in accordance with its terms. There was no other agreement between the company and its creditors. All this the plaintiff had admitted. Signing the dividend sheet—an inseparable accessory to the deed of composition—was a more important and binding act than was the signing of the deed.

Following the dicta of Judges Ashurst and Buller in *Heathcote v. Crookshanks* (2 East), this agreement of composition between the company and its creditors is not binding in law without the acceptance of the less sum stipulated for. The creditors are always entitled to their whole demand until the agreement has been followed up by actual acceptance. The agreement was a *nudum pactum* unless they afterwards accepted the certain proportion. *E converso*, the creditor accepting the proportion—accepting the advantage of the dividend, should bear the burden or restraint imposed by the agreement. (*Qui sentit commodum debet sentire et onus*).

Held, by W. A. Ross, J., that a connection be-