

and after a careful inspection and examination of the two boxes, he had come to the conclusion that it was unlikely that an ordinary customer would be so deceived by any similarity as to be misled into purchasing the goods of the defendants, thinking he was purchasing those of the plaintiffs. The matter was left in too much doubt to decide otherwise.

There was some ground for suspicion that the designer of the defendants' label had copied the plaintiffs' label.

The plaintiffs had not made out a case entitling them to succeed; but they should not be ordered to pay costs.

Action dismissed without costs.

MIDDLETON, J.

APRIL 27TH, 1918.

*GORDON v. FRASER.

Mortgage—Claim of Mortgagee to Fixtures—Attornment Clause—Creation of Relationship of Landlord and Tenant—Right to Remove Tenant's Fixtures—Right of Mortgagee to Fixtures—Intention—Removal of Fixtures—Injunction—Damages.

Motion by the plaintiff for an interim injunction, turned by consent into a motion for judgment.

The motion was heard in the Weekly Court, Toronto.

Peter White, K.C., for the plaintiff.

J. H. Fraser, for the defendant.

MIDDLETON, J., in a written judgment, said that the plaintiff was a mortgagee of certain lands and premises, and sought to restrain the removal of certain articles which he contended were fixtures and to compel the restoration of certain other articles, also said to be fixtures, or damages.

One Thornton, the owner of the premises, on the 1st December, 1912, mortgaged them to the plaintiff to secure an advance of \$5,000. Thornton sold the land to one Williams, and took from him a mortgage to secure part of the purchase-money. This mortgage was subject to the plaintiff's prior charge. Thornton and his brother, who carried on business in partnership, sold their stock of merchandise, fixtures, and chattels to Williams, and executed a bill of sale, dated the 16th December, 1916. On the