

of the Imp. Act 46 & 47 Vict. ch. 57, as amended by 51 & 52 Vict. ch. 50, are not to be too readily accepted as authorities. I think it is shewn that the letters in question were applied by the plaintiffs to a special kind of acid phosphate produced by them as early as the year 1884 or 1885; that they have ever since been used by the plaintiffs in connection with the same kind of acid phosphate; that acid phosphate has been ordered of and supplied by them under the designation "C.A.P.," and has become known by reference to these letters as the plaintiffs' product, and the letters "C.A.P." have become identified with the plaintiffs' acid phosphate. As early as 1886 they were deemed entitled to be registered as a trade mark in the United States; and since 1890 or 1891, at least, the plaintiffs' acid phosphate has been ordered and sold extensively in Canada by reference to these letters; and the plaintiffs' product has been distinguished from others by reference to these letters among traders and others dealing in acid phosphate as an ingredient for use in making baking powder. . . .

In my opinion, therefore, the plaintiffs had a good trade mark which they validly registered on the 24th July, 1900.

The defendants have used, and are using, the letters "C. A. P." in connection with the sale of acid phosphate made by them. Before the year 1897 they had made and sold acid phosphate, but had designated it acid phosphate of calcium or calcium acid phosphate. But in 1897 they began to use the letters "C. A. P.," and to connect them in such a way in the sale of acid phosphate as to be, in fact, a copy of the plaintiffs' trade mark. . . . The defendants deny intention to copy or imitate the plaintiffs' mark, and argue that no person has been deceived. But where the plaintiffs shew an actual copying of their registered trade mark, they are not required to go further. The act gives them the exclusive right to use the trade mark to designate the article manufactured or sold by them; and the defendants cannot, either knowingly or innocently, infringe upon that right. Under the English Act the same rule prevails: *Edwards v. Dennis*, 30 Ch. D. at p. 171; *Lambert v. Goodbody*, 18 Times L. R. 394.

It was objected that the plaintiffs were guilty of delay, or that they acquiesced in the defendants' use of the letters. But it is shewn that they only became aware of the defendants' user of them in the early part of 1900, when they immediately wrote protesting and requesting a discontinuance. This was followed by interviews between the solicitors and