

L. C.

M'ANDREW v. BASSET.

Trade mark—Name of place.

Though no exclusive right of property can be acquired in the public and well known name of a geographical district, such a right may be acquired in the application of such a name to a particular article of manufacture, if the article has acquired a reputation in the market under such name as a trade mark.

REVIEWS.

COMMENTARIES ON THE LAW OF ENGLAND APPLICABLE TO REAL PROPERTY, (by Sir William Blackstone, Knight), ADAPTED TO THE PRESENT STATE OF THE LAW IN UPPER CANADA, by Alexander Leith of Osgoode Hall, barrister-at-law, Toronto. W. C. Chewett & Co., 17 and 19 King street east, Toronto. Price \$7.

Mr. Leith, in opening his preface, well remarks, that the same considerations which induced Mr. Stephen some years ago to adapt the well known commentaries of Blackstone to the then existing state of the law of England apply with much greater force in the case of their adaptation to the existing law of Upper Canada. Much of Blackstone is obsolete but much more is law at the present day as it was when written. Mr. Stephen and Mr. Warren, in England, have both endeavored to modernize Blackstone. Mr. Leith has thoroughly adapted the first volume of the work of the great commentator, or that which treats of real property, to the law of Upper Canada. His task was no ordinary one. Since 1792 the laws of England and of Upper Canada have been, to a certain extent, diverging. A thorough knowledge of the law of England as it was in 1792 was necessary to a correct understanding of the law of Upper Canada as it now exists. The *lex non scripta* of both countries is much the same; but the *lex scripta* of the one now widely differs from the *lex scripta* of the other, especially in matters relating to real property.

We know of no man at the bar better fitted than Mr. Leith to point out the differences between the two in such a manner as to instruct the law student and guide the professional man in active practice. He has made the law of real property his especial study. Had he written an original treatise on the real property law of Upper Canada we think he would not have had so much trouble as he appears to have had in the arrangement of the work before us. It is difficult to dovetail ones thoughts into the work of another. Far easier would it be to map out for oneself a plan and to fill it in with freedom of expression unrestrained by the surrounding ideas of another author. But as Blackstone is still without a rival as a popular writer upon the laws of England we can well understand Mr. Leith's desire to be in such good company. The result, so far as the first volume is concerned, is a Canadian Blackstone, equal to the original as touching its style, and more reliable than the original as touching the present state of the law.

This was accomplished by the exclusion from the original text of all that is wholly unapplicable here, by the amendment of all that is altered, and by the insertion of all that was necessary to be added. The latter feature of the work is of greater extent than we anticipated. The chapter on the English laws in force here, the authority for their application, and for Provincial legislation is entirely original. It is a most instructive essay, and as reliable as it is instructive. The writer reviews the Treaty of Paris, the proclamation introducing English law, the Imperial Statute, 14 George III. cap. 83, and other statutes affecting the early government of the Provinces. So his chapter on descent since the abolition of primogeniture in Upper Canada is most instructive. It was written without much aid. The statute has been in force a very short time, is essentially different to the law of descent in England, and has received as yet little attention from the

Courts of Upper Canada. Mr. Leith, however, has not failed to draw light from the law of descent in the State of New York. His exposition of the law is, under the circumstance, not only useful but invaluable. So his chapters on prescription under Con. Stat. of Canada, cap. 88, and on entails under Con. Stat. cap. 83. But, perhaps, the most important chapter in his work is that of title under execution. The writ of *fiery facias* against lands has with us a very wide operation. It is a writ, so far as lands are concerned, wholly unknown in England. It is traceable to the 5 Geo. II. cap. 7. The writer points out some of the difficulties in applying that statute to the case of the sale of a testator's or intestate's lands. He notices the well known decision of *Gardiner v. Gardiner*, and refers to it in connection with the recent Provincial Statute, 27 Vic. cap. 15. He then proceeds to consider what interest in lands are affected by a writ of *fiery facias* against lands, and shews what are and what are not saleable under such a writ. He then adverts to the provisions of the Con. Stat. U. C., cap. 87, enabling a mortgagee to purchase the equity of redemption in the mortgaged lands without merging the mortgage debt. The chapter displays much thought, much caution and much learning.

The work contains an Appendix of the leading real property statutes affecting lands in Upper Canada, and concludes with a carefully compiled and most complete index. Indeed the volume as a whole does much credit to its author and speaks well for the progress of the profession in this Province. Canadian legal works are now to be counted in tens if not in hundreds, and this in a colony so young, with a population so small, indicates not merely the respectability and number but the enterprize of the profession. Few, if any, authors of legal works in Upper Canada have made much pecuniarily by the labors of authorship. But we hope the day is now come when such authors will find a prompt and sufficient support from those who either stand in need of or avail themselves of their services.

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TO CORRESPONDENTS.

"A STUDENT," under General Correspondence, p. 167.