

mark, the court will require proof of actual deception; but, as the learned judge put it, the point against the defendants was that they were alleged to have taken that part of the plaintiffs' mark which had given a name to the plaintiffs' goods. No objection to the plaintiffs' claim by reason of the refusal to permit the registration of his mark appears to have been insisted upon. By the Trade-marks Registration Act 1876 (39 & 40 Vict. c. 33), the right of traders to take proceedings to protect their trade-marks which had been in use, as the plaintiffs' had, previously to the passing of the Act of 1875, is left as if the Trade-marks Registration Act had not been passed.

### NOTES OF CASES.

#### SUPERIOR COURT.

MONTREAL, December 30, 1878.

SMART V. WILSON et al.

*Sale of Land for taxes—Proprietor described as "Inconnu" where proprietorship was uncertain—Proprietor reinstated.*

JOHNSON, J. The plaintiff says he has been dispossessed of his property by the defendants under colour of law, and he wants to get it back. It appears that the county municipality and the village municipality, defendants, were parties to certain proceedings, resulting in a form of sale, or what was intended to be so, to the other defendant, Wilson (who makes default), of part of two lots of land belonging to the plaintiff, on the pretext that municipal taxes were due upon them, and that the owner was unknown. The corporation of the village (Hochelaga) pleads 1st, by denying everything, 2nd, by denying specially that the plaintiff is proprietor, and setting up a by-law of the 9th of May, 1864, and then alleging an assessment made on the plaintiff in 1865, on eight lots, and one made on his son (John Smart), on some other lots, and that when payment was asked of the one, he shifted the debt on the other. Then, the making of a new roll in which the plaintiff's lots were put as belonging to an *inconnu*, the amount due being \$21, and that, therefore, under the 19th Section of the Act, the Secretary and Treasurer made a

list of the lots in arrears and sent it to the County Treasurer, who sold them conformably to Section 71. They then say that the plaintiff was present at the sale, and could have opposed it or set it aside within the two years; and that the municipality acted in perfect conformity with the law. The County Corporation pleaded that the plaintiff had already brought his action against them, which had been dismissed; and consequently they pleaded that everything had been done according to law.

The plaintiff has gone very fully into his case, and supported every part of it by precise evidence. The defendants have, neither of them, adduced any evidence beyond formal extracts of their official proceedings, and have not even cross-examined the plaintiff's witnesses. All the essential allegations in the declaration, therefore, are proved; and the question is merely whether the plaintiff's land being entered in the roll as belonging to an *inconnu* or absentee, while the proprietor is well known, and living as the plaintiff did here for forty years on the other side of the Papi-neau road just opposite to these lots, can authorize a sale of it in this manner so as to be effectual against his right of property. I cannot shut out the impression that these municipal bodies considered this a short and clever way of deciding who was to pay the taxes. They were uncertain whether it was the father or the son; so, to cut the matter short, they said it was neither, but a total stranger. This was not the meaning of their by-law, which evidently contemplated proceedings against persons who could not be found. Here it was not the difficulty of finding the owner, but the difficulty of selecting between two owners, both of them present, and which they might have done at any time. It was merely the *embarras du choix*. The plaintiff's pretensions have been decided in his favour in numerous and well-known reported cases that were cited, and not answered, because they could not be answered. Then the idea that the plaintiff could lose his right of property from the fact of his presence at the sale is quite untenable. If any one should assume without right to sell my estate, it would surely not validate his act or give a title to another because I stood by and treated him as a lunatic, and his proceedings with