

(4) In the certificate of registration, the plaintiff's trade mark was described as consisting of "the representation of an anchor, with the letters 'J.D.K. & Z.,' or the words 'John De Kuyper & Son, Rotterdam,' etc., as per the annexed drawings and application." In the application the trade mark was claimed to consist of a device or representation of an anchor inclined from right to left in combination with the letters "J.D.K. & Z.," or the words "John De Kuyper & Son, Rotterdam," which, it was stated, might be branded or stamped upon barrels, kegs, cases, boxes, capsules, casks, labels, and other packages containing Geneva sold by plaintiffs. It was also stated in the application that on bottles was to be affixed a printed label, a copy or *facsimile* of which was attached to the application, but there was no express claim of the label itself as a trade mark. This label was white, and in the shape of a heart, with an ornamental border of the same shape, and on the label was printed the device or representation of the anchor, with the letters "J.D.K. & Z.," and the words "John De Kuyper & Son, Rotterdam," and also the words "Genuine Hollands Geneva," which, it was admitted, were common to the trade. The plaintiffs had, for a number of years prior to registering their trade mark, used this white heart-shaped label on bottles containing Geneva sold by them in Canada, and they claimed that by such use and registration they had acquired the exclusive right to use the same.

*Held*, that the shape of the label did not form an essential feature of the trade mark as registered.

(5) The defendants' trade mark was, in the certificate of registration, described as consisting of an eagle having at the feet V.D.W. & Co., above the eagle being written the words "Finest Hollands Geneva"; on each side are the two faces of the medal, underneath on a scroll the name of the firm "Van Dulkan, Wieland," etc., and the word "Schiedam," and, lastly, at the bottom the two faces of a third medal in the shape of a heart ("*Le tout sur une étiquette en forme de cœur*"). The colour of the label was white.

*Held*, that in view of the plaintiffs' prior use of the white heart-shaped label in Canada, and the allegation by the defendants, in their pleadings, that the use of a heart-shaped label was common to the trade prior to the plaintiffs' registration of their trade mark, the defendants had no exclusive right to the use of the said label, and that the entry of registration of their trade mark should be so rectified as to make it clear that the heart-shaped label forms no part of such trade mark.

*H. Abbott, Q.C., and Campbell* for plaintiffs.

*A. Ferguson, Q.C., and Duhamel, Q.C.,* for defendants.

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SUPREME COURT OF JUDICATURE FOR ONTARIO.

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COURT OF APPEAL.

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BRYCE v. LOUTIT ET AL.

[Feb. 28.]

*Nuisance—Water—Municipal corporations.*

One who dams up surface water upon his own land is responsible for damages caused by the breaking of the dam and the consequent escape of this