

Sup. Ct.]

NOTES OF CANADIAN CASES.

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illegal, they did, in fact, impede, prevent and interfere with the exercise of the franchise of certain voters by getting their ballots marked, rendered identifiable, and consequently void, whereby the franchise of these voters was unjustifiably interfered with.

At a previous election the respondent had been defeated by a majority of three votes, and the election having been contested was set aside, and certain voters were reported by the judge as having been guilty of corrupt practices, but had not been found guilty of such corrupt practices under sec. 104 of the Dominion Elections Act, 1874.

At a public meeting before the election, A. C. C., the respondent's agent, to intimidate these persons and prevent them from voting, in a speech made by him, threatened them with punishment if they voted; and subsequently printed notices to the same effect were sent to these voters.

On the polling day D. P., who had been appointed deputy-returning officer on the distinct understanding with, and promise made to, the returning officer that he would not mark the ballots of these voters, consulted with A. C. C., and on his advice, and in collusion with him, marked the ballots of certain of these voters.

Held, That the election was void by reason of the attempted intimidation practised by A. C. C., the respondent's agent, and by reason also of the conspiracy between the said agent and the deputy returning officer to interfere with the free exercise of the franchise of voters, violations of sec. 95 of the Dominion Elections Act, 1874, which are corrupt practices under section 98 of the said Act.

Appeal allowed with costs.

Geoffrion, Q.C., and *Monk*, for appellant.

Ouimet, Q.C., and *Cornellier*, for respondent.

MORSE V. MARTIN.

Trade mark—Infringement of—Resemblance to deceive ordinary purchasers necessary.

The appellant, proprietor of a trade mark registered in Canada, and used by him on an article of his manufacture styled "The Rising Sun Stove Polish," the mark in question consisting of a printed vignette or picture of a rising sun above a body of water, with the words "The Rising Sun Stove Polish" printed

across the picture, sued one C. M. (the respondent) for \$5,000 damages for infringement of his trade mark. At the trial there was evidence that C. M. manufactured and sold in Canada a stove polish put up in packages bearing a vignette or picture of an orb or sun, with the words "Sunbeam Stove Polish" printed. One article was put up compact and the other in powder. The packages were not alike in shape or colour—one was put up in small oblong cubical blocks, in red wrappers, with the device of a well developed sun rising above a body of water, whilst the other was put up in cylindrical tin boxes, in yellow wrappers, with a small sun about the centre of the label, and had printed on it the name of the manufacturer.

Held (affirming the judgments of the Courts below), that plaintiff had failed to prove that any fraudulent imitation of his trade mark had been practised, or that one had been used having a resemblance to it, calculated to deceive or mislead ordinary purchasers purchasing with ordinary caution.

Appeal dismissed with costs.

Kerr, Q.C., for appellant.

Robertson, Q.C., for respondent.

THE QUEBEC WAREHOUSE COMPANY V. THE TOWN OF LEVIS.

44 & 45 Vict. ch. 40, sec. 2—Construction of—
By-law—Ultra vires—Injunction.

Under 44 & 45 Vict. ch. 40, sec. (P. Q.), passed on a petition of the Quebec Central Railway Company, after notice given by them, asking for an amendment of their charter, the town of Levis passed a by-law guaranteeing to pay to the Quebec Central Railway Company the whole cost of expropriation for the right of way for the extension of the railway to the deep water of the St. Lawrence River over and above \$30,000. Appellants being ratepayers of the town of Levis, applied for and obtained an injunction to stay further proceedings on this by-law on the ground of its illegality. The proviso in sec. 2 of the Act, under which the corporation of the town of Levis claimed the by-law to be authorized is as follows:—"Provided that within thirty days from the sanction of the present Act, the corporation of the town of Levis furnishes the said Company with its