

teurs ont été trompés sur la ressemblance des dites deux marques ;

“Déboute les défendeurs de leur défense, et les condamne à payer aux demandeurs la somme de \$100 de dommages, avec intérêt, &c.”

The action was brought by the respondents, claiming the sum of \$2,000 damages for infringement of a trade mark on soap. The plaintiffs, J. Barsalou & Co., alleged that they had been manufacturing soap for several years past in Montreal, and in 1877 had registered a trade mark for the article manufactured by their firm; that the distinctive feature of this trade mark was a horse's head, which was impressed on each piece of the soap; and that the defendants, Darling & Brady, had imitated this mark with the intention of deceiving the public into buying the soap made by them instead of Barsalou's soap.

The appellants pleaded to this suit, that the soap manufactured by them was not an imitation of Barsalou's soap; that it bore the imprint of the head of a unicorn, and not that of a horse; that there was no similarity in the inscription, the Barsalou soap having the words, “The Imperial Trade Mark Laundry Bar” stamped on the face of each piece, with the name “J. Barsalou & Co., Montreal,” on the opposite side; whereas the soap manufactured by appellants had the words “A. Bonin, 115 St. Dominique street, Very Best Laundry,” on the face, without any words on the opposite side.

The evidence showed that the respondents' trade mark was the imprint of a horse's head, with the words, “The Imperial Laundry Bar,” stamped on the face, and the words “J. Barsalou & Co., Montreal,” on the opposite side. The soap manufactured by appellants had the head of a unicorn, with the words “A. Bonin 115 St. Dominique St. Very Best Laundry,” on the face, without any words on the opposite side. The arrangement of the words was also different.

MONK, J., pointed out that the imprint and general appearance of the two heads differed considerably, besides the addition of the horn to the head of the unicorn. There was no resemblance between the two marks and the accompanying words that could deceive any one with ordinary intelligence. Moreover there was no evidence that the respondents had suffered any damage.

The judgment in appeal is as follows :—

“Considering that it is in evidence that the print used by appellants on their soap is not the same as the one used by respondents in conformity to their trade mark, and there is no such resemblance or similarity between the two that the difference cannot easily be noticed by any person with ordinary care and intelligence;

“And considering that there is error in the judgment rendered by the Superior Court, at Montreal, on the 30th day of April, 1879;

“This Court doth reverse the said judgment of the 30th of April, 1879;

“And proceeding to render the judgment which the said Superior Court should have rendered, doth dismiss the action of the respondents, and doth condemn them to pay to the appellants the costs incurred as well in the Court below as on the present appeal.”

Judgment reversed.

Cruikshank & Cruikshank, for Appellants.
Beique, Choquet & McGoun, for Respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, NOV. 19, 1880.

Sir A. A. DORION, C. J., MONK, RAMSAY, CROSS,
BABY, JJ.

LA SOCIÉTÉ PERMANENTE DE CONSTRUCTION (plf. below), Appellant, and ROBINSON (def. below), Respondent.

Delegation—Acceptance—Registration.

The appeal was from a judgment of the Superior Court, Montreal, Papineau, J., Feb. 28, 1879, reported in 2 Legal News, p. 148, where the facts will be found.

The appellant submitted the following propositions :—

1. L'engagement contracté par Robinson de payer à l'acquit de Léonard la créance de la Société appelante a, *ipso facto*, engendré un lien de droit entre Robinson et elle, et a, *de plano et sans acceptation antécédente*, ouvert en faveur de cette dernière, un droit d'action contre le premier.

2. S'il était besoin d'acceptation, une acceptation expresse n'était pas nécessaire, une acceptation implicite ou tacite était suffisante.

2. Cette acceptation s'infère dans l'espèce de l'acte de vente par Léonard à Robinson.

RAMSAY, J. The first proposition of Appellant seems to be that by the form of Respond-