

bottler, without the written consent of such person, trades or traffics in any bottle or siphon which has upon it the duly registered trade mark or name of another person, or fills such bottle or siphon with any beverage for the purpose of sale or traffic."

The case set forth that E. Mireault, a ginger ale and soda water manufacturer in the city of Ottawa, had his name blown, stamped, or permanently affixed on four bottles; that defendant, a ginger ale and soda water manufacturer, dealer, trader, and bottler, in the same place, on 26th July, 1904, at the city of Ottawa, filled the four bottles with beverage, labelled the same with his label, and placed them upon the market for the purpose of sale.

Counsel for the prosecution admitted that Mireault's name was not duly registered.

The magistrate convicted and fined defendant, and reserved the question: "Is the name blown, stamped, or permanently affixed upon a bottle sufficient, or does it require registration as in the case of a trade mark?"

Gordon S. Henderson, Ottawa, for defendant.

J. R. Cartwright, K.C., for the Crown.

The judgment of the Court (MOSS, C.J.O., OSLER, MACENNAN, GARROW, MACLAREN, J.J.A.), was delivered by

OSLER, J.A.— . . . I am of opinion that it is not necessary that the name should be registered. Assuming that the mere words composing the name of the "other person" may be the subject of registration as a trade mark, then if such name be so registered it is registered as a trade mark, and becomes ipso facto a duly registered trade mark. It cannot be registered otherwise than as such. When, therefore, Parliament made it an offence to trade or traffic in any bottle, etc., which has upon it the duly registered trade mark or name of another person, they must have meant something more than one having a duly registered trade mark upon it, and to forbid also (subject to the provisions of the section) trade or traffic by one person in bottles with the name of another person—which, as I have said, is, as such, or otherwise than as a trade mark, incapable of registration—upon them.

The object of the legislation evidently was to prevent, as far as possible, the easy commission of a fraud of that kind. In the French version of the Code the words . . .