

was valid only by estoppel and was fed by estoppel to the extent only of the interest taken by the purchaser under the deed; that that interest was subject to the claim of the plaintiff for the balance of purchase money, and that the plaintiff's mortgage was therefore entitled to priority. *Nevitt v. McMurray* (1886), 14 A.R. 126, applied.

Judgment of ROSE, J., reversed.

E. H. Tiffany, for appellant. *A. C. Macdonell*, for respondent.

From Rose, J.]

WILSON v. LYMAN.

[May 10.

Trade mark—Trade name—"Fly poison pad."

The plaintiffs sold sheets of paper, saturated with fly poison, under the name of "Wilson's Fly Poison Pad." These words were registered by them as a trade mark, and were printed on each sheet, and the sheets became known in the trade as "pads."

Held, that the word "pads" was *publici juris*, and that the defendants, who were manufacturers and vendors of fly poison, were entitled to describe as "pads" sheets of paper used by them for a similar purpose, the general appearance of the sheets being different, and their name appearing prominently on them.

Judgment of ROSE, J., affirmed.

S. H. Blake, Q.C., and *J. J. Scott*, for appellants. *D. E. Thomson*, Q.C., and *D. Henderson*, for respondents.

HIGH COURT OF JUSTICE.

Boyd, C.]

[April 12.

CANADA PERMANENT LOAN & SAVINGS CO. v. TRADERS BANK.

Fixtures—Plant and machinery—Included in mortgage—Agreement for security—Subsequent mortgage—Chattel mortgage—Constructively affixed—Notice.

The plaintiffs were mortgagees from a manufacturing company, and their mortgage in addition to the land and premises included "all the plant and machinery now upon or hereafter placed upon said land, all of which plant and machinery are to be considered as fixtures for the purpose of this mortgage," and provided "that none of the machinery . . . will be removed during the currency of this mortgage," and after the covenant to insure "the foregoing covenant to insure shall apply to machinery as well as to buildings and the company (plaintiffs) shall have a first lien" etc., and was duly registered. The defendants were assignees of a subsequent mortgage which included the plant and machinery in similar terms, but subject to plaintiff's mortgage, and were also mortgagees under a chattel mortgage, covering "all the machinery and plant on the said premises" and most of the machines, etc. In an action for a declaration that the plaintiff had a lien on certain machines, and for an injunction to restrain the defendants from removing them