

de droit, s'il y a lieu, à raison de la détention de la dite propriété sans droit après l'expiration de son bail."

RAMSAY, J. The appellant leased a house from the respondent, who brought an action seeking the expulsion of the appellant and claiming rent, water-rate, and damages for broken glass. This action was instituted on the 1st May, 1880, the day on which the rent fell due. During the proceedings, and subsequently to the 1st of May, respondent instituted an incidental demand for damages suffered by her, owing to appellant's detention of the property after the expiration of the lease, and adding a special conclusion for damages, but without renewing the conclusion of the original demand for expulsion. Appellant, by his plea to the incidental demand, asserts his right to remain in possession. The principal demand was rejected by the Court below, because the rent was not due when the action was brought, because the taxes were not due to the Plaintiff but to the Corporation of the city, and because the breaking of the glass was attributable, according to the evidence, to the working of the house, and not to any act of the Appellant. The damages alleged in the incidental demand, were said to have been suffered by one Tighe, the tenant of Respondent, and therefore they were refused, but the Court granted the prayer of the principal demand because the Appellant had completed what would otherwise have been an imperfect issue by his allegation that he had a right to remain in possession of the premises after the 1st May, when his lease was plainly at an end. Appellant now seeks to obtain the reversal of this judgment by saying that the incidental demand had no connection with the principal demand, and was therefore wholly inadmissible; and accordingly, that the principal demand being rejected, there were no conclusions to justify a judgment for expulsion. There can be no doubt that the procedure is irregular in the extreme, as was remarked by the learned judge in the Court below. Nevertheless, he held that the incidental demand was only an addition to the principal demand, and that as the issue was complete by the plea, as to whether appellant should be expelled or not, he could decide it without going beyond the whole conclusions. We cannot say that

this decision is wrong. The judge had all the issues before him, and the whole evidence as perfectly as it ever could be brought before him in another suit, and we think he was justified in treating the incidental demand as incorporated in the principal demand, it having been so treated by both parties; although the ordinary practice is undoubtedly to put separate conclusions to the incidental demand.

The appeal is therefore dismissed with costs.

Judgment confirmed.

*Archambault & David*, for Appellant.

*Ritchie & Ritchie*, for Respondent.

#### COURT OF QUEEN'S BENCH.

MONTREAL, Dec. 24, 1880.

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

DARLING et al. (defts. below), Appellants, and BARSALOU et al. (pliffs. below), Respondents.

##### *Trade Mark—Resemblance.*

*B. & Co. registered a trade mark for the laundry soap made by them, the mark consisting of the imprint of a horse's head, with the words "The Imperial Laundry Bar" stamped on the face of each piece, and the words "J. Barsalou & Co., Montreal," on the opposite side. D. & Co. subsequently manufactured a soap with the imprint of the head of a unicorn and the words "A. Bonin, 115 St. Dominique street, Very Best Laundry" on the face, (without any words on the opposite side). Held, that there was no resemblance or similarity between the marks which could deceive persons of ordinary intelligence, and D. & Co. could not be restrained from continuing the manufacture of their soap.*

The appeal was from the following judgment, rendered by the Superior Court, Montreal, Rainville, J., on the 30th of April, 1879:

"La cour, etc.

"Considérant que les demandeurs ont prouvé les allégations de leur déclaration;

"Considérant que la marque par les défendeurs sur le savon par eux manufacturé et vendu est une imitation frauduleuse de la marque de commerce des demandeurs, et de nature à tromper les acheteurs en général;

"Considérant que l'impreinte de la licorne est faite de manière à représenter la tête d'un cheval plutôt que celle d'une licorne;

"Considérant qu'il est prouvé que des ache-