

costs. J. Reeve, Q.C., and J. E. Day for appellant. Osler, Q.C., for defendants.

ROSE v. McLEAN PUBLISHING CO.

[BURTON AND MACLENNAN, JJ.A., FERGUSON AND ROSE, JJ., MARCH 3, '97.

*Trade journals—Similarity of names of—Action to restrain use of name—No monopoly or property in a geographical name—Term "Canadian" misleading similarity.*

Judgment on appeal by plaintiff from order of a Divisional Court (Boyd, C., and Robertson, J.) allowing an appeal from the judgment of MacMahon, J., at the trial, in favour of the plaintiff, and dismissing the action without costs. The plaintiff having published for a number of years a journal devoted to the interests of the booksellers in Canada, called "The Canadian Book-seller," sought to enjoin defendants from adopting as the name of a journal published and sold by them, "The Canada Book-seller and Stationer," which for many years had been published by them under another name. There was no evidence of fraudulent intention on defendants' part. The Court below held (27 O. R. 325) that as a rule a person cannot have monopoly or property in a geographical name, and that the plaintiff was not entitled to the injunction sought for. This Court held (MacLennan, J.A., dissenting) that although the word "Canadian" was a geographical term and had not acquired a secondary meaning as in some of the cases, and therefore there was in one sense no property in the word, yet the similarity of names was misleading, and the plaintiff having established the name of theirs so as to make it very closely resemble that of the plain-

tiff there was in effect a fraud upon the plaintiff, which the Court ought to restrain. Appeal allowed with costs here and below, and judgment of trial Judge restored. J. Bicknell for appellant. Robinson, Q.C., and Levesconte for defendants.

BLACKLEY v. TORONTO RAILWAY COMPANY.

[BURTON, OSLER, MACLENNAN, JJ.A., FERGUSON, J., 3RD MARCH, 1897.

*Damages—Lord Campbell's Act—Action by father for accidental killing of son—Negligent act of deceased.*

Judgment on appeal by defendants from order of a Divisional Court (Robertson, Street, JJ.) dismissing motion by defendants for a nonsuit, the jury having failed to agree at the trial. The Judges in the Court below differed in opinion, Robertson, J., being in favour of dismissing the motion for a nonsuit, and Street, J., of granting it. The action was brought by David Blackley, the father of a young man named Ralph McDonald Blackley, nearly 20 years old, who was accidentally killed on a car on the defendants' line, on the 1st October, 1892, to recover damages under Lord Campbell's Act. The car was going down Church Street on the westerly track; the deceased ran after it while it was in motion, after leaving Gerrard Street, and jumped on the footboard on the easterly side of the car. He remained on the footboard smoking, and when the car came to Gould Street, he was struck and killed by a car going northerly upon the easterly track. There was no fender to keep the deceased from getting into a seat, such as is now in use in the defendants' cars. The negligence complained of was that defendants should have had a fender