

blue ink and the defendant's name and address being also printed on the label in smaller type in red ink. Defendant sold these pills and on several occasions sold them as Simpson's Kidney Pills advertised, no other such pills were advertised in the locality except those advertised by the plaintiff. The only bond of resemblance between the boxes sold by the plaintiff and those sold by the defendant was in the use of the name "Simpson"; in respect to size, shape and style of printing on the labels they were easily distinguishable. It also appeared that long prior to the registration of the plaintiff's trade-mark the name "Simpson" had, in 1873, been registered by one J. B. Simpson in connection with medicinal pills, and the name was, at the time of the plaintiff's application for registration, owned by one S., who had, however, consented to the plaintiff's registration. The pills sold by S. under the name of "Simpson's" were not intended or advertised as a remedy for kidney complaints, but for other diseases. The plaintiff had in his advertisements published fictitious testimonials from persons alleged to have derived benefit from the use of his pills, and had upon certain occasions advertised himself merely as the agent for "Simpson's Kidney Pills":—Held, that the fact that the word "Simpson" had been, previously to the plaintiff's registration, used and registered as a trade-mark for pills as a cure for one complaint, did not disentitle the plaintiff to obtain registration of the name as a trade-mark, for pills to cure another ailment, but the registration was therefore good. Held, also, that the fact that the name "Simpson" was entirely fictitious and was not the name of the real manufacturer, did not constitute any such misrepresentation as would disentitle the plaintiff to an injunction. Held, also, following *Ford v. Foster*, 41 L.J. Ch. 682; L. R. 7 Ch. 611; 27 L. T. 891; 20 W. R. 818; that only misrepresentations contained in the trade-mark itself will disentitle the plaintiff to an injunction, and that therefore the fictitious testimonials published by the plaintiff were not such misrepresentations as would defeat his right. Semble, also, that the prior user outside of Canada of the word "Simpson" in connection with kidney pills was not sufficient to disentitle the

plaintiff to its exclusive use within Canada. Held, also, upon the evidence that the defendant had adopted the word "Simpson" wilfully, and solely to induce the public to believe that the pills he sold were those advertised by the plaintiff, and that therefore the plaintiff was entitled to an injunction, with costs. One of the defendant's witnesses stated that he had in the year 1891 seen the name "Simpson's" Kidney Pills inscribed upon a wire door mat in London, England. This evidence was objected to on the ground that it was secondary evidence and that the door mat itself should be produced. Held, that the evidence should be admitted, because the production of the door mat would be highly inconvenient. *Templeton v. Wallace*: (Scott, J., 1900), p. 340.

TRANSFER ABSOLUTE IN FORM.

See PRACTICE, 4.

TRIAL.

See PRINCIPAL AND AGENT, 1.

TROVER.

See PARENT AND CHILD.

ULTRA VIRES.

See CONSTITUTIONAL LAWS—LIQUOR LAWS, 4.

UNCERTAINTY.

See LAND TITLES, 3.

WAGES.

See ATTACHMENT OF DEBTS, 2—MARRIAGE TIME LAW — MASTER AND SERVANT.

WAIVER.

See CONDITIONAL SALE.