

SEPTEMBER 19TH, 1902.

C. A.

PROVIDENT CHEMICAL WORKS v. CANADA CHEMICAL MFG. CO.

Trade Mark—Descriptive Letters—Registration—Secondary Meaning—Proof of Acquisition of—Fraud—Deception—Infringement—Delay and Acquiescence—Injunction—Damages—Inquiry.

Appeal by plaintiffs from judgment of MEREDITH, C.J. (2 O. L. R. 182), dismissing action for an injunction and damages and other relief in respect of the alleged infringement by defendants of a trade mark registered by plaintiffs.

F. P. Betts, London, and H. Cronyn, London, for appellants.

G. F. Shepley, K.C., and E. W. M. Flock, London, for defendants.

The judgment of the Court (ARMOUR, C.J.O., OSLER, MOSS, J.J.A.—LISTER, J.A., having died after the argument) was delivered by

MOSS, J.A.—“The appellants’ first contention is, that the Chief Justice erroneously held that it was open to defendants to impeach the plaintiffs’ title as registered proprietors of the trade mark; that *Partlo v. Todd*, 12 O. R. 175, 14 A. R. 444, 17 S. C. R. 196, no longer governs owing to subsequent legislation; that defendants are not now entitled to attack, by way of defence, the plaintiffs’ right to register or put forward as a trade mark the letters in question; that the effect of 54 & 55 Vict. ch. 26, sec. 4, and 54 & 55 Vict. ch. 35, sec. 1, amending R. S. C. ch. 63, is to vest in the Exchequer Court of Canada the sole jurisdiction to adjudicate upon the validity of a trade mark, and so the Provincial Courts have no longer jurisdiction to entertain, in an action for infringement of a registered trade mark, a defence to the effect that plaintiff is not the proprietor of the trade mark, or that it is not one capable of registration.

[Discussion of the case and statutes just cited.]

The provisions of these two Acts, while extending the jurisdiction of the Exchequer Court so as to enable it to deal with doubtful or conflicting applications for registration, and with suits or applications to make, expunge, vary, or rectify