

EXCHEQUER COURT.

Burbidge, J.] IN RE MELCHERS AND DE KUYPER. [March 7.

*Trade mark—Resemblance between—Refusal to register both—Grounds of.*

The object of s. 1 of the Act respecting Trade Marks and Industrial Designs (R.S.C., c. 63), as enacted in 54-55 Vict., c. 35, is to prevent the registration of a trade mark bearing such a resemblance to one already registered as to mislead the public and render it possible that goods bearing the trade mark proposed to be registered may be sold as the goods of the owner of the registered trade mark.

2. The resemblance between the two trade marks justifying a refusal by the Minister of Agriculture in refusing to register the second trade mark, or the Court in declining to make an order for its registration, need not be so close as would be necessary to entitle the owner of the registered trade mark to obtain an injunction against the applicant in an action of infringement.

3. It is the duty of the Minister to refuse to register a trade mark when it is not clear that deception may not result from such registration: *Eno v. Dunn*, 15 App. Cas. 252; and *In re trade mark of John Desohurst & Sons, Ltd.* (1896), 2 Ch. 137, referred to.

*T. Brosseau*, for applicants. *A. Ferguson*, Q.C., and *C. S. Campbell*, for opposants.

Burbidge, J.] YULE v. THE QUEEN. [April 4.

*Constitutional law—8 Vict. (P.C.), c. 90—B.N.A. Act, 1867, s. 111—Liability of Province of Canada existing at time of Union—Jurisdiction—Arbitration—Condition precedent to right of action—Waiver.*

By the Act 8 Vict. (P.C.), c. 90, Y. was authorized at his own expense to build a toll bridge with certain appurtenances over the River Richelieu, in the parish of St. Joseph de Chambly, P.Q., such bridge and appurtenances to be vested in the said Y., his heirs etc., for the term of fifty years from the passing of the said Act; and that at the end of such term the said bridge and its appurtenances should be vested in the Crown and should be free for public use, and that it should then be lawful for the said Y., his heirs, etc., to claim and obtain from the Crown the full and entire value which the same should at that time be worth, exclusive of the value of the tolls, such value to be ascertained by three arbitrators, one of which to be named by the governor of the province for the time being, another by the said Y., his heirs, etc., and the third by the said two arbitrators. The bridge and its appurtenances were built and erected in 1845, and Y. and his heirs maintained the same and collected tolls for the use of the said bridge until the year 1895, when the said property became vested in the Crown under the provisions of the said Act.

*Held*, that upon the vesting of the bridge and its appurtenances in the Crown, the obligation created by the said statute to compensate Y. and his heirs, etc., for the value thereof was, within the meaning of the 111th section of "The British North America Act, 1867," a liability of the late Province of Canada, existing at the Union, and in respect of which the Crown, as represented by the Government of Canada, is liable.