

since Fox's Act, is all of questions peculiarly one for a jury:" (per Coleridge, C.J., in *Saxby v. Easterbrook* (1878), 3 C.P.D. 339, at p. 342); *Odgers on Libel & Slander*, 4th ed., pp. 575, 772, 773, and 680.

It would thus appear that our statute, at all events in so far as it refers to civil actions, was introduced into Canada as part of the common law in 1792, and in this regard the statute of 1850 above referred to was merely declaratory of the common law.

The plaintiff's counsel relied on *Sydney Post Publishing Co. v. Kendall* (1910), 43 S.C.R. 461, and *Lumsden v. Spectator Printing Co.* (1913), 29 O.L.R. 293, urging that, inasmuch as there was proof of defamatory libel, the verdict was perverse and there ought to be a new trial; that, in short, the verdict found by the jury, for whose consideration it essentially was, was such that no jury could have found as reasonable men; and referred to *Australian Newspaper Co. v. Bennett*, [1894] A.C. 284, at p. 287.

Quite aside from the question of damages, the jury might have taken the view that the publications in question were not in fact libellous upon the facts proved in the case; it was solely a question for the jury; and their verdict for the defendants ought not to be disturbed.

The appeal should be dismissed with costs.

MULOCK, C.J.Ex., agreed with CLUTE, J.

RIDDELL, J., agreed in the result, for reasons stated in writing.

SUTHERLAND, J., also agreed in the result, for reasons stated in writing.

KELLY, J., agreed in the result, for the reasons stated by SUTHERLAND, J.

*Appeal dismissed.*

FIRST DIVISIONAL COURT.

OCTOBER 29TH, 1918.

CANADIAN H. W. GOSSARD CO. LIMITED v. DOMINION  
CORSET CO. LIMITED.

*Trade-Name—Deception—Use of Similar Name and Label—Sale of Goods—Likelihood of Purchasers being Deceived—Evidence—Suspicious Circumstances—Action to Restrain Use of Name and Label—Dismissal without Costs—Appeal—Dismissal with Costs.*

Appeal by the plaintiffs from the judgment of SUTHERLAND, J.,  
14 O.W.N. 164.