

factured or sold by them." Section 15 provides that "Every trade-mark registered in the office of the minister shall be assignable in law." There is no limitation here as there is in section 70 of the English Act (c. 57, 1883), which is as follows: "A trade-mark when registered shall be assigned and transmitted only in connection with the good-will of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that good-will." The good-will was sold and assigned in this case. Section 19 of our statute gives the proprietor of a registered trade-mark a right of action against any person using it, or any fraudulent imitation of it, or any person who sells any article bearing the trade-mark.

Stated shortly, the defendant, who was the proprietor of this trade-mark, sold it with the good-will of his business to the company for a valuable consideration which he received—he made an assignment of the property, not specifically mentioning the trade-mark, but by words in my opinion amply sufficient for the purpose of transferring it—he and the company used it, and for the two years which the company existed treated it as the company's property, and he, as a part of the arrangement under which the company was organized, gave a covenant that he would execute all papers necessary to give a perfect title to the property. The plaintiff as the assignee of the company required a specific assignment of the trade-mark by name, in order to have it registered under the statute, and the rights protected. He asked the defendant to do this at his expense. He has refused for reasons which seems to me altogether insufficient.

The plaintiff must have a decree with costs.

NEW BRUNSWICK.

SUPREME COURT, CHANCERY DIVISION. OCT. 4TH, 1910.

KENNEDY v. SLATER.

Originating Summons—Practice — Concurrent Jurisdiction with Probate Court—Con. Stat. of N. B. (1903), c. 161, s. 2.

W. B. Jones, K.C., for the plaintiff.

M. G. Teed, K.C., for the defendant.

BARKER, C.J.:—This matter comes before me by way of originating summons and arises out of the following