

"name" mentioned in the section should be registered under the Trade Mark and Design Act and amendments thereto:—

Held, that when Parliament made it an offence to trade or traffic in any bottle, etc., which has upon it the duly registered trade mark or name of another person, they must have meant something more than one having a duly registered trade mark upon it, and to forbid also trade or traffic by one person in bottles with the name of another person: that the words "duly registered" are confined to the trade mark, and do not apply to the name: and that it is sufficient if the name of another person is upon the bottle, and it is not necessary that such name should be registered as a trade mark.

Cartwright, K. C., Deputy Attorney-General, for Crown.
Gordon Henderson, for defendant.

HIGH COURT OF JUSTICE.

Divisional Court.]

[Jan. 11.]

BLACKLEY v. ELITE COSTUME CO.

Service out of the jurisdiction—Contract to be performed in Ontario—Con. Rule 162 (c).

The defendants gave an order in writing to the plaintiffs' traveller while he was in Montreal, which was to be and was accepted by the plaintiffs by letter from Toronto, the plaintiffs' place of business.

Held, upon the facts, that an acceptance by post was within the contemplation of the parties, and that the contract was made when the plaintiffs' letter accepting the order was mailed.

Plaintiffs' claim was endorsed for breach of contract and for goods sold and delivered. The contract provided that the goods were to be delivered f.o.b. at Toronto.

Held, 1. The property in the goods passed on such delivery being made, and that a breach of the contract by non-acceptance was a breach within Ontario of an obligation of a contract to be performed within Ontario.

2. Even if the rule of law, that a debtor must seek out his creditor to pay him, unless the application of it is inconsistent with the terms of the contract, is to be excluded, it was in the contemplation of the parties that payment was to be made at Toronto, and the obligation to pay was therefore one to be performed in Ontario.