

80. In considering the reasonableness of time which is substantially a question of fact a point of law arises and it is this—whether the time allowed by the Notice is to be considered or whether it is the actual time allowed.

81. I can find no case which deals with this point. I, however, incline to the view that it is that which the notice gives, but having regard to the conclusion I have come to on this issue in the case it is unnecessary for me to express a definite finding.

82. On this second main issue of the case I find as a fact that neither the time allowed by the Notice nor the time actually allowed was reasonably sufficient for the Company to remedy the breaches required by paragraph 3 of the said Notice.

83. In the result the plaintiff Company succeeds.

84. Judgment for the plaintiff Company:—

- (1) Recovery of the demised premises situate at 84, High Street, in the Town of San Fernando comprised in the said Deed of Lease.
- (2) Damages for breach of covenant for quiet enjoyment contained in the said Deed of Lease, and/or for trespass.

85. On the question of damages it is necessary to proceed with the further hearing of the action for the purpose of assessment, it having been agreed by Counsel for the parties, on the suggestion of the Court, that the issues in the case other than damages be first determined.

86. Costs to the plaintiff to be taxed.

Judgment for the plaintiff with costs.

THE FLORSHEIM SHOE COMPANY v. CAMERON

[SUPREME COURT (Gilchrist, Ag. C.J.), October 30, 31, November 1, 16, 1939.]

No. 403 of 1937.

Passing off—Trade Mark—Patents, Designs and Trade Marks Ordinance, Cap. 189 (Now Ch. 3. No. 18.)—Obligation to register—Fraudulent registration—Trade Mark not registrable—Cancellation of entry in Register—Reputation of goods—Injunction.

The F. Company, was a U.S. Company which had been manufacturing shoes for over forty years. The distinctive trade mark of such shoes had always been 'Florsheim' and the Company was duly registered in the

U.S.A. as the proprietor of such trade mark. Wherever its shoes were sold they had acquired a reputation for quality. From 1931 until 1934, through its agents S. Ltd., the F. Company sold shoes in Trinidad at the rate of two hundred pairs per year. In 1934 S. Ltd., went into liquidation. The final winding up of S. Ltd. was completed on 7th September, 1935. In April, 1935, the defendant C. applied for and obtained the registration in the Trinidad Trade Marks Register of a trade mark the essential particular of which was the word 'Florsheim' and of himself as proprietor thereof. This trade mark was practically a facsimile of the F. Company's mark. At the time of this registration the F. Company had no agent in Trinidad and no knowledge of C's action. On 26th February, 1936, another agent, B., was appointed by the F. Company who however found that as a consequence of C's registration of the F. Company's mark he was unable to sell any shoes. On the F. Company suing C. in a passing off action,

HELD: (1) The F. Company were under no obligation to take steps to register their mark under sections 39 and 40 of the Ordinance and so avoid the loss complained of.

(2) On the facts the registration by C. was fraudulent and "calculated to deceive" within the meaning of s. 41 of the Ordinance and therefore his trade mark was not legally registrable under s. 33 (1) (e).

(3) The court had power under its equity jurisdiction to order C. to take steps to have his entry in the Register removed, in spite of there being no provision in the Ordinance enabling the court to make such an order. The court would not allow the ordinance to be made an instrument of fraud.

(4) Whether the F. Company had abandoned the right to its mark in Trinidad or not was a question of its intention; and in fact it had not abandoned it.

(5) The F. Company had established that its trade mark was known and had acquired a reputation in Trinidad to a degree sufficient to entitle it to an injunction restraining the defendant from using the mark and passing off his goods as those of the plaintiff company.

Cases referred to :

- (1) *Reddaway v. Banham*, [1896] A.C. 199.
- (2) *Angus v. Angus*, 25 E.R. 800.
- (3) *McCormick v. Grogan*, 4 E. & I. Appeals 82.
- (4) *McAndrew v. Bassett* (1864), 10 L.T. 442 (H.L.).
- (5) *Orr-Ewing & Co. v. Johnston & Co.*, 13 Ch. D. 434 (C.A.) and 7 App. Cas. 219 (H.L.).
- (6) *Powell v. Birmingham Vinegar Brewery Co.*, [1896] 2 Ch. (C.A.) and [1897] A.C. 711 (H.L.).
- (7) *Valentine Meat Juice Co. v. The Valentine Extract Co.* (1900), 16 T.L.R. 522.
- (8) *Poirot v. Jules Poirot Ltd. and A. F. Nash.* (*Kerley on Trade Marks*, 6th ed. p. 559).

(9) *Panhard et Levassor v. Panhard Levassor Motor Co. Ltd.* (1901), 70 L.J. Ch. 738.

(10) *Hall v. Barrows*, 32 L.J. Ch. 548.

(11) *Monson & Co. v. Boehm*, 26 Ch.D. 398.

ACTION brought by The Florsheim Shoe Company against J. Frederick Cameron for damages for passing off the plaintiff's goods as his own; for an injunction, declaration and other relief. The facts and pleadings in the case sufficiently appear from the judgment of the trial judge.

GILCHRIST, Ag. C.J. :

1. This is a passing off action in which the plaintiff company (hereinafter referred to as the company) alleges that the defendant copied the name and trade marks of well known boots and shoes manufactured by the company and passed them off on the public of Trinidad as his boots and shoes, and claims :—

- (i) a declaration that the defendant procured by fraud the entry, No. 21 of 1935, in the Register of Trade Marks kept by the Registrar General of the Colony,
- (ii) a declaration that the Trade Mark in respect whereof the said entry was made was not registrable by the defendant when it was so registered,
- (iii) an Order directing the defendant to cancel the said entry in the Register of Trade Marks of the Colony,
- (iv) an injunction restraining the defendant, his servants and agents :—
 - (a) from distributing among dealers in Trinidad and Tobago, and from selling and/or causing to be distributed or sold under the name "Florsheim" boots, shoes and other footwear manufactured by any person, firm or corporation other than the company or
 - (b) from passing off or causing, procuring or assisting any person firm or corporation to pass off boots, shoes or other footwear not in fact manufactured or sold by the company as being boots shoes or other footwear manufactured or sold by the company,
- (v) damages,
- (vi) such further and/or other relief as to the Court may seem just.

2. The principle of law governing a case such as this is clearly stated in *Reddaway v. Banham* (1). At p. 204 the LORD CHANCELLOR says: "I believe the principle may be very plainly stated, and that is that nobody has a right to represent his goods as the goods of somebody else." At p. 210 LORD HERCHELL says: "The name of a person, or words forming part of the common stock of language may become so far associated with the goods of a particular maker that it is capable of proof that the use of them by themselves without explanation or qualification by another manufacturer would deceive a purchaser into the belief that he was getting the goods of A. when he

was really getting the goods of B. In a case of this description the mere proof by the plaintiff that the defendant was using a name, word, or device which he had adopted to distinguish his goods would not entitle him to any relief. He could only obtain it by proving further that the defendant was using it under such circumstances or in such manner as to put off his goods as the goods of the plaintiff."

3. On notice to the defendant at the instance of the company, for the purposes of this case only, the defendant admits the several facts hereunder subject to certain qualifications or limitations:—

1. That the plaintiff is a corporation incorporated under the laws of the State of Illinois, U.S.A. with its principal office at 541 West Adams Street, in the City of Chicago in the said State of Illinois.
2. That the plaintiff is and has been for many years past duly registered in the U.S.A. under the laws of the country as proprietors of the trade marks of which facsimiles are marked respectively "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", and "K" and attached to the plaintiff's notice to admit herein dated the 12th April, 1939.
3. That one of the essential particulars of the said trade marks is and always has been the word "Florsheim".
4. That for a continuous period of over forty years the plaintiff has been manufacturing boots, shoes and other footwear bearing one or other of the said trade marks referred to above.
5. That for a continuous period of over forty years the plaintiff has been selling boots, shoes and other footwear bearing one or other of the said trade marks referred to above, but not that such sales have been in any particular country of the world.
6. That the plaintiff's said boots, shoes, and other footwear have been for many years past and are being sold extensively in the U.S.A. and other parts of the world, but in some only, and not in all other parts of the world.
7. That the plaintiff's said boots, shoes and other footwear have a general reputation amongst the public of being of very high quality. But in such parts of the world only in which they are and have for many years past been extensively sold.
8. That the shoes now produced and marked 1 to 13 are typical samples of the shoes manufactured and sold by the plaintiff as aforesaid.
9. That the shoes produced by the plaintiff with their said notice to admit and marked "P" is a shoe manufactured in Great Britain and sold by the defendant in Trinidad.
10. That the said shoe marked "F" is not manufactured or sold by or on the behalf of the plaintiff or with the plaintiff's authority or consent.

11. That the plaintiff does not manufacture and has never manufactured shoes in Great Britain.
12. That the plaintiff had no agent in Trinidad in the year 1935 and was not aware of the defendant's application to register the Trade Mark registered by him and referred to in the Statement of Claim.

No evidence was led for the defence.

4. It is clear that on the 24th of April, 1935 the defendant applied for and obtained the registration of the trade mark entered in the Trade Marks Register of the Colony No. 21 of the year 1935, and of himself as the proprietor thereof, the essential particular of which is the word "Florsheim", and the design of which is a reproduction of, and bears a marked resemblance to the design of the company's trade marks, in other words practically a facsimile of the company's trade marks, the existence of which the defendant was fully aware. Further it appears that at or about the time of the registration of the said trade mark by the defendant the company had no knowledge of the proposed registration or the said registration.

5. Counsel for the defendant submitted that if the company is entitled to use the name "Florsheim" they are not damnified by the registration by the defendant of the trade mark, No. 21 of 1935, in that they could have taken steps under Section 39 and 40 of the Patents, Designs and Trade Marks Ordinance, Cap. 189, to obtain registration of the word "Florsheim" and their trade marks.

6. Whilst it is open to the company to take such a course I fail to see that they were under necessity to do so.

7. The next question for consideration is that raised by paragraph 8 of the Statement of Claim, namely,—that the said trade mark appropriated and registered by the defendant did not at the date of the application for registration comply with the requirements of Section 33, Subsection (1) of the Ordinance, Cap. 189, and that the same was not registrable by the defendant, and for a declaration to this effect, and that the said registration, No. 21 of 1935, in the Register of Trade Marks of the Colony was procured by fraud, and for an order directing that the Registrar General rectify the register by expunging and/or removing therefrom the said entry.

8. The submissions of Counsel for the defendant are that the said registration by the defendant is registrable under the provisions of Section 33, Subsection (1) (ε) of the Ordinance and that, if it is not calculated to deceive, Section 41 of the Ordinance does not apply.

9. The submissions of Counsel for the company are that it is not so registrable in that the defendant to put it bluntly stole from the company the word "Florsheim" and their trade mark, and in so doing his conduct was calculated to deceive and Section 41 applies.

10. I have no hesitation in saying that on the evidence the defendant in registering the Trade Mark, No. 21 of 1935, did so with the full knowledge that it was calculated to deceive and made use of the Ordinance, Cap. 189, for the fraudulent purpose not only with the view of his own dishonest advantage but also with the effect of preventing the company from using its own trade name and design. His whole conduct and actions in this respect and subsequently were and are clothed in fraud and deception and saturated with dishonesty. I therefore hold that the said name and mark were not legally registrable under the said section.

11. With respect to the other part of this question Counsel for defendant submits that there is no power in the Court to order the Registrar of Trade Marks to remove or expunge the said entry of registration, and in this respect referred to a passage at p. 272 of the 2nd Edition of KERLY ON TRADE MARKS and to a statement of CHITTY, J., in the case of *Ainslie & Co's. Trademark*, "that this is not a question of Equity; this is a question of right under the Statute."

12. Now as pointed out by Counsel for the company this statement of CHITTY, J., is founded on the fact that in England there is provision in the Act permitting action to be taken under the Statute for the removal from the register of a trade mark which provision finds no place in the local enactment (Cap. 189).

13. It is clear and settled law that Courts will not allow a Statute to be used as an instrument of fraud such as is clear in the case of the defendant here.

14. This being so and there being no provision in the local enactment similar to that of the English Act empowering the Court to order the removal of the registration of a trade mark from the Register, this does not mean and cannot mean that a Court of Equity is rendered impotent. The jurisdiction of a Court of Equity in respect of fraud is that it acts on the person—the conscience of the party—so guilty of fraud and fastens upon him a personal obligation—see *Angus v. Angus* (2); *McCormick v. Grogan* (3).

15. Thus though the Court has no power to order the Registrar of Trade Marks to expunge and/or remove from the Register the entry, 21 of 1935, the Court is nevertheless fully seized with the power to fasten upon the conscience of the defendant and order and compel him to himself and at his own expense to cancel and/or remove the said entry from the Register of Trade Marks of the Colony. I entertain no doubt this is a proper order to make in this case.

16. The next question is as to the proof necessary to entitle the company to the injunction prayed for against the defendant. Counsel for the defendant submits that the company must prove that they had a trade mark that is known and has acquired a reputation as their distinctive trade mark and not abandoned but kept alive, that the title the company must show is a universal

reputation as to the use of their shoes so far as this Colony is concerned, put in other words the company must show a connection by a number, apparently considerable or at any rate substantial, of probable dealers in, or purchasers of their goods, and non-abandonment of such. In support of this submission he referred to p. 541 of the 4th edition of KERLY ON TRADE MARKS.

17. This passage reads: "No length of time during which the use of the badges in question by the plaintiff or his predecessors must have extended can be laid down, although it seems safe to assume that an actual and practical knowledge of the connection between them and him by a number, apparently considerable, of probable dealers in or purchasers of the goods must be shown"

I would emphasise the words "no length of time during which the use can be laid down" and the words "probable dealers in or purchasers of".

Counsel for the company referred to the 6th edition of KERLY ON TRADE MARKS, p. 36 and p. 428 and particularly to *McAndrew v. Bassett* (4).

18. I do not propose to go into the lengthy submission and cases on this head of the case; they are fully and clearly recorded in my notes.

19. I, however, specially note the following—*McAndrew v. Bassett* (4); *Orr Ewing & Co. v. Johnston & Co.* (5); *Powell v. Birmingham Vinegar Brewery C.* (6); *Valentine Meat Juice Company v. The Valentine Extract Company* (7); and to *Poiret v. Jules Poiret Ltd.* and *A. F. Nash* (8); *Panhard et Levassor v. Panhard Levassor Motor Co., Lim.* (9). See also *Hall v. Barrows* (10).

20. In *McAndrew v. Bassett* (4) at p. 444 the LORD CHANCELLOR says:—"The substance of the argument of the defendant is this, that, supposing the court interferes upon the ground of property in a trade mark, that property must be regarded as the offspring of such an antecedent user as will be sufficient to have acquired, for the article stamped, general notoriety and reputation in the market, and that the property cannot be held to exist until the fact of that general user, that notoriety and that public reputation, have been proved to exist. Now I am by no means driven to the necessity of determining when, for the first time, property may be said to be established in a trade mark. The elements of the right to that property may be represented as being, the fact of the article being in the market as a vendible article, with that stamp of trade mark, at the time when the defendants imitate it. The essential qualities for constituting that property probably would be found to be no other than these: first, that the mark has been applied by the plaintiffs properly; that is to say, that they have not copied any other person's mark, and that the mark does not involve any false representation; secondly, that the article so marked is actually a vendible article in the market; and thirdly,

that the defendants, knowing that to be so, have imitated the mark for the purpose of passing in the market other articles of a similar description It is impossible, therefore, to say that a case so circumstanced has not all the element of the cases that require the interposition of this court. There is the deliberate imitation of the mark previously existing in the market. The thing is done in order that the rival articles of the defendants manufacture may be brought into the market in rivalry with that which is there."

In *Hall v. Barrows* (10) at p. 551 the MASTER OF THE ROLLS says:—"It is clear from a variety of decided cases, that a manufacturer who has originally stamped his goods with a particular brand, has a property in his mark at law, and can sustain an action for damages for the use of it by another. It is also clear that Courts of equity will restrain the use of it by another person. It has sometimes been supposed that a manufacturer can only acquire such a property in a trade mark as will enable him to maintain an injunction against the piracy of it by others, by means of a long-continued use of it, or, at least, such a use of it as is sufficient to give it a reputation in the market where such goods are sold. But I entertain great doubt as to the correctness of this view of the case. The interference of a Court of equity cannot depend on the length of time the manufacturer has used it. If the brand or mark be an old one, formerly used, but since discontinued, the former proprietor of the mark undoubtedly cannot retain such a property in it, or prevent others from using it; but, provided it has been originally adopted by a manufacturer, and continuously, and still used by him to denote his own goods when brought into the market and offered for sale, then I apprehend although the mark may not have been adopted a week, and may not have acquired any reputation in the market, his neighbours cannot use that mark."

21. Here it might be convenient to state that Counsel for the defendant in the course of his address said that: If the Court as a matter of law held that there was title to the use of the name or word 'Florsheim' by the plaintiff company in Trinidad, then the use by the defendant of his mark as registered (No. 21 of 1935) is calculated to deceive.

22. On a full and careful consideration of the submissions of Counsel and the cases cited I find as follows:—that

- (i) The name "Florsheim" in the United States of America stands for good quality shoes and has acquired a reputation that the name assures the good quality of the shoes.
- (ii) It was in consequence of demands for these shoes by American oil drillers resident in Trinidad that the firm of Stodarts Ltd., in 1931, commenced importing them into the Colony although the Managing Director of the firm had never previously heard about them. The clear inference from this is that the demand must have been sufficiently great to justify the firm in doing so.

- (iii) Stodarts Ltd., approached the company to do business and on their request an agreement was entered into with the company by which Stodarts Ltd., were appointed sole agents and importers of the company's shoes in the Colony and that such shoes were high grade shoes and were sold for \$15 to \$16 a pair and were regularly imported and sold very well.
- (iv) Following the introduction in the Colony these shoes were on the market as a vendible article with the trade name "Florsheim" and marks of the company at the time when the defendant adopted the said name and imitated the trade mark of the company and further they became known to local people resident in the oilfields and acquired a sufficient reputation in Trinidad to induce some people other than oil drillers to purchase them by name.
- (v) Apart from their reputation there is a market in Trinidad for good quality shoes.
- (vi) in the first three to four years of their importation into the Colony despite the high price charged for them Stodarts, Ltd., were able to sell approximately 200 pairs of these shoes each year and this goes to show that these shoes had gained for themselves in Trinidad a definite reputation, at any rate amongst the oilfields community of the Colony.
- (vii) In 1934 Stodarts Ltd., went into liquidation. A Receiver was appointed by the debenture holders on the 24th March, 1934. The Receiver so appointed was removed on the 7th May, 1934 and W. F. Bryden of the firm of A. S. Bryden & Sons who carry on business in the Colony as commission agents was appointed Receiver in his place.
- (viii) The final winding up of Stodarts Ltd., was completed on the 7th September, 1935 and Bryden ceased to act as Receiver and the notice of cessation of his acting is dated the 14th September, 1935 and filed on the 16th September, 1935.
- (ix) When the liquidation of Stodarts Ltd., became effective the firm had in stock shoes of the company and these were sold in due course of the liquidation. As to when they were actually sold there is no evidence.
- (x) On the 24th April, 1935 the defendant applied for and obtained the registration of the trade mark entered in the Trade Marks Register of the Colony as No. 21 of that year, and himself as the proprietor thereof, the essential particulars of which is the word "Florsheim" and the design of which is a reproduction of and bears marked resemblance to the design of the company's trade marks, in other words practically a facsimile.

- (xi) On the 26th February, 1936 W. F. Bryden, of the firm of A. S. Bryden & Sons of the Colony, was appointed agent in the Colony of the company and received samples of their shoes to show to merchants with a view to doing business; he showed the said shoes to Messrs Hoadleys, Stephens and others of the Colony who told him they could not buy the shoes as the "Florsheim" brand of shoes had been registered in Trinidad by Cameron the defendant. In consequence of this he took legal advice, he discovered that the "Florsheim" brand of shoes had been registered by the defendant as the proprietor of the mark. In view of the attitude of the merchants and the advice he received he did not further offer to the merchants the company's shoes. As soon as he is able he proposes to sell the company's shoes in the Colony. There is a large market for the sale of shoes in the Colony.
- (xii) The defendant was fully aware from the time of the first importation of the company's shoes into Trinidad of the word "Florsheim" and the design used by the company to distinguish their shoes and that he recognised the very good quality of these shoes and realised the reputation they had acquired and were acquiring so as to make them readily saleable to persons in Trinidad who were willing to pay the price for good quality shoes. Further that from his knowledge of the footwear trade he was aware that that reputation was justifiably acquired.
- (xiii) That defendant considered it sufficiently worth his while to seize the first opportunity which offered to steal the company's trade name "Florsheim" and their design and to have them impressed on shoes manufactured in Great Britain for him and to be sold by him, the clear purpose being to deceive the public or a certain section of it in the Colony into believing his shoes to be of the company's manufacture and fraudulently to exploit for his own advantage the sale value of the company's trade name and design. His conduct in adopting the name "Florsheim" and the company's trade is the best evidence of his intention to pass off his goods as those of the company, and pregnant proof of the reputation of their shoes in the Colony and that he considered it a desirable thing to steal their trade name and design.
- (xiv) The company was satisfied that it had won for its shoes a sufficient reputation in Trinidad to justify it in appointing an agent in the Colony after the liquidation of Stodarts Ltd., but it was prevented from continuing to sell its shoes in the Colony by reason of the defendant's registration, No. 21 of 1935, as his own of what was and is really the company's trade name and design on their shoes.
- (xv) By reason of the company's agents, Stodarts Ltd., going into liquidation the company's shoes ceased temporarily to be sold in Trinidad.

This fact, however, in my opinion does not prove abandonment by the company of their trade name and design in the Colony in respect of the sale of their shoes, or an intention to do so.

The case of *Monson & Co. v. Boehm* (11) is a clear authority that abandonment is one of intention to be inferred from the facts of the particular case, there must be either direct evidence showing such intention or evidence so distinct that such intention can be inferred.

Whether it be for the defendant to prove abandonment or whether it be for the company to prove non-abandonment I hold that the company neither abandoned nor had any intention to abandon their trade name and design in the Colony; the evidence shows the contrary, but that at present the company is prevented from selling their shoes in Trinidad under their trade name and designs by the fraud, deception and dishonesty of the defendant.

- (xvi) The defendant admits that on the 11th August, 1936, the company's solicitor wrote him a letter referring to "Florsheim" shoes.

On the 26th November, 1937, the writ in this action was filed, the Statement of Claim was delivered on the 9th April, 1938, the Defence was delivered on the 31st May, 1938, and the admissions of the defendant filed on the 19th April, 1939.

Notwithstanding the letter of the 11th August, 1936, and the delivery of the Statement of Claim the defendant admits that shoes similar to the shoe, Exhibit "A" (marked "P", *vide* admission 9), are still being sold by him in the Colony. Stodart says that the mark on this shoe "A" appears to be the mark of the "Florsheim" shoe imported by his firm. This of itself is clear evidence of fraudulent intention. See *Orr Ewing v. Johnson* (5).

23. In my judgment the company has fully established their case against the defendant and is entitled to:—

- (a) a declaration that the registration by the defendant No. 21 of 1935 in the Trade Marks Register of the Colony is calculated to deceive and is fraudulent and ought to be set aside,
- (b) an order that the defendant forthwith and at his own cost and expense take all steps prescribed by section 56 of Cap. 189 to procure the cancellation of the registration by him of the Trade Mark, No. 21 of 1935, in the Trade Marks Register of the Colony
- (c) an order that the defendant, his servants and agents, each and every of them, be perpetually restrained from selling or offering for sale, or advertising for sale under the trade name of "Florsheim" or any other description of which "Florsheim" forms part, or distributing amongst dealers in the Colony or from selling or distributing or causing to be sold or distributed under the name "Florsheim" any boots, shoes or other footwear manufactured by

- any person other than the plaintiff company in such a manner as to pass off or cause or procure or assist any person, firm or corporation to pass off boots, shoes or other footwear not in fact manufactured and/or sold by the company as being boots, shoes or footwear manufactured or sold by the plaintiff company,
- (d) an order that the defendant forthwith deliver on oath to the plaintiff company's agents in Trinidad, Messrs. A. S. Bryden & Sons, at No. 2 Abercromby Street, Port-of-Spain, all boots, shoes, and other footwear in his possession or control bearing the name "Florsheim" or the mark registered as No. 21 of 1935 by him in this Colony. Also all boxes, wrappers, circulars, advertisements and other documents bearing the name and/or mark aforesaid.

On the delivery up to the company's agents, Messrs. A. S. Bryden, of the said boots, shoes and footwear, the defendant to be at liberty in the presence of a representative of the company to remove the said name and mark on the said boots, shoes and other footwear so delivered up at his own expense and to the satisfaction of the company or their agent, and on such being done the said boots, shoes and other footwear to be delivered back to the defendant, the company not to be responsible for any damage not occasioned through any act or default on their part or for any cause beyond their control.

- (e) that an enquiry be directed as to the profits made by the defendant from the sale of all or any boots, shoes and footwear bearing the trade mark registered as No. 21 of 1935 of the Colony from the date of the registration of the said trade mark down to the date of delivery by the defendant of the said boots, shoes and other footwear as ordered in (d) above.
- (f) that the defendant do pay to the plaintiff company the amount of such profits (if any),
- (g) the defendant must pay the plaintiff company their costs of this action to be taxed,
- (h) liberty to all parties to apply.

24. I should like to express my appreciation of the able manner in which Counsel for the parties presented their case to the Court and to thank them for the assistance they have given me.

I especially thank Mr. Wooding, Junior Counsel for the company, for the form in which he made his submissions which was of great assistance to me.

Judgment for the plaintiff accordingly.