

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLEE, VS. ALHAMBRA CIGAR & CIGARETTE MANUFACTURING CO., DEFENDANT AND APPELLANT

G.R. No. 10251, February 10, 1916

Ponente: MORELAND, J.

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MORELAND, J.:

The plaintiff claims to have appropriated and to own the exclusive right to use the word "Isabela" on cigarettes. ,

Sometime before the commencement of this action defendant began the manufacture of cigarettes, offering them to the public in packages on the front side of each of which appeared the words "Alhambra Isabelas." This action was brought to enjoin the defendant from so using the word "Isabelas." Judgment was for plaintiff and defendant appealed.

The complaint contains two counts, one for the violation or infringement of the trade-name "Isabela," and the other, claims the plaintiff, for unfair competition arising out of the use by the defendant of the word "Isabelas" on its cigarettes in the manner already stated. The trial court dismissed the count based on unfair competition, saying, "we doubt that the facts established, under the circumstances of the case, Justify the inference of actual intention on defendant's part to deceive the public and defraud a competitor, and can, therefore, not find the defendant guilty of unfair competition." Although neither count in the complaint was based on the infringement or violation of a trade-mark, and plaintiff, during the trial, offered no evidence on that subject, and, accordingly, no issue was framed thereon either by the pleadings or on the trial (*Lizarraga Hermanos vs. Yap Tico*, 24 Phil. Rep., 504), nevertheless the court, in its decision for plaintiff, treated the action as one for the infringement of a trade-mark, saying, "the case is rather one of the violation of a trade-mark under the first four sections of Act No. 666." The court then cited those sections of the Act relative to trade-marks, discussed them at some length, and finally founded its judgment thereon.

Plaintiff did not appeal from that portion of the judgment finding the defendant not guilty of unfair competition; while the defendant appealed from that part founded on the violation of a trade-mark and decreeing a perpetual injunction. Therefore the question involving unfair competition is not really before us, that count of the complaint founded thereon having been in effect dismissed by the trial court, and no appeal having been taken from that dismissal. While the court founded its judgment solely on the theory of a violation of a trade-mark and, although the defendant insisted from the very beginning that the action as set out in the complaint in no possible way involved the question of a trade-mark, nevertheless, the court, as we have already seen, proceeded to try and resolve the case on that theory and based its judgment exclusively thereon. Defendant now contends that, if it appears that the action was not for a violation of a trade-mark, the judgment should be reversed, as it was wholly misled in its defense and would be seriously prejudiced by the change necessarily resulting. We regard the action, however, as we necessarily must under the statute, as one for the violation of a trade-name and not one for the violation of a trade-mark or for unfair competition. But, inasmuch as we find for the defendant on the whole case

and reverse the judgment against it, we do not stop to dispose of the question as to whether the theory of the action was changed during or after trial or on appeal, so long as the parties have agreed on certain questions which they have submitted and discussed, which questions include all those which can arise whether the action be for the violation of a trade-name or for unfair competition. We prefer to decide the case so as to end the litigation once for all.

Inasmuch as the plaintiff did not appeal from the judgment dismissing the complaint as to unfair competition, we would be justified in holding that that question is not before us, and, accordingly, in deciding the case from the single viewpoint of a violation of a trade-name. But for the reasons just expressed we take up both alleged causes of action and decide all the questions presented by both.

Plaintiffs claim is this: It has trade-name rights in the word "Isabela." The defendant has violated those rights. Plaintiff is entitled to damages on the theory of violation of a trade name, or unfair competition, or both. Can it recover? We hold that none of these claims have been sustained and that plaintiff is not entitled to recover on any theory mentioned. We proceed to show why.

Rights of action for the violation of a trade-mark or trade-name or to restrain unfair competition are conferred by statute. Without such a statute right of action would not exist in those cases. In deciding this appeal, therefore, we must be governed by the provisions of the statute.

The Act is No. 666 of the Philippine Commission and confers a right of action in three cases—(1) for the violation of a trade-mark, (2) a trade-name, and (3) to restrain unfair competition. The statute founds the cause of action in the first two cases exclusively on the invasion of the right of property which the statute gives in the trade-mark or trade-name. These actions are not based on fraud nor is the right given on the theory of unfair competition. It is founded solely in the property which the statute creates in the trade-mark or trade-name. These two cases are dealt with somewhat on the theory of patents, giving the owner of the trade-mark or trade-name a right in the thing similar to the right created by a patent. As a necessary consequence, an action for a violation or infringement of a trade-mark or trade-name does not proceed primarily on the theory that either the plaintiff or the public has been or will be defrauded, although that may be, in effect, the result; but on the hypothesis that plaintiff's right in the mark or the name has been invaded and that he is entitled to the damages resulting from the invasion. In either case an action may be maintained without proof of anything more than the right to the exclusive use of the mark or name and that the defendant has violated it. No allegation or proof of fraud or intent to defraud is necessary. On the other hand, the action to prevent unfair competition is based exclusively on fraud; and it would seem from the wording of the statute that it refers to the fraud committed on the public rather than to the fraud committed on the plaintiff—the fraud against the plaintiff being only an incident—the means by which the fraud is perpetrated on the public. No right of property in the appearance which plaintiff gives to his goods is required, if the word "property" may be used in such a connection, and none needs to be alleged or proved. In such an action plaintiff, to recover, must prove that the defendant, in selling his goods, gave them the same general appearance of the goods of the plaintiff either in the wrapping of the package in which they were contained or in the devices of words thereon or in some other feature of their appearance which would be likely to influence purchasers to believe that the goods offered for sale by defendant were those of the plaintiff; and that the defendant clothed his goods with such appearance for the purpose of deceiving the public and of defrauding the plaintiff of his legitimate trade. The statute expressly requires that the plaintiff prove the intent to deceive the public and defraud a competitor before he can recover; and, while such intent may be inferred from the similarity in the appearance of the goods as packed or offered for sale, such an inference is not a necessary one, it being legally possible that such similarity exist and there still be no intent to deceive. Fraud, then, is the essence of an action of unfair competition; right in property the essence of the other two.

From these observations it is a necessary deduction that an action for the violation of a trade-name cannot be carried on in conjunction with an action of unfair competition based on a similarity to the plaintiff's trade-name. If an action on the trade-name will lie, then an action of unfair competition based on similarity to the trade-name is impossible; whereas, on the other hand, if an action of unfair competition is the proper action, then one for the violation of a trade-name based on the same facts will not lie. The facts which will support an action for the violation of a trade-name will not support an action of unfair competition. The same is true of an action for the violation of a trade-mark except where such an action fails for the reason that the trade-mark is invalid because it consists of a word or words which, in law, are not capable of appropriation as a trade-mark. In such case, by express provision of the statute (section 7), an action of unfair competition will lie. No such exception is made in favor of a trade-name; and if the plaintiff fails to establish his right of property therein, his failure is irremediable. He cannot fall back on the action of unfair competition. We apprehend that the reason why this privilege was not extended to a plaintiff in an action for the violation of a trade-name was that an action of unfair competition is based exclusively on the appearance of the goods as they are exposed for sale; while, under the statute, the trade-name, unlike the trade-mark, applies exclusively to the business, profession, trade or occupation of the plaintiff and, as a consequence, it is not essential that the trade-name appear on plaintiff's goods or go into the market with them. (Section 5.) It is clear that, if the action of unfair competition is based on the appearance of the goods as they are exposed for sale, the facts necessary to support an action for the violation of a trade-name will not sustain it as neither the trade-name of the plaintiff nor of the defendant need go into the market at all and, as a consequence, the similarity of appearance between the goods of plaintiff and defendant, a fact necessary to sustain an action of unfair competition, may not exist.

Another principle of the law of trade-marks, trade-names and unfair competition of importance in this case, and one which naturally follows from what has already been said, is that there can be no secondary meaning, as that term is understood in the American law of trade-marks and trade-names, with respect to a trade-name. It must be borne in mind, as we stated at the outset, that the only rights existing in this jurisdiction with respect to trade-marks and trade-names, as well as unfair competition, are conferred by Act No. 666; and, accordingly, they are limited by the provisions of the Act. The statute prohibits the registration of a trade-name when that trade-name represents the geographical place of production or origin of the products or goods to which the trade-name refers, or when it is merely the name, quality, or description of the merchandise with respect to which the trade-name is to be used. In such cases, therefore, no trade-name can exist. The statute prescribes what a trade-name may be and then gives a right of action to protect the owner of that trade-name. If it is not a trade-name defined by statute, it does not carry with it the right of action granted by the statute. No trade-name can legally exist except that prescribed by the Act. If it can exist, it can be enforced as, and only as, the rights in trade-names are enforced under the statute. If it cannot exist as a trade-name, it cannot be enforced at all, either as a trade-name, i. e., as a property right, or on the theory of unfair competition based on the doctrine of secondary meaning. Of course, if the trade-name is not recognized in law, it can have no secondary meaning. Moreover, the doctrine of secondary meaning as it is known in the United States, is carried into effect on the theory of unfair competition and not on the theory of property in the trade-name. Indeed, the necessity of basing the action on the theory of unfair competition negatives the existence at that time of the trade-name in its primary meaning. In this jurisdiction that necessity is emphasized by the fact that, as we have seen, the statute makes a sharp distinction between actions for the violation of a trade-mark or trade-name and those based on unfair competition, the former being founded in a property right and the latter on the fact that fraud has been or will be committed on the public. Furthermore, if the action of unfair competition based on the similarity of plaintiff's and defendant's trade-names cannot be maintained in this jurisdiction, as we have seen that it cannot, then the fundamental basis of the doctrine of secondary meaning disappears. We might add that the statute does not seem to have dealt with trade-names as it has with trade-marks; for, with respect to the latter, it expressly confers, as we have seen (sec. 7), a right of

action for unfair competition even though the trade-mark, as such, is illegal and unregistrable by reason of being the name of the geographical place of production or origin of the goods to which it is affixed, or the name, quality or description of the merchandise on which it is placed. In other words, the statute seems to create with regard to a trade-mark a right which is, in many aspects, the equivalent of that springing from the doctrine of secondary meaning, and where the trade-mark, though illegal and unregistrable under the Act, has been used by the plaintiff for such a length of time that it has ceased to be used and understood in its primary meaning, the owner will be protected on the theory of unfair competition. The statute does not confer a right on the owner of a trade-name under similar circumstances.

The trial court was, therefore, correct in dismissing that count of the complaint based on unfair competition. The statute, as we have already observed, does not permit these two actions to be maintained on the same facts. We might say, however, that the ownership of a trade-name does not necessarily prevent the owner from bringing an action of unfair competition founded on the appearance of the goods of defendant as exposed for sale, which appearance is not based on similarity to the owner's trade-name. Such an action would have to be based on the general appearance of the package, its form, color, style, adornment, and matters of that character; and would not lie on appearance arising from the similarity of plaintiff's and defendant's trade-names.

The effect of these observations and conclusions would necessarily be to end the case at this point if we were disposed to leave the other questions presented for resolution unsettled; for, if there can attach to a trade-name no secondary meaning, plaintiff's action must fail. It is based exclusively on the secondary signification of the word "Isabela" which it has acquired by long association with plaintiff's cigarettes, by virtue of which it no longer means to the trade and the public generally when used in connection with tobacco products, a province of Luzon or the tobacco grown in that province, but simply and solely the products of plaintiff's factory. In other words, the claim is that it has completely lost its primary signification and come to have a secondary meaning exclusively when used in connection with manufactured tobacco. The action being based entirely on the theory of secondary meaning, and the statute giving no right of action in cases of that character, it is evident that the action cannot be maintained.

In spite of the fact, however, that we might here reverse the judgment on the grounds already stated, we prefer, in the interests of the parties, the bar and the public generally, to decide the other questions presented, some of them being extremely important and of public interest and they having been fully argued on the appeal. (*Lichauco vs. Limjuco and Gonzalo*, 19 Phil. Rep., 12.)

It is admitted all through this case, in fact it is alleged in plaintiff's complaint and is set out in all parts of its brief filed on this appeal, that plaintiff's trade-name, as evidenced by the certificate issued under the Spanish regime, consists solely of the words "La Flor de la Isabela." Plaintiff does not claim that the word "Isabela" has been registered by it as a trade-name or that it has a title from any source conferring on it the exclusive right to use that word. The certificate offered in evidence by plaintiff to show its right to the exclusive use of the phrase "La Flor de la Isabela" grants two rights: One in a trade-mark consisting of a rectangular shield, surmounted by a crown and divided into four equal parts, in the right hand upper corner of which is a full rigged sailing ship at sea, in the left hand upper corner a growing tobacco plant, in the lower right hand corner a field of sugar cane with a pool of water in the foreground, and in the lower left hand corner a factory in operation; the other, a right in the trade-name "La Flor de la Isabela." As we have already seen, there is no claim here based on the infringement or violation of the trade-mark just described, nor is there contention or claim of any kind that the use of the word "Isabela" is a violation or an infringement of the trade-name "La Flor de la Isabela." The action is not for the violation of the trade-name "La Flor de la Isabela," but for the violation of an entirely different trade-name, namely, "Isabela." The exclusive right to use this name, plaintiff claims arises from two causes: First, the

contraction of the phrase "La Flor de la Isabela" into the word "Isabela" by popular expression and use; and, second, the use for more than twenty years of the word "Isabela." In view of the fact that there is no claim of an infringement of the trade name "La Flor de la Isabela," these two claims are identical; for, there could have been no contraction brought about by popular expression except after long lapse of time. The contraction of the phrase into the word would create no rights, there being no registration, unless it resulted from long use. Therefore, to establish a right in the word, the contraction must be shown to have existed for a length of time equivalent to that which would be necessary to give the word "Isabela" the dignity and legal status of a trade-name. If, therefore, it results from the evidence in this action that the word "Isabela" has not been used by the plaintiff for a period of time sufficient to give it the special value necessary to bring it within the law relating to trade-names (if it be admitted for the moment that that could be done), then the plaintiff must fail, whether it base its action on contraction, or use, or both.

There is another ground on which plaintiff would fail in his action. If it should appear in the case that the word "Isabela" was a word which, at the time of its adoption by plaintiff and at all times since, was the name of the geographical place of production or origin or was ordinarily and generally used as the name, quality or description of the merchandise to which it related, plaintiff would fail, as such name would not be capable of being registered as a trade-name (secs. 2 and 13) and could not, for that reason, be appropriated by plaintiff as such. That being so, no action for a violation thereof could be maintained, as none is granted by the statute in such case. (Secs. 3, 5, and 7.)

Before entering on the discussion of the facts of the case, it may be well to set down certain things that appear to be uncontroverted

- There is a province in the Island of Luzon known as Isabela Province. In that province grows tobacco of a class and quality not grown in any other province or place in the Philippine Islands.
- That tobacco is known commercially and to the trade as Isabela tobacco and the expression "Isabela tobacco" has in the Philippine Islands a meaning as definite, certain and clear as the expression "Havana tobacco" or "Virginia tobacco" in the United States.
- The defendant has used on its cigarettes the words "Alhambra Isabelas" with a statement that the cigarettes inclosed in the package are composed exclusively of Isabela tobacco. Aside from "Isabela" no other word or phrase or character is used on defendant's packages which it is claimed is in violation of plaintiff's rights.
- There is absolutely no resemblance between the packages of cigarettes manufactured and sold by the plaintiff and those manufactured and sold by the defendant, except in the word "Isabela."
- The phrase "La Flor de la Isabela" means in English, giving it a free translation, "The best tobacco grown in Isabela Province," or "The finest tobacco grown in Isabela Province," or "The finest quality of tobacco grown in Isabela Province." The phrase, in its primary sense, conveys the idea that the products on which it is placed are composed of the best tobacco grown in the Province of Isabela.
- Plaintiff's cigarettes marked with the design "La Flor de la Isabela," and referred to in this case, are not manufactured or composed, either wholly or in part, of tobacco grown in Isabela Province.
- The cigarettes manufactured and sold by defendant as "Alhambra Isabelas" are composed exclusively of tobacco grown in Isabela Province.
- The word "Isabela," when used in connection with tobacco, cigars or cigarettes, signifies in its primary sense that the tobacco itself, or that composing the cigars or cigarettes, is Isabela tobacco.

We are of the opinion that the plaintiff must fail in this action for the reason that, in the first place, it has not

proved that the word "Isabela" has been used in the manner and form alleged in the complaint; and, in the second place, for the reason that it is the name of the geographical place of production or origin of the material composing the article to which it is affixed and that it is the name, quality and description thereof. The burden is on plaintiff to prove the use of the word "Isabela" for such a length of time and under such circumstances as to give it the right to its exclusive use. Reviewing the evidence of record, we are of the opinion that the overwhelming weight thereof is contrary to plaintiff's contention. It shows that in not a single instance in the history of the plaintiff corporation, so far as is disclosed by the record, has a package of its cigarettes gone into the market, either at wholesale or retail, with the word "Isabela" alone on the package as a separate or distinct word or name. In every instance, so far as the documentary evidence goes, the packages have been marked by the phrase "La Flor de la Isabela." There is not an exhibit of any probative value on the issues involved which does not tend affirmatively to establish that the word was never used as a separate and distinct word and to negative any intention on the part of the plaintiff to use it as such. As far back as the time when the plaintiff obtained the right to use the trade-name "La Flor de la Isabela" the exhibits filed in its application for registration of that trade-name demonstrate, as they naturally must, that the trade-name which plaintiff desired to secure was "La Flor de la Isabela" and not "Isabela." These exhibits are the wrappers which inclose plaintiff's cigarettes as they are found exposed for sale and have on them the words, designs and devices to the exclusive use of which plaintiff claims to be entitled. Every one of them contains the phrase "La Flor de la Isabela" and not one of them the word "Isabela." In all of them the word "Flor" is almost equally conspicuous with the word "Isabela" and from them we can see no intent to emphasize the word "Isabela" more than the word "Flor." So far as the record shows, plaintiff nowhere advertised or advertises its cigarettes as "Isabela" cigarettes and we find nothing in the exhibits which shows that the plaintiff has or ever had the slightest intention to use the word "Isabela" as a trade-name.

Much stress is laid by plaintiff on the fact that the wholesale packages of cigarettes, that is, the packages containing a number of the small retail packages, have printed on the two edges in large letters "Isabela Cortos," "Isabela Largos," and "Isabela Entrelargos," as the case may be. But it is to be noted that it appears from the exhibits themselves that plaintiff's trade-name "La Flor de la Isabela," in conspicuous letters, is also attached to both ends of each of such packages; and each of the small packages inclosed in the larger carries the phrase "La Flor de la Isabela" and not the word "Isabela." It remains true, therefore, as we said at the outset, that not a single package of plaintiff's cigarettes has ever gone into the market in the Philippine Islands with the word "Isabela" alone thereon as a trade-name.

Much importance is attached by plaintiff to a letter dated April 8, 1914, received from one of its employees in America. While this letter is of doubtful competency as evidence for plaintiff, it is in the record, and inasmuch as so much stress is laid on a portion of it, and it appears to be competent evidence as against plaintiff, we refer to it. The sentence in the letter to which reference is particularly made is this: "Furthermore, the trade here knows the cigars as 'Isabela' pure and simple." As is seen, this letter refers to cigars and not cigarettes; but, be that as it may, we believe that the plaintiff has quite overlooked the real nature of the letter as evidence. In its attempt to demonstrate that its tobacco products are known in America as "Isabela" products, it overlooked the first part of the letter which, to us, is the most significant part of it. The writer says:

"Ehrman Bros. & Co. have asked us to have the paster 'La Flor de la Isabela,' which goes on the end of the boxes, as per sample we inclose herewith, changed as follows: Make the strip about half as wide again as the inclosed sample, and instead of the words 'La Flor de la Isabela,' put on just the one word 'Isabela' in large letters. Ehrman Bros. say their customers claim that the lettering on this strip is too small for the customers to notice it readily behind the counter, whereas a large lettering of the word 'Isabela' will be much more attractive and more noticeable."

This portion of the letter demonstrates conclusively that the plaintiff has never advertised its cigars in America as

"Isabela" cigars. It has persisted always in advertising them as "La Flor de la Isabela;" and the precise objection made by the dealers handling plaintiff's cigars in the United States is that plaintiff insists on advertising its goods as "La Flor de la Isabela" instead of "Isabela;" and it is clear from the letter that if, as the writer says, its cigars are known to the trade in America as "Isabela" cigars, it is not by reason of plaintiff's efforts but in spite of them. Plaintiff itself has put forth no effort, as far as we can see from the record, to create a right in the word "Isabela." All of its money has been spent and all its energy used in the advertisement of the phrase "La Flor de la Isabela."

A price list of the products of the plaintiff company has been introduced in evidence, on the tenth and eleventh pages of which appear the words "Isabela Cortos," "Isabela Largos" and "Isabela Entrelargos," together with the price. We do not regard this price list as indicating anything more than the fact that the limited space (the price list is printed in very small letters) forbade the use of the phrase "La Flor de la Isabela." But we note then, in extremely large letters, comparatively speaking, on the front page of the price list, are found the words "La Flor de la Isabela," while on each package of cigarettes which, in the price list, are called "Isabela Cortos," "Isabela Largos" and "Isabela Entrelargos," is found, in more than one place, the phrase "La Flor de la Isabela." Moreover, under the word "remarks" found at the close of the price list, are these words: "When the Spanish Government abolished the tobacco monopoly in the Philippine Islands this company acquired the exclusive right to use the marks Cavite, Malabon, Princesa, and Meisic which were formerly the property of the Government." Nothing is said about the word "Isabela." No rights are claimed by that advertisement in that name.

The documentary evidence introduced by plaintiff is fully corroborated by the evidence of defendant. The testimony of Mr. Olsen, one of the leading tobacco manufacturers of the Philippine Islands, is to the effect that the products of plaintiff's factory are generally known in the Philippine Islands as Tabacalera products, sometimes as "La Flor de la Isabela" products, but not as "Isabela" products. He states that the cigarettes which plaintiff calls "Isabela Cortos" and "Isabela Largos" are generally known to the trade as "Tabacalera Cortos" and "Tabacalera Largos." The clerk of the Court of First Instance in which the action was tried, being called as a witness for the defendant, testified that he smoked cigarettes of the Tabacalera and Insular factories and that he had never heard of "Isabela" cigarettes before the defendant began the manufacture of its cigarettes; but that he had frequently heard of the factory "La Flor de la Isabela." Mr. Blanco, the interpreter of the court, testified that he had smoked cigarettes for forty or fifty years and that he had not heard of "Isabela" cigarettes.

While some of the witnesses for the plaintiff testified that the public knew the products of plaintiff's factory as "Isabela" products, that testimony was in part contradicted by other witnesses for the plaintiff and is entirely at variance with its documentary evidence.

It appearing from the record in the case that the plaintiff has always insisted on the ownership of the trade-name "La Flor de la Isabela" and has invariably sent it into the market with its products both in the Philippine Islands and in the United States, and that whatever effort and money plaintiff has expended in securing a trade-name have been spent with respect to "La Flor de la Isabela" and not "Isabela," we are driven to the conclusion that, as a matter of fact, the word "Isabela" has never been used by the plaintiff as a trade-name in such a way as to give it any exclusive right therein. Moreover, the persistent use of the trade-name "La Flor de la Isabela" denies the possibility of any single word in that phrase being a trade-name. It being kept in mind that there is no contention on the part of the plaintiff that the use of the word "Isabela" by the defendant is an infringement of the trade-name "La Flor de la Isabela," it is clear that the use of "La Flor de la Isabela" has given the plaintiff no right to the use of the word "Isabela." Furthermore, plaintiff denies that it has abandoned the trade-name "La Flor de la Isabela," but maintains that its rights therein are now in full force and effect. Admitting, even for the sake of argument, that there can exist a trade-name without registration under the statute, it is well known that the plaintiff is not entitled to the exclusive right to use such a trade-name unless it has used it for a sufficient length of time to give it a

special value. But plaintiff's effort has been directed exclusively to the trade-name "La Flor de la Isabela," and this fact necessarily negatives any claim that the word "Isabela," has, by plaintiff's effort, received any special value in connection with plaintiff's products.

We might say, in concluding this branch of the subject, that, even admitting that the word "Isabela" may have been appropriable by plaintiff as a trade-name at the time it began to use it, the evidence showing that it had been exclusively appropriated by the plaintiff would have to be very strong to establish the fact of appropriation and the right to exclusive use. The law as it now stands and has stood since the Royal Decree of 1888 prohibits the use of a geographical name as a trade-name. Act No. 666 prohibits the use not only of a geographical name but also of a word which is either the name, quality, or the description of the article to which the trade-name refers. Even if appropriation were possible, it would require the clearest of proof to permit the appropriation of a word as a trade-name the use of which in that connection the law expressly declines to sanction.

Furthermore, we are of the opinion that, even if plaintiff had proved a right to the exclusive use of the word "Isabela," we would be forced to conclude that its use by the defendant in connection with the word "Alhambra," which is made equally conspicuous with the word "Isabela," would be a sufficient effort on the part of defendant to distinguish its cigarettes from those of plaintiff; particularly in view of the fact that the word "Isabela" is the name of a province and also the commercial name of the tobacco grown in that province.

We do not believe, however, that the word "Isabela" can be appropriated or could be appropriated at the time plaintiff claimed that it began to use that word as descriptive of its products. The Royal Decree of 1888 prohibited the use of a geographical name as a trade-name or trade-mark and that decree was in force before the use of the word "Isabela" began, even under plaintiff's claim. At least it had not been used for a sufficient length of time to give it a property right therein, it never having been registered as a trade-name either under that decree or Act No. 666. From the date of that decree to the present time it has been unlawful to select the word "Isabela" as a trade-name, and it would have been impossible during that time for plaintiff to have obtained a right therein, no matter how much the word might have been used or to what extent it had been advertised. While Act No. 666, as we have seen, expressly permits the appropriation of a trade-mark, although it may be a geographical or descriptive name, it does not permit the appropriation of a trade-name under the same circumstances. We accordingly repeat, from the Royal Decree of 1888 to the present time, the word "Isabela" has not been appropriable by anybody as a trade-name.

For these reasons and for the further reason that we regard the case of *Baxter vs. Zuazua* (5 Phil. Rep., 160), as decisive of the main questions involved in this case, we are of the opinion that the judgment must be reversed.

The judgment appealed from is reversed and the perpetual injunction issued thereon is dissolved. Without costs in this instance. So ordered.

Arellano C. J., and Torres, J., concur.

Carson, and Trent, JJ., concur in the result.

Johnson, J., dissents.

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