

TITLES OF PUBLICATIONS AT LAW*

DARRELL DRAPKIN

Toronto

The increasing importance of native Canadian literature, coupled with the growing number of Canadian publications devoted to its expression, testifies to Canada's maturity as a nation as eloquently as does its industrial growth. The attendant growth of the law in this field is well indicated by the publication in 1944 of the first Canadian legal work devoted exclusively to the subject.¹ Rules of law have in this field, as in others, served effectively in maintaining, reinforcing and even elevating standards of ethics so as to secure to both authors and publishers the fruits of their talents and enterprise and to protect the public from literary fraud and deception.

It is proposed to consider the protection afforded by Canadian law to the titles or names of literary publications. This will necessitate considering not only the law of copyright but also the branches of the law of unfair competition known as passing off and infringement of trade marks. In these legal fields the law is in a fluid state, relatively unhampered by anachronistic statutes and precedents, and is readily adapting itself to meet the novel problems that are continually being created in a complex and evolving society. Moreover there is a gratifying harmony in these legal fields among Canadian, English and American jurisdictions, as indicated by their adherence to the international conventions for the protection of literary and industrial property,² permitting useful reference to decisions in all the jurisdictions.

Copyright

The first copyright act, which is to be found in 8 Anne, chapter 19, abolished common-law copyright in published works,³ making it purely statutory, but not in unpublished works which still remained solely at common law. Although a series of subsequent statutes in England and Canada altered and extended

* The present article was co-winner of the Wallace Nesbitt Competition at the Osgoode Hall Law School in 1946.

¹ Fox: Canadian Law of Copyright (1944).

² By section 2(a) of The Unfair Competition Act, 1932, Canada adheres to the Convention of the Union of Paris of March 20, 1883, for the Protection of Industrial Property, as revised at The Hague on November 6th, 1925. Over forty nations, including Great Britain and the United States, adhere to this Union.

Both Canada and Great Britain, but not the United States, adhere to the Rome Copyright Convention, 1928; copyright privileges are extended by the United States to citizens of Canada and Great Britain on a reciprocal basis.

³ *Donaldson v. Beckett* (1774), 2 Bro. P.C. 129.

the terms of the original act, it was not until passage of the Copyright Act of 1911⁴ in England and the Copyright Act of 1921⁵ in Canada that common-law copyright in unpublished works was clearly abolished and brought under the copyright statutes so as to make all copyrights purely statutory.⁶

By section 4 of the present act⁷ "copyright shall subsist in Canada in every original literary, dramatic, musical and artistic work". "Work" is defined by section 2(v)⁸ as including "the title thereof when such title is original or distinctive", so that at first sight copyright protection would appear to extend to titles *per se* apart from the literary work as a whole. However in the case of *Francis Day & Hunter Ltd. v. Twentieth Century Fox Corporation Ltd.*,⁹ in which the owner of the copyright in a song entitled "The Man Who Broke the Bank at Monte Carlo" claimed infringement by the making and showing of a film bearing the same title but using neither the words nor the music of the song, Lord Wright, speaking for the Privy Council, stated the effect of these sections to be as follows:

to copy the title constitutes infringement only when what is copied is a substantial part of the work . . . and would apply to a case such as a title covering a whole page of original matter, or something of that nature.

It is to be noted that in this respect the laws in England¹⁰ and in the United States¹¹ appear to be to the same effect.

Since the exception noted by Lord Wright will rarely, if ever, be met with in modern commercial practice, in which florid titles have been replaced by brief titles with their greater advertising appeal, the law of copyright does not afford any real protection to titles *per se*. Of course if both the title and a part of the copyrighted work are copied infringement of the copyright will be more readily found than in the case where the same part of the copyright work, without the title, is copied.¹²

⁴ 1-2 Geo. V, c. 46, s. 1.

⁵ 1921, c. 24, s. 41, now R.S.C. 1927, c. 32, s. 42; the act did not come into force until January 1st, 1924.

⁶ *Underwriters Survey Bureau Ltd. et al. v. Massie and Renwick Ltd.*, [1938] Ex. C.R. 103.

⁷ R.S.C., 1927, c.32.

⁸ 21-22 Geo. V., 1931, c. 8.

⁹ [1939] 4 All E.R. 192, at p. 199; [1939] 4 D.L.R. 353, at p. 360.

¹⁰ Copinger on the Law of Copyright (6th ed.), at p. 56; *Dick v. Yates* (1881), 18 Ch. D. 76, at p. 89.

¹¹ Ball: Law of Copyright and Literary Property (1944), at p. 122.

¹² For a full treatment of infringement of copyright see Fox: Canadian Law of Copyright (1944), at pp. 327ff.

Passing Off

The action to restrain a defendant from passing off his wares as those of the plaintiff is the generalized form of the now statutory action to restrain the infringement of a trade mark,¹³ which is to be discussed subsequently in detail. The defendant may directly misrepresent¹⁴ that the goods he sells are the goods of the plaintiff, but more commonly he does so indirectly by copying or imitating the trade name, the unregistered trade mark¹⁵ or some other indicia by which the plaintiff's business and goods are known to be his. In all these cases, if damages result or if there is a probability of damages resulting,¹⁶ the plaintiff has his remedy in a passing off action.

Where the title of a publication has been copied or imitated the plaintiff must prove by direct evidence that there has been such a sale¹⁷ as to obtain for it a reputation in the minds of the public as referring to his publication. Both volume and duration of sale must be considered and it has been held that a sale of eighty copies of a newspaper over three days was not sufficient to establish such a reputation.¹⁸

Fraud is not a necessary ingredient of the action and, having established the reputation, the plaintiff need only show that there is a probability of confusion arising in the normal course of trade.¹⁹ The court may consider the conflicting titles under adjudication to be so dissimilar that there is no probability of confusion, but this type of case is very rare. Ordinarily, in determining whether there is a probability of confusion, which is always a question of fact, the court compares the titles, considers evidence of actual confusion and compares the types of publications, one may be a book and the other a magazine, to which the titles are applied. It also considers the types of purchaser who purchase the publications, since, for example, purchasers of technical trade journals are less likely to be confused

¹³ *Per* Halsbury L. C. in *Reddaway v. Banham*, [1896] A.C. 199, at p. 204.

¹⁴ This topic is considered at length in Kerly on Trademarks (6th ed.), at pp. 551*ff*; the cases therein discussed, while not specific to titles of publications, are applicable to them.

¹⁵ Although by section 4(4) of The Unfair Competition Act, 1932, an action for infringement can only be taken with respect to a registered trade mark, it was held in *Anheuser Busch Inc. v. Canada Bud Breweries Ltd.*, [1933] O.R. 75, that the owner of an unregistered trade mark, even if it is registrable under the act, can still maintain a passing off action in respect to it.

¹⁶ *Borthwick v. The Evening Post* (1888), 37 Ch. D. 449.

¹⁷ *Licensed Victuallers' Newspaper Co. v. Bingham* (1888), 38 Ch. D. 139, at p. 143.

¹⁸ *Idem*.

¹⁹ *United States Playing Card Co. v. Hurst* (1918), 58 S.C.R. 603.

by similar names than the less discriminating purchasers of cheap fiction magazines. Other factors are outlets, the prices at which the publications are sold and the general appearances of the publications.

From this examination the court forms a fact picture in which the relative significance of any one or group of the factors varies from case to case. Thus, for example, it has been held that there was no probability of deception between two daily newspapers entitled the "Evening Times" where one was published in Glasgow and the other in London, even though the Glasgow paper had a small circulation in London;²⁰ while the "London Journal" succeeded in preventing a rival paper from being published in the same city under the title "Daily London Journal".²¹ In another case, in which the proprietors of the well-known magazine "Punch" took action against the proprietors of a new magazine entitled "Punch and Judy," it was held that there was no probability of deception because the first magazine sold at threepence and the second at a penny, and because they had different frontispieces.²²

The titles of all types of publications can be protected by a passing off action. Thus passing off actions have been employed to protect not only the titles of newspapers and magazines but also the titles of songs,²³ books,²⁴ piano lessons,²⁵ copy books,²⁶ railway guides,²⁷ and even greyhound racing "tip sheets".²⁸ The scope this action has been afforded in the United States is strikingly illustrated by the case of *Paramore v. Mack Sennett Inc.*²⁹ in which the court went so far as to restrain the use of the title of a well-known poem as the title of a completely unrelated film.³⁰

Trade Marks in General

The basis of both passing off and infringement of trade mark actions is the violation of the proprietor's right to use a certain

²⁰ *Outram v. London Evening Newspapers Co. Ltd.* (1911), 28 R.P.C. 308.

²¹ *Ingram v. Stiff* (1859), 5 Jur. (N.S.) 947.

²² *Bradbury v. Beaton* (1869), 18 W.R. 33, at p. 34.

²³ *Chappell v. Sheard* (1855), 2 K. & J. 117.

²⁴ *Mathieson v. Sir Isaac Pitman & Sons Ltd.* (1930), 47 R.P.C. 541, per Maugham J. at p. 549.

²⁵ *Metzler v. Wood* (1878), 8 Ch. D. 606.

²⁶ *The Canada Publishing Co. v. Gage* (1885), 11 S.C.R. 306.

²⁷ *Henry Blacklock & Co. Ltd. v. Bradshaws Publishing Co.* (1926), 43 R.P.C. 97.

²⁸ *Shallis v. Freeman & Stirling Press Ltd.* (1931), 48 R.P.C. 370.

²⁹ (1925), 9 F. (2d) 66.

³⁰ But in *Francis Day & Hunter Ltd. v. Twentieth Century Fox Ltd.*, [1939] 4 All E.R. 192, it was held that there was no passing off where the title of the plaintiff's song was applied to a film.

name or title which designates to the public that the publications are his.

In a passing off action the plaintiff is under the burden, in each case, of proving by direct evidence the establishment for the title of a reputation in the mind of the public as referring to his publication. However by section 18 of The Unfair Competition Act, 1932,³¹ production of a certified record of registration of the trade mark is prima facie evidence of ownership and conclusive evidence that the trade mark was in use in Canada at the date of registration in such a manner as to give its proprietor the sole right to use it for the same or similar goods as against anyone adopting the same or similar trade mark after the date of registration.³² Registered trade marks therefore provide the most advantageous means for protecting titles of publications.

In view of the protection afforded to publications by the successive copyright acts the courts in Canada have been very hesitant to extend the protection of the trade mark acts to titles of publications, although, as previously pointed out, the copyright acts have afforded them no real protection. It is therefore necessary to determine whether titles can be valid trade marks.

At common law the name or title by which goods are referred to is their trade name, and trade marks are a specialized class of trade name affixed to, or impressed upon, the goods.³³ Thus the title of a publication impressed thereon is a trade mark by this definition. A trade mark is a right of property but a trade name is not always considered as such. In passing off actions this distinction is of little practical importance, inasmuch as actions on trade names include the narrower trade mark action, and many of the cases dealing with publications which proceeded on the basis of a violation of rights in a trade name could have been decided similarly as simple trade mark cases. Moreover, even when recognizing that titles of publications are a special kind of trade name, the courts have designated them by such varied terms as trade marks,³⁴ a kind of trade mark,³⁵ a right in the nature of a trade mark,³⁶ and a quasi trade mark.³⁷ However it now appears to be established law that the names of periodical publi-

³¹ 22-23 Geo V, c. 38.

³² See also section 4 of this act.

³³ *Singer Manufacturing Co. v. Wilson* (1874), 2 Ch. D. 434, at p. 443.

³⁴ *New York Herald Co v. Ottawa Citizen Co.* (1908), 41 S.C.R. 229, at p. 236.

³⁵ *Rose v. McLean Publishing Co.* (1897), 24 O.A.R. 240, at p. 243.

³⁶ *Idem.*, at p. 248.

³⁷ Copinger on the Law of Copyright (6th ed.), at p. 59; *William Stevens v. Cassell & Co.* (1913), 29 T.L.R. 272.

cations,³⁸ and specifically the names of newspapers,³⁹ are capable of being trade marks at common law.

Trade marks, both registered and unregistered, cannot be employed to extend a monopoly granted by law by way of patent⁴⁰ or copyright.⁴¹ Thus, where a certain title is applied to a story, a poem, a book or any publication other than a constantly changing series of individual literary works, the public has only one way of describing the publication, so that the title is always descriptive of it as a literary work⁴² and does not merely connote the publication of a particular publisher as is required of a trade mark. In these cases, as soon as the copyright terminates, the title, always a descriptive term, is *publici juris*, for otherwise the public would have no way of asking for that particular publication and if the proprietor of the copyright continued to retain the exclusive right to the title, by way of trade mark, he would in practice retain a monopoly on the literary work itself.

In the case of a title applied to a constantly changing series of books in which each book has its individual title, such as "Little Big Books" applied to a series of pocket books,⁴³ the public after the lapse of the copyright can ask for each book by its individual title and the title of the series is a proper trade mark designating the publications as being the products of a particular publisher. However if the series comprises a story published in sections at periodical intervals the title is not only the title of the series but also the title of every section of the series and the title is descriptive, the public having no other way of describing each part of the serial than by use of the title of the serial.⁴⁴

In the case of newspapers and periodicals the title, while incidentally the title of each issue, is essentially the title of the constantly changing series, designating the publications as being those of a particular publisher. Although an over-all copyright subsists in the collective work in each issue, in addition to the

³⁸ See footnote 34 *ante*.

³⁹ *Journal of Commerce Publishing Co. v. Record Publishing Co.*, [1929] Ex. C.R. 168, at p. 171.

⁴⁰ *Reddaway v. Banham*, [1896] A.C. 199, at p. 216.

⁴¹ *New York Herald Co. v. Ottawa Citizen Co.* (1908), 41 S.C.R. 229, at p. 234; *Merriam v. Texas Siftings Publishing Co.* (1892), 49 Fed. Rep. 944, at p. 947; *In re Page Co.*, 47 App. D.C. 195.

⁴² See note to *Clemens v. Belford* (1883), 14 Fed. Rep. 728, in Cox, Manual, at p. 685.

⁴³ *Whitman Publishing Co. v. McLaughlin Bros. Inc.*, 497 O.G. 278.

⁴⁴ *In Re Page Company*, 47 App. D.C. 195; this reasoning supports the judgment in *New York Herald Co. v. Ottawa Citizen Co.* (1908), 41 S.C.R. 229, in which it was held that the title of a comic section, a pictorial serial, was not a registrable trade mark under The Trade Mark and Design Act of 1906.

separate copyright subsisting in each individual story, article or picture,⁴⁵ each of these has its own title. Thus while the existence at the end of the over-all copyright monopoly period of a trade mark in the title of the series would prevent the public from freely applying the name to the collective work in each issue, no detrimental monopoly would result since the public would be free to designate the individual items by their own individual titles.

An examination of the cases supports this differentiation since in Canada, the United States⁴⁶ and Great Britain⁴⁷ the titles which have been afforded protection as trade marks, whether registered or unregistered, have been the titles of constantly changing series of publications and never the titles of particular books, stories or individual works.

Registered Trade Marks

Under Past Acts

In the case of *New York Herald Co. v. Ottawa Citizen Co.*,⁴⁸ the Supreme Court dealt with the validity of the trade mark registrations, under The Trade Marks and Design Act of 1906,⁴⁹ of the titles "Buster Brown" and "Buster Brown and Tige" as applied to weekly comic sections of newspapers. According to the report the proprietor of the titles used them merely as headings for the comic sections, and not to denote that the comic sections were produced by him, inasmuch as the sections were modified to bear the titles, and to appear as ordinary parts, of the various newspapers with which they were sold.

Section 5 of the act, upon which the judgment was specifically based, reads as follows:

All marks, names, labels, bands, packages or other services, which are adopted for use by any person in his trade, business, occupation; or calling, for the purpose of distinguishing any manufacture, product or article of any description manufactured, produced, compounded, packed or offered for sale by him, applied in any manner whatever either to such manufacture, product or article, or to any package, parcel, case, box or other vessel or receptacle of any description whatsoever containing the same, shall, for the purposes of this Act, be considered and known as trade marks.

⁴⁵ Fox: Canadian Law of Copyright (1944), at p. 88.

⁴⁶ See footnote 42 *ante*; *In Re Page Company*, 47 App. D.C. 195.

⁴⁷ See the cases cited by Duff J. in *New York Herald Co. v. Ottawa Citizen Co.* (1908), 41 S.C.R. 229, at p. 236, as supporting his finding that the titles of periodical publications are capable of becoming the subject of trade mark rights at common law.

⁴⁸ (1908), 41 S.C.R. 229.

⁴⁹ R.S.C., 1906, c. 71.

Idington J., speaking for the majority of three, found in substance that the titles were not "adopted" to distinguish any corporeal thing as required by the act, *i.e.* "any manufacture, product or article of any description manufactured, produced, compounded, packed or offered for sale by him", but were "adopted" to distinguish the incorporeal "brain product" which could be covered by copyright, and that the registrations were therefore invalid.⁵⁰ This result accords with that previously arrived at in this article on basic principles⁵¹ with regard to serials, a comic being a pictorial serial.

However the learned justice, by *dictum*, extended this finding to exclude all publications from registration under this act although, as Duff J. pointed out in his dissenting judgment,⁵² the title can also serve to distinguish, within the meaning of the act, the periodical publication as a corporeal "product . . . produced" by its publisher, and although there is a clear distinction between periodical publications, such as magazines and newspapers, and serials.⁵³

In the subsequent case of *Journal of Commerce Publishing Co. v. Record Publishing Co.*⁵⁴ MacLean J. held that the titles of newspapers are not registerable under the same section⁵⁵ on the ground that a newspaper is not a "manufacture, product or article" within the meaning of the act because a newspaper is not "a commodity of trade and commerce or something . . . traded in" as required by the presence of the word "trade" in "trade mark". The learned justice considered the case of *New York Herald Co. v. The Ottawa Citizen* as being irrelevant and unauthoritative as applied to this case, apparently confining it to comic strips only.

However when it is noted that MacLean J. accepted as established that the title of a newspaper can be a trade mark at common law,⁵⁶ since a newspaper is clearly an article, manufacture or product,⁵⁷ the use made of the word "trade" to narrow

⁵⁰ Beginning at p. 231.

⁵¹ See the section of this article on Trade Marks in General.

⁵² Beginning at p. 236. Speaking for the minority of two he stated that, both at common law and under the act, the titles of periodical publications were capable of becoming trade marks. However he did not distinguish between serials and periodical publications such as magazines and newspapers.

⁵³ See footnote 51 *ante*.

⁵⁴ [1929] Ex. C.R. 168.

⁵⁵ The Trade Mark and Design Act, R.S.C., 1927, c. 201, embodied the 1906 act with various amendments, section 5 having remained unchanged from the 1906 act, although ss. 2 and 3 were added by the act 17 Geo. V., c. 71, s.2.

⁵⁶ At p. 171.

⁵⁷ At p. 169.

the plain meaning of the words "manufacture, product or article" appears highly questionable. Moreover it is submitted that any doubt in this question is resolved by the words "of any description" which follow the above quotation in the act and which were entirely ignored in the judgment.

The learned judge also appears to have considered the title as being unregistrable because it was descriptive⁵⁸ of the newspaper (the name in question was "Canadian Journal of Commerce" and a journal is a newspaper) and the judgment can be sustained on this ground alone.

Effect of International Convention

On September 1st, 1923, Canada adhered to the "Convention of the Union of Paris of March 20, 1883 for the Protection of Industrial Property".⁵⁹ By article 7 of the revised Convention "the nature of the goods on which the trade mark is to be used can, in no case, form an obstacle to the registration of the trade mark". At present well over forty nations adhere to this Convention, including Great Britain and the United States which have adhered since the original Convention of 1883.⁶⁰

The word "goods" is found in both the British Trade Marks Act⁶¹ and the United States Registration of Trade Marks Act⁶² and has been interpreted in both countries, in accordance with its plain meaning, as including newspapers, periodicals and series of books.⁶³ In view of these interpretations and the unequivocal wording of article 7 the narrow interpretations placed by the Canadian courts in the preceding cases on section 5 created a situation not consonant with Canada's obligations under article 7.

⁵⁸ With regard to descriptive names and titles see *Rose v. McLean Publishing Co.*, 24 O.A.R. 240, at pp. 251ff; *Mathieson v. Sir Isaac Pitman & Sons Ltd.*, [1930] R.P.C. 541, at p. 549; *International Press Ltd. v. Tunnell*, [1938] 1 D.L.R. 393, at p. 411; (1943-44), 42 Patent and Trade Mark Review 264 (U.S.).

⁵⁹ By section 2a of The Unfair Competition Act, 1932, Canada now adheres to the Convention as revised at The Hague on November 6th, 1925.

⁶⁰ See 42 Patent and Trade Mark Review 255 for details as to affiliations of the various countries.

⁶¹ For example, 1-2 Geo. VI, 1938, c. 22, s.4(1).

⁶² For example, U.S.C., title 15, s. 81.

⁶³ For Great Britain see Schedule IV, Class 16, of the Trade Mark Rules, 1938 (S.R. & O., 1938, No. 661) which, by virtue of section 40(2) of the Trade Marks Act, "shall, while in force, be of the same effect as if . . . contained in this Act"; in the United States see Class 38, "Prints and Publications", in the "Classification of Merchandise Under the Act of May 4, 1906" and also *Architectural Catalogue Co. v. F. W. Dodge Co.* (1943), 136 F. (2d.) 1008, CCA.

The Unfair Competition Act, 1932

Article 7 of the International Convention is now embodied in section 28 (1) (d) of the present act and clearly permits the registration with respect to all goods of marks registered abroad. In the absence of express words to the contrary it must be presumed that the act affords equally as broad protection in this regard to Canadian nationals as to foreign nationals.

Section 2 (m) of the act, which is analogous to section 5 of the previous acts but differs markedly from it, defines a trade mark as being " . . . a symbol which has become adapted to distinguish particular wares falling within a general category from other wares falling within the same category, and is used by any person in association with wares entering into trade or commerce for the purpose of indicating to dealers in, and/or users of such wares that have been manufactured, sold, leased or hired by him, or that they are of a defined standard or have been produced under defined working conditions, by a defined class of persons, or in a defined territorial area, and includes any distinguishing guise capable of constituting a trade mark".

According to the Shorter Oxford English Dictionary the word "wares", which is not defined in the act, means "goods" or "things which a merchant, tradesman, or pedlar has to sell", and clearly includes publications. The meaning of the word "wares" is not cut down by any limiting words in the act. Moreover the word "wares" in section 2(m) is broader than the equivalent words in section 5, and section 2(m) does not include the words relied upon in the preceding cases to exclude publications. Finally section 2(m) is a definition whereas section 5 is merely a classification.⁶⁴

In view of the above considerations, and in the absence of any cases in point under the present act, it appears that the cases under the old acts are no longer applicable so as to exclude titles of periodical publications, such as series of books, magazines and newspapers, from registration as trade marks. However the titles of serials still do not appear to be registrable. But it must be emphasized that the trade mark attaches to the titles as applied to the corporeal wares and not to the incorporeal "brain product". Thus it is the publisher, not the author, who owns the trade mark and it serves to indicate to the public the source of the publication. If he wishes to assign his rights in the trade mark he must concurrently assign all the goodwill associated with the publication

⁶⁴ Fox: Canadian Law of Trade Marks and Industrial Designs (1940), at p. 66.

and not merely the right to use the trade mark on the literary material.⁶⁵

The present Registrar of Trade Marks now registers titles of periodicals of all types and they have been registered in large numbers. Although the result in the *New York Herald Co. v. Ottawa Citizen Co.*⁶⁶ case appears to be good law even under the present act, titles of comic strips are also accepted. However titles of newspapers are not accepted for registration, since the Registrar considers himself to be still bound by the case of *Journal of Commerce Publishing Co. v. Record Publishing Co.*⁶⁷ Of course registration of the titles of books, stories and the like is not permitted.

THE LESSON OF NUREMBERG

I certainly should have had little interest in the proceedings, had their object been simply to punish a score or so of guilty men. The fact that one particular individual committed suicide, that others, who were, on any view, common murderers, were hanged, that some were fortunate enough to be acquitted, is a matter of only transient significance. What is of enduring importance is that the Nuremberg trial, to which twenty-three Nations directly adhered, has established beyond doubt three principles:

- (1) that to initiate a war of aggression is an international crime;
- (2) that the individuals who lead their countries into such a war are personally responsible;
- (3) that individuals therefore have international duties which transcend the National duty of obedience imposed by particular states where to obey would constitute a crime against the Nations.

What now, with these principles laid down, must be the future course of international relations? We must build upon these principles the rule of law and order in international affairs, just as we have it in municipal ones. (Rt. Hon. Sir Hartley Shawcross, M.P., to the Annual Meeting of the American Bar Association held at Atlantic City in October 1946)

⁶⁵ *Pepsi-Cola Co. v. Coca-Cola Co.*, [1938] Ex. C.R. 263, at p. 297.

⁶⁶ See footnote 48 *ante*.

⁶⁷ See footnote 54 *ante*.