

Before Mr. Justice Phear.

1869

June 14.

GRAHAM & CO. (PLAINTIFFS) v. KERR, DODS & CO., (DEFENDANTS.)

*Injunction to restrain use of Trade mark.*

Mr. *Graham* for plaintiffs.—Kerr, Dods & Co., sold goods, bearing the same trade mark as Graham & Co.'s merchandise. Kerr, Dods & Co state that they have nothing to do with the ticket, as it is the ticket sent them on goods from constituent at Glasgow, and that they have telegraphed home to their constituents concerning the ticket.

Mr. *Kennedy* for defendants.—This special ticket the plaintiffs have not even shewn to be their trade mark, and it has in no way been shown that there was any fraud intended on the part of the defendants; on the contrary the defendants, by their willingness to telegraph home, and discover the real facts of the case, make it manifest that no fraud has ever contemplated.

PHEAR, J.—It is not enough to say that there was no fraudulent intention. That is no reason why an injunction should not be granted. I do not think I have any option if the marks, which defendants have used, are those of the plaintiffs; no matter what their intention was, a perpetual injunction would be granted. In the meantime an interlocutory injunction must issue. Obviously there is a close imitation. Interlocutory injunction to issue with costs.

Before Mr. Justice Phear.

KELLY v. KELLY AND SAUNDERS.

*Alimony pendente lite—Payments of Costs into Court—Practice.*

1869

May 14.

Mr. *Hyde* had obtained a rule *nisi* in this case, calling on the petitioner to show cause why he should not pay alimony to the respondent, *pendente lite*, and also pay into Court a sum sufficient to cover the respondents's cost of the trial of the suit.

It appeared that the petitioner had children by a former wife, as well as by his present one, and the respondent had taken away some property belonging to the petitioner, who had also paid certain debts, contracted by the respondent.

Mr. *Cowell* now showed cause. The most the Court could grant was one-fifth the petitioners income; and under the above circumstances, so much as this should not be granted. Alimony is only due from the date of return of the citation, and not from the date of service.