

RIVAL CIGARETTES.

A TRADE MARK DISPUTE.

Before Mr. Justice Hood, at the Practice Court, yesterday, an action was begun by the British American Tobacco Co. Ltd. against Leon Felimann and Isaac Chain, trading as the Oriental Cigarette Company, Melbourne, in which the plaintiff seeks to restrain defendant from the alleged infringement of a trade mark, and asks for the delivery of all boxes, shells, slides, wrappers, and papers, for damages, and for an account of profits.

Mr. Jacobs (instructed by Mr. F. B. Waters) appeared for plaintiff company, and explained that his clients were proprietors of the trade mark, "The Flags." Defendant company, he said, had been selling cigarettes under the name of "The Flags," which he contended was an infringement of plaintiff's trade mark.

Mr. Marks (instructed by Mr. J. A. Isaacs) appeared for the defendant company, and said that whilst plaintiffs' trade mark was without any device, defendants' had a device representing the British and Australian flags, with the firm's name underneath, in addition to the words "The Flags."

His Honor: Could not the action be disposed of by an interim injunction?

Mr. Marks said a number of defences would be pleaded. Plaintiffs, it would be contended, had no title to the trade mark. It would also be submitted that the mark was in common use, and that plaintiffs were not carrying on the business connected with the trade mark.

His Honor said that, in view of the defence that would be pleaded, he considered there should be a trial of the action. He made an order for pleadings, defence, inspection, interrogatories and discovery.

In reply to Mr. Marks's application for the case to be heard before a jury, his Honor said during the last hundred years judges had decided such cases without the aid of a jury. He would make no order in that respect.