

Appl. 131 PR 347.  
 Appl. 14. 1 PR 481.  
 Cons. 16. 1 PR 493.  
 Appl. 17. 1 PR 179.  
 Appl. 19 1 PR 70.  
 Appl. 22 ~~1 PR~~ 113.  
 1 PR

[HIGH COURT OF AUSTRALIA.]

HOWARD AUTO-CULTIVATORS LIMITED . APPELLANT ;  
 OPPONENT,

AND

WEBB INDUSTRIES PROPRIETARY LIMITED RESPONDENT.  
 APPLICANT,

*Trade Mark—Registration—"Invented word"—"Rohoe"—Use in respect of* H. C. OF A.  
*cultivating implements—Trade Marks Act 1905-1936 (No. 20 of 1905—No. 75*  
*of 1936), s. 16 (1) (c).* 1946.

Application having been made for registration as a trade mark in respect  
 of cultivating implements of the word "Rohoe,"

*Held by Rich, Starke, Dixon and McTiernan JJ. (Latham C.J. and Williams*  
*J. dissenting) that the word was not an "invented word" within the meaning*  
*of s. 16 (1) (c) of the Trade Marks Act 1905-1936, inasmuch as it was apparent*  
*that the word was merely an abbreviated combination of known words;*  
 therefore registration should be refused.

MELBOURNE,

May 15 ;

June 7.

Latham C.J.,  
 Rich, Starke,  
 Dixon,  
 McTiernan and  
 Williams JJ.

APPEAL from Deputy Registrar of Trade Marks.

Webb Industries Pty. Ltd. applied to the Registrar of Trade Marks for registration as a trade mark in class 7 in respect of cultivating implements of the word-mark "Rohoe."

Howard Auto-Cultivators Ltd., which manufactured rotary hoes and other cultivating implements, opposed the application on the ground, so far as is here material, that "Rohoe" was not an invented word within the meaning of s. 16 (1) (c) of the *Trade Marks Act* 1905-1936.

In support of the opposition the opponent lodged statutory declarations by a number of persons, all expressing the opinion that the proposed word-mark was an abbreviation of the words "rotary hoe."

The Deputy Registrar granted the application, being of opinion that "Rohoe" was an invented word.

From this decision the opponent appealed to the High Court.



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*May*, for the appellant. The word "Rohoe" is not an invented word within the meaning of s. 16 (1) (c) of the *Trade Marks Act*. It conveys an obvious meaning and is not distinctive. In considering what meaning, if any, it conveys, regard must be had to the goods in relation to which it is proposed to be used. In relation to cultivating implements, "Rohoe" is an obvious compound of the well-known English word "hoe" and an abbreviation, "ro." In this combination "ro" cannot fail to convey the sense of "rotary"; it is clear that it is derived from the Latin word *rota*, which itself has been accepted into the English language, with the sense of rotation, so that it has become an English word. Although a word has been newly coined, it is not an invented word within the meaning of the section if it conveys the same idea as a known word (*In re Fanfold Ltd.'s Application* (1) ); according to this test "Rohoe" is not an invented word. [He referred to *Eastman Photographic Materials Co. v. Comptroller-General of Patents, Designs, and Trade-marks* ("Solio" Case) (2); *Schweppes Ltd. v. E. Rowlands Pty. Ltd.* ("Sarilla" Case) (3); *In re National Biscuit Co.'s Application* (4); *S. M. T. Gramophone Co. Ltd. v. Itonia Gramophones Ltd.* (5); *Philippart v. William Whiteley Ltd.* (6); *In re Boots Pure Drug Co. Ltd.'s Trade Mark "Livron"* (7).]

*Spicer*, for the respondent. The word "Rohoe" is not a colourable imitation or variation of any known word or words. The expression "ro" has no meaning; it is incapable of conveying the idea that it is an abbreviation of any particular known word, whether it be "rotary" or any other word commencing with "ro." The matter cannot be tested by reference to the goods to which the word-mark is to be attached. The question is whether the word is new to the language, not what effect it would have on people who use particular goods. The present case does not resemble the "*Sarilla*" Case (8); in that case there was evidence that "sar" or "sars" was commonly used as an abbreviation of "sarsaparilla," and this facilitated the conclusion that "*Sarilla*" was merely a variant. [He referred to the "*Solio*" Case (9); *J. C. & J. Field Ltd. v. Wagel Syndicate Ltd.* (10).]

(1) (1928) 45 R.P.C. 325, at pp. 330, 332, 333.

(2) (1898) A.C. 571; 15 R.P.C. 476, at pp. 485-487.

(3) (1913) 16 C.L.R. 162, at pp. 164-166.

(4) (1902) 19 R.P.C. 281.

(5) (1931) 48 R.P.C. 309, at p. 313.

(6) (1908) 25 R.P.C. 565, at p. 569.

(7) (1937) 54 R.P.C. 327, at p. 333.

(8) (1913) 16 C.L.R. 162.

(9) (1898) A.C., at pp. 576, 577.

(10) (1900) 17 R.P.C. 266, at p. 272.



May, in reply, referred to *In re Salter's Application* (1); *Hommel v. Gebrüder Bauer & Co.* (2).

*Cur. adv. vult.*

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June 7.

The following written judgments were delivered :—

LATHAM C.J. The respondent company applied for the registration of the word "Rohoe" as a trade mark in respect of cultivating implements. The appellant company unsuccessfully opposed the application before the Deputy Registrar of Trade Marks. An appeal is brought to this court. The only question argued was whether the Deputy Registrar was right in holding that the word "Rohoe" was an invented word so as to be registrable under the *Trade Marks Act* 1905-1936, s. 16 (1) (c).

It was decided in the "*Solio*" Case, *Eastman Photographic Materials Co. v. Comptroller-General of Patents, Designs, and Trade-marks* (3), that the provision in s. 16 (1) (c), permitting the registration of an invented word, was not limited by the provision in s. 16 (1) (d), permitting the registration of a word or words having no direct reference to the character or quality of the goods. It was held that a word which was an invented word could be registered as a trade mark although it had some reference to the character or quality of the goods.

If the word "Rohoe" were registered it could be applied to spades, shovels, rakes, cultivators, many kinds of hoes, etc. The word "Rohoe" is a coined word which is completely new. There is no evidence to suggest that the word has ever been used for any purpose whatever or that the word existed before it was proposed by the applicant as a trade mark. In the "*Solio*" Case (4), Lord Macnaghten said in words which have frequently been applied in subsequent cases that if the word applied for "is an invented word—if it is 'new and freshly coined' (to adapt an old and familiar quotation), it seems to me that it is no objection that it may be traced to a foreign source, or that it may contain a covert and skilful allusion to the character or quality of the goods—I do not think that it is necessary that it should be wholly meaningless." The word "Rohoe" was, on the evidence, "coined for the first time for the purpose of being applied to the goods in question"—cf. *Hommel (trading as Nicolay & Co.) v. Gebrüder Bauer & Co.* (5).

The word "Rohoe" has no meaning in the English language or, as far as the evidence goes, in any language. The argument of the

(1) (1923) 40 R.P.C. 402.

(2) (1904) 21 R.P.C. 576, at p. 581.

(3) (1898) A.C. 571; 15 R.P.C. 476.

(4) (1898) A.C. 571, at p. 583; 15 R.P.C., at p. 486.

(5) (1904) 21 R.P.C. 576, at p. 582.



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appellant has been founded upon the contention that the word may be regarded as an abbreviation of the descriptive term "rotary hoe," and that therefore it should be regarded as being the words "rotary hoe" written in an abbreviated form. There is, however, no evidence that any person has ever used the word "Rohoe" as an abbreviation for "rotary hoe" or that any person has ever used "ro" as an abbreviation of the word "rotary." "Ro" appears to me to be no more an abbreviation of the word "rotary" than it is an abbreviation of any other word beginning with the letters r o.

The appellant relies upon a large number of declarations, all in the same form, in which the deponents (all of whom, except one, are farmers and familiar with machines used for agricultural and horticultural purposes) declare that the opponent company manufactures rotary hoes and that they do not know of any other rotary hoe on the market. They state that if they saw the name "Rohoe" on a rotary hoe without any other name thereon they would accept it as being made by the opponent company. But in exactly the same way all these declarants, believing as they do that all rotary hoes are made by the opponent company, would believe that any rotary hoe bearing any name at all, but without the name of a manufacturer on it, would be a machine made by the opponent company. If this evidence were accepted as relevant it would prevent the registration by any person other than the opponent company of any trade mark (other than the name of a company, individual or firm or a signature—s. 16 (1) (a) and (b) ) for application to rotary hoes. This evidence, in my opinion, has no bearing upon the question whether or not the word "Rohoe" is an invented word.

But the declarations contain also the following statements:—"If I saw a cultivating implement not being a rotary hoe bearing the name 'Rohoe' I would conclude that a mistake had been made in branding the implement for to my mind the name 'Rohoe' is an abbreviation of the words 'Rotary Hoe.'"

This statement assumes that the word "Rohoe" is used as a name of a rotary hoe and states the opinion of the deponent that if the word were observed to be applied to such a hoe he would think that the word was an abbreviation of the words "rotary hoe." This opinion would be produced, not by any consideration of the word "Rohoe" in itself, but by a consideration of that quite meaningless word when it was found to be applied to one particular implement, namely a rotary hoe. But such a proposition has been declared by the House of Lords to be not relevant in considering whether a word is an invented word. In the "*Solio*" Case (1), Lord *Herschell* (2)

(1) (1898) A.C. 571; 15 R.P.C. 476.

(2) (1898) 15 R.P.C., at p. 485.



says "an invented word has of itself no meaning until one has been attached to it." In the "*Diabolo*" Case, *Philippart v. William Whiteley Ltd.* (1), *Parker J.* said: "To be an invented word, within the meaning of the Act, a word must not only be newly coined, in the sense of not being already current in the English language, but must be such as not to convey any meaning, or, at any rate, any obvious meaning, to ordinary Englishmen. It must be a word having no meaning or no obvious meaning until one has been assigned to it."

The idea that the word "Rohoe" may be an abbreviation of other words arises, not from the word itself, but entirely from the application of the word in a particular case. This therefore, in my opinion, is one of the cases in which a newly coined word, not current in the English language "has of itself no meaning until one has been attached to it"—see "*Solio*" Case (2). It is an invented word, and in my opinion the Deputy Registrar was right in allowing registration.

I would therefore dismiss the appeal.

**RICH J.** This is an appeal from the decision of the Deputy Registrar of Trade Marks which granted an application by the respondent company to register a trade mark consisting of the word "Rohoe" in class 7 in respect of cultivating implements.

The crucial question for decision is whether this alleged trade mark is qualified for registration under clause (c) of s. 16 (1) of the *Trade Marks Act* 1905-1936 as being an invented word. Section 114 was not pressed. The characteristics of an invented word are that the word must not only be newly coined but must also be such a word as not to carry any meaning or any obvious meaning to the man in the street: cf. *Philippart v. William Whiteley Ltd.* (3); *In the matter of the application of Linotype Company Ltd.* (4).

The phrase "the man in the street" is an umbrella phrase which includes not only those engaged in gardening, farming and other agricultural pursuits, but also those familiar with agricultural and gardening tools. I venture to think that the majority of the population in Australia, men, women and children, are acquainted with the word "hoe" and its use. One knows of its use as a tool between rows of drilled wheat or of flowers, vegetables, shrubs and trees. It is difficult from the experience of our senses to think of the word "hoe" without at once associating it with the word "row." It requires neither invention nor ingenuity to think of the

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(1) (1908) 25 R.P.C. 565, at p. 569.

(2) (1898) A.C. 571; 15 R.P.C. 476.

(3) (1908) 2 Ch. 274, at p. 279.

(4) (1900) 17 R.P.C. 380, at p. 385.



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word "hoe" when using the word "row." The omission of the termination "tary" from the word does not make any substantial difference so as to constitute "Rohoe" as an invented word within the meaning of clause (c) of s. 16 (1) of the Act. And the obvious disguise of the word "row" by the use of two letters "ro" is an affront to reality and should be so regarded. The word in dispute lacks one of the required particulars or elements of an invented word. Moreover the matter is left in doubt and the application should have been refused.

STARKE J. This is an appeal from the Deputy Registrar of Trade Marks allowing the registration as a trade mark in Class 7 in respect of cultivating implements of the word "Rohoe" as an invented word.

A rotary hoe is a well known agricultural implement. The word "Rohoe" is formed by omission of the letters "tary" from the word "rotary" and adding the remaining letters to the word "hoe."

The "*Solio*" Case (*Eastman Photographic Materials Co. v. Comptroller-General of Patents, Designs, and Trade-marks*) (1) authoritatively expounds the meaning of an "invented word" for the purposes of the *Trade Marks Act* and later cases merely apply that interpretation to the varying facts of other cases. However the mere addition to or subtraction from or the misspelling or the variation of words in use in the English language does not make a word so formed an invented word. The question in each case is one of fact. Cases on each side of the line are collected in the text books (See, for instance, *Kerly on Trade Marks*, 6th ed., pp. 166-168).

In my judgment the word "Rohoe" does not qualify as an invented word. It merely contracts the name of the well known agricultural implement known as a "rotary hoe."

The appeal should be allowed and the registration of the word as a trade mark disallowed.

DIXON J. A rotary hoe is a familiar agricultural implement and the appellants, whose business consists in the manufacture and sale of machines for agriculture and horticulture, trade largely in them. The respondent's application is to register in respect of cultivating implements the word-mark "Rohoe." It is clear that it is not registrable as a trade mark unless it is an invented word within the meaning of s. 16 (1) (c) of the *Commonwealth Trade Marks Act* 1905-1936. The Registrar, who dismissed the appellants' opposition and



granted registration, held that it does amount to an invented word and the question is whether that decision is right.

The fact that a word is not included in the dictionaries is not enough to show that it is an invented word, nor is the fact that it has been newly constructed : *Re Yalding Manufacturing Company's Application* (1). The materials from which such a word has been fashioned cannot be neglected and if it is compounded of elements of which the source is manifest and the intended meaning is transparent, it becomes a question whether there is anything more than a colourable attempt at reproducing some of the sounds and all the sense of an expression belonging to common speech. Mis-spellings, variations and distortions of ordinary words do not amount to invention, and it has been held that to write a proper name backward is not to invent a word : *Re George Cording Ltd.'s Application* (2). Novelty is, of course, looked for and that means more than giving existing words or a combination of words a disguise, whether phonetic or graphic, which the mind of the hearer or reader at once penetrates. In the words of Lord *Shand* : " There must be invention, and not the appearance of invention only. It is not possible to define the extent of invention required ; but the words, I think, should be clearly and substantially different from any word in ordinary and common use. The employment of a word in such use, with a diminutive or a short and meaningless syllable added to it, or a mere combination of two known words, would not be an invented word ; and a word would not be ' invented ' which, with some trifling addition or very trifling variation, still leaves the word one which is well known or in ordinary use, and which would be quite understood as intended to convey the meaning of such a word " : *Eastman Photographic Materials Co. v. Comptroller-General of Patents, Designs, and Trade-marks* (3).

On the other hand the new word need not be wholly meaningless and it is not a disqualification " that it may be traced to a foreign source or that it may contain a covert and skilful allusion to the character or quality of the goods." This is the expression of Lord *Macnaghten* (4), who also said " the word must be really an invented word. Nothing short of invention will do. On the other hand, nothing more seems to be required." No one now supposes that the *Trade Marks Act* requires that a word or words, although invented, shall not contain or suggest any reference to the character or quality of the goods or that it imposes any further requirement which must

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(1) (1916) 33 R.P.C. 285, at p. 289.

(2) (1916) 33 R.P.C. 83.

(3) (1898) A.C. 571, at p. 585 ; 15  
R.P.C. 476, at p. 487.

(4) (1898) A.C., at p. 583.



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be fulfilled for the word to be registrable. But, though, as appears from Lord *Macnaghten's* statement, some signification or indication of meaning is not inconsistent with invention, yet in deciding whether what is put forward is an invented word or is but an old word or words masquerading under some thin disguise of orthography, abbreviation or pronunciation, the fact that it is effectual in conveying the same meaning cannot be disregarded. It is not surprising, the subject matter being trading goods, that more often than not the meaning discernible in a word said to be newly devised relates to the character or quality of the goods. But logically the circumstance that it is this particular kind of meaning that is signified rather than some other should not weigh against the claim for invention, notwithstanding that, in the case of an existing word, such a meaning would disqualify the word as the essential particular of a registrable mark.

The real difficulty lies in the recognizable features of a word said to be new and invented. If in its features there is an immediate disclosure of the origin and meaning of the elements of which it has been formed, the question must arise whether it is anything more than a version or perversion of an existing word or words. Lord *Herschell* thought that an invented word had no meaning until one has been attached to it (1). He made a qualification, not now material, with reference to combinations of foreign words little known to Englishmen. He stated his opinion that a combination of two English words was not an invented word, even although the combination might not have been in use before, and that a mere variation in orthography or termination of a word would not be sufficient to constitute an invented word if to the eye or ear the same idea would be conveyed by the word in its ordinary form. The same thing had been put by *Lindley* L.J. in the course of his dissenting judgment in *Re Farbenfabriken Application* (2), the decision of the majority in which was overruled by the House of Lords in the "*Solio*" Case (*Eastman Photographic Materials Co. v. Comptroller-General*) (3). He said: "Any word which is in fact new, and not what may be called a colourable imitation of an existing word, is, in my opinion, an invented word. . . . Again, I do not think that a word can fairly be called an invented word if it is so nearly like a known word in spelling or sound as to be an obvious imitation of it and is in substance that word though spelt or sounded a little differently" (4). In Lord *Parker's* summary in *Philippart v. William Whiteley Ltd.* (5) the two things, viz. that the word must

(1) (1898) A.C., at p. 581.

(2) (1894) 1 Ch. 645, at p. 652.

(3) (1898) A.C. 571.

(4) (1894) 1 Ch., at pp. 652, 653.

(5) (1908) 2 Ch. 274, at p. 279.



be new and that it must not be connotative, are expressed as separate conditions. "To be an invented word, within the meaning of the Act, a word must not only be newly coined in the sense of not being already current in the English language, but must be such as not to convey any meaning, . . . to ordinary Englishmen. It must be a word having no meaning, or no obvious meaning, until one has been assigned to it." He employed the expression "ordinary Englishmen" because "it is not enough that it might suggest a meaning to a few scholars." Lord *Greene* M.R. in *In re Boots Pure Drug Co.* (1), in pointing out that Lord *Parker* had stated two considerations as essential before a word could be an invented word, transformed the "ordinary Englishmen" into "an ordinary educated Englishman" and proceeded to restate and illustrate the requirement as follows:—"But the next question would be whether, although not a word current in the English language, it was a word which would convey an obvious meaning, as might well happen if the word was by some sort of a jingle, or the presence of some element in it, one which suggested an obvious meaning to the English hearer."

Examples of words which, although new in formation, have failed because of these principles, to qualify as invented words are, "Orlwoola" (2), "Absorbine" (*Christy v. Tipper* (3)), "Arsenoid" (*Re Yalding Manufacturing Company's Application* (4)), "Eanco," *scil.* "E and Co." (*Re Eisman & Co.'s Application* (5)), "Uneeda" (*Re National Biscuit Co.'s Application* (6)), "Panoram" (*Re Kodak Ltd.'s Trade Mark* (7)), "Aluminox" (*Re Salter's Application* (8)), "Trakgrip" (at all events so I read the judgment of *Simonds J.* in *Re Dunlop Rubber Co.'s Application* (9)). On the other hand "Yeastvite" has been accepted into the category of invented words (*Irving's Yeast-Vite Ltd. v. Horsenail* (10), and so has "Sardovy," from sardines and anchovy (*Re Brown, Wills & Nicholson's Application* (11)), and "Oxo" (*In re Liebig's Extract of Meat Co.'s Trade-mark* (12)).

In applying the foregoing conceptions to such a case as the present some subsidiary questions arise. It is clear that it is rather among farmers and horticulturists than among ordinary people, educated or uneducated, that "rohoe" would possess a meaning. It is also clear that it is when it is used in connection with agricultural implements and not when it is used in the abstract and without context,

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(2) (1909) 26 R.P.C. 683, 850.	(8) (1923) 40 R.P.C. 402.
(3) (1905) 1 Ch. 1; 21 R.P.C. 755.	(9) (1942) 59 R.P.C. 134.
(4) (1916) 33 R.P.C. 285.	(10) (1934) 150 L.T. 402.
(5) (1920) 37 R.P.C. 134.	(11) (1923) 41 R.P.C. 171.
(6) (1902) 1 Ch. 783; 19 R.P.C. 281.	(12) (1902) 22 N.Z.L.R. 165.



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as, so to speak, a word in gross, that it is understood as an abbreviation of rotary hoe.

1. Is it proper in considering whether some new verbal formation is an invented word to ask whether and how it would be understood by a section of the community following a particular pursuit or possessing special vocational or technical interests, or must the public at large be alone considered? I think the answer must be that if the predominant use of the word-mark is or will be among such a section, it is their understanding that should afford the criteria. Lord *Parker* when he spoke of ordinary Englishmen was thinking of an article in which the trade would be with the public at large and, I feel sure, did not intend to require that words addressed to those engaged in some trade or pursuit should not be submitted to the test of their understanding and interpretation.

2. How far should use in connection with a particular article or thing be taken into account as tending to display the character and significance of the word? During the argument of the "*Solio*" Case (1) Lord *Herschell* is reported (2) to have remarked that whether the word "*solio*" referred to the sun, to the sole of a boot or to the soil, from "*solum*," would depend upon the idea suggested by the connection with which it was used and not by the word itself. But again I think that the question depends upon the use to which it is intended to put the word-mark. Doubtless a word is no less invented because, when it comes to be affixed to an article, its meaning is determined and perhaps explained. But the meaning of all words is governed by their context and how words are understood depends upon the universe of discourse. Here the scope of the use of the word is settled by the application for registration, which is in respect of cultivating implements. In that setting "*rohoe*" will carry to the mind of a horticulturist what would never occur to the hearer if, for instance, he were a seaman heaving on a line.

When Lord *Parker* held that "*diabolo*" was not an invented word he was guided by the fact that it was applied to a well-known game once called in England "the devil on two sticks." In this connection it could not be regarded as without obvious meaning to ordinary Englishmen.

The word "*rohoe*" is in fact a compound of the word "*hoe*" and the first syllable of "*rotary*." "*Ro*" is not a recognized contracted prefix from rotary as, I think, "*roto*" has come to be, but it is the first syllable. "*Hoe*" is, of course, the common English name of a common tool and it is now the familiar name of

(1) (1898) A.C. 571; 15 R.P.C. 476.

(2) (1898) 15 R.P.C., at p. 480.



an ordinary agricultural or horticultural implement. The fact that when written it is represented as the second syllable of the word "rohoe" and not as itself a separate word will not disguise its nature when spoken. The word is therefore a compound of a monosyllabic prefix with a distinctly recognizable word of common use.

The foregoing considerations appear to me to reduce the issue in the present case to the question whether when a farmer, a horticulturist, a trader in agricultural and horticultural implements or a person otherwise concerned with them hears or sees the word "rohoe" used in connection with or in some way in reference to such implements he will not at once treat it as an obvious contraction of "rotary hoe" and so understand it.

I should think that in those circumstances the hearer, or for that matter the reader, would instantly recognize the word "hoe" and his mind would at once translate the syllable "ro" into "rotary," understanding it to be devised by abbreviation as a prefix to convey that idea.

The question, though in a very small compass, is not an easy one, as the division of opinion it has provoked shows. But my conclusion is that the word formed bears a face value for those for whom it is meant and to them has an obvious meaning based upon an obvious structure, one element in which is a plain English word and the other a transparent abbreviation. It is very different from a covert and skilful allusion to the character of the goods. I therefore think that it is not an invented word within the meaning of s. 16 (1) (c) of the *Trade Marks Act* 1905-1936.

I think that the appeal should be allowed and the application for registration refused.

McTIERNAN J. In my opinion this appeal should be allowed.

In the "*Solio*" Case (1) there are observations upon the characteristics of an invented word; but according to later authority the complete definition of an invented word is that given by Mr. Justice Parker (afterwards Lord Parker) in the "*Diabolo*" Case (2). See the "*Consolette*" Case (3), per Lord Tomlin, and the "*Livron*" Case (4). What was said by Greene M.R. in the latter case is this: "In the *Diabolo* Case (2), Parker J. stated two considerations which are essential before a word can be an invented word. One of them is that the word must be newly coined, and the other is in substance this, that besides being a newly coined word, it must be a word which

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(1) (1898) A.C. 571.  
(2) (1908) 2 Ch. 274; 25 R.P.C. 565.  
(3) (1931) 48 R.P.C., at p. 313.  
(4) (1937) 54 R.P.C. 327, at p. 333,  
per Greene M.R.; and at p. 337,  
per Romer L.J.



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has no obvious meaning to the ordinary educated Englishman. In the case of '*Solio*,' for instance, that would be a newly coined word within Mr. Justice *Parker's* definition, which refers to words current in the English language. The word '*Solio*' was not current in the English language at all. But the next question would be whether, although not a word current in the English language, it was a word that would convey an obvious meaning, as might very well happen if the word was by some sort of a jingle or the presence of some element in it one which suggested an obvious meaning to the English hearer."

No one doubts that "*Rohoe*" is a newly coined word. But it is essential that "*Rohoe*" should satisfy the test of being a word which has no obvious meaning to the Australian hearer. I cannot see that the Deputy Registrar applied that test. In the first place, he said "There is no evidence before me that '*Rohoe*' is a mere misspelling or abbreviation of any descriptive word or words or a combination thereof." This, I think, means no more than that "*Rohoe*" is newly coined. In the second place, the Deputy Registrar said: "Although by dissecting the word *Rohoe* the word '*Hoe*' may be found to have a descriptive meaning when applied to the goods I am without evidence that '*Ro*' has any meaning or that it is an accepted abbreviation of any word descriptive or otherwise when applied to the goods under consideration and it appears to me upon considering the mark as a whole, as I am bound to do, that the word complies with all the principles established by the cases to qualify as an invented word." This finding means, I think, that while "*Hoe*" is not, the word "*Ro*" is a newly coined word. But this examination of the component parts of the word is not enough. It is essential that the whole word "*Rohoe*" does not convey an obvious meaning to the Australian hearer. There is evidence that the term "*rotary hoe*" is widely used to mean an implement for cultivating the soil. The Deputy Registrar said that he was "without evidence to substantiate any suggestion that '*Ro*' is an accepted abbreviation of *Rotary*." I think that the material consideration is rather whether, where "*ro*" and "*hoe*" are used in conjunction as one word, that word would convey to many Australians who see or hear it the same apparent meaning as "*rotary hoe*." In my opinion the word "*Rohoe*" would convey that meaning to many Australians who work on the land.

The respondent has not given the history of how it claims to have invented this word. It is very probable that the word was formed merely by dropping the syllable "*tary*" out of the word "*rotary hoe*."



I think that on the evidence the application should have been refused. H. C. OF A.

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WILLIAMS J. This is an appeal under s. 45 of the *Trade Marks Act* 1905-1936 from a decision of the Deputy Registrar of Trade Marks to accept an application by the respondent to register a trade mark consisting of the word "Rohoe" in class 7 in respect of cultivating implements.

The Registrar granted the application on the ground that the word qualified for registration as an invented word within the meaning of s. 16 (1) (c) of the Act.

The leading case on the meaning of an invented word is of course the "*Solio*" Case (1). The speeches of their Lordships, and particularly that of Lord *Herschell*, establish that an invented word is allowed to be used as a trade mark not as a reward of merit but because its registration deprives no member of the community of the right which he possesses to use the existing vocabulary as he pleases. *Parker J.*, as he then was, summed up the principles in these speeches in *Philippart v. William Whiteley Ltd.* (2) when he said that: "To be an invented word, within the meaning of the Act, a word must not only be newly coined in the sense of not being already current in the English language, but must be such as not to convey any meaning, or at any rate any obvious meaning, to ordinary Englishmen. It must be a word having no meaning, or no obvious meaning, until one has been assigned to it." The principles stated in the "*Solio*" Case (3) have been applied to the facts of many subsequent cases. Most of them have been collected in the footnotes to *Halsbury*, 2nd ed., vol. 32, pp. 544, 545.

Two recent cases are *In re National Machinery Co.'s Application* (4), where an application was refused to register the word "Dex" in respect of bolts and screws, and *In re Dunlop Rubber Co. Ltd.'s Application* (5), where an application was granted to register the word "Trakgrip" in respect of pneumatic tyres.

Counsel for the appellant did not dispute that "Rohoe" is a newly coined word, but he contended that the Latin word *rota* is now an ordinary English word meaning "rotation"; that the adjective rotary is a derivative; that hoe is an ordinary English word; and that "Rohoe" is simply a misspelling of "rotary hoe" which nevertheless conveys to the eye or ear the same meaning as would be conveyed by these words if used in their ordinary form. A trader

(1) (1898) A.C. 571.

(2) (1908) 2 Ch. 274, at p. 279.

(3) (1898) A.C. 571; 15 R.P.C. 476.

(4) (1941) 58 R.P.C. 128.

(5) (1942) 59 R.P.C. 134.



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could not register as a trade mark the word "hoe" or any misspelling of "hoe" which conveys the same meaning. He could not register such a word with a prefix properly or improperly spelt apt for any normal description of any quality of a hoe, as for instance the word "rotahoe." But the prefix "ro" is not apt to conjure up any quality of a hoe. "Ro" is an obsolescent English word of quite different meaning. It does not resemble any modern English word to the eye and only resembles "row" to the ear. "Row" has no meaning in relation to any quality of a hoe or of any other agricultural implement. "Rohoe" would not, in my opinion, convey the meaning of a rotary hoe to the ordinary mind.

I would therefore dismiss the appeal.

*Appeal allowed with costs. Order of Deputy Registrar set aside. Application for registration refused. Applicant to pay costs of opponent.*

Solicitors for the appellant, *Robert Burge & Co.*, Sydney, by *Krcrouse, Oldham & Darvall*.

Solicitors for the respondent, *Oswald Burt & Co.*

E. F. H.