

instead the meaning of the plaintiff's cones only. Any such suggestion was preposterous. "Real cake" means real cake; that is all the public is concerned in. Is it real cake, the proper accompaniment of ice-cream, or is it some imitation or substitution uneatable or indigestible? As to shape, all cones are made in the same shape, and as to ornamentation there is nothing distinctively different.

The consumers know nothing and care nothing who the maker may be, so long as the cone is real cake; and no one, and especially no one in the ice-cream trade, could think from the name alone, that "Ideal cake cones" and "Real cake cones" were the same thing. "Cake cones" are admittedly free words, and, being so, how can the word "Ideal" bring them into a "Real" monopoly? In neither sound nor sight nor in meaning are they alike.

The injunction against actual deception was not moved against and should therefore stand: but the appeal should be allowed, and the action, in other respects, dismissed.

The plaintiff should have the general costs of the action; as to the issues upon which he fails there should be no order as to costs. The defendants should have their costs of this appeal.

Appeal allowed.

HIGH COURT DIVISION.

ROSE, J., IN CHAMBERS.

SEPTEMBER 30TH, 1919.

REX v. BEARDEN.

*Criminal Law—Magistrate's Conviction—Warrant of Commitment—
Misnomer of Defendant—Habeas Corpus—Production of War-
rant by Gaoler—Issue and Lodging of New Warrant Describing
Defendant by True Name—Amendment—Criminal Code, sec.
1124.*

Motion for the discharge of the defendant from custody under a warrant of commitment issued by a magistrate.

T. R. Morris, for the defendant.
Edward Bayly, K.C., for the Crown.

ROSE, J., in a written judgment, said that there had not been a formal return to the writ of habeas corpus, but upon the return of the motion for the discharge of the prisoner the gaoler appeared and produced the writ and the warrant of commitment.