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ment took place; and the plaintiff was entitled to enforce performance as against D. M.'s undivided interest.

Reeve, Q.C., and *McGillivray*, of Uxbridge, for the plaintiff.

Marsh, for the defendant.

CHANCERY DIVISION.

Ferguson, J.]   [June 29.

WATSON V. WESTLAKE.

Trade mark—Infringement—Word in common use not eligible as trade mark.

In January, 1885, plaintiff registered as a trade mark, under the Act of 1879, the words, "Imperial Cough Drops," and now sued the defendant for infringement thereof by selling confectionery under the name "Imperial Cough Candy."

Held, that inasmuch as the evidence showed that the word "Imperial" as a designation or mark for cough drops or candy was really public property, and a common brand or designation for candy long before the plaintiff's registration, the plaintiff had not the right to endeavour to attribute to that which he might manufacture a name which had been for years before a well-known and current name by which that article was defined, and the action must be dismissed.

Ridout, for the plaintiff.

Frazer, for the defendant.

Ferguson, J.]   [August 31.

AMBROSE V. FRASER.

Married Woman—Liability as assign under covenant running with the land.

On November 23rd, 1872, defendant F. executed a lease of certain lands to the plaintiff and another, covenanting that the plaintiff should be allowed to erect a malt-house on the premises, and that at the expiration or other sooner determination of the demise, F., "his heirs and assigns," would pay the plaintiff the value of the malt-house which in case of disagreement was to be determined by arbitration. The plaintiff erected a malt-house.

Afterwards, in 1878, his co-lessee transferred his interest in the lease to the plaintiff; and during the continuance of the term F. conveyed the land in such manner as that it became vested in him and his co-defendant W. as trustees for his (F.'s) wife, in whom the beneficiary interest was vested at the commencement of this action. It appeared that the marriage of F. and his wife took place in 1849, without any marriage contract or settlement, but that she had separate property at the time of the execution of the lease and had had such ever since, and now had it. After this the lands were sold under a mortgage of date prior to the lease, which absorbed the whole of the purchase money. The present action was now brought against F., Mrs. F. and W. to recover the amount awarded by the arbitrators who had been appointed to fix the value of the malt-house. It further appeared and was urged by way of counter-claim, that a certain sum of $275 was due from the plaintiff in respect to rent unpaid and certain non-repairs.

Held, (1) that Mrs. F. was not liable in respect of her separate estate under the covenant although the covenant was one which ran with the land, and the reversion had in equity been assigned by the covenantor to her during the term and before breach of the covenant. To hold that she was would be to say that the separate property of a married woman married before May 4th, 1859, without any marriage contract or settlement, is bound by a contract made by her husband. For it was not pretended that she made any contract herself or that any credit was given or anything whatever done in respect to, or on the faith of, her separate property or estate. (2) That the $275 could not properly be set off against the plaintiff's demand, the matters of the two not being in the same right; but the said sum being owing to the defendants as trustees, whereas the plaintiffs claim was against the defendant F. individually and payable out of F.'s own estate.

Moss, Q.C., and *Barwick*, for plaintiff.

Osler, Q.C., and *Gunther*, for defendant.