

stances it was reasonably necessary. The County Court judge acting on the latter finding dismissed the action, but the Divisional Court (Phillimore, Hamilton, and Stratton, JJ.) thought the first finding should prevail and gave judgment for the plaintiff for nominal damages and an injunction. The Divisional Court thought that what the jury meant by their second finding was merely that the defendant had done the act in such circumstances as a reasonable man acting bona fide would consider necessary, but they held that if the act was not in fact necessary then it could not be justified merely by a bona fide belief that it was on the part of the trespasser.

PRACTICE—SERVICE OF WRIT OF SUMMONS—INDORSEMENT ON WRIT OF DATE OF SERVICE—PROCEEDINGS BY DEFAULT—
RULE 62—(ONT. RULE 150).—IRREGULARITY—NULLITY.

Hamp-Adams v. Hall (1911) 2 K. B. 942 is a case which illustrates the importance of complying with the rule requiring the date of service to be indorsed on a writ of summons; see Ont. Rule 150. In this case the indorsement had not been made, and the defendant not having appeared, the plaintiff signed judgment for default of appearance and assessed damages, and on the application of the defendant the judgment and assessment were set aside, as being, not a mere irregularity, but a nullity,—the court holding that the omission of the indorsement of service as required by the Rule disabled the plaintiff from proceeding under the Rules for default of appearance. The Court of Appeal (Williams and Buckley, L.JJ.) reversed the order of Bucknill J., who had refused the defendant's application.

PASSING OFF—"GET-UP" OF GOODS—USEFUL BUT UNPATENTABLE COMBINATION—ARTICLE IN COMMON USE—INJUNCTION.

In *Edge v. Nicolls* (1911) A.C. 693, the House of Lords (Lord Loreburn, L.C., and Lords Gorell, Robson and Atkinson), have been unable to agree with the decision of the Court of Appeal (1911) 1 Ch. 5 (noted ante, p. 175). The action, it may be remembered, was to restrain the defendants from imitating the "get-up" of plaintiff's goods. The goods in question were laundry blue which the plaintiffs sold in canvas bags with a small stick attached thereto, it being shewn that this particular style of get-up had become a distinctive feature of the plaintiff's goods. The defendants did up their goods in a similar style, the only difference being that they attached to the bags a label bearing their own name. The Court of Appeal thought that the stick being a useful but unpatentable device could not be regarded as part of the get-up of the article, but their Lordships thought otherwise and granted the injunction prayed.