

REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

From Divisional Court] GILLETT v. LUMSDEN. [June 29.
Trade Mark—"Cream Yeast"—Validity—Infringement—Trade name—
"Passing off."

Held, 1. The plaintiff's trade mark for a certain kind of yeast consisting of a label bearing the representation of the head and bust of a woman with the words "Dry" and "Hop" on either side and the words "Cream Yeast" below, was properly registerable and valid. *Provident Chemical Works v. Canada Chemical Co.*, 4 O.L.R. 545, followed.

2. The defendants, by selling yeast in packages labelled "Jersey Cream Yeast Cake", the words "Jersey Cream" at the top and "Yeast Cake" at the bottom, with the representation of two Jersey cows and a milkmaid between, were not infringing the plaintiff's mark. *Cochrane v. McNish*, 13 R.P.C. 100, distinguished.

3. The defendants were not, upon the evidence, guilty of passing off their goods in such manner as to induce the belief that they were goods manufactured by the plaintiff.

Judgment of a Divisional Court, 6 O.L.R. 66, affirmed.

Bicknell, K.C., for appellant. *Shepley*, K.C., and *F. C. Cooke*, for respondents.

From Drainage Referee.] [Sept. 10.
MCGILLIVRAY v. TOWNSHIP OF LOCHIEL.

Water and watercourses—Drains—Increasing flow of natural stream—Ditches and Watercourses Act—Outlet—Engineer's award.

The owner of land on the banks of a natural stream has no legal ground of complaint if riparian owners above him use the stream as an outlet for drains made by them in the reasonable agricultural use of their lands although the result is to increase the amount of water in the stream and to flood part of his land. But this principle does not apply to persons not riparian owners, who by proceedings under the Ditches and Watercourses Act obtain an outlet to the stream, and they are liable to a person injured by the increased amount of water.

A proper outlet under the Ditches and Watercourses Act is one which enables the water to be discharged without injuriously affecting the lands of another, and if the outlet chosen by the engineer is not in fact a proper