

Besides, Jersey cream is actually used in defendants' preparation, and a man may state that fact on his label without being exposed to injunction: see *Turton v. Turton*, 42 Ch. D. at p. 147.

Here there is no obvious imitation by defendants of plaintiff's label or of the words he uses in it, judged by ocular inspection, and, according to the latest decision, "the eyesight of the Judge is the ultimate test:" per Farwell, J., in *Bourne v. Swan*, [1903] 1 Ch. 229. . . .

The action fails and should be dismissed with costs, and the appeal allowed with costs.

FERGUSON, J., gave written reasons for the same conclusion.

MACLAREN, J.A., also concurred.

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CARTWRIGHT, MASTER.

JUNE 6TH, 1903.

CHAMBERS.

### CASTLE v. CHAPUT.

*Parties—Adding Party — Alternative Relief—Joinder of Causes of Action—Jury Notice—Leave to Give after Time Expired.*

Motion by plaintiff for leave to add as a defendant one J. C. Campbell referred to in the 3rd paragraph of the statement of defence as a traveller in the employ of the defendants who acted for them in the transaction out of which the present action arose.

R. C. H. Cassels, for plaintiff.

W. E. Middleton, for defendants, contended that, although plaintiff might have a separate cause of action against Campbell, it was not so connected with the action against the firm as to be capable of being joined to it.

THE MASTER referred to *Bennetts v. McIlwraith*, [1896] 2 Q. B. 464, *Honduras R. W. Co. v. Tucker*, 2 Ex. D. 301, and *Thompson v. London County Council*, [1898] 1 Q. B. at p. 845, and proceeded:—

In deciding these questions in Chambers, the pleadings only can be looked at. The question is, what does the party allege? Not, what can he prove? If the present action had been brought at first against the present defendants and