

*Held*, that the order directing payment of costs was properly made under ss. 77 and 119 of the O.J. Act; and that execution was properly issued out of the High Court under rule 3, by analogy to the procedure under rule 818.

*Bartram*, for defendant. *Dromgole*, for plaintiff.

Street, J.]

GILLETT v. LUMSDEN.

[July 9.

*Trade mark*—"Cream yeast"—*Protection—Acquisition of right by user—Abandonment—Injunction.*

The words "cream yeast" are not the proper subject of a trade mark, being common words of description. *Partlo v. Toad*, 14 A.R. 444, and *Provident Chemical Works v. Canada Chemical Co.*, 2 O.L.R. 182, followed.

But the plaintiff's yeast having acquired a reputation in the market under the name of "cream yeast," that name was his property as against persons seeking to use it for the purpose of selling other goods of the same character, and he was entitled to have the defendants restrained from so using it.

The fact that the plaintiff had not for some years before action sold many boxes of the article did not shew an abandonment of the right to use the name in connection with the goods, the plaintiff having always been ready to furnish the article when it was asked for.

*Masten*, and *Spence*, for plaintiff. *F. C. Cooke*, for defendants.

Street, J.]

NEELY v. PETER.

[July 11.

*Water and watercourses—Injury to land by flooding—Claim for damages—Summary procedure—Costs of action—Erection and maintenance of dam—Liability of owners—Tolls—Liability of lumbermen using dam.*

Action by the owner of land upon a river against the original defendants for flooding such land by a dam. At the trial it appeared that the dam was the property of an improvement company incorporated under the Timber Slide Companies Act, R.S.O. c. 194, and that the original defendants had used it for the purpose only of floating logs down the river; and the improvement company were added as defendants.

*Held*, 1. Although a plaintiff is not bound to proceed summarily upon a claim such as this, under R.S.O. c. 85, but has a right to bring an action in the ordinary way, yet in the absence of any good reason for not proceeding under the special Act, a plaintiff who brings an action should not be allowed the costs of doing so.