

Held, also, on the second ground that plaintiff can only vacate the order "by plain and uncontrovertible proof that he is in possession of sufficient property standing in his own name, of which he is beneficial owner, and which is easily exigible"; and that such has not been shown.

Motion dismissed with costs to defendant, and in any event.

R. H. R. Munro, for plaintiff.

W. R. Smyth, for defendant.

[Affirmed on appeal to a Judge in Chambers.]

MEREDITH, C.J.]

DICKERSON *v.* RADCLIFFE.

[April 5.

Action—Defamation—Trade libel—Action on the case—Trial by jury—Judicature Act, 1895, s. 109.

An action for words written and published relating to articles of the plaintiffs' manufacture, and the rights of the plaintiffs under certain letters patent, by virtue of which they claimed a monopoly of the manufacture and sale of the articles, is not an action of defamation properly so called, but an action on the case for maliciously acting in such a way as to inflict loss upon the plaintiffs, and does not come within s. 109 of the Judicature Act, 1895, so as to be triable only by a jury, unless by consent.

J. Bicknell, for the plaintiffs.

J. B. Holden, for the defendants.

ARMOUR, C.J., FALCONBRIDGE, J.,
STREET, J. }

[April 8.

O'DONNELL *v.* GUINANE.

County Court appeal—Order setting aside judgment on terms—Finality of.

In a County Court action the defendant made a motion to set aside a judgment by default as irregular, but the Judge held it regular, and, while he set aside the judgment, he did so upon terms of the defendant paying costs. The defendant appealed from this order upon the ground that the judgment should have been set aside unconditionally.

Held, that the order was not "in its nature final," within the meaning of s. 42 of the County Courts Act, R.S.O., c. 47, and the appeal did not lie.

W. J. Clark, for the plaintiff.

Boland, for the defendant John Guinane.

MEREDITH, C.J.]

CAUGHELL *v.* BROWER.

[April 9.

Security for costs—Rule 1243—"Proceeding for the same cause"—Award—Motion to set aside—Appeal—Action—Matters not included in award.

The word "proceeding" in Rule 1243 means a proceeding in Court.

An appeal from an order dismissing a motion to set aside an award made upon a voluntary submission is not a "proceeding for the same cause," within