

TITLE.

Title by possession—Declaration of evidence—Viva voce evidence—Delivery of abstract—Specific performance—See SALE OF LANDS, 1.

TRADE MARK.

1. *Trade Mark and Design Act of 1879—Action to restrain infringement of registered trade mark—Prior user—Definition of trade mark.*—In an action to restrain the infringement of a trade mark registered under the "Trade Mark and Design Act of 1879."

Held, following *McCall v. Theal*, 28 Gr. 48, that prior user can be given in evidence to invalidate the trade mark.

Held, also, that the words "Gold Leaf" used in the plaintiff's trade-mark distinguished the flour made by the plaintiff from that made by any other person, and, as such, was a proper subject of a trade mark within the language of section 8 of the Act.

Held, also, on the evidence that "Gold Leaf" was a common brand for patent flour in use before the registration of the plaintiff's trade-mark, and that "the plaintiff had not the right to endeavour to attribute to that which he might manufacture a name which had been for years before a well-known and current name by which that article was defined," and that there must be judgment for defendant with costs. *Partlo v. Todd*, 171.

2. *Infringement—"Imperial"—Word in common use not eligible as trade mark.*—The plaintiffs having registered as a trade mark the words "Imperial cough drops," now sued

the defendant for infringement thereof by selling confectionery under the name "Imperial cough candy."

Held, that inasmuch as the evidence shewed that the word "Imperial" as a designation or mark for cough drops or candy was really public property, and a common brand or designation for candy long before the plaintiffs' registration, the plaintiffs had not the right to attribute to that which he might manufacture a name which had been for years before a well-known and current name by which that article was defined, and the action must be dismissed.

Partlo v. Todd, 12 O. R. 171, followed. *Watson v. Westlake*, 449.

TRIAL.

Charging jury as to necessity of corroborative evidence—Accomplice—Criminal law.—EVIDENCE, 1.

TRUSTEES AND EXECUTORS.

Conversion—Expropriation by railway company—Compensation money—Who entitled to on death of owner.

See RAILWAYS AND RAILWAY COMPANIES, 3.

WARRANT OF COMMITMENT.

Need not be dated if not issued too soon.—*See CANADA TEMPERANCE ACT, 1.*

WASTE.

Action of waste.—*See COVENANT, 1.*