

few cases between the end of 1894 and the beginning of 1901 when it was asked for: Kerly on Trade Marks, 2nd ed., p. 346.

There should, therefore, be a declaration that the defendants, by using the word "cream," as applied to their yeast, have infringed the plaintiff's rights, and a judgment for a perpetual injunction restraining them from doing so; and the defendants must pay the costs of the action.

MACMAHON, J.

JULY 10TH, 1902.

TRIAL.

STEWART v. WALKER.

*Will—Proof of Copy when Original not Produced—Loss or Destruction of Original—Revocation—Evidence—Action to Establish Will—Parties—Administrator Pendente Lite.*

Action to establish the will of the late John A. McLaren, of Perth, who died in January, 1902

The deceased was illegitimate, and after his death a will said to have been made by him four years before could not be found, and no original testamentary document could be found or produced, and it was alleged by the Attorney-General for the Province of Ontario, and by a sister of the deceased, the defendant Eliza McIntyre, that McLaren died intestate, and that, by reason of his illegitimacy, all his property escheated to the Crown, and a declaration was accordingly claimed by the Attorney-General as to the vesting of the property in the Crown.

The plaintiff was a nephew of Mr. McLaren, and it was shewn that he was and had been for many years the especial favourite of Mr. McLaren. The plaintiff alleged that four years ago a will had been drawn for Mr. McLaren, under his instructions, by which certain bequests were made to the defendants, being his brothers and sisters, and to Mr. Walker, who was his confidential bookkeeper, and to Miss Hamilton, and that, after such specific bequests, the whole of the residue of the estate was by the will given to the plaintiff. A copy of the will was made at the time of the execution of the original, and this copy was produced at the trial of the action. It was contended by the Attorney-General and by the defendant Eliza McIntyre, who was a sister, that the will referred to had been revoked, and that another will had been made; and a large amount of evidence was given at the trial on the question of revocation or intention to revoke the will which was made in plaintiff's favour.

G. H. Watson, K.C., for plaintiff.