

WRIGHT, CROSSLEY & CO.....PLAINTIFFS ;

1898

AND

June 28.

THE ROYAL BAKING POWDER }
COMPANY } DEFENDANTS.*Action to expunge a trade-mark—Plaintiffs out of jurisdiction—Costs—
Refusal to order security for—Particulars.*

On an application by the plaintiffs to expunge defendants' trade-mark from the register, the defendants, resident out of the jurisdiction, applied for and obtained an order for security for costs against the plaintiffs, also resident out of the jurisdiction ; plaintiffs thereupon applied for a similar order upon the ground that the matter was within the discretion of the court.

Held, that security should not be ordered against the defendants.

THIS was on application by plaintiffs for an order for security for costs against the defendants in a proceeding to expunge a trade-mark from the register.

Both the parties to the proceeding were resident without the jurisdiction of the court. After the service of the statement of claim, an application was made on behalf of the defendants for an order compelling the plaintiffs to give security for the defendants' costs, and this order was granted. Plaintiffs then applied for a similar order against the defendants.

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C. J. R. Bethune for the application : The English practice is to grant an order for security against either party living out of the jurisdiction. (*James v. Lovel* (1) ; *In re Compagnie Générale d'Eau Minérales et de Bains de Mer* (2). Under the Ontario practice the court has no discretion ; as soon as it is shown that the party against whom the order is sought is with-

(1) 56 L. T. at p. 742.

(2) [1891] 3 Ch. D. at p. 458.

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out the jurisdiction of the court, the order will be made of course. This is a case where the court should exercise its discretion to grant the order asked for in the interests of justice. Both parties being domiciled abroad they ought to be treated on an equal footing. This case may be likened to a matter of interpleader or replevin. It is the practice in Ontario in interpleader proceedings to grant security against any party who is out of the jurisdiction. (*The Knickerbocker Trust Company of New York v. Webster* (1).)

J. F. Smellie, contra, relied upon the *Annual Practice* 1897, at p. 1152, and cases there cited.

Mr. *Bethune* replied.

THE JUDGE OF THE EXCHEQUER COURT.—I feel that I cannot entertain the application made by the plaintiffs for an order calling upon the defendants to give security for costs to the plaintiffs simply because the former are resident without the jurisdiction; and the application, therefore, must be dismissed. But as this is the first occasion when the question has been raised before me, I will dismiss the application without costs.*

*REPORTER'S NOTE.—Upon application by the defendants in this case, an order was made directing the plaintiffs to give particulars of the date of the first user in England of the word "Royal" as applied to Baking Powder, and the names of the places, other than England, where it had been used, together with the dates of user in such places.

(1) 17 Ont. P. R. 179.