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A
DIGEST OF CASES

OF

TRADE MARK, TRADE NAME, TRADE
SECRET, GOODWILL, &c.

DECIDED

IN THE COURTS OF
THE UNITED KINGDOM, INDIA, THE COLONIES

AND

THE UNITED STATES OF AMERICA.

BY

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OF LINCOLN'S INN, BARRISTER-AT-LAW, AUTHOR OF "THE LAW OF TRADE MARKS, ETC."

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TO

THE HON. SIR EDWARD FRY,

ONE OF THE JUDGES OF HER MAJESTY'S HIGH COURT OF JUSTICE
(CHANCERY DIVISION),

This Work

IS

(BY HIS LORDSHIP'S PERMISSION)

INSCRIBED WITH MUCH RESPECT

BY

THE AUTHOR.

PREFACE.

THIS work completes the design with which the author undertook his treatise on "The Law of Trade Marks, &c."

The object aimed at in the present compilation has been to present a concise statement of the facts and decisions in all cases connected with the law of Trade Marks and kindred topics, as ascertained by a careful comparison of all the various reports in which each case appears. It has been decided to arrange this collection of cases in chronological order, supplementing the body of the work with a full index, in preference to digesting the matter under heads, because, where the latter form of arrangement is adopted, one of two things must happen—either the bare decision on each point is given without the facts necessary to enable it to be rightly appreciated, or else the facts have to be repeated on each mention of the case; besides which, the connexion between the points decided in the case is obscured, and points on which the case is only incidentally useful escape notice altogether. It is hoped that the Index may supply a sufficient guide to the contents of the book.

The present volume contains cases decided in the Courts of all the English-speaking countries. But it has not been thought advisable to extend the scope of the book so as to include decisions of the Courts of other countries, since, apart from the difference in language, the principles by which the

Courts of France, Germany, &c., are governed are entirely independent of those recognised in the Courts of the United Kingdom and the United States.

A number of cases hitherto unreported, decided principally under the recent Registration Acts, are contained in this volume, taken sometimes from the *Times* or the author's own notes, but generally from the shorthand notes, for the use of which the author desires to express his thanks to the authorities at the Trade Marks Registry Office. In a few instances the existing reports have been supplemented from the same sources. All the places in which each case is reported, so far as could be ascertained, are given. The English cases are brought down to the Easter Vacation, 1879, the cases from other Courts as nearly to that date as was practicable. It should be mentioned that a few of the more recent decisions are under appeal.

In some instances statements of the law on various points by learned judges, intended to be of general application, are appended to the cases in which they were made, and it is hoped that these extracts may be found useful.

L. B. S.

2, NEW SQUARE, LINCOLN'S INN,

May, 1879.

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—o—

A. J.	Australian Jurist.
Abb. Pr.	Abbott's Practice Reports (New York).
Act. Comm.	Acting Commissioner.
Ad. & E.	Adolphus and Ellis.
Alb. L. J.	Albany (New York) Law Journal.
Allen	Allen (Massachusetts).
Am. L. Reg.	American Law Register.
Am. L. Rev.	American Law Review.
Am. L. T.	American Law Times.
Amer. Rep.	American Reports.
App. Cas.	Appeal Cases.
Asst. Comm.	Assistant Commissioner.
Atk.	Atkins.
B. & Ad.	Barnewall and Adolphus.
B. & Cr.	Barnewall and Cresswell.
Barb. Ch.	Barbour's Chancery Reports (New York).
Barb. S. C. or Barb.	Barbour's Supreme Court Reports (New York).
Beav.	Beavan.
Beng. L. R. App.	Bengal Law Reports, Appendix.
Biss.	Bissell (U. S. Circuit Court).
Bl. C. C.	Blatchford (U. S. Circuit Court).
Bos.	Bosworth (New York).
Bos. & P., N. S.	Bosanquet and Puller New Reports.
Brews.	Brewster (Pennsylvania).
Browne	Browne (Massachusetts).
Bush	Bush (Kentucky).
C. B.	Common Bench.
C. C. C.	Central Criminal Court.
C. C. C. Sess. Pap.	Central Criminal Court Sessions Papers.
C. C. R.	Court of Crown Cases Reserved.
C. & P.	Carrington and Payne.
C. P.	Common Pleas.
C. P. Div.	Common Pleas Division.
Cal.	California.
Ch. D.	Chancery Division.
Chitty Gen. Pr.	Chitty's General Practice.
Cinc.	Cincinnati.
Codd. Dig.	Coddington's American Digest of Trade Mark Cases.
Comm.	Commissioner.
Comm. of App.	Commission of Appeals (New York).

Conn.	Connecticut.
Coop.	Cooper.
C. P. Coop.	C. P. Cooper.
Cor.	Coryton (Bengal).
Cox	Cox's Criminal Cases.
R. Cox	R. Cox's American Trade Mark Cases.
Cro.	Croke.
Ct. of App.	Court of Appeal.
Ct. of Sess. Cas.	Court of Sessions Cases (Scotch).
Cush.	Cushing (Massachusetts).
D. & B.	Dearsley and Bell.
D. & R.	Dowling and Rylands.
Daly	Daly (New York).
Deady	Deady (U. S. Circuit Court).
De G. F. & J.	De Gex, Fisher and Jones.
De G. & J.	De Gex and Jones.
De G. J. & S.	De Gex, Jones and Smith.
De G. M. & G.	De Gex, Macnaghten and Gordon.
De G. & Sm.	De Gex and Smale.
Dill.	Dillon (U. S. Circuit Court).
Doug.	Douglas.
Drew.	Drewry.
Drew. & Sm.	Drewry and Smale.
Duer	Duer (New York).
E. & B.	Eliis and Blackburn.
Ell. & Ell.	Ellis and Ellis.
Eq. Rep.	Equity Reports.
Esp. N. P. C.	Espinasse, Nisi Prius Cases.
Ex.	Exchequer.
Ga.	Georgia.
Giff.	Giffard.
H. L. C.	House of Lords Cases.
H. of L.	House of Lords.
H. & M.	Hemming and Miller.
H. & N.	Hurlstone and Norman.
H. & Tw.	Hall and Twells.
H. & W.	Harrison and Wollaston.
Hand	Hand (New York).
Hilt.	Hilton (New York).
Hoff.	Hoffman (New York).
Holmes	Holmes (U. S. Circuit Court).
Hopk.	Hopkins (New York).
How. App. Cas.	Howard's Appeal Cases (New York).
How. Pr.	Howard's Practice Cases (New York).
Hughes	Hughes (U. S. Circuit Court).
Hun	Hun (New York).
Ill.	Illinois.
Ind.	Indiana.
Ir. Ch.	Irish Chancery.
Ir. Eq.	Irish Equity.
Ir. Jur.	Irish Jurist.
J. & H.	Johnson and Hemming.
J. & S.	Jones and Spencer (New York).
Jac.	Jacob.
Jac. & W.	Jacob and Walker.
Johns.	Johnson.

Journal of Jurisp.	Journal of Jurisprudence (Scotch).
Jur.	Jurist.
K. & J.	Kay and Johnson.
Keyes	Keyes (New York).
Ky.	Kentucky.
L. J. Bkptcy.	Law Journal, Bankruptcy.
L. J. Ch.	Law Journal, Chancery.
L. J. C. P.	Law Journal, Common Pleas.
L. J. Ex.	Law Journal, Exchequer.
L. J. K. B.	Law Journal, King's Bench.
L. J. M. C.	Law Journal, Magistrates' Cases.
L. J. Notes of Cas.	Law Journal, Notes of Cases.
L. J. P. C.	Law Journal, Privy Council.
L. J. Q. B.	Law Journal, Queen's Bench.
L. R. Ch.	Law Reports, Chancery Appeals.
L. R. C. P.	Law Reports, Common Pleas.
L. R. Eq.	Law Reports, Equity.
L. R. H. L.	Law Reports, House of Lords (English and Irish).
L. R. P. C.	Law Reports, Privy Council.
L. T.	Law Times.
La. Ann.	Louisiana Annual Reports.
Lans.	Lansing (New York).
Lathrop	Lathrop (Massachusetts).
Leg. Obs.	Legal Observer.
M. M. A.	Merchandise Marks Act, 1862.
M. & Rob.	Moody and Robinson.
Mac. & G.	Macnaghten and Gordon.
McLean	McLean (U. S. Circuit Court).
Madd.	Maddock.
Man. & G.	Manning and Granger.
Mass.	Massachusetts.
Md.	Maryland.
Me.	Maine.
Mer.	Merivale.
Mich. C. C.	Michigan Circuit Court.
Mich. N. P.	Michigan Nisi Prius.
Mo.	Missouri.
Mod.	Modern Reports.
Mont. D. & De G.	Montague, Deacon and De Gex.
Monthly L. R.	Monthly Law Reports.
Moo. P. C.	Moore's Privy Council Cases.
My. & Cr.	Mylne and Craig.
N. Car.	North Carolina.
N. P.	Nisi Prius.
N. R.	New Reports.
N. S.	New Series.
N. Y.	New York.
N. & M.	Neville and Manning.
N. & P.	Neville and Perry.
Neb.	Nebraska.
Paige	Paige (New York).
Pemb.	Pemberton on Judgments.
Penn. St.	Pennsylvania State Reports.
Penn. L. J.	Pennsylvania Law Journal.
Ph.	Phillips.

Phila.	Philadelphia.
Pick.	Pickering (Massachusetts).
Post	Post (Missouri).
R. I.	Rhode Island.
Robertson	Robertson (New York).
Russ.	Russell.
S. & S.	Simons and Stuart.
Sandf. Ch.	Sandford's Chancery Reports (New York).
Sandf. S. C.	Sandford's Supreme Court Reports (New York).
Sawyer	Sawyer (U. S. Circuit Court).
Scot. L. Rep.	Scottish Law Reporter.
Scott, N. R.	Scott's New Reports.
Seton	Seton on Decrees.
Sickles	Sickles (New York).
Sim.	Simons.
E. D. Smith	E. D. Smith (New York).
Story	Story (U. S. Circuit Court).
Sup. Ct.	Supreme Court.
Super. Ct.	Superior Court.
Swanst.	Swanston.
T. M. A.	Trade Marks Registration Act.
Thomp. & C.	Thompson and Cook (New York).
Trade Marks	British and Foreign Journal of Commerce, Trade Marks, and International Exhibitions.
Trans. App.	Transcript Appeals (New York).
U. S. C. C., Dt. of—	United States Circuit Court, District of—.
U. S. Pat. Comm. Decis.	Decisions of the U. S. Commissioner of Patents.
U. S. Pat. Gaz.	United States Official Patent Gazette.
U. S. Rep.	United States Supreme Court Reports.
U. S. Sup. Ct.	United States Supreme Court.
V. & B.	Vesey and Beames.
V. R. Eq.	Victoria Reports (First Series) Equity.
Va.	Virginia.
Ves.	Vesey.
Vict. L. R. Eq.	Victoria Law Reports (New Series) Equity.
W. N.	Weekly Notes.
W. R.	Weekly Reporter.
W. Va.	West Virginia.
W. & W. (I. E. & M.)	Wyatt and Webb's Victoria Reports (Insolvency, Ecclesiastical and Matrimonial).
W. W. & A'B. Eq.	Wyatt, Webb and A'Beckett's Victoria Reports (Equity).
W. A'B. & W. Eq.	Webb, A'Beckett and Williams' Victoria Reports (Equity).
Wallace	Wallace (United States Supreme Court).
Wall. Jr.	Wallace, Junior, (U. S. Circuit Court).
West. L. J.	Western Law Journal.
Wils.	Wilson.
Wilson (Ind.)	Wilson's Indianapolis Reports.
Wisc.	Wisconsin.
Wood. & M.	Woodbury and Minot (U. S. Circuit Court).
Y. & C. Ch.	Younge and Collyer's Chancery Reports.

DIGEST
OF
CASES OF TRADE MARK, &c.

SOUTHERN v. HOW.

1.

Temp. Jac. 1.

[*Common Pleas*—*Popham* 144 ; *Cro. Jac.* 471 ; 2 *Rolle* 28.]

Action on the case for deceit.

Doderidge, J., cited a case in which it was held by the Court of Common Pleas, in the reign of Queen Elizabeth, that an action on the case for deceit would lie against a clothier who had applied another's mark to his own inferior cloth. Popham says the action was brought by the defrauded clothier; Croke, by the purchaser; but Rolle states that this was not mentioned, but conjectures that it was by the purchaser.

BLANCHARD v. HILL.

2.

Dec. 18th, 1742.

[*Lord Hardwicke, C.* — 2 *Atk.* 484.]

Motion for injunction to restrain the use of the Great Mogul stamp on cards, refused.

“ Every particular trader has some particular mark or stamp ; but I do not know of any instance of granting an injunction here to restrain one trader from using the same mark with another, and I think it would be of mischievous consequence to do it. Mr. Attorney-General has mentioned a case where an action at law was brought

by a clothworker against another of the same trade for using the same mark, and a judgment was given that the action would lie. But it was not the single act of making use of the mark that was sufficient to maintain the action, but doing it with a fraudulent design, to put off bad cloths by this means, or to draw away customers from the other clothier; and there is no difference between a tradesman's putting up the same sign, and making use of the same mark, with another of the same trade." "An objection has been made that the defendant, in using this mark, prejudices the plaintiff by taking away his customers. But there is no more weight in this than there would be in an objection to one innkeeper setting up the same sign with another."

3.

GIBBLETT v. READ.

17 Geo. 2.

[*Lord Hardwicke, C.*—9 *Mod.* 459.]

Suit by the children of the proprietor of nineteen out of twenty shares in the *St. James' Evening Post* newspaper.

Held, that such shares belonged to the personal estate of the deceased proprietor, and must be accounted for by his widow and executrix accordingly.

"The case was put of physical secrets or nostrums, where everything was carried on by the materials purchased after the testator's death, and yet the nostrum is part of the personal estate of the testator. This has been resembled to the case of a shoemaker; and, in that case, suppose the dealing has been extensive, and carried on in partnership, and with the father's stock, the son, who is executor, would be accountable. Suppose the house were a house of great trade, he must account for the value of what is called the goodwill of it." "In the case of Tipping, if anybody had thought of his nostrum, as he had no patent, any discoverer might have sold it."

4.

SINGLETON v. BOLTON.

1783.

[*King's Bench*—3 *Doug.* 293.]

The plaintiff manufacturing and selling, in succession to his father, a medical preparation under the name of "Dr.

Johnson's Yellow Ointment," and the defendant having begun to sell a medicine under the same name, plaintiff nonsuited in an action, and a rule which had been obtained for a new trial, discharged.

Per Lord Mansfield, C.J. "If the defendant had sold a medicine of his own under the plaintiff's name or mark, that would be a fraud for which an action would lie. But here both the plaintiff and defendant use the name of the original inventor, and no evidence was given of the defendant having sold it as if prepared by the plaintiff. The only other ground on which the action could be maintained was that of property in the plaintiff, which was not pretended, there being no patent, nor any letters of administration."

COOPER v. WATSON.

5.

1784.

[*King's Bench*—3 *Doug.* 413.]

Action of covenant on articles of partnership in a brewing business, by which it was covenanted that the partnership should continue for eleven years, with a proviso that either partner should be at liberty to quit the trade and mystery of a brewer, on giving six months' notice to the other, and that the party to whom such notice should be given might be at liberty to continue the trade on his own account.

The defendant continuing to trade as a brewer on his own account, after giving the six months' notice,

Held, that, on the construction of the covenant, the defendant must quit the business altogether.

WORRAL v. HAND.

6.

1791.

[*Lord Kenyon, C.J., at N.P.*—*Peake*, 105.]

Action of assumpsit for goods sold and delivered, the defendant being the administratrix of a publican, and

having sold the goodwill of the public-house for a sum of money.

Held, that the sum which she had received was assets in her hands, though she was tenant at will after the death of the intestate.

7.

WEBSTER v. WEBSTER.

May 19th, 1791.

[*Lord Thurlow, C.*—3 *Swanst.* 490.]

Motion by one of three executors of a deceased person for an injunction to restrain the other two executors, whose partner the deceased had been, from continuing to use the name of their deceased partner in their business, refused, on the ground that no liability could thereby be thrown upon the deceased partner's estate, and that the possible fraud upon the public gave the executor no claim against the defendants.

8.

JENDWINE v. SLADE.

July 12th, 1797.

[*Lord Kenyon, C.J. at N.P.*—2 *Esp. N. P. C.* 572.]

Action to recover damages on the sale of two pictures, copied respectively from Claude Lorraine and Teniers, but sold under a catalogue which described them as by those artists.

Held, that the description did not amount to a warranty.

“It was impossible to make this the case of a warranty. The pictures were the work of artists some centuries back, and there being no way of tracing the picture itself, it could only be matter of opinion whether the picture in question was the work of the artist whose name it bore, or not. The catalogue only expressed the opinion of the vendor, but left the determination to the buyer's own judgment.”

HAMMOND v. DOUGLAS.

9.

July 31st, 1800.

[Lord Loughborough, C.—5 Ves. 539.]

On exceptions to the Master's report, which stated the purchase money of the goodwill of a partnership business to belong to the joint estate of the partners, one of whom was dead,

Held, that the sum belonged to the survivor.

The Lord Chancellor was "clearly of opinion that upon a partnership without articles the goodwill survives; and a sale of it cannot be compelled by the representative of the deceased partner, being the right of the survivor, which the law gives him to carry on the trade: it is not partnership stock, of which the executor may compel a division."

HOGG v. KIRBY.

10.

March 15th, 1803.

[Lord Eldon, C.—8 Ves. 215.]

The plaintiff being the proprietor of a magazine called "The Wonderful Magazine," the defendant began to bring out an extremely similar publication, which he described as a "New Series, Improved."

Injunction granted to restrain the wrongful acts of the defendant, and *Held*, that the fact that the plaintiff's work was incorrectly stated to be "by William Granger, Esq.," did not disentitle the plaintiff to his injunction, but should be left to form an ingredient in the action for damages.

It is competent to any person, perceiving the success of a literary work, "to set about a similar work, *bonâ fide* his own. But it must be in substance a new and original work, and must be handed out to the world as such."—"I shall state the question to be, not whether this work is the same, but, in a question between these parties, whether the defendant has not represented it to be the same; and whether the injury to the plaintiff is not as great, and the loss accruing ought not to be regarded in equity upon the same principles between them as if it was, in fact, the same work."

11.

BUNN v. GUY.

Nov. 7th, 1803.

[*King's Bench*—4 *East* 196.]

Case sent from Chancery.

Held, that a contract entered into by a practising attorney to relinquish his business and recommend his clients to two other attorneys for a valuable consideration, and that he would not himself practise in such business within certain limits, and would permit them to use his name in their firm for a certain time, but without his interference, &c., was good in law.

12.

LONGMAN v. TRIPP.

Nov. 21st, 1805.

[*Common Pleas*—2 *Bos. & P. N. R.* 67.]

Action of assumpsit.

Held, that the right of printing and publishing the *Bristol Mercury* newspaper passed, on the bankruptcy of the printer and publisher, to his assignees in bankruptcy, as being goods and chattels within 21 Jac. I., c. 19, s. 11, notwithstanding an assignment thereof as a security previously made to a creditor, but not made public.

13.

SHACKLE v. BAKER.

Feb. 6th, 1808.

[*Lord Eldon, C.*—14 *Ves.* 468.]

Motion for an injunction to restrain the defendants from proceeding at law under a judgment, the plaintiff alleging that the defendants, the goodwill of whose business he had bought, were carrying on business in com-

petition with him, after they had persuaded him to omit a covenant against so doing in the agreement for sale, on the ground that it was unnecessary for him to have more than their word, refused.

“I cannot see my way to grant an injunction in this case. If it had been nothing more than a purchase of the goodwill of this trade, the vendor would be at liberty to set up the same trade in any other situation. Against that the purchaser has the choice of several securities. He may rest upon the assurance of the vendor; he may require a covenant; but resting upon a covenant, he can have nothing more than an action for damages, and the observation that such an action is an extremely imperfect remedy has been repeatedly made. The parties may, therefore, proceed to ascertain for themselves what shall be the damages from time to time, and, unless they are so awkward as to put that in the shape of penalty, instead of liquidated damages, there is a perfect and absolute remedy.”

CRAWSHAY v. COLLINS.

14.

July 26th, 1808.

[*Lord Eldon, C.*—15 *Ves.* 218.]

Partnership suit.

P. 27. The Lord Chancellor agreed with the doubt expressed by Sir Samuel Romilly upon the decision in *Hammond v. Douglas*, that the goodwill of a partnership business survived to the surviving partner.

LONGMAN v. WINCHESTER.

15.

Nov. 23rd, 1809.

[*Lord Eldon, C.*—16 *Ves.* 269.]

Motion to dissolve an injunction which had been granted to restrain the pirating of a Court Calendar, refused.

“In the case of *Hogg v. Kirby* there was no doubt that any person might publish a work of that description which was the subject of

that injunction. Each party might publish his own collection, and the articles might happen to be the same, but the one could not excite the public curiosity by copying into his work from that of the other. The defendant in that case had not done that; but he published a number of a work as a continuation of the plaintiff's old work, taking the credit which had been acquired by that to his own, and that he was not permitted to do."

16.

FEATHERSTONHAUGH v. FENWICK.

April 18th, 1810.

[*Grant, M.R.*—17 *Ves.* 298.]

Partnership suit.

Held, that the consequence of the dissolution of a partnership, where there were no articles prescribing the terms, was a general sale and account of the joint property; and that some of the partners could not, therefore, insist on taking the share of another partner at a valuation, nor that he should remove his property from the premises, so as to deprive him of his share in the goodwill, nor retain the benefit of a clandestine renewal to them of the lease of the partnership premises, since that would be to give them the whole benefit of the goodwill, but that such renewed lease must be included in the valuation of the partnership property.

17.

CRUTTWELL v. LYE.

Nov. 21st, 1810.

[*Lord Eldon, C.*—17 *Ves.* 335 ; 1 *Rose* 123.]

The plaintiff having bought from the defendant's assignees in bankruptcy the goodwill of his principal carrying business, and a subordinate business of the same kind having been bought back for the defendant at the same time, the latter recommenced business in such a manner as to render a mistake between the two businesses possible.

Motion for an injunction to restrain the defendant from so doing, refused, on the ground that the defendant was entitled to carry on a similar business, if he did not hold it out as being the same.

"There can be no doubt that this Court would interpose against that sort of fraud which has been attempted by setting up the same trade in the same place, under the same sign or name, the party giving himself out as the same person."

"I cannot say that any of those interests which a bankrupt is supposed to have by the effect of the certificate, or in the surplus of his estate after payment of his debts, form a principle upon which he should not be permitted to engage again in the like trade, which in this sort of case is materially distinguished from the same trade. In *Hogg v. Kirby* the defendant's magazine, being published as a continuation of the plaintiff's, was the same."

"The goodwill, which has been the subject of sale, is nothing more than the probability that the old customers will resort to the old place."

SEDON v. SENATE.

18.

1811.

[*Grant, M.R.*—Cited 2 *V. & B.* 220.]

The defendant, having sold a medicine to the plaintiff, began to sell another under a similar description, and to put forth advertisements containing verses which had before been used on the original medicine.

Injunction granted to restrain the defendant from continuing so to do, though the plaintiff had no patent for the medicine.

CANHAM v. JONES.

19.

June 23rd, 1813.

[*Plumer, V.C. of E.*—2 *V. & B.* 218.]

The plaintiff being the proprietor of a secret medicine called "Velno's Vegetable Syrup," the defendant, who had been in the plaintiff's service, and had there become

acquainted with a part of the secret, began to make and sell a spurious preparation under the same name.

Demurrer to a bill for an injunction to restrain him from so doing, allowed, on the ground that there was no exclusive right in a medicine, not protected by patent, such as to prevent the sale of a medicine under the same title by another person, the latter not assuming the name and character of the original maker.

20.

SCOTT v. MACKINTOSH.

May 8th, 1813.

[*Lord Eldon, C.—1 V. & B. 503.*]

Motion to revive an injunction to restrain the defendant from proceeding at law, refused.

“Where a man sells the goodwill of a trade and covenants to make it as profitable as he can, the actual profit made is not that which the vendee is bound to take; but he will have an action of covenant, if he can establish his title to more through the default of the vendor.”

21.

DAY v. DAY.

1816.

[*Chancery—Eden on Inj. (Ed. of 1821) 314.*]

The defendant having placed on his blacking certain labels in imitation of those used by the plaintiff on his, injunction granted to restrain the infringement.

22.

BOZON v. FARLOW.

July 29th, 1816.

[*Grant, M.R.—1 Mer. 459.*]

Bill by the vendor, for the specific performance of an agreement for the sale of an attorney's practice, dismissed,

on the ground that the agreement contained no express stipulations enabling the Court to carry it into effect on the vendor's part, in return for the purchase money, and that there were no conditions so generally applicable to such transactions as to be capable of being inserted by way of "usual clauses." And *Held*, that it was doubtful whether such an agreement was in its nature valid, either on the ground of morality or of public policy; and further, whether, if legally valid, it was of such a nature as to be capable of being enforced in equity.

LORD BYRON v. JOHNSTON.

23.

Nov. 28th, 1816.

[*Lord Eldon, C.*—2 *Mer.* 29.]

The defendant having advertised for sale certain poems of which he represented the plaintiff to be the author, on motion on behalf of the plaintiff (he being absent abroad), and upon affidavits by his agents of circumstances leading to the belief that the poems were not his work, and the defendant refusing to swear to his belief that they were so, injunction granted, to restrain the defendant, until answer or further order, from publishing such poems in the plaintiff's name, or as his work.

NEWBERY v. JAMES.

24.

March 27th, 1817.

[*Lord Eldon, C.*—2 *Mer.* 446.]

On motion by the defendants, injunction which had been granted to restrain them from violating an agreement not to divulge the secret of a medical preparation, dissolved, on the ground that if there were a real secret in question, the Court would have no means of interfering to enforce its order.

25.

HARRISON v. GARDNER.

July 23rd, 1817.

[*Plumer, V. C. of E.*—2 *Madd.* 198.]

The defendant having been partner with the plaintiff, and having, on his retirement from the firm, accepted a sum awarded to him by arbitrators in respect of his share of the goodwill, and calculated by them upon the understanding that he would not set up the same trade in the same street or its vicinity, injunction granted to restrain him from setting up the same trade in the same street or its vicinity.

P. 219. "What is the 'goodwill' of a retail shop in a populous neighbourhood? 'Goodwill' is defined by Lord Eldon to be 'the probability that the old customers will resort to the old place.' (*Cruttwell v. Lye*, 17 Ves. 346.) A person, not a lawyer, would not imagine that when the goodwill and trade of a retail shop were sold, the vendor might the next day set up a shop within a few doors, and draw off all the customers. The goodwill of such a shop, in good faith and honest understanding, must mean all the benefit of the trade, and not merely a benefit of which the vendor might the next day deprive the vendee. The authorities, however, are strong to show that the sale of a goodwill does not impart restraint, and that a person selling the goodwill of a business, for however large a consideration, is not prevented from setting up the trade. In *Shackle v. Baker*, 14 Ves. 468, it was held that the sale of a goodwill leaves the vendor at liberty to set up the same trade in *any other situation*. But here the trade is carried on in the *same situation*."

26.

WILLIAMS v. WILLIAMS (1).

Aug. 6th, 1817.

[*Lord Eldon, C.*—3 *Mer.* 157.]

On motion by the defendant, injunction which had been granted to restrain the defendant (among other things) from divulging a secret in respect of a medicine, dissolved, on the affidavit of the defendant denying the truth of the

facts as stated upon the plaintiff's affidavit, and on the ground that there was no secret. And *Held* that it was doubtful whether a Court of Equity, in its jurisdiction to decree specific performance of an agreement, could interfere by injunction in such a case.

“ I do not think that the Court ought to struggle to protect this sort of secrets in medicine.”

KENNEDY v. LEE.

27.

Nov. 17th, 1817.

[*Lord Eldon, C.*—3 *Mer.* 441.]

Partnership suit.

Held, that an agreement to buy up his partner's share in a nursery gardener's business did not bind the purchasing partner to pay for the outgoing partner's share in the goodwill. And *Held*, that, unless there were some provisions in the agreement with respect to the goodwill, and preventing the outgoing partner from carrying on business in a specified locality, the latter would be at liberty to carry on the same trade “ where, and when, and with whom he pleased.”

FARR v. PEARCE.

28.

Feb. 10th, 1818.

[*Leach, V. C. of E.*—3 *Madd.* 74.]

Suit by the personal representative of A., who had entered into articles of partnership with the defendant, in his surgeon's practice, and had paid a premium.

The defendant having sold the goodwill of the practice, after the death of A.; *Held*, upon the construction of the articles, that A.'s representative was not entitled to a share of the money produced by the sale of the goodwill.

“In this case the articles define the interest which the representatives of a deceased partner are to take, and there is no provision which gives them the benefit of the goodwill of the concern. But if the general question had arisen here, I think it would have been difficult to maintain that where a partnership is formed between professional persons, as surgeons, and one dies, the other is obliged to give up his business and sell the connexion for the joint benefit of himself and the estate of his deceased partner. When such partnerships determine, unless there be stipulations to the contrary, each must be at liberty to continue his own exertions; and where the determination is by the death of one, the right of the survivor cannot be affected. Such partnerships are very different from commercial partnerships.”

29.

WILLIAMS v. WILLIAMS (2).

June 10th, 1818.

[*Lord Eldon, C.*—2 *Swanst.* 253 ; 1 *Wils.* 473.]

The plaintiffs having bought up the interest of the defendant, one of the partners in their coaching business, and the defendant having undertaken not to be concerned in any coach running a specified route, or prejudicial to the partnership business, but having subsequently begun to run a coach in violation of the agreement, injunction granted to restrain him from so doing.

30.

GEE v. PRITCHARD.

July 17th, 1818.

[*Lord Eldon, C.*—2 *Swanst.* 402.]

Injunction granted to restrain the publication of private letters.

P. 413. “The publication of a libel is a crime, and I have no jurisdiction to prevent the commission of crimes, except, of course, such cases as belong to the protection of infants, where a dealing with an infant may amount to a crime—an exception arising from that peculiar jurisdiction of this Court.”

YOVATT v. WINYARD.

31.

May 15th, 1820.[*Lord Eldon, C.—1 Jac. & W. 394.*]

The plaintiff, being the proprietor of the secret recipes for certain veterinary medicines, having taken the defendant into his employ under an agreement by which he was to have a salary and be instructed in the business generally, but was not to be taught the secrets, the defendant secretly acquainted himself with the secrets, and, setting up for himself, made up the medicines and sold them with directions for use copied from the plaintiff's.

On motion by the plaintiff, injunction granted to restrain the defendant from using or communicating the secret recipes, except as to the treatment of animals then in his care, and from printing and publishing the directions, on the ground that the defendant had become acquainted with the secrets by breach of trust.

BAKTER v. CONOLLY.

32.

July 13th, 1820.[*Lord Eldon, C.—1 Jac. & W. 576.*]

Motion for an injunction to restrain an action at law brought to recover an annual payment due by way of purchase money for goodwill, refused.

P. 580. "The Court certainly will not execute a contract for the sale of a goodwill, at the same time it will not enjoin against any proceeding at law under such an agreement—suppose, for instance, there is a contract for the goodwill of a shop; it cannot be conveyed, and the Court would say—'Go and make what you can of it at law; if you can recover, very well, we won't prevent you; if you cannot, very well again, we won't assist you.'"

33.

EDMONDS v. BENBOW.

Feb. 20th, 1821.

[*Leach, V.C. of E.*—*Seton, 3rd ed., 905 ; 4th ed., 238.*]

The plaintiff being the proprietor and publisher of a newspaper called *The Real John Bull*, injunction granted to restrain the publication by the defendants of a newspaper called *The Real John Bull*, or *The Old Real John Bull*, and of any other newspaper as a continuation of the plaintiff's newspaper.

[34.]

**IN RE THE EDINBURGH CORRESPONDENT
NEWSPAPER.**

May, 1822.

[*Ct. of Session.*—*Ct. of Sess. Cas., 1st Ser. I. (New ed.) 407n.*]

The plaintiffs being the proprietors of a newspaper entitled *The Edinburgh Correspondent*, interdict granted to restrain the publication of a new paper under that name.

Per Lord Balgray. "The partners under the existing firm, as publishers of the former paper, have a right to prevent any paper from being published under such title or firm as may mislead the public into a belief that it is the former paper."

[35.]

M'CORMICK v. M'CUBBIN.

July 4th, 1822.

[*Ct. of Session.*—*Ct. of Sess. Cas., 1st Ser. I., 541 (New ed., 496).*]

On the death of a person entitled to one half of the copyright and goodwill of a newspaper called *The Ayr Advertiser*, bill of suspension and interdict presented by

the persons entitled to the other half (who had themselves refused to purchase the share of the deceased proprietor) to restrain the latter's executors from offering the half share for sale, refused, on the ground that the copyright and goodwill of a newspaper were a species of property capable of transmission by the proprietor to his representatives, and that the latter were entitled to the benefit to be derived from a sale of the share.

BRYSON v. WHITEHEAD.

36.

Nov. 25th, 1822.

[*Leach, V.C. of E.*—1 *S. & S.* 74; 1 *L. J., Ch.* 42.]

In a suit by the vendor of the goodwill of his dyeing business, with the exclusive use of a secret mode of dyeing, specific performance of the agreement between the vendor and purchaser, granted.

“Although the policy of the law will not permit a general restraint of trade, yet a trader may sell a secret of business, and restrain himself generally from using that secret. Let the Master, in settling the deed which is to give effect to this agreement, introduce a general covenant to restrain the use of the secret for twenty years, and a covenant limited in point of locality, as to carrying on the ordinary business of a dyer, both parties being willing that the agreement should be so modified.”

COOK v. COLLINGRIDGE.

37.

Jan. 27th, 1823.

[*Lord Eldon, C.*—*Jac.* 607; 1 *L. J., Ch.* 74; *Collyer on Partnership* (2nd ed.) 215.]

Partnership suit.

On petition in this cause (see *Collyer, ubi sup.*) subsequent to the decision of the above date,

Held that, the partnership having expired by mere effluxion of time, the former copartners were under no obligation, after the sale of the business, to refrain from

carrying on the same kind of business, or uniting in a new partnership with any other persons, and that notice of this must be inserted in the particulars of sale of the partnership property and effects.

38.

GREEN v. FOLGHAM.

June 10th, 1823.

[*Leach, V.C. of E.*—1 S. & S. 398; 1 L. J., Ch. 203.]

The secret recipe of a medical preparation, called "Dr. Johnson's Ointment for the Eyes," having been settled upon the parents of the parties in the suit, and after the death of the survivor of them, to be sold for the benefit of the plaintiffs and defendant, the mother, being the surviving parent, communicated the secret to the defendant for the benefit of himself and the plaintiffs, his younger brothers and sisters.

In a suit by the younger brothers and sisters, after the mother's death,

Held, that the defendant held the secret upon the trust of the settlement, and must account for the profits since his mother's death (an allowance being made him for his trouble), and that an issue must be directed to ascertain the value of the secret.

"If this secret could be made a subject of sale, the plaintiffs would be next entitled to ask from the Court that a sale should be directed accordingly. But inasmuch as the Court has no possible means either to communicate this secret to a purchaser with certainty, or to protect him in the enjoyment of it, a sale becomes impracticable. But although the Court cannot direct a sale, it has the power of taking a course which, in point of advantage, will be equivalent to the plaintiffs. It can inquire what would be the value of this secret to sell, provided it could be made the subject of sale; and the annual profits which have actually been made by the sale of the ointment from the death of the mother will be a fair criterion by which that value may be estimated."

CONSTABLE & Co. v. BREWSTER.

[39.]

July 6th, 1824.

[Ct. of Session—Ct. of Sess. Cas. 1st Ser. III., 215 (New ed. 152).]

The plaintiffs having employed the defendant for five years as one of the editors of *The Edinburgh Philosophical Journal*, which was described on the title page as "conducted by Dr. Brewster and Professor Jameson," and the defendant having, at the end of the five years, separated from the plaintiffs and announced the publication of "No. 1 of the New Series of the *Edinburgh Philosophical Journal*, conducted by Dr. Brewster," interdict granted to restrain the publication of a work under that title.

SYKES v. SYKES.

40.

Nov. 11th, 1824.

[King's Bench—3 B. & Cr. 541; 5 D. & R. 292; 3 L. J., K. B. 46.]

The plaintiff having been in the habit of marking his shot-belts, powder-flasks, &c., with the words "Sykes' Patent" (though the patent which had been taken out had been held to be invalid), the defendants copied this mark on their own goods.

Action on the case.

Held, by Bayley, J., at the trial, and afterwards by the Court of K. B., that the defendants had no right to mark their goods "as and for" the plaintiff's goods, and that the fact that the immediate purchasers knew who was the maker made no difference.

Per Abbott, C.J.—"It was established most clearly that the defendants marked the goods manufactured by them with the words 'Sykes' Patent,' in order to denote that they were of the genuine manufacture of the plaintiff; and although they did not themselves sell them as goods of the plaintiff's manufacture, yet they sold them to retail dealers for the express purpose of being resold as goods of the plaintiff's manufacture. I think that is substantially the same thing."

[41.]

SNOWDEN *v.* NOAH.

Jan., 1825.

[*N. Y. Chancery*; } ——— *Hopk.* 347; *R. Cox*, 1.]
Sandford, C. }

Motion by a person who had purchased the right to publish a newspaper called *The National Advocate* in the city of New York, for an injunction to restrain the vendor from starting a paper in that city called *The New York National Advocate*, refused, on the ground that the names were sufficiently distinct to prevent deception.

42.

COSLAKE *v.* TILL.

Aug. 4th, 1826.

[*Lord Gifford, M.R.* ——— 1 *Russ.* 376.]

Suit by the purchaser for the specific performance of an agreement by a tenant at will of a public-house for the sale of the possession, trade, and goodwill of the house at a fixed sum, and of the stock and furniture at a valuation, one of the terms being that possession should be taken and the money paid on a given day.

Held (1), that time was of the essence of the contract, and that the plaintiff not having been ready with the purchase money till the day after the given day, specific performance could not be granted; (2) that it was doubtful whether a Court of Equity would enforce the performance of a contract for the purchase of a subject matter, of which the goodwill of a public-house, unconnected with any fixed interest in the premises, formed the principal part.

43.

DAKIN *v.* COPE.

June 1st, 1826; April, 1827.

[*Plumer M.R.*; *Lord Gifford, M.R.*; } ——— 2 *Russ.* 170.]
Lord Eldon, C.

In a suit by the executors of a publican, with whom the defendant had entered into an agreement for the pur-

base of the leasehold public-house and the goodwill and cences connected therewith, specific performance of the agreement granted.

DELONDRE v. SHAW.

44.

April 16th, 1828.

[*Shadwell, V.C. of E.—2 Sim., 237.*]

Suit commenced jointly by Delondre, the inventor, and Pelletier, the compounder, by agreement with Delondre, of "Sulphate of Quinine," to restrain the imitation of the labels and seals used on the bottles of quinine.

Demurrer allowed, on the ground that the parties who asked joint relief were not entitled to joint relief, Pelletier not being shown to have any interest in the labels and seals in question.

CHISSUM v. DEWES.

45.

July 21st, 1828.

[*Leach, M.R.—5 Russ. 29.*]

The unexpired term in a house; and the goodwill of the business there carried on, having been sold in a creditor's suit, with the consent of an equitable mortgagee, and having brought a price less in amount than the debt due to the equitable mortgagee;

Held, that the equitable mortgagee was entitled to the whole of the purchase-money, whether arising from the value of the goodwill, or from the value of the lease apart from the goodwill.

"The goodwill of the business is nothing more than an advantage attached to the possession of the house; and the mortgagee, being entitled to the possession of the house, is entitled to the whole of that advantage. I cannot separate the goodwill from the lease."

46.

SPICER v. JAMES.

Nov., 1830.

[*Leach, M.R.*—*Collyer on Partnership, 2nd ed. 104.*]

The administrator of an attorney having carried on the business of the intestate until the latter's son came of age, upon which he transferred the business to the latter, the latter afterwards became insolvent.

Suit by one of the creditors against the administrator for an account of the profits of the business while managed by him, and insisting that he was indebted to the intestate's estate in respect of the goodwill of the business, dismissed, on the ground that the goodwill of a trade of a personal nature, as that of an attorney, was not a subject of administration.

47.

DAY v. BINNING.

Jan. 21st, 1831.

[*Shadwell, V.C. of E.*—*C. P. Coop. 489 ; 1 Leg. Obs. 205.*]

The plaintiffs being manufacturers of blacking, which they sold in bottles labelled, among other things, with the words "Manufactured by Day & Martin," the defendants began to sell other blacking in similar bottles, bearing similar labels, except that for the words "Manufactured by Day & Martin" were substituted the words "Equal to Day & Martin's," "equal to" being in very small letters.

On motion by the plaintiffs, injunction granted to restrain the defendants from using labels imitated from the plaintiffs'.

HENRY v. PRICE.

48.

March 29th, 1831.[*Shadwell, V.C. of E.—1 Leg. Obs. 364.*]

The plaintiff preparing calcined magnesia, in succession to his father, and selling it in bottles of a special shape, labelled "Henry's Calcined Magnesia, Manchester," the defendant began to prepare magnesia, and to sell it in similar bottles, similarly labelled.

On motion by the plaintiff, injunction granted to restrain the defendant from continuing to infringe the plaintiff's rights.

ARCHBOLD v. SWEET.

49.

Feb. 9th, 1832.[*Lord Tenterden, C.J., at N. P.—1 M. & Rob. 162; 5 C. & P. 219.*]

The publisher of a legal work issued an inaccurate edition of the work, falsely purporting to have been prepared by the author.

Action on the case by the author.

Held, that he was entitled to recover damages for the injury done to his reputation by the defendant's conduct, notwithstanding that the defendant was the owner of the copyright.

"The question is for the jury, whether the third edition, in the form in which it is put forth, would be understood by purchasers to be by the plaintiff: if purchasers who paid reasonable attention to its contents would not so understand it, the verdict must be for the defendant; if they would, for the plaintiff.

"The nearest resemblance to the present case seems to me to be furnished by those cases in which a person, having a reputation for the manufacture of a particular commodity, but not protected by a patent, brings an action against another for selling an inferior article in his name. The cases are not exactly alike; there the sale of the commodity is affected, here the character of the author; but they bear a close analogy to each other."

50.

BLOFELD v. PAYNE.*Jan. 12th, 1833.*

[*King's Bench.*—4 *B. & Ad.* 410 ; 1 *N. & M.* 353 ; 2 *L. J., K. B., N. S.* 68.]

The plaintiff being a manufacturer of metallic hones, which he sold in certain special envelopes containing directions for use, &c., the defendants sold other hones in similar envelopes.

Action on the case.

Held, that, although no specific damage was proved, and the jury found the defendant's articles to be equal to the plaintiff's, the plaintiff was still entitled to some damages for the invasion of his right.

Lord Denman, C.J., told the jury at the trial that "even if the defendant's hones were not inferior, the plaintiff was entitled to some damages, inasmuch as his right had been invaded by the fraudulent act of the defendants."

Per Littledale, J.—"The act of the defendant was a fraud against the plaintiff, and if it occasioned him no specific damage, it was still to a certain extent an injury to his right."

51.

GOUT v. ALEPLOGLU.*April 15th, 1833.*

[*Shadwell, V.C. of E.*—6 *Beav.* 69n. ; 5 *Leg. Obs.* 495 ; *Chitty, Gen. Pr.* 721.]

The plaintiff having long manufactured watches for the Turkish and Levantine market, and marked them with his name, the Turkish word "Pessendede" (meaning "warranted"), a sprig, &c., the defendants began to manufacture and export watches similarly marked.

On motion by the plaintiff,

Held, that the plaintiff had acquired, by long previous usage, the exclusive right to designate his watches by

that Turkish word in Turkish characters, and that an injunction must be granted to restrain the defendants from infringing the plaintiff's rights.

MARTIN v. WRIGHT.

52.

Aug. 9th, 1833.

[*Shadwell, V.C. of E.*—6 *Sim.* 237.]

The defendant exhibited as a diorama a large painting, which he represented to be a copy of a picture by the plaintiff.

Suit for an injunction and account.

Held, that equitable relief could not be granted until the plaintiff's right had been established at law.

“With respect to the defendant representing his copy as Martin's picture, it must be either better or worse; if it is better, Martin has the benefit of it; if worse, then the misrepresentation is only a sort of libel, and this Court will not prevent the publication of a libel. If Martin had exhibited his picture as a diorama, then he might have been entitled to an injunction.”

RANSOME v. BENTALL.

53.

Dec. 11th, 1833.

[*Shadwell, V.C. of E.*—3 *L. J., Ch., N. S.* 161.]

The plaintiffs having been in the habit of marking their patent ploughshares with the words “Ransome's Patent,” and the letters “H. H.,” and also with a number denoting size, as “6,” the defendant began to sell ordinary ploughshares stamped with a similar mark.

Injunction granted to restrain the defendant from continuing to infringe.

“If the defendant had been in the habit of marking his ploughs with only ‘H. H. 6,’ and if I could see the marks so placed that no person could be deceived in purchasing the ploughs, then I might refuse the injunction as to that part of the prayer. But here the defendant wants me to decide *ab ante* that no possible use of ‘H. H. 6’ may have the effect of misleading persons, and therefore the whole prayer must be granted.”

54.

R. v. OGDEN.

Nov. 29th, 1834.

[*C. C. C.*—
Bolland, B., & Park, J. } —6 *C. & P.* 631.]

On an indictment under 13 Geo. III. c. 52, s. 14, and 38 Geo. III. c. 69, s. 7, for unlawfully transposing the Hall mark of the lion passant from one gold ring to another,

Held, that the language of the Act being express, the prisoner must be convicted, notwithstanding that both rings were genuine, and that the prisoner had acted without any fraudulent intention. A pardon was subsequently granted.

55.

LEWIS v. LANGDON.

May 30th, 1835.

[*Shadwell, V.C. of E.*—7 *Sim.* 421 ; 4 *L. J., Ch., N. S.* 258.]

After the dissolution of the firm of “Brookman & Langdon” (makers of lead pencils, which they stamped with their name) by the death of one of the partners, the surviving partner, J. Lewis, took a new partner, and began to carry on business as “James Lewis & Co., successors to Brookman & Langdon,” and the defendant, one of the executors of the deceased partner, subsequently began to carry on business as “Brookman & Langdon.”

On motion by the surviving partner in the old firm and his new partner, injunction granted to restrain the defendant from carrying on business as “Brookman & Langdon” until after the trial of an action at law.

56.

POWER v. BARHAM.

Nov. 26th, 1835 ; Jan. 14th, 1836.

[*Coleridge, J., at N. P.*—7 *C. & P.* 356 ; 1 *M. & Rob.* 507.
King's Bench—4 *Ad. & E.* 473 ; 6 *N. & M.* 62 ; 1 *H. & W.* 683 ; 5 *L. J., K. B., N. S.* 88.]

The plaintiff bought from the defendant certain pictures which he said were by Canaletto, and which were described

in the bill of parcels as "four pictures, views in Venice—*Canaletto*," but which turned out not to be by that painter.

Action of *assumpsit*.

Held, that it was for the jury to say what was the effect of the words in the bill of parcels, and whether they implied a warranty of genuineness, or conveyed only a description or an expression of opinion.

KNOTT v. MORGAN.

57.

July 27th; Aug. 19th, 1836.

[*Lord Langdale, M.R.*; } ————2 *Keen* 213.]
Lord Cottenham, C. }

The omnibuses of the London Conveyance Company being painted, and their servants clothed, in a special and distinctive manner, the defendant began to run omnibuses similarly painted, with servants similarly clothed.

On motion by the plaintiffs, injunction granted to restrain the defendant from imitating the plaintiffs' line of omnibuses.

Per Lord Langdale, M.R. "It is not to be said that the plaintiffs have any exclusive right to the words 'Conveyance Company,' or 'London Conveyance Company,' or any other words; but they have a right to call upon this Court to restrain the defendant from fraudulently using precisely the same words and devices which they have taken for the purpose of distinguishing their property, and thereby depriving them of the fair profits of their business by attracting custom on the false representation that carriages, really the defendant's, belong to and are under the management of the plaintiffs."

[In *Woollam v. Ratcliff*, 1 H. & M. 259—61, Wood, V.C., remarking upon the above case, said that there "the words 'Conveyance Company,' the green omnibus, &c., were held sufficient together to entitle the plaintiffs to an injunction. The defendant might have had those words painted on a yellow omnibus without objection, and so of the other resemblances; the wrong lay in their accumulation, not in any one of them alone."]

58.

HITCHCOCK v. COKER.*Feb. 6th, 1837.*

[*Exch. Ch.*—6 *Ad. & E.* 438—54; 1 *N. & P.* 796—814; 2 *H. & W.* 464—71; 6 *L. J., Ex., N. S.* 266—69.]

Action of assumpsit.

Per Tindal, C.J. “The goodwill of a trade is a subject of value and price. It may be sold, bequeathed, or become assets in the hands of the personal representative of a trader.”

[59.]

THOMSON v. WINCHESTER.*March, 1837.*

[*Mass. Sup. Ct.*—19 *Pick.* 214; *R. Cox* 7.]

The plaintiff selling certain medicines of his own preparation under the name of “Thomsonian Medicines,” the defendant began to sell inferior medicines under the same name.

Action on the case.

Held, (1) that a plaintiff who sold medicines under a certain name was entitled to recover at least nominal damages from another person who had sold other medicines under that name, or had sold them, or placed them in the hands of others to be sold, “as and for” the plaintiff’s medicines; (2) but that there was no exclusive right to compound and sell an unpatented medicine; (3) that there was no exclusive right in the name, if it had become generic and descriptive of a class of medicines; (4) that the sale of inferior medicines under a name which had become generic and descriptive gave no right to another person selling medicines under the same name to recover damages, though his medicines had become discredited by the inferiority of the medicines sold under the same name; (5) that a new trial must be granted.

Per Shaw, C.J. "The right to make and to sell is common to all, if no deceit is practised by one, in falsely assuming the name and credit of another."

PIDDING v. HOW.

60.

June 21st, 1837.

[*Shadwell, V.C. of E.*—8 *Sim.* 477 ; 6 *L. J., Ch., N. S.* 345.]

The plaintiff having sold tea under the name of "Howqua's Mixture," and in packages marked in a special manner, the defendant began to sell tea under the same name, in similar packages.

On motion by the defendant to dissolve an injunction, which had been granted *ex parte* to restrain him from infringing the plaintiff's rights,

Held, that the plaintiff was *prima facie* entitled to an injunction, but that the plaintiff having in his advertisements made a number of false representations to the public, with respect to the origin, composition, and value of his tea, the injunction ought not to have been granted until he had established his right at law, and must be dissolved, liberty being given to bring an action.

"It is a clear rule, laid down by Courts of Equity, not to extend their protection to persons whose case is not founded in truth."

MOTLEY v. DOWNMAN.

61.

July 5th, 1837.

[*Lord Cottenham, C.*—3 *My. & Cr.* 1 ; 6 *L. J., Ch., N. S.* 308.]

The plaintiff having been in the habit, while lessee of certain works at Carmarthen, of marking the boxes of tin plates there made with the letters "M. C.," and having afterwards removed his establishment forty miles off, where he continued to use the same mark, the defendants, subsequent lessees of the Carmarthen works, began to

mark their boxes with the letters "M. C.," and to call themselves "The 'M. C.' Tin Plate Company."

Injunction, which had been granted on motion by the plaintiff, to restrain the defendants from the use of the initials and name, dissolved, liberty being given to bring an action, on the ground that there was at least a substantial question whether the plaintiff had not obtained the use of the mark only as a tenant of the works at Carmarthen, to which locality it was really attached, and that in all such cases the Court of Equity would not act otherwise than as ancillary to the Court of Law, the question being one of a legal right.

[62.]

VICKERY v. WELCH.

Oct., 1837.

[*Mass. Sup. Ct.* — 19 *Pick.* 523.]

The defendant, having entered into a bond with the plaintiff to convey to him his chocolate mill, together with his exclusive right or secret of manufacture, subsequently declined to communicate the secret to the plaintiff, or to covenant not to communicate it to others.

Action of debt on the bond.

Held, that the defendant ought to have conveyed the exclusive right, with covenants to communicate the secret to the plaintiff, and not to others, and that the defendant's refusal had constituted a breach of the bond.

"It was contended for the defendant that this obligation was void as being in restraint of trade. But we cannot suppose that the case comes within that doctrine. The defendant claims to operate by a secret art. The public are not prejudiced by the transfer of it to the plaintiff. If it were worth anything, the defendant would use the art and keep it secret; and it is of no consequence to the public whether the secret art be used by the plaintiff or by the defendant."

MILLINGTON *v.* FOX.

63.

March 24th, 1838.

[*Lord Cottenham, C.*—3 *My. & Cr.* 338.]

The plaintiffs and their predecessors in business having for many years carried on business as manufacturers of steel, which they stamped with the names and letters "Crowley," "Crowley Millington," "J. H.," the defendants marked other steel with the same marks and sold it so marked.

Injunction granted to restrain the defendants from continuing to use those marks, though they had acted without any fraudulent intention: but *Held*, that no costs could be given, since the plaintiffs had persevered with the suit after the defendants had offered to give them all to which they were entitled.

"I see no reason to believe that there has, in this case, been a fraudulent use of the plaintiffs' marks. It is positively denied by the answer, and there is no evidence to show that the defendants were even aware of the existence of the plaintiffs, as a company manufacturing steel. . . . In short, it does not appear to me that there was any fraudulent intention in the use of the marks. That circumstance, however, does not deprive the plaintiffs of their right to the exclusive use of those names."

DOUGHERTY *v.* VAN NOSTRAND.

[64.]

July 15th, 1839.

[*N. Y. Chancery;*
Hoffman, A. V. C. } — *Hoff.* 68.]

Partnership suit.

Held, that the goodwill of the business and lease of the partnership premises did not survive to the surviving partners, but were partnership property.

"Upon a sale of the lease of trading premises, the goodwill of course enters into the value of the lease, and enhances the purchase money. In truth, in a lease of a trading establishment it constitutes a large part of the value."

[65.]

BELL v. LOCKE.

Jan. 1840.

[*N. Y. Chancery.*— }
Walworth, C. } ———8 *Paige* 75 ; *R. Cox.* 11.]

The plaintiffs being the proprietors and publishers of a newspaper called *The Democratic Republican New Era*, the defendant began to publish another paper under the name of *The New Era*.

Injunction to restrain the defendant from publishing his newspaper under that name, refused, on the ground that there was no real probability of deception.

66.

WHITTAKER v. HOWE.

Jun 18th, 1841.

[*Lord Langdale, M.R.*—3 *Beav.* 383.]

The defendant, a solicitor, having sold his practice to the plaintiff, and agreed not to practise as a solicitor in Great Britain for twenty years, nevertheless continued to practise as such.

On motion by the plaintiff,

Held, that the agreement was not invalid, and that an injunction must be granted to restrain the defendant from practising in any part of Great Britain, and from endeavouring to induce the clients of the firm to cease to employ the firm.

67.

SEELEY v. FISHER.

Feb. 5th, 1841.

[*Lord Cottenham, C.*—11 *Sim.* 581 ; 10 *L. J., Ch., N. S.* 274 ; 21 *Leg. Obs.* 474.]

The plaintiff being the owner of the copyright of Mr. Scott's Commentary on the Bible, and having brought out a fifth edition of the work, after the author's death, with his last improvements and corrections, the defendants

reprinted the fourth edition, and in their advertisements reflected on the plaintiff's work as not containing the work of the author while still vigorous.

Injunction, which had been granted on motion by the plaintiff, dissolved, on the ground that the statements made by the defendants did not represent their work to contain any matter which was the plaintiff's exclusive property, and that, so far as they disparaged the plaintiff's work, they merely amounted, if untrue, to a libel, for which the proper remedy was an action at law.

MORISON v. SALMON.

68.

Jan. 14th, 30th, 1841.

[*Common Pleas.*—2 *Man. & G.* 385 ; 2 *Scott, N. R.*, 449 ; 10 *L. J.*,
C. P. 91.]

The plaintiffs being the proprietors and compounders of "Morison's Universal Medicines," which they sold in boxes, enclosed in wrappers bearing those words ; the defendants sold other medicines in similar wrappers.

Action on the case.

A verdict having been found for the plaintiff, with one farthing damages, and the judge having certified for costs ;

On motion for a new trial,

Held (1), that the allegation that the defendant had used wrappers similar to those used by the plaintiffs for the purpose of causing his medicines to be mistaken for the plaintiffs', disclosed a sufficient cause of action ; (2) and that, inasmuch as a right was in question, the judge had power at the trial to certify for costs, although the jury gave only one farthing damages.

Per Erskine, J.—"The ground of action is not that the defendant prepared and sold medicine in imitation of 'Morison's Universal Medicine,' but that he prepared and sold it under a false representa-

tion that it was the article prepared and sold by the plaintiffs, whereby the plaintiffs were prevented from selling large quantities of their medicine. That is a good cause of action."

Per Maule, J.—"The right is of a well-known description. It is not a general right to carry on a particular trade, but a right to protection which a party has who uses certain marks, and to the use which he may have as good a right as though he were a patentee."

69.

EX PARTE THOMAS.

July 21st, 1841.

[*Court of Review in Bankruptcy*— } ———2 *Mont. D. & De G.* 294; 10 *L.*
Sir J. Cross. } *J., Bkpty.* 75; 5 *Jur.* 967.]

On petition in the bankruptcy of hotel keepers,

Held, that the goodwill of a bankrupt's trade, so far as it was personal, remained with the bankrupt; so far as it was local, passed to the assignees in bankruptcy, and that, in the case in question, owing to the special circumstances, the assignees had not acquired any interest in the goodwill.

"It is easy to conceive there to be such a thing as local goodwill, arising from the habit which customers have been in of frequenting the same place. There is another kind of goodwill which may be called personal, and this has been said to be incapable of sale. But there may be a goodwill, like that in the present case, which is partly personal and partly local."

70.

WILLET v. BLANFORD.

Jan. 12th, 1842.

[*Wigram, V.C.*—1 *Hare*, 253; 11 *L. J., Ch.* 182; 6 *Jur.* 274.]

Partnership suit.

Held, that in ascertaining the interest to which the estate of a deceased partner was entitled in the profits of the business after his death, his capital not having been taken out, a variety of considerations must be regarded, but that where the business consisted substantially of good-

will, the interest would usually be determined by the shares in the business.

P. 270. "The whole, or the substantial part, of a trade may consist in goodwill, leading to renewals of contracts with old connexions: In such a case it is the identical source of profit which operates both before and after dissolution; and this appears to me to be the groundwork of Lord Eldon's reasoning in *Cook v. Collingridge*."

THORNBURY v. BEVILL.

71.

May 2nd, 1842.

[*Knight Bruce, V.C.*—1 *Y. & C. Ch.* 554; 6 *Jur.* 407.]

Specific performance of an agreement between two solicitors, refused, on the ground of want of acceptance by the plaintiff.

P. 564. "This is not quite a case of dissolution of partnership, but something between a dissolution of the partnership and a purchase of the business; and notwithstanding the case of *Bunn v. Guy*, from which I do not mean to express dissent, decided as it was by judges of high authority, I am not prepared to say that it is fit that a Court of Equity should enforce an agreement between two solicitors, that one on retiring from the business shall permit the other to carry on business in his name. Whether such an agreement be or be not within the strict policy of the law, it may be doubtful whether this Court ought to assist it."

CRAWSHAY v. THOMPSON.

72.

May 26th, 1842.

[*Common Pleas.*—4 *Man. & G.* 357; 5 *Scott, N. R.* 562; 11 *L. J., C. P.* 301.]

The plaintiff, an ironmaster, marking his iron with the letters "W. C." in an oval, the defendants, also ironmasters and merchants, sold other iron marked with the letters "W. O." in an oval.

Action on the case.

A verdict having been found for the defendants,

On motion for a new trial—

Held (1), that it was necessary for the plaintiff to prove fraudulent intention, and that the only evidence of this being the alleged resemblance, it had been properly left to the jury to say, first, whether there was such a resemblance as to deceive an ordinary purchaser, and injure the plaintiff, and second, whether there was fraudulent intention on the part of the defendants; (2) that notice which had been given to the defendants by the plaintiff, that they were using a mark calculated to deceive, was evidence for the jury to consider with regard to the defendants' intention, but could not of itself alter the legal rights of the parties, since it only informed the defendants of what was the plaintiff's opinion

73.

PERRY v. TRUEFIT.

Dec. 9th, 1842.

[*Lord Langdale, M. R.*—6 *Beav.* 66 ; 1 *L. T.* 384.]

The plaintiff being the compounder of "Perry's Medicated Mexican Balm," the defendant began to make up and sell another compound under the name of "Truefitt's Medicated Mexican Balm."

Motion by the plaintiff for an injunction to restrain the defendant from infringing his rights, refused, with liberty to the plaintiff to bring an action, on the ground of misrepresentations contained in the plaintiff's show-cards as to the origin and substance of his composition.

"I think that the principle on which both the Courts of Law and of Equity proceed, in granting relief and protection in cases of this sort, is very well understood. A man is not to sell his own goods under the pretence that they are the goods of another man; he cannot be permitted to practise such a deception, nor to use the means which contribute to that end. He cannot, therefore, be allowed to use names, marks, letters, or other *indicia*, by which he may induce purchasers to believe that the goods which he is selling are the manu-

facture of another person. I own it does not seem to me that a man can acquire a property merely in a name or mark; but whether he has or not a property in the name or the mark, I have no doubt that another person has not a right to use that name or mark for the purposes of deception, and in order to attract to himself that course of trade, or that custom which, without that improper act, would have flowed to the person who first used, or was alone in the habit of using, the particular name or mark."

ENGLAND v. DOWNS.

74.

Dec. 17th, 1842.

[*Lord Langdale, M.R.*—6 *Beav.* 269; 12 *L. J., Ch.* 85; 6 *Jur.* 1075.]

The widow of a licensed victualler, who was carrying on the business, assigned her household goods, stock-in-trade, &c., prior to a second marriage, to trustees, upon trusts for herself and her daughters, excluding the second husband.

Suit by the daughters, after their mother's death, for the execution of the trusts of the settlement.

Held that, under the circumstances of the case, the goodwill passed to the trustees of the deed, and not to the husband; as being incident to the stock and licence, and not to the premises on which the business was carried on.

"This, in one way of looking at it, is the goodwill. It is the chance or probability that custom will be had at a certain place of business, in consequence of the way in which that business has been previously carried on."

ENGLAND v. CURLING.

75.

July 20th, 1843; July 15th, 1844.

[*Lord Langdale, M.R.*—8 *Beav.* 129.]

Partnership suit.

Injunction granted, to restrain the defendant Curling, between whom, the plaintiff, and another, there was a subsisting agreement for a partnership for a certain term, from carrying on business with the other defendants under

the old firm name of "Goodwin, Curling, & Co.," and from opening letters, &c., addressed to or intended for the old firm, and from publishing notices of the dissolution of the existing partnership until the expiration of the term for which it was to last.

76.

CROFT *v.* DAY (1).

Dec. 18th, 1843.

[*Lord Langdale, M.R.*—7 *Beav.* 84.]

The plaintiffs being the executors of the surviving partner in the firm of "Day & Martin," of 97, High Holborn, blacking manufacturers, who sold their blacking in bottles labelled with the name and address of the firm, the defendant obtained the authority of a man named Martin to use his name, and began to sell blacking in bottles labelled with the name and address "Day & Martin, 90½ Holborn Hill," in imitation of the genuine labels.

On motion by the plaintiffs, injunction granted to restrain the defendant from using labels or show cards calculated to produce deception.

"It has been very correctly said that the principle in these cases is this—that no man has a right to sell his own goods as the goods of another. You may express the same principle in a different form, and say that no man has a right to dress himself in colours, or adopt and bear symbols, to which he has no peculiar or exclusive right, and thereby personate another person, for the purpose of inducing the public to suppose, either that he is that other person, or that he is connected with and selling the manufacture of such other person, while he is really selling his own. It is perfectly manifest that to do these things is to commit a fraud, and a very gross fraud."

"It is perfectly manifest that two things are required for the accomplishment of a fraud such as is here contemplated. First, there must be such a general resemblance of the forms, words, symbols, and accompaniments as to mislead the public; and, secondly, a sufficient distinctive individuality must be preserved, so as to procure for the person himself the benefit of that deception which the general resemblance is calculated to produce. To have a copy of the thing

would not do, for though it might mislead the public in one respect, it would lead them back to the place where they were to get the genuine article, an imitation of which is improperly sought to be sold. For the accomplishment of such a fraud it is necessary, in the first instance, to mislead the public, and in the next place, to secure a benefit to the party practising the deception, by preserving his own individuality."

CROFT v. DAY (2).

77.

July, 1844.

[*Lord Langdale, M.R.*—28 *Leg. Obs.* 378.]

On motion to commit the defendant in *Croft v. Day* (1), for breach of the injunction, it appearing that the plaintiffs had taken no notice of a form of label suggested by the defendant, which he proposed to adopt in place of the one against the use of which the injunction had been granted, and the plaintiffs alleging that the suggested alterations were merely colourable;

Held, that if the defendant was willing to make a proper distinction, and the plaintiffs refused to attend to his proposal, the Court would itself determine whether the proposed distinction was sufficient.

TAYLOR v. CARPENTER (1).

[78.]

October, 1844.

[*U. S. C. C. Ct. of Mass.*—
Story and Sprague, J.J. } —3 *Story*, 458; *R. Cox* 14.]

The plaintiffs being English manufacturers of thread, which they sold on spools, labelled on the top with the words "Taylor's Persian Thread," and on the bottom with the name "J. & W. Taylor, Leicester," the defendant, an American citizen, made up similar spools of inferior thread and sold them similarly labelled.

Injunction granted to restrain the defendant from

infringing the plaintiffs' rights, notwithstanding their alienage.

Per Story, J.—"It is suggested that the plaintiffs are aliens. Be it so. But in the courts of the United States, under the constitution and laws, they are entitled, being alien friends, to the same protection of their rights as citizens. There is no pretence to say that if a similar false imitation and use of the labels of a citizen, put upon his own manufactured articles, had been designedly and fraudulently perpetrated and acted upon, it would not have been an invasion of his rights, for which our law would have granted ample redress. There is no difference between the case of a citizen and that of an alien friend, where his rights are openly violated."

79.

COATS *v.* HOLBROOK.

July, 1845.

[*N. Y. Chancery.*— } ————2 *Sandf. Ch.* 586; 3 *N. Y. Leg. Obs.* 404;
Sandford, A. V. C. } *R. Cox* 20.]

The plaintiffs being Scotch thread manufacturers, who sold their thread on spools, labelled (among other things) with the words "J. & P. Coats' Best Six Cord," the defendants, American commission merchants, made up inferior thread in a similar manner and similarly labelled.

Suit for an injunction.

Held (1), that the conduct of the defendants was intended and calculated to deceive; (2) that the fact that the plaintiffs were aliens did not deprive them of their right to an injunction; (3) that it was no defence to say that the purchasers from the defendants were informed that their article was spurious, since the statement did not pass to subsequent purchasers; (4) that the injunction must, therefore, be granted; (5) that with respect to the costs up to bill filed, the defendants must pay them, there being no necessity for the plaintiffs to have given them notice before filing their bill, and that the defendants must also pay the subsequent costs, an offer of submission by them having been imperfect.

HINE v. LART.

80.

*Jan. 12th, 1846.**[Shadwell, V.C. of E.—10 Jur. 106 ; 7 L. T. 41.]*

The plaintiffs being hosiers, who sold a special kind of black stockings, made on purpose for them, and marked with the word "Ethiopian" and six white lines, the defendants, also hosiers, began to sell stockings similarly marked.

Motion to dissolve an injunction which had been granted to restrain the infringement of the plaintiffs' marks, refused, and *Held* that, although persons other than the plaintiffs, viz. the personal representatives of a deceased partner in the plaintiffs' firm, might have some interest in the marks, yet the plaintiffs had a sufficient interest in them to be entitled to sue.

PIERCE v. FRANKS.

81.

*Jan. 13th, 1846.**[Knight Bruce, V.C.—15 L. J., Ch. 122 ; 10 Jur. 25.]*

The plaintiff dealing in certain kinds of brushes, which he stamped with the name and address, "Smyth's, Bond Street," the defendant sold other brushes similarly marked.

Suit for an injunction.

Held (1), that the injunction must be granted ; (2) that the plaintiff had not exceeded his right in filing his bill without previous communication with the defendant, and that the plaintiff was entitled to the costs of the suit, notwithstanding that the defendant said he would have submitted if application had been made to him ; (3) but that the defendant was entitled to whatever costs were occasioned by a particular unfounded allegation in the bill as to private marks.

82.

RODGERS v. NOWILL.*June 30th, 1846 ; Nov. 2nd, 1847 ; Dec. 9th, 1847.*[*Wigram, V.C.*—6 *Hare*, 325.][*Common Pleas.*—5 *C. B.* 109 ; 17 *L. J., C. P.* 52 ; 11 *Jur.* 1039 ;
10 *L. T.* 88.]

The plaintiffs being cutlers, who stamped their cutlery with the name, "J. Rodgers & Sons," with a crown and "V. R.," the defendants began to sell cutlery stamped with the same marks and the word "Sheffield."

Suit for an injunction.

Held, that the bill must be retained for a year, leave being given to bring an action, the defendants claiming the name as their own firm name.

Action on the case.

A verdict having been found for the plaintiffs, with forty shillings damages,

On motion for a new trial,

Held, that the Judge at the trial was right in directing the jury that the action was brought to try a right, and not to recover substantial damages, and also in leaving to them the following questions:—(1) Whether the mark as used by the defendants was calculated to deceive ordinary persons ; (2) whether they had adopted the particular form of deceit charged ; (3) whether they had acted with fraudulent intention ;—and that no allegation of special damage was required, and that the motion for a new trial must be refused.

On motion by the plaintiffs, injunction granted to restrain further infringements, with the costs of the proceedings at law and in equity, except the costs of the evidence in equity.

TAYLOR v. CARPENTER (2).

[83.]

Oct., 1846.

[U. S. C. C., Dt. of Mass.— } ——— 2 *Wood. & M.* 1; *R. Cox* 32;
Woodbury and Sprague, J.J. } 9 *L. T.* 514.]

The plaintiffs, an English firm of thread-manufacturers, marking their thread in a special manner, the defendant, an American citizen, sold other thread marked in imitation of the plaintiffs'.

Action on the case.

A verdict having been returned for the plaintiffs, with substantial damages,

On motion for a new trial,

Held (1), that the existence of a foreign custom to infringe American trade marks, if established, would not debar an American Court from protecting foreign trade marks; (2) that it was no defence that the defendant's goods were equal in quality to the plaintiffs'; (3) that it was no defence for the defendant to say that he had informed the immediate purchasers that the mark on the goods was not genuine; (4) that it was no defence to plead that the plaintiffs had delayed, unless the delay amounted to a licence to use the marks, or an abandonment to the public; (5) that actual damage having been suffered by loss of sales by the plaintiffs, they were entitled to recover more than nominal damages; (6) but that exemplary damages should not be given in an action for infringement of trade mark.

TAYLOR v. CARPENTER (3).

[84.]

Dec., 1846.

[N. Y. Chancery— } } ——— 2 *Sandf. Ch.* 603; 11 *Paige*, 292; *R.*
Sandford, C. } } *Cox* 45.]
N. Y. Ct. of Errors. }

The defendant, an American citizen, sold spurious thread in America, labelled with the same marks as those used

by the plaintiffs, English thread manufacturers, on their "Taylor's Persian Thread."

Injunction to restrain the defendant's infringement granted, and affirmed,

And *Held* (1), that the trade mark of an alien would be protected in the American Courts; (2) that the quality of the thread on which the spurious marks were placed was immaterial; (3) that it was no defence for the defendant to say that he had informed the immediate purchaser that the marks were spurious.

Per Lott, Senator.—"The object of the complainants' bill is to prevent the commission of a fraud, not only on them and to the prejudice of their rights, but on the public, by the sale of an article with an imitation of their trade mark thereon, in such a manner as to deceive purchasers, and through the false representations thus held out, to deprive the owners thereof of the profits of their skill and enterprise."

Per Spencer, Senator.—"The right claimed by the complainants does not partake in any considerable, if in any degree, of the nature and character of a patent or copyright. . . . The defendant is at full liberty to manufacture and vend the same kind of thread to any extent he pleases, and whenever he chooses. He is only required to depend for success upon his own character and fame. . . . He is only required not to pirate upon the rights of others."

85.

SPOTTISWOODE v. CLARKE.

Dec. 11th, 1846.

[*Lord Cottenham, C.*—2 *Ph.* 154; 1 *Coop.* 254; 10 *Jur.* 1043; 8 *L. T.* 230—271.]

The plaintiff being the proprietor and publisher of "The Pictorial Almanack," the defendant published another almanack in a very similar wrapper, under the name of "Old Moore's Pictorial Almanack."

Injunction, which had been granted by the V.C. of E. to restrain the defendant from the publication of his almanack, dissolved, the defendant keeping an account, and the plaintiff having liberty to bring an action, on the

ground that the Court was dealing with a legal right, and that the consequences of an erroneous view of the legal right would be very serious to the defendant.

1 Coop. 264.—The possibility of acquiring an exclusive right in a general word, such as “Pictorial,” “Illustrated,” denied.

2 Ph. 157.—“Take a piece of steel : the mark of the manufacturer from whom it comes is the only indication to the eye of the customer of the quality of the article. So it is of blacking, or any other article of manufacture, the particular quality of which is not discernible by the eye. But these cases are quite different from the present case, in which, if you are deceived at all, it is not by the eye.”

ROUTH v. WEBSTER.

86.

Jan. 28th, 1847.

[*Lord Langdale, M.R.*—10 *Beav.* 561 ; 11 *Jur.* 701 ; 9 *L. T.* 491.]

The defendants, being the provisional directors of a joint-stock company, called “The Economic Conveyance Company,” published a prospectus in which the plaintiff’s name appeared as a trustee of the company, without his authority.

On motion by the plaintiff, injunction granted to restrain the defendants from using the plaintiff’s name, without his authority, in their prospectus, or so as to identify him with the company.

FRANKS v. WEAVER.

87.

March 10th, 1847.

[*Lord Langdale, M.R.*—10 *Beav.* 297 ; 8 *L. T.* 510.]

The plaintiff being the inventor and compounder of “Franks’ Specific Solution of Copaiba,” which he sold in wrappers containing that title, directions for use, testimonials, &c., the defendant began to sell another preparation, which he called “Chemical Solution of Copaiba,” and placed in wrappers in which he made use of the plaintiff’s

name and testimonials in such a manner as to lead, *prima facie*, to the belief that they were applicable to the defendant's preparation, though on a close examination it appeared that they were used by him in praise of the genuine article, with which his own was compared.

On motion by the plaintiff, injunction granted to restrain the defendant from acting so as to deceive.

88. **THE LONDON AND PROVINCIAL LAW ASSURANCE SOCIETY v. THE LONDON AND PROVINCIAL JOINT STOCK LIFE ASSURANCE COMPANY.**

Nov. 11th, 1847.

[*Shadwell, V.C. of E.*—17 *L. J., Ch.* 37 ; 11 *Jur.* 938 ; 10 *L. T.* 127.]

Motion for an injunction to restrain the defendants from using the first three words of the title of their company, refused, and an action directed to be brought, on the ground that no deception or damage was probable, and that there was a doubt as to a sufficient length of user by the plaintiffs.

“The principles, I apprehend, are clear, that the Court will always have regard to this, whether there has been such an exclusive right to a name on the part of the plaintiffs as to justify the Court in interfering in a summary way against the defendants ; and the Court will consider whether, taking all the names together, it is or is not apparent that there is such a deceptive quality as is likely to produce the injury complained of.”

89.

GUINNESS v. ULLMER.

Nov. 11th, 1847.

[*Shadwell, V.C. of E.*—10 *L. T.* 127.]

The plaintiffs being porter brewers at Dublin, the defendants, who were engravers, engraved blocks or plates

in imitation of those from which the labels placed on the plaintiffs' porter were printed.

On motion by the plaintiffs, injunction granted to restrain the defendants from making or disposing of any such blocks or plates.

"If a thing contains twenty-five parts, and one only is taken, such an imitation will be sufficient to contribute to a deception, and the law will hold those responsible who have contributed to the fraud."

FOWLE v. SPEAR.

[90.]

Nov., 1847.

[*U. S. C. C.; E. Dt. of Penn.—* } ———7 *Penn. L. J.* 176; *R. Cox* 67.]
Kane, J.

Motion for injunction to restrain the use of wrappers, labels, and bottles, similar to those in which a quack medicine called "Wistar's Balsam of Wild Cherry" was contained, refused, on the ground of misrepresentations by the plaintiff as to the quality and properties of his medicine.

PARTRIDGE v. MENCK.

[91.]

Jan., 1848.

[*N. Y. Chancery—* } }
Sandford, V.C.; } } ———2 *Sandf. Ch.* 622; 2 *Barb. Ch.* 101; 1 *How.*
Walworth, C. } } *App. Cas.* 558; *R. Cox* 72.]
N. Y. Ct. of App.

Order dissolving an injunction which had been granted, on motion by the maker of "A. Golsh's Friction Matches," to restrain the sale of matches in boxes labelled "Menck & Backe's Friction Matches, late chemist to A. Golsh," affirmed, on the ground (1) that ordinary purchasers would not be deceived; (2) that the plaintiff was disentitled by reason of his continuing to use the name of Golsh, to

whose business he had succeeded, after the latter had ceased to be connected with the business.

Per Walworth, C.—"The question in such cases is not whether the complainant was the original inventor or proprietor of the article made by him, and upon which he now puts his trade mark, or whether the article made and sold by the defendant under the complainant's trade mark, is an article of the same quality or value. But the Court proceeds upon the ground that the complainant has a valuable interest in the goodwill of his trade or business; and that, having appropriated to himself a particular label, or sign, or trade mark, indicating to those who wish to give him their patronage that the article is manufactured or sold by him, or by his authority, or that he carries on business at a particular place, he is entitled to protection against a defendant who attempts to pirate upon the goodwill of the complainant's friends or customers, or the patrons of his trade or business, by sailing under his flag without his authority or consent."

92.

PURSER v. BRAIN.

Jan. 21st, 1848.

[*Shadwell, V.C. of E.*—17 *L. J., Ch.* 141].

The plaintiff, trading under the name of "The London Manure Company," the defendants began to trade as "The London Patent Manure Company," and to issue circulars imitated from the plaintiff's.

On motion by the defendants, an injunction which had been granted on motion by the plaintiffs, to restrain the defendants from the use of their name, and from issuing such circulars, dissolved, and an action at law directed, on the ground that there might be a question as to the plaintiffs having acquired an exclusive right by length of user, which ought to be considered by a jury.

93.

CLARK v. FREEMAN.

Jan. 31st, 1848.

[*Lord Langdale, M.R.*—11 *Beav.* 112; 17 *L. J., Ch.* 142; 12 *Jur.* 149; 11 *L. T.* 22; 35 *Leg. Obs.* 436].

The plaintiff, Sir James Clark, being an eminent

physician, who did not compound or sell pills, the defendant began to compound and sell a quack medicine as "Sir J. Clarke's Consumption Pills."

Motion by the plaintiff, for an injunction to restrain the defendant from so doing, refused, on the ground that there was no right of property to be protected, and that the Court had no jurisdiction to stay the publication of a libel, the remedy for which must be sought at law.

FLEMING v. NEWTON.

[94.]

Feb. 17th, 1848.

[*Ct. of Session*—*Ct. of Sess. Cas., 2nd Ser., VIII., 677.*]

[*House of Lords*—*1 H. L. C. 363.*]

The respondent's name was placed upon the register of protests for non-acceptances of bills of exchange.

Interdict to restrain, so far as the respondent's name was concerned, the publication of a copy of the register, granted by the Court of Session, but rescinded by the House of Lords, on the ground that the question of defamation was one for a jury.

Per Lord Cottenham, C., 1 H. L. C. 376.—"The liberty of the press consists in the unrestricted right of publishing, subject to the responsibilities attached to the publication of libels, public or private. But if the publication is to be anticipated and prevented by the intervention of the Court of Session, the jurisdiction over libels is taken from the jury, and the right of unrestricted publication is destroyed."

BULLOCK v. CHAPMAN.

95.

March 1st, 1848.

[*Knight Bruce, V.C.*—*2 De G. & Sm. 211; 12 Jur. 738; 11 L. T. 326.*]

Motion by the plaintiff for an injunction to restrain a banking company from returning his name to the Stamp Office, under 7 & 8 Vict. c. 113, among the names of the

shareholders in the company, he alleging that he had ceased to be a shareholder, refused, on the ground that the plaintiff's case was not clearly proved, and that, in any case, the apprehended damage would not be irreparable.

96.

WEDGWOOD v. SMITH.

1848.

[*Shadwell, V. C. of E.*—.]

The plaintiff being a manufacturer of pottery, which he marked with his name "Wedgwood," the defendant began to sell other pottery marked "Wedgwood," or "Wedgewood."

Injunction granted to restrain the defendant from infringing the plaintiff's mark.

[97.]

SCOVILLE v. TOLAND.

1848.

[*U. S. C. C., Dt. of Ohio.*—6 *West. L. J.* 84.]

The defendant imitated the labels used by the plaintiff on certain medicines prepared by him.

Injunction to restrain the defendant from so doing, refused, on the ground that the case was not within the jurisdiction of the Circuit Court, and *Held*, that such labels were not capable of protection by means of the provisions of the Copyright Acts, though an application of them to spurious medicines would be restrained on general grounds by the proper Court.

PRINCE ALBERT v. STRANGE.

98.

Jan. 16th, Feb. 8th, June 2nd, 1849.

[*Knight Bruce, V.C.*—2 *De G. & Sm.* 652 ; 13 *Jur.* 45—507 ; 12 *L. T.* 367 ; 13 *L. T.* 341 ; 37 *Leg. Obs.* 276.]

[*Lord Cottenham, C.*—1 *Mac. & G.* 25 ; 1 *H. & Tw.* 1 ; 18 *L. J. Ch.* 120 ; 13 *Jur.* 109 ; 12 *L. T.* 441 ; 37 *Leg. Obs.* 394.]

The defendant published a catalogue of certain etchings executed by the plaintiff, some copies of which had been obtained surreptitiously and by breach of trust, the catalogue being so framed as to lead to the belief that the defendant was acting with the plaintiff's consent.

On motion by the plaintiff, injunction granted to restrain the exhibition of the etchings and publication of the catalogues, and *Held*, that the Court of Chancery would exercise an original and exclusive jurisdiction to restrain the publication, not only of unpublished compositions which the author desired to keep private, but also of any catalogue or description of them made and published without his consent.

COFFEEN v. BRUNTON (1).

199

May, 1849.

[*U.S.C.C., Dt. of Ind.*— } —4 *McLean*, 516 ; *R. Cox* 82.]
McLean, J.

The plaintiff being the inventor and proprietor of a medical preparation which he called "The Chinese Liniment," the defendant began to make and sell another preparation under the name of "The Ohio Liniment," in bottles labelled with directions, &c., similar to those on the plaintiff's bottles, and made other misrepresentations calculated to deceive, in advertisements and handbills.

On motion by the plaintiff, injunction granted to restrain the defendant from using such directions and making such misrepresentations, and *Held*, (1) that without a patent there could be no exclusive right of manu-

facture ; (2) that where a trade mark was infringed, some damages must be given at law, though no specific injury was proved.

“It would seem that an intentional fraud is not necessary to entitle the plaintiff to protection, but that where the same mark or label is used, which recommends the article to the public by the established reputation of another, who sells a similar article, and the spurious article cannot be distinguished from the genuine one, an injunction will be granted, although there was no intentional fraud. And I am inclined to think that this is a correct view of the principle, for the injury will be neither greater nor less by the knowledge of the party.”

[100.] **THE AMOSKEAG MANUFACTURING CO. v. SPEAR.**

Oct., 1849.

[*N. Y. Super. Ct.*— } ————2 *Sandf. S. C.* 599 ; *R. Cox* 87.]
Duer, J.

The plaintiff company manufacturing cotton tickings, which they sold with a printed label affixed, on which the letters “A. C. A.” were prominent, the defendants began to sell a similar article similarly labelled.

On motion by the defendants, to dissolve an injunction which had been granted to restrain the defendants from using labels similar to those of the plaintiffs, or having thereon the letters “A. C. A.,”

Held, (1) that a partial imitation would be restrained, if it was calculated to deceive ; (2) that a gratuitous acquiescence by the owner of a trade mark in its use by another was in the nature of a licence which was revocable and might be withdrawn ; (3) that the labels in question were, as a whole, calculated to deceive, and that the injunction must be maintained as to them, but that as far as it regarded the letters in particular, which were merely indicative of quality, and could not be appropriated, it must be dissolved until an action at law should result in the plaintiffs' favour.

“The manufacturer’s trade mark is an assurance to the public of the quality of his goods, and a pledge of his own integrity in their manufacture and sale. To protect him, therefore, in the exclusive use of the mark that he appropriates, is not only the evident duty of a Court, as an act of justice, but the interests of the public, as well as of the individual, require that the necessary protection shall be given.”

“The owner of an original trade mark . . . has no right to an exclusive use of any words, letters, figures, or symbols which have no relation to the origin or ownership of the goods, but are only meant to indicate their name or quality.”

RUDDEROW v. HUNTINGTON.

[101.]

Oct., 1849.

[*N. Y. Super. Ct.*—3 *Sandf. S. C.* 252 ; *R. Cox* 106.]

The plaintiffs, auctioneers, having sold certain boxes of what was supposed to be, and was labelled as, “Thompson’s Eye Water,” but without any warranty or false representation, the purchaser, who had given a promissory note for the price, discovered the lotion and labels to be spurious, and refused to pay for it.

Action on the note.

Held that, the plaintiffs being ignorant of the fraud, and having made no warranty or false representation, were entitled to recover the price.

SMALE v. GRAVES.

102.

Feb. 14th, 1850.

[*Knight Bruce, V.C.*—3 *De G. & Sm.* 706 ; 19 *L. J., Ch.* 157 ; 14 *Jur.* 662 ; 15 *L. T.* 179.]

The defendant, being the widow and acting executrix of a surgeon-dentist, agreed to sell to a person, as his successor, the goodwill of the practice and an introduction to the patients, for an annuity of £100 for five years, to be paid by half-yearly instalments, to be secured by mortgage.

Administration suit.

Held that, if not the whole, at any rate some part of the annuity belonged to the estate.

[103.]

DAVIS v. KENDALL.

Sept., 1850.

[*Rhode I. Sup. Ct.*—2 *R. I.* 566 ; *R. Cox* 112.]

The plaintiff being the original inventor and manufacturer of Perry Davis' "Pain Killer," the defendant began to make and sell another article as "Perry's Vegetable Pain Killer," and in bottles similarly labelled to the plaintiff's.

Action on the case.

Held, that the plaintiff was entitled to judgment.

Per Greene, C.J.—"All are entitled to make and vend this compound, and to vend it as a similar article to that made and sold by the plaintiff ; but no one but the plaintiff has a right to sell it as a medicine manufactured by the plaintiff. The adoption of the same label as the plaintiff's will, of course, be actionable ; and so the adoption of a label so like the plaintiff's as to mislead the public would be actionable. If the difference be merely colourable, it will not avail the defendant."

[104.]

STONE v. CARLAN.

1850.

[*N. Y. Super. Ct.*— } —13 *Monthly L. R.* 360 ; *R. Cox* 115.]
Campbell, J. }

The plaintiffs being coach-proprietors, who had contracted with the proprietors of "The Irving Hotel," at New York, for the conveyance to and fro of their visitors, and for the use of their name and that of their hotel, upon their coaches and their servants' badges, the defendants

used the names "Irving Hotel," "Irving House," "Irving," &c., upon their coaches and servants' badges.

On motion by the plaintiffs, injunction granted to restrain the defendants from so doing.

JOLLIE v. JAQUES.

[105.]

October, 1850.

[U. S. C. C., S. Dt. of N. Y.— } —1 Bl. C. C. 618.]
Nelson, J.

Suit under the U. S. Copyright Act of 1831 to restrain an imitation of a musical composition, entitled "The Serious Family Polka."

It having been decided that the plaintiff's claim to copyright could not be supported,

Held, that the plaintiff not being entitled to the copyright in the composition, he was not entitled to protection in respect of the title.

"The title or name is an appendage to the book or piece of music for which the copyright is taken out, and if the latter fails to be protected, the title goes with it, as certainly as the principal carries with it the incident."

HOLLOWAY v. HOLLOWAY.

106.

November 9th, 1850.

[*Lord Langdale, M.R.*—13 *Beav.* 209.]

The plaintiff, Thomas Holloway, manufacturing and selling pills and ointment at 244, Strand, as "Holloway's Pills and Ointment," the defendant, his brother, Henry Holloway, began to sell other pills and ointment at 210, Strand, as "H. Holloway's Pills and Ointment," the pill-boxes, pots, labels, and wrappers being similar to those used by the plaintiff.

On motion by the plaintiff for an injunction to restrain the defendant from infringing the plaintiff's rights,

Held, (1) that the defendant's conduct was intended and calculated to deceive; (2) that the fact that the defendant's name was the same as the plaintiff's did not entitle him so to act; (3) that the assumption by the plaintiff, without authority, of the title of "Professor," and some exaggerated commendations of his medicines did not disentitle him; (4) that the injunction must be granted; (5) that the defendant alleging that he had not had time to answer the plaintiff's affidavits, liberty must be given him, expressed in the order, to move to dissolve the injunction.

"The defendant's name being Holloway he has a right to constitute himself a vendor of Holloway's pills and ointment, and I do not intend to say anything tending to abridge any such right. But he has no right to do so with such additions to his own name as to deceive the public, and make them believe that he is selling the plaintiff's pills and ointment."

"I do not mean to say that I have any sort of respect for this sort of medicines. I have none; but the law protects persons from fraudulent misrepresentations, and this is a species of property which the law does allow, and so long as the law recognises it, it must be protected, and persons in the situation of the defendant will not be allowed to practise a fraud like that here complained of."

107.

FOOT v. LEA.*Dec. 5th, 1850.*[*Smith, M.R. of I. — 13 Ir. Eq. 484.*]

The petitioners, Lundy Foot & Co., being Dublin snuff manufacturers, who used a show-board over their door, and placed labels on their packets of snuff, on each of which their name appeared, the respondent, who had formerly been in their employ, opened a shop in Dublin, and styled himself on the show-board over his door, and on the labels on his packets of snuff, "A. Lea, late of Lundy Foot & Co.," the words "late of" being much smaller than the rest.

Petition for an injunction to restrain the respondent from so doing, dismissed, on the ground that the question was one of a legal right which must be decided at law.

HOWARD v. HENRIQUES.

[108.]

March, 1851.

[*N. Y. Super. Ct.*—3 *Sandf. S. C.* 725 ; *R. Cox* 129.]

The plaintiff being the proprietor of a hotel at New York, called the "Irving House," or "Irving Hotel," the defendant opened another hotel at New York under the same name.

Motion by the defendant to dissolve an injunction which had been granted, on motion by the plaintiff, to restrain the defendant from so doing, refused.

Per Campbell, J.—"We think that the principle of the rule is the same, to whatever subject it may be applied, and that a party will be protected in the use of a name which he has appropriated, and by his skill rendered valuable, whether the same is upon articles of personal property which he may manufacture, or applied to a hotel where he has built up a prosperous business."

COFFEEN v. BRUNTON (2).

[109.]

May, 1851.

[*U. S. C. C., Dt. of Ind.*— } —5 *McLean*, 256 ; *R. Cox* 132.]
McLean J.

The plaintiff being the proprietor of a medical preparation called "The Chinese Liniment," the defendant began to sell another preparation under the name of "The Ohio Liniment," in bottles similarly labelled.

Injunction to restrain the defendant from so doing, refused, on the ground that the defendant was originally

concerned with the plaintiff in bringing out the lotion, that a partnership between them had been in contemplation, and that it was at least probable that the defendant was acquainted with the composition of the plaintiff's lotion, so that the plaintiff should be required to try his right at law in the first place.

“To entitle a complainant to protection against a false representation, it is not essential that the article should be inferior in quality, or that the individual should fraudulently represent it, so as to impose upon the public; but if by representation it be so assimilated as to be taken in the market for an established manufacture or compound of another, the injured person is entitled to an injunction. The injury is not the less, though the false representations be made without a knowledge of such interference.”

110.

MORISON v. MOAT.

Aug. 20th, 1851; Jan. 22nd, 1852.

[*Turner, V.C.*—9 *Hare*, 241; 20 *L. J., Ch.* 513; 15 *Jur.* 787.]
 [Knight Bruce and Lord Cranworth, *L.J.J.*—21 *L. J., Ch.* 248; 16
Jur. 321.]

The plaintiffs being two of the surviving partners in the firm of Morison, Moat & Co., and the legatees of the secret recipe and prescription of an unpatented medicine, called “Morison’s Universal Medicine,” the defendant, who was the third surviving partner in the firm, began, after the dissolution of the partnership, to use the secret recipe, and sell the medicine under the same name, having made himself acquainted with the secret through a breach of confidence on the part of a third person.

On motion by the plaintiffs, injunction granted to restrain the defendant from using the secret recipe or selling any medicine under the name, and *Held*, that a defence of delay on the part of the plaintiffs failed.

Per Turner, V.C. (9 Hare, 258).—"What we have to deal with here is, not the right of the plaintiffs against the world, but their right against the defendant. It may well be that the plaintiffs have no title against the world in general, and may yet have a good title against this defendant."

Per Lord Cranworth, L.J. (21 L. J. Ch. 248).—"There is no doubt whatever that where a party who has a secret in a trade employs persons under contract, express or implied, or under duty, express or implied, those persons cannot gain the knowledge of that secret and then set it up against their employer."

MARSH v. BILLINGS.

[111.]

March, 1852.

[*Mass. Sup. Ct.*—7 *Cush.* 322 ; 14 *Monthly L. R.* (4 *N. S.*) 664 ;
R. Cox 118.]

The plaintiffs being coach-proprietors, who had purchased from the proprietor of "The Revere House" hotel, at Boston, the exclusive right of conveyance of the visitors to that hotel, and the use of the name of the hotel on their coaches, servants' badges, &c., the defendants, who had had the same right previously to the plaintiffs, continued to act in the same manner after the right had passed to the plaintiffs.

Action on the case.

Held, that the defendants were entitled to convey passengers freely, but that they were not entitled to falsely represent themselves as having the patronage of the proprietor of the establishment, and that the plaintiffs were entitled to recover such damages as the jury, upon the whole evidence, should be satisfied that they had sustained, and not merely for the loss of such passengers as could be actually proved to have been diverted from their coaches to the defendants'.

112.

LUMLEY v. WAGNER.*May 20th, 26th, 1852.*[*Parker, V.C.*—5 *De G. & Sm.* 485.][*Lord St. Leonards, C.*—1 *De G. M. & G.* 604; 21 *L. J., Ch.* 898; 16 *Jur.* 871.]

The plaintiff being a theatrical manager, the defendant, a singer, agreed with him to sing at his theatre for a certain period, and there only, but subsequently agreed to sing at another theatre before that period had elapsed

On motion by the plaintiff, injunction granted to restrain the defendant from singing elsewhere without permission, during the existence of the agreement, and *Held*, that the positive and negative stipulations formed one contract, and that the violation of the negative stipulation would be prevented, though the specific performance of the entire agreement could not be enforced.

113.

FARINA v. SHAW.*June 3rd, 1852.*[*Parker, V.C.*—Cited 3 *Eq. Rep.* 886-7; 1 *K. & J.* 514; 24 *L. J., Ch.* 632; 25 *L. T.* 211; 3 *W. R.* 532.]

The plaintiff being a manufacturer of Eau de Cologne, which he sold in bottles bearing special labels, the defendant, a printer, printed and sold other labels similar to those used by the plaintiff.

Suit for an injunction.

The defendant undertook not to print or sell any labels in infringement of the plaintiff's rights, and to give up all labels in his possession, and the plates for printing them, and to pay £50 costs.

TURNER v. EVANS.

114.

July 30th, 1852 ; June 6th, 1853.

[*Knight Bruce and Lord Cranworth, L.JJ.*—2 *De G. M. & G.* 740.]
 [Queen's Bench—2 *E. & B.* 512 ; 22 *L. J., Q. B.* 412 ; 17 *Jur.* 1073 ;
 21 *L. T.* 153 ; 1 *W. R.* 434.]

The plaintiffs purchased from the defendant, a wine merchant in the counties of Carnarvon, Anglesea, and Merioneth, his business, stock in trade, &c., including £2000 as a premium for the goodwill, and the defendant agreed (among other things) not directly or indirectly to carry on the business of a wine merchant in those counties. He subsequently set up business outside those counties, but solicited and obtained orders within them.

On motion by the plaintiffs for an injunction to restrain the defendant from soliciting orders,

Held, by Kindersley, V.C. (affirmed by Lord Cranworth, L.J.), that there had been no breach of the agreement, and that the injunction must be refused until after a trial at law.

Action of assumpsit.

Verdict for the defendant directed, with leave to move to enter a verdict for the plaintiffs, with nominal damages.

On motion by the plaintiffs accordingly,

Held, that there had been a breach of the agreement.

Injunction subsequently granted.

RODGERS v. NOWILL (2).

115.

Jan. 17th ; Feb. 22nd, 1853.

[*Stuart, V.C.*—17 *Jur.* 109 ; 1 *W. R.* 122.]
 [*Knight Bruce and Turner, L.JJ.*—3 *De G. M. & G.* 614 ; 22 *L. J., Ch.* 404 ; 17 *Jur.* 171 ; 20 *L. T.* 319 ; 1 *W. R.* 205—216.]

The defendant having been restrained from the use of a certain trade mark on cutlery, consisting of "J. Rodgers

& Sons," with a crown and "V. R.," (*Rodgers v. Nowill* (1)), afterwards entered into a partnership with his father and brother in 1848, and thenceforward used the same mark, sometimes with colourable additions.

On motion for committal for breach of the injunction in 1853,

Held, by the V.C., that, on account of the plaintiffs' delay, the motion must be refused, but without costs; by the L.JJ., that the defendant must be committed, unless within a week he suggested and undertook to use for the future a mark which the Court should approve.

Per Turner, L.J.—"On the question of acquiescence, I think that in a case of this description, where there has been an injunction granted by this Court, there must, in order to deprive the party who has obtained the injunction of the right to move for committal upon the breach of it, be a case made out almost amounting to such a licence to the party enjoined, to do the act enjoined against, as would enable him to maintain a bill against others for doing that act. The party enjoined must, I think, show such acquiescence as would be sufficient to create new right in him."

116.

FLAVEL v. HARRISON.

Feb. 22nd, 1853.

[*Wood, V.C.*—10 *Hare*, 467; 22 *L. J., Ch.* 866; 17 *Jur.* 368; 1 *W. R.* 213.]

The plaintiff being the manufacturer, in succession to his father, the original inventor, of an article which, though not patented, he called "Flavel's Patent Kitchener," the defendant, who had been in the plaintiff's employ, began to advertise for sale other goods under the same name.

Motion by the plaintiff for an injunction to restrain the defendant from so doing, refused, liberty being given to bring an action, on the ground that, (1) the plaintiff falsely described his article as patented; (2) he had delayed making his motion for four months after he had known of the defendant's use of the name.

“ I think that the use of the word ‘ patent ’ operates to prevent the public from testing it (the invention) as they otherwise might ; they are dissuaded from examining the article, with a view to imitation ; and it is in evidence that persons were prevented from making that free use of it which every purchaser has a right to make of an unpatented article. The knowledge that there was no patent would enable and encourage every ironmonger who bought the article to take it to pieces, and examine, and make copies and models of all the parts for the purpose of imitation, if he thought it likely to be useful, which he would never think of doing with regard to a patented article.”

BURGESS v. BURGESS.

117.

March 17th, 1853.

[*Knight Bruce and Turner, L.JJ.*—3 *De G. M. & G.* 896 ; 22 *L. J.*, *Ch.* 675 ; 17 *Jur.* 292 ; 21 *L. T.* 53.]

The plaintiff manufacturing “ Burgess’ Essence of Anchovies,” at 107, Strand, the defendant, who was his son, and had been in his employ, set up a business for himself, in which he styled himself, on his shop front and labels, as “ late of 107, Strand,” and called the article he made “ Burgess’ Essence of Anchovies.”

On motion by the plaintiff, before Kindersley, V.C., injunction granted as to “ late of 107, Strand,” but refused as to “ Burgess’ Essence of Anchovies.”

On appeal, *Held*, (1) that in the absence of fraud, the defendant could not be restrained from using his own name, or describing his article as being what in fact it was ; (2) that a delay from October to March in appealing from the refusal of the motion for an injunction was fatal to the appeal ; (3) and that the wider injunction must be refused.

Per Turner, L.J.—“ Where a person is selling goods under a particular name, and another person, not having that name, is using it, it may be presumed that he so uses it to represent the goods sold by himself as the goods of the person whose name he uses ; but where

the defendant sells goods under his own name, and it happens that the plaintiff has the same name, it does not follow that the defendant is selling his goods as the goods of the plaintiff. It is a question of evidence in each case whether there is false representation or not."

118.

FARINA v. GEBHARDT.

March 23rd, 1853.

[Wood, V.C.—Cited 3 Eq. Rep. 891 ; 1 K. & J. 517.]

The plaintiff being a manufacturer of Eau de Cologne, which he sold in bottles bearing certain special labels, the defendant imitated those labels.

Motion by the plaintiff for an injunction to restrain the defendant from infringing his rights, refused, on the ground of the plaintiff's delay in making his application. The defendant subsequently submitted to pay his own costs, and undertook to refrain from future infringements.

119.

EDELSTEN v. VICK.

April 16th, 1853.

[Wood, V.C.—11 Hare, 78 ; 1 Eq. Rep. 413 ; 18 Jur. 7.]

The plaintiffs, being the successors in business of the original patentees of "Tayler & Co.'s Patent Solid-headed Pins," continued, after the expiration of the patent, to use, on their packets of pins, labels printed from the old blocks, describing the pins as "patent."

The defendants made pins and sold them in packets made up and labelled similarly to the plaintiffs', except that they added "J. Vick, from the late."

On motion by the plaintiffs for an injunction to restrain the defendants from so doing,

Held, (1) that the plaintiffs were entitled to an injunction to restrain a palpable fraud; (2) that the defendants

could not be absolutely restrained from representing that their pins were made according to Tayer's expired patent, but that they must not do so in such a way as to deceive; (3) that the plaintiffs were not disentitled by reason of their continued user of the word "patent," since there had been a patent, and the word had not been first adopted after its expiration.

"It does not follow, because upon the expiration of the patent the article and its known description become open to all, that therefore all would become entitled to use the label by which the patentees had been accustomed to distinguish their goods. The public may have acquired confidence in that particular label, and that confidence may have given a value to it which the patentees may be entitled to have protected after the expiration of their patent."

R. v. DUNDAS.

120.

1853.

[York Assizes.— } ---6 Cox 380.]
 Erle, J.

On an indictment for obtaining money by false pretences, the prisoner having induced the prosecutor to buy blacking of him, contained in bottles labelled "Everett's Premier" (that being the name of an article manufactured by a London maker of high reputation), on a representation that the blacking was Everett's, and himself Everett's agent;

Held, (1) that an offer to sell on sale or return was immaterial, the actual bargain being for cash; (2) that it was unimportant whether the prisoner's name were or were not Everett, as he asserted, if he had acted fraudulently; (3) that the jury must decide whether or not certain differences between the labels on the prisoner's bottles, and those on the genuine ones, were mere small, colourable differences, and intended to deceive.

Guilty—two years' imprisonment.

[121.]

STOKES v. LANDGRAFF.

Oct., 1853 ; Sept., 1854.

[*N. Y. Sup. Ct.*—17 *Barb.* 608 ; *R. Cox* 137.]

The plaintiff being a manufacturer of glass, which he sold under the names "Galen," "Lake," "Cylinder," "Wayne," "New York," the defendants made and sold other glass under the same names.

On motion by the defendants, injunction which had been granted, on motion by the plaintiff, to restrain them from so doing, dissolved, on the ground that those words were indicative, not of the manufacturer, but of the quality of the article.

Per Strong, J.—"The principle is well settled that a manufacturer may, by priority of appropriation of names, letters, marks, or symbols of any kind to distinguish his manufactures, acquire a property therein as a trade mark. . . . In respect to words, marks, or devices, which do not denote the goods, or property, or particular place of a person, but only the nature, kind, or quality of the articles in which he deals, a different rule prevails. No property in such words, marks, or devices can be acquired."

122.

HOFFMAN v. DUNCAN.

Nov. 2nd, 1853.

[*Wood, V.C.*—*Seton*, 4th ed., 256.]

Partnership suit.

Injunction granted, after the dissolution of the firm of "Hoffman & Duncan," to restrain one of the former partners from the use of the name of the partnership.

123.

SHRIMPTON v. LAIGHT.

Jan. 19th, 1854.

[*Romilly, M.R.*—18 *Beav.* 164.]

The plaintiffs being the makers of a needle which they called "the graduated, grooveless, drill-eyed, ground down,"

and sold in packets labelled with those words, and a statement that they were "invented and made solely by Shrimpton & Hooper, at the Albion Needle Works, Studley," the defendant, authorised, as he alleged, by one David Shrimpton Turvey, who was not a needle-maker, began to sell other needles in packets similarly labelled, except that "Shrimpton & Hooper" and "Albion Needle Works" were omitted, and "Shrimpton Turvey" substituted.

On motion by the plaintiffs, injunction granted to restrain the defendant from imitating the plaintiffs' labels.

"The way in which the Court deals with these cases is, not to see whether manufacturers themselves would distinguish them, but whether the public, who may be more easily misled, would probably be deceived."

TAYLOR v. TAYLOR.

124.

Jan. 19th, 1854.

[Wood, V.C.—2 Eq. Rep. 290 ; 23 L. J., Ch. 255 ; 22 L. T. 271.]

The plaintiffs being manufacturers of thread, which they sold on reels bearing labels, on which the words "Taylor's Persian Thread" were prominent, the defendant began to sell thread similarly put up, except that before the name "Taylor" he inserted "Sam." instead of "J. W."

On motion by the plaintiffs, injunction granted to restrain the defendant from selling thread on reels labelled with that name or any other colourable imitation of the plaintiffs' labels.

"In every case the Court must ascertain whether the differences are made *bonâ fide* in order to distinguish the one article from the other, whether the resemblances and the differences are such as naturally arise from the necessity of the case, or whether, on the other hand, the differences are simply colourable, and the resemblances are such as are obviously intended to deceive the purchaser of the one article into the belief of its being the manufacture of another person. Resemblance is a circumstance which is of primary importance for the Court to consider, because if the Court finds, as it almost

invariably does find in such cases as this, that there is no reason for the resemblance, except for the purpose of misleading, it will infer that the resemblance is adopted for the purpose of misleading."

[125.]

LEMOINE v. GANTON.

Jan., 1854.

[*N. Y. C. P.*—2 *E. D. Smith*, 343; *R. Cox* 142.]

The plaintiff, a French manufacturer of calf-skin leather, adopted a new trade mark for his leather, and discontinued the use of his old mark. About a year later the defendant sold leather not prepared by the plaintiff, bearing the plaintiff's discontinued mark.

Action for damages.

A verdict having been returned for the plaintiff,

On motion for a new trial,

Held, that the plaintiff was entitled to recover damages for the defendant's infringement of his rights, notwithstanding that he had discontinued the use of the mark.

Per Daly, J.—"The wrong and injury to the plaintiff consisted in the sale of calf-skins falsely purporting and declared to be of his manufacture; and it makes no difference whether that object was effected by counterfeiting the trade mark which he uses at present, or one that he formerly used. An injury results to him in either case."

[126.]

GILLOTT v. KETTLE.

March, 1854.

[*N. Y. Super. Ct.*—3 *Duer* 624; *R. Cox* 148.]

The plaintiff being a penmaker, who sold his pens in boxes labelled respectively with the number "303" or "753," the former denoting the superior, the latter the inferior quality, the defendant removed the labels with "753" from the boxes of inferior pens, and substituted for them labels imitated from the labels used on the boxes of superior pens, with "303."

On motion by the plaintiff, injunction granted, and upheld, to restrain the defendant from so doing.

Per Bosworth, J.—"The fraud complained of consists in selling an inferior article of the plaintiff's manufacture as being one of a superior quality. The fraud, to the extent that it may be successful, is twofold. The public is defrauded by being induced to buy the inferior for the superior article. The plaintiff is defrauded by an unjust destruction of confidence that his pens are put up for sale and assorted with reference to the quality, indicated to dealers by the labels on the boxes which contain them."

EVANS v. HUGHES.

127.

March 30th, 1854.

[*Wood, V.C.*—18 *Jur.* 691.]

The plaintiff being the widow and executrix of one of the partners in the firm of "Evans & Hughes," which was constituted under articles of which one provided that, on the decease of either partner, his personal representative was to have the power, within three months, of electing to continue his share; the defendant, being the surviving partner in the firm, before the expiration of the three months, or election, began to carry on business in his own name.

On motion by the plaintiff, injunction granted to restrain the defendant, until the expiration of the three months, or election, from carrying on the business under any other name than that under which it had been carried on in the lifetime of the deceased partner.

POTTER v. THE COMMISSIONERS OF INLAND REVENUE.

128.

June 15th, 1854.

[*Eschequer*—10 *Ex.* 147; 23 *L. J.*, *Ex.* 345; 18 *Jur.* 778; 23 *L. T.* 269; 2 *W. R.* 561.]

Case stated by the Commissioners of Inland Revenue.

Held, that the assignment by deed of the goodwill of a

trade was a conveyance of property, within the Stamp Act, 13 & 14 Vict. c. 97, and not of a mere possibility, and was therefore subject to *ad valorem* duty.

Per Pollock, C.B.—"Very frequently the goodwill of a business or profession, without any interest in land connected with it, is made the subject of sale, though there is nothing tangible in it: it is merely the advantage of the recommendation of the vendor to his connexions, and his agreeing to abstain from all competition with the vendee. Still, it is a valuable thing belonging to himself, and which he may sell to another for a pecuniary consideration."

129.

HALL v. HALL.

March 5th, 1855.

[*Romilly, M.R.*—20 *Beav.* 139.]

Partnership suits.

Cross suits having been commenced by each of the partners in a brewing business, carried on under articles of partnership, which provided that the surviving or continuing partner, in case of the death or retirement of the other, should have the option of taking over the share of the deceased or retiring partner in the partnership "property, credits and effects," and it having been agreed that the partnership should be dissolved, and that the continuing partner should take over the partnership "stock in trade and effects" at a valuation,

Held, that the goodwill was not to be taken into account and valued as being included in the partnership "property, credits and effects," or "stock in trade and effects."

FARINA v. SILVERLOCK.

130.

June 6th, 1855 ; July 9th, 1856 ; June 1st, 1858.

[Wood, V.C.—1 K. & J. 509 ; 3 Eq. Rep. 883 ; 24 L. J., Ch. 632 ;
25 L. T. 211 ; 3 W. R. 532.]

[Lord Cranworth, C.—6 De G. M. & G. 214 ; 26 L. J., Ch. 11 ; 2 Jur.,
N. S. 1008 ; 27 L. T. 277 ; 4 W. R. 731 ;
52 Leg. Obs. 342.]

[Queen's Bench—30 L. T. 242 ; 31 L. T. 99.]

[Wood, V.C. (after trial at Law)—4 K. & J. 650.]

The plaintiff being a manufacturer of Eau de Cologne, which he sold in bottles bearing a special label, with his signature and other particulars, the defendant, a printer, printed and sold similar labels.

On motion by the plaintiff for an injunction to restrain the defendant from so doing,

Held, by the V.C., that the plaintiff was entitled to an injunction to restrain the defendant from "scattering over the world the means of enabling parties to commit frauds upon the plaintiff."

Held, by the Lord Chancellor, that, since the labels might be printed for a legitimate purpose, viz., to replace genuine labels on genuine goods, which had become obliterated, the injunction must be dissolved, liberty being given to bring an action.

An action having been brought, and having resulted in a verdict for the plaintiff, which was upheld by the Court of Queen's Bench, injunction restored.

Per Wood, V.C. (1 K. & J. 515).—"No man has a right to sell wares with a trade mark upon them which has been used to designate the wares of the party complaining. A man may acquire, not an absolute kind of property, but that kind of right in a trade mark which entitles him to say, 'No one shall sell goods of his own making marked with my trade mark, which I have been in the habit of using in my trade, so as to make people think that they are of my manufacture.'"

Per Lord Cranworth, C. (6 De G. M. & G. 217).—"This right cannot be properly described as a copyright, it is in fact a right which can be said to exist only, and can be tested only by its violation ; it is

the right which any person designating his wares or commodities by a particular trade mark, as it is called, has to prevent others from selling wares which are not his, marked with that trade mark, in order to mislead the public, and so incidentally to injure the person who is owner of the trade mark. . . . I apprehend that the law is perfectly clear, that any one who has adopted a particular mode of designating his particular manufacture, has a right to say, not that other persons shall not sell exactly the same article, better or worse, or an article looking exactly like it, but that they shall not sell it in such a way as to steal (so to call it) his trade mark, and make purchasers believe that it is the manufacture to which that trade mark was originally applied."

P. 219.—"I think it clear that any man would be at liberty, if it was writing instead of printing, to write, or if he was capable of printing and engraving, to print and engrave for himself, a label being a colourable imitation of, or a copy of the plaintiff's label, and to put it on Eau de Cologne, being the Eau de Cologne of the plaintiff."

131. .

MORRIS v. MOSS.

July 24th, 1855.

[*Romilly, M.R.*—25 *L. J., Ch.* 194.]

Administration suit.

Held, that the goodwill of a business, which had been carried on by a wife before marriage, and afterwards by the husband and wife, on the death of the husband survived to the wife, and that she might dispose of it and receive the purchase money for her own benefit, even though it was carried on upon leasehold premises, forming a part of the husband's estate, and of which he had disposed by his will.

132.

CHAPPELL v. SHEARD.

Aug. 2nd, 1855.

[*Wood, V.C.*—2 *K. & J.* 117 ; 1 *Jur., N.S.* 996 ; 3 *W. R.* 646.]

The plaintiffs being the publishers and proprietors of a song entitled "Minnie," which was published with a

special kind of title page, the defendant published another song under the name of "Minnie Dale," with a title page copied from the plaintiffs'.

Suit for an injunction.

Held, (1) that the song was known to the purchasing public by four characteristics—the names of the song, of the singer, of the composer, of the publisher; (2) that a statement on the plaintiffs' title page "written by George Linley," he having written the words, though not composed the music, did not disentitle the plaintiffs, though Linley was better known as a composer than as a poet; (3) that the plaintiffs were not disentitled by their own delay, they having first become acquainted with the piracy on June 18th; (4) and that the injunction must be granted.

HEATH v. WRIGHT.

[133.]

Oct., 1855.

[*U. S. C. C., E. Dt. of Penn.*—} —3 *Wall. Jr.*; *R. Cox* 154.]
Kane, J.

The plaintiff preparing and selling a toilet compound under the name of "Kathairon," the defendant sold another preparation under the same name.

Motion by the plaintiff, for an injunction to restrain the defendant from so doing, refused, on the ground that the misstatements and exaggerations contained in the labels on the plaintiff's own bottle, were such as to disentitle him to any relief.

THE MERRIMACK MANUFACTURING CO. v. GARNER. [134.]

Nov., 1855.

[*N. Y. C. P.*—2 *Abb. Pr.* 318; 4 *E. D. Smith* 337; *R. Cox* 155.]

The plaintiffs being manufacturers of cotton prints, which they sold labelled with the words "Merrimack

Prints, Fast Colours, Lowell, Mass.," the defendants sold other cotton goods labelled with the words "English Free Trade, Merrimack Style, Warranted Fast Colours."

Suit for an injunction.

Injunction which had been granted, on motion by the plaintiffs, to restrain the defendants from so doing, dissolved, on the ground that the plaintiffs' title was not sufficiently clear for an injunction to be granted without a preliminary trial at law.

135.

AUBIN v. HOLT.

Nov. 23rd, 1855.

[*Wood, V.C.*—2 *K. & J.* 66 ; 25 *L. J.*, *Ch.* 36 ; 4 *W. R.* 112.]

The plaintiff and defendant, being the members of the firm of "Holt & Aubin," solicitors, having agreed, upon the dissolution of the partnership, that the defendant should continue to carry on the business in the old name, after the dissolution, he paying a certain annuity to the plaintiff, the retiring partner, the defendant failed to pay the annuity in accordance with the terms of the agreement.

Suit for specific performance of the agreement.

Held, that the agreement was not void as being against public policy, and that specific performance must be granted.

136.

CHAPPELL v. DAVIDSON.

Nov. 26th, 1855 ; Jan. 11th, 1856.

[*Wood, V.C.*—2 *K. & J.* 123.]

[*Knight Bruce & Turner, L.JJ.*—8 *De G. M. G.* 1.]

The plaintiffs being the publishers and proprietors of a song called "Minnie," the defendant published another

song under the name of "Minnie, dear Minnie," with a title page copied from that of the plaintiffs' song.

On motion by the plaintiffs to continue an injunction which had been granted to restrain the defendant from so doing,

Held, by the V.C., (1) that the plaintiffs were entitled to an injunction, without a preliminary trial at law; (2) that the plaintiffs were not disentitled by reason of having placed on their title page the words "written by George Linley," he being a well-known composer, the fact being that he had written the words, but not composed the music; (3) that the defendant could not escape his liability by instructing his shopmen to inform customers of the facts, since their statements would not pass on to subsequent purchasers; (4) that the defendant, having insisted on his right of publication, and refused to submit, must pay costs.

Held, by the L.JJ., that the injunction ought to be continued only on the terms of the plaintiffs undertaking to bring an action, and to be answerable in damages.

CHRISTY v. MURPHY.

[137.]

Feb., 1856.

[N. Y. Sup. Ct.— } —12 How. Pr. 77; R. Cox 164.]
 Clerke, J.

The plaintiff being the original founder of the "Christy's Minstrels," during a temporary discontinuance of his performances the defendants, most of whom had been in his service, began to perform under that name.

On motion by the plaintiff, injunction granted to restrain the defendants from so doing, notwithstanding that the plaintiff's performances were for the time being in abeyance; and *Held* that, even if the defendants could have proved a licence from the plaintiff to use the name, unless

they could also prove it to be irrevocable, they would have had no right to continue the use of the name one moment after the plaintiff had signified his intention to withdraw the permission.

[138.]

WALTON v. CROWLEY.

March, 1856.

[*U. S. C. C., S. Dt. of N. Y.*— } —3 *Bl. C. C.* 440 ; *R. Cox* 166.]
Betts, J.

The plaintiff being the sole vendor in America, under an exclusive contract with an English firm, of the needles made by that firm, the defendant sold other needles with trade marks similar to those on the plaintiff's needles.

On motion by the plaintiff, injunction granted to restrain the infringement of the trade marks on the needles made in England and sold by him.

“The plaintiff was not the inventor of this label or trade mark, nor the one who originally adopted it, but he is the assignee of it, and of the goodwill of the trade. He stands, thus, in the same relation to the defendant as his assignor would.”

“A tradesman, to bring his privilege of using a particular mark under the protection of Equity, is not bound to prove that it has been copied in every particular by another. It is enough for him to show that the representations employed bear such a resemblance to his as to be calculated to mislead the public generally who are purchasers of the article, and to make it pass with them for the one sold by him. If the *indicia* or signs used tend to that result, the party aggrieved will be allowed an injunction staying the aggression until the merits of the case can be ascertained and determined.”

139.

WEDDERBURN v. WEDDERBURN.

April 7th, 1856.

[*Romilly, M. R.*—22 *Beav.* 84 ; 25 *L. J. Ch.* 710 ; 2 *Jur. N. S.* 674 ;
 28 *L. T.* 4.]

Partnership suit.

Held, that the plaintiffs, being the representatives of a

deceased partner in a partnership business, carried on under articles, which provided that the goodwill of the business should, on the death of one partner, belong to the survivors, were not entitled to share in profits attributable to the goodwill; though, in the absence of express agreement, goodwill was partnership assets.

22 Beav., p. 104.—“Goodwill manifestly forms a portion of the subject matter which produces profits, which constitutes partnership property, and which is to be divided between the surviving partners and the estate of the deceased partner, according to the terms of the contract, and when that is silent, according to their shares in the concern. There is considerable difficulty in defining accurately what is included under this term goodwill. It seems to be that species of connexion in trade which induces customers to deal with a particular firm. . . . I am of opinion that, both on principle, on the authority of the decided cases, and on the ordinary rules of common sense, I must, whenever there is a reputation and connexion in business, constituting goodwill, treat that as part of the assets of the concern.”

LAWSON v. THE BANK OF LONDON.

140.

April 22nd, 1856.

[*Common Pleas*—18 *C. B.* 84; 25 *L. J., C. P.* 188; 2 *Jur., N. S.* 716; 27 *L. T.* 134; 4 *W. R.* 481.]

The plaintiff having established a bank in London, called “The Bank of London,” the defendant bank commenced business under the same name.

Action on the case.

On demurrer,

Held, that it was a fatal objection that there was no averment in the declaration that the plaintiff had ever carried on the business of a banker at his bank, since, from that omission, it disclosed no cause of action, and that the demurrer must be allowed.

Per Willes, J., p. 94.—“In any way of reading this declaration, one cannot glean from it that the plaintiff had ever carried on the business of a banker. If that had been averred in the declaration,

and it had been shown that the defendants carried on their business under the same name, for the purpose of making it to be believed that it was the plaintiff's business, then the question whether a corporation could as such be liable for such a fraud, would have arisen. I am not prepared to say that they would not be liable, if the cause of complaint were properly alleged. They would have capacity to do the act, and might possibly be responsible for its consequences."

P. 93.—“No action could, I apprehend, be maintained for the sale of goods branded or stamped with another manufacturer's mark, which mark had never been put forth to the world by the party complaining of the misuser of it.”

141.

PROWETT v. MORTIMER.

May 3rd, 1856.

[*Stuart, V.C.*—2 *Jur.*, N. S. 414; 27 *L. T.* 132; 4 *W. R.* 519.]

The plaintiff, having become by purchase the proprietor of *The Britannia* newspaper, incorporated it with another paper called *The John Bull*, and issued the combined paper as *The John Bull and Britannia*, and the defendant, being the former printer and publisher of *The Britannia*, began to publish a new paper under the name of *The True Britannia*, as an imitation and continuation of *The Britannia*.

On motion by the plaintiff for an injunction to restrain the defendant from so doing,

Held, that the plaintiff, in the circumstances of the case, was not disentitled by the fact that he was not registered at the Stamp Office as the proprietor of either newspaper, and that an injunction must be granted to restrain the defendant from publishing his paper, or any other paper, as a continuation of the plaintiff's paper, and from soliciting custom as for the plaintiff's paper.

STEWART *v.* SMITHSON.

[142.]

May, 1856.[*N. Y. C. P.*—1 *Hilt.* 119; *R. Cox* 175.]

The plaintiffs being manufacturers of thread, which they sold under a trade mark consisting of the words "Hall & Moody's patent thread, Barnsley," and "Grant & Wilson's celebrated patent thread, Berwick," the defendants sold other thread similarly marked.

Action for an injunction and an account.

Motion by the defendants for leave to amend their answer, refused, on the ground that the intended amendments, to the effect that the plaintiffs' thread had never been manufactured by any such persons as those by whom it purported to have been manufactured, and that no patent for the thread had ever existed, if true, would constitute no defence to the action.

SAMUEL *v.* BERGER.

[143.]

Dec., 1856.

[*N. Y. Sup. Ct.*— } ———24 *Barb.* 163 ; 13 *How. Pr.* 342 ; 4 *Aib. Pr.*
Davies, J. } 88 ; *R. Cox* 178.]

The plaintiff being a watchmaker, who had purchased from another watchmaker, named Brindle, the exclusive right to stamp on his own watches the name of the latter, which had acquired a reputation, the defendants sold other watches made by Brindle, before the sale to the plaintiff, and stamped with his name.

Motion by the plaintiff for an injunction to restrain the defendant from so doing, refused, with costs, since to have granted it would have been to protect the sale of the spurious article, and restrain that of the genuine.

[144.]

FETRIDGE v. WELLS.

Jan., 1857.

[N. Y. Super. Ct.— } —4 Abb. Pr. 144; 13 How. Pr. 385; R. Cox
Duer, J. } 180.]

The plaintiff being the proprietor of a cosmetic called "The Balm of Thousand Flowers," the defendants began to prepare and sell a similar article, under the name of "The Balm of Ten Thousand Flowers."

Injunction which had been granted, on motion by the plaintiff, to restrain the defendants from so doing, dissolved, on the ground that (1) the name did not constitute a trade mark, and (2) the plaintiff was disentitled by his own misrepresentations in the following particulars, viz.:—*First*, Though the compound was not derived from flowers, the name was as above, and the directions for use contained direct statements to that effect; *second*, the plaintiff in his advertisements falsely overstated the amount paid by him for the secret recipe; and, *thirdly*, the directions contained the most exaggerated statements with respect to the valuable qualities of the cosmetic.

The defendants being *in pari delicto*, no costs given.

[145.]

FETRIDGE v. MERCHANT.

Jan., 1857.

[N. Y. Super. Ct.— } —4 Abb. Pr. 156; R. Cox 194.]
Hoffman, J. }

The plaintiff being the proprietor of a cosmetic called "Balm of Thousand Flowers," the defendants sold another preparation under a similar name.

On motion by the defendants to dissolve an injunction which had been granted to restrain them from so doing,

Held, (1) that the name was a fancy name, and not descriptive; (2) but that the injunction must be dissolved,

the plaintiff to bring an action, on the ground of the uncertainty of the plaintiff's having been the first to appropriate the name.

"The further removed such an appellation (*i.e.*, a fancy name) is from actually representing the article in question, the more exclusive and decided becomes the right to it."

"Even if the term used may be used in common, yet it may be employed by one with such peculiar emblems, colours, and devices, as to give to him an exclusive right. Strictly, the right of appropriation in such instances results from the peculiar emblems."

BLOSS v. BLOOMER.

[146.]

March, 1857.

[*N. Y. Sup. Ct.*—23 *Barb.* 604; *R. Cox* 200.]

The defendant purchased from the plaintiffs a number of seed bags, marked with the plaintiffs' label, and agreed to fill them with seeds of good quality, but filled them with inferior seeds.

Action for damages.

On demurrer,

Held, that the plaintiffs were not entitled to recover damages from the defendant for injury caused to their reputation by his so doing, since the contract was for a fraud upon the public, and that the demurrer must be allowed.

Per E. D. Smith, J.—"If it be a crime to counterfeit labels, words, or devices, previously appropriated to distinguish property, or to vend goods thus stamped, without disclosing the fact to the purchaser, it is equally an offence against the spirit of the law, equally injurious to trade and commerce, and equally an imposition upon the public, to palm off spurious goods under cover of genuine labels and devices. Contracts to do this are clearly against public policy, and should not be upheld and enforced by the courts."

147.

R. v. BRYAN.*May 11th, 1857.*

[*C. C. R.*—*D. & B.* 265; 7 *Cox* 312; 26 *L. J., M. C.* 84; 3 *Jur., N. S.* 620; 45 *C. C. C. Sess. Pap.* 529.]

On an indictment for obtaining money by false pretences, the prisoner having been found by the jury to have obtained advances of money from pawabrokers on certain plated spoons, by means of fraudulent representations that the spoons had as much silver on them as Elkington's A, and that the foundations were of the best material, knowing that to be untrue;

Held, that the statement made by the prisoner merely amounted to an exaggerated commendation in the course of bargaining, with respect to a matter of opinion, and not to a deliberate mis-statement of a matter of fact, and that the conviction must be quashed.

[148.]

CLARK v. CLARK.*May, 1857.*

[*N. Y. Sup. Ct.*—25 *Barb.* 76; *R. Cox* 206.]

The plaintiffs being manufacturers of thread, which they sold in spools labelled with their name and other particulars, the defendant sold other thread labelled in a very similar manner.

Suit for an injunction.

Injunction, which had been granted, on motion by the plaintiffs, to restrain the defendant from imitating the plaintiffs' trade marks on spool cotton, and which had afterwards been dissolved, restored in part, so as to restrain the use by the defendant of his own name (which was the same as the plaintiffs'), only when so placed as to produce deception, and not absolutely.

Per Mitchell, J.—“If the wholesale buyer, who is most conversant with the marks, is not misled, but the small retailer or the consumer is, the injury is the same in law, and differs only in degree. The right of action must exist for the last as well as for the first.”

PETERSON v. HUMPHREY.

[149.]

May, 1857.

[*N. Y. Sup. Ct.*— }
Mitchell, J. } —4 *Abb. Pr.* 394 ; *R. Cox* 212.]

After the dissolution of the firm of “Peterson & Humphrey,” each partner commenced a new business, and one, the defendant, trading under the name of “Humphrey & Co.” at the old premises, continued to use the old sign with the old name on the premises, without sufficient alterations to show the change in the firm.

Injunction granted to restrain the defendant from so doing, and also to restrain him from publishing any notice to the effect that he was carrying on the business of the old firm ; but the defendant to be at liberty to state that he had been a member of the old firm, and was carrying on the same kind of business as formerly.

WILLIAMS v. JOHNSON.

[150.]

June, 1857.

[*N. Y. Super. Ct.*—2 *Bos.* 1 ; *R. Cox* 214.]

The plaintiff being a manufacturer of soap, which he sold in boxes labelled, among other things, with the words “Genuine Yankee Soap—manufactured at Manchester, Conn., by Williams & Bro.,” the defendants sold other soap in boxes on which was a label containing the words “Genuine Yankee Soap, manufactured at New York, by L. Williams & Co.”

Injunction granted to restrain the defendants from infringing the plaintiff’s labels.

151. THE COLLINS COMPANY v. BROWN.

June 10th, 1857.

[*Wood, V.C.*—3 *K. & J.* 423; 3 *Jur., N. S.* 929; 30 *L. T.* 62.]

The plaintiffs being an American Company of edge-tool manufacturers, who stamped their goods "Collins & Co., Hartford Cast Steel, Warranted," the defendant, an English maker, made other goods with the same stamp.

Suit for an injunction and account.

Demurrer by the defendant, on the ground of the plaintiffs' alienage, overruled.

"If a man has been in the habit of using a particular mark for his goods for a long time, during which no one else has used a similar mark, and then another person begins to use the same mark, that can only be with a fraudulent intent; and any fraud may be redressed in the country in which it is committed, whatever may be the country of the person who has been defrauded."

152. THE COLLINS COMPANY v. COWEN.

June 11th, 1857.

Wood, V.C.—3 *K. & J.* 428; 3 *Jur., N. S.* 929; 29 *L. T.* 245; 30 *L. T.* 62; 5 *W. R.* 676.]

The plaintiffs being an American Company of edge-tool manufacturers, who stamped their goods "Collins & Co., Hartford Cast Steel, Warranted," the defendants, English makers, made other goods with the same stamp.

Demurrer by the defendants, on the ground of the plaintiffs' alienage, overruled.

"The question has nothing to do with the question of copyright."

"I apprehend that every subject of every country, not being an alien enemy—and even to an alien enemy the Court has extended relief in cases of fraud—has a right to apply to this Court to have a

fraudulent injury to his property arrested. And here the plaintiffs have the right—a right recognised, I imagine, everywhere in the world, or at least in every civilized community—of saying, ‘We, being the manufacturers of certain goods, claim that another man shall not manufacture goods, and put upon them our trade mark, and then pass them off as manufactured by us.’”

DARBEY v. WHITAKER.

168.

July 13th, 1857.

[*Kindersley, V.C.*—4 *Drew.* 134 ; 5 *W. R.* 772.]

Specific performance of a written agreement for the sale of a leasehold public-house, goodwill, &c., refused, the agreement containing a clause as to arbitration which the Court could not enforce; although, but for that clause, specific performance would have been granted.

“It is said there can be no specific performance of a contract to purchase a goodwill. No doubt you cannot have a specific performance of a contract to purchase a goodwill alone, unconnected with business premises, by reason of the uncertainty of the subject-matter. But when a goodwill is entirely or mainly annexed to the premises, and the contract is for the sale of the premises and goodwill, there is not the slightest ground for doubt that such a contract is a fit matter for a decree in a suit for specific performance.”

BROOKLYN WHITE-LEAD CO. v. MASURY.

[154.]

Sept. 1857.

[*N. Y. Sup. Ct.*—25 *Barb.* 416 ; *R. Cox* 210.]

The plaintiffs and defendant alike manufactured white-lead in Brooklyn, and had a shop in New York. The plaintiffs labelled their kegs “Brooklyn White-Lead Co.,” the defendant at first labelled his “Brooklyn White-Lead, Pure, 100 lbs.,” but afterwards changed this to “Brooklyn White-Lead and Zinc Company.”

Injunction granted to restrain the defendant from the use of the word “Company” or “Co.”

"*Per Mitchell, J.*—"It is to protect the plaintiffs' right of selling their own that the law of trade marks has been introduced. It must include a right to sell to all, to the incautious, as well as to the cautious. Any false name that is assumed in imitation of a prior true name is in violation of this right, and the use of it should be restrained by injunction."

155.

R. v. CLOSS.

Nov. 30th, 1857.

[*C. C. R.*—*D. & B.* 460; 7 *Cox* 494; 27 *L. J.*, *M. C.* 54; 3 *Jur.*, *N. S.* 309.]

On an indictment for obtaining money by false pretences, for a cheat at Common Law, and for forgery, the prisoner having sold a copy of a painting as the original, with the signature of the painter, J. Linnell, imitated in the corner, and the jury having acquitted the prisoner on the first count, but found him guilty on the others,

Held, (1) that as to the count for forgery, the conviction was bad, there being no forgery of a written document; (2) that as to the count for a cheat at Common Law, the conviction would have been good if the count had shown that it was by the false token that the money had been obtained, but that, this not being so, the conviction on this count was bad; (3) and, therefore, that the conviction must be quashed.

Per Cockburn, C.J.—"A forgery must be of some document or writing; and this was merely in the nature of a mark put upon the painting with a view of identifying it, and was no more than if the painter put any other arbitrary mark as a recognition of the painting being his. . . . If a person in the course of his trade, openly and publicly carried on, were to put a false mark or token upon an article, so as to pass it off for a genuine one, when in fact it was only a spurious one, and the article was sold and money obtained by means of that false mark or token, that would be a cheat at Common Law."

AUSTEN v. BOYS.

153.

Dec. 7th, 1857; June 23rd, 1858.

[*Romilly, M.R.*—24 *Beav.* 598; 27 *L. J., Ch.* 243; 3 *Jur., N. S.* 1285; 30 *L. T.* 216.

[*Lord Chelmsford, C.*—2 *De G. & J.* 626; 27 *L. J., Ch.*, 714; 4 *Jur., N. S.*, 719; 31 *L. T.* 276; 6 *W. R.* 729.]

Partnership suit.

The parties, solicitors, having agreed, by their articles of partnership, to become partners for seven years, and the articles providing that, if either retired, he should receive the value of his goodwill,

Held that, on the retirement of one of the partners, by notice given two days before the end of the seven years, he was only entitled to receive the value of the goodwill as for those two days, and not as of a going concern.

Per Lord Chelmsford, C.—“It is very difficult to give any intelligible meaning to the term ‘goodwill’ as applied to the professional practice of a solicitor in this abstract sense. Where a trade is established in a particular place, the goodwill of that trade means nothing more than the sum of money which any person would be willing to give for the chance of being able to keep the trade connected with the place where it has been carried on. It was truly said in argument that ‘goodwill’ is something distinct from the profits of a business, although in determining its value the profits are necessarily taken into account; and it is usually estimated at so many years’ purchase upon the amount of these profits. But the term ‘goodwill’ seems wholly inapplicable to the business of a solicitor, which has no local existence, but is entirely personal, depending upon the trust and confidence which persons may repose in his integrity and ability to conduct their legal affairs.”

WELCH v. KNOTT.

157.

Dec. 22nd, 1857.

[*Wood, V.C.*—4 *K. & J.*, 747; 4 *Jur., N. S.* 330.]

The plaintiffs being manufacturers of soda water, which they sold in bottles in which were moulded the words “J.

Schwepe & Co., 51, Berners Street, Oxford Street, Genuine Superior Aerated Waters," and which had a label of coloured paper over the cork, with the words "J. Schwepe & Co.," the defendant sold other soda water in old bottles of the plaintiffs', moulded with their name, and with somewhat similar labels over the cork, but printed with the words "Soda Water," instead of the plaintiffs' name.

On motion to dissolve an injunction which had been granted, on motion by the plaintiffs, to restrain the defendant from infringing the plaintiffs' rights,

Held, that the injunction must be dissolved, on the ground that the bottles were not shown to have been sold, when refilled, with any intention to deceive, or probability of deception, although, if a probability of deception had been caused, though unintentionally, by the defendant, the injunction would have been continued.

158.

DAVIES v. HODGSON.

Feb. 15th, 1858.

[*Romilly, M.R.*—25 *Beav.* 177 ; 27 *L. J.*, *Ch.* 449 ; 4 *Jur.*, *N. S.* 252 ; 31 *L. T.* 49 ; 6 *W. R.* 355.]

Administration suit.

Held that, since a surviving partner or clerk, who is appointed executor, remains at liberty to continue to carry on the same trade, a purchaser of the goodwill of a testator's business must take it subject to the chance of retaining the old customers, and that, in the case in question, the goodwill was valueless, since the brother of the testator, who had been actively concerned in the business, could not be prevented from continuing to carry it on.

Ex parte FOSS ; *In re* BALDWIN.

159.

Feb. 16th, March 23rd, 1858.

[*Evans, Comm.*—30 *L. T.* 354.][*Knight Bruce and Turner, L.JJ.*—2 *De G. & J.* 230 ; 27 *L. J.*,
Bankruptcy. 17 ; 4 *Jur., N. S.* 522 ; 31 *L. T.* 30.]

The registered proprietor of the *Standard* and *St. James' Chronicle* newspapers became bankrupt, while the sheriff was in possession of his premises.

Held, that the right of publication of the newspapers was property, and therefore "goods and chattels" within the enactments in the Bankruptcy Acts as to reputed ownership, but that it was intangible property, and, therefore, incapable of seizure by a sheriff, and, therefore, that though the sheriff was in possession of the premises at the time of the bankruptcy, the right of publication passed to the assignees in bankruptcy.

LAZENBY *v.* LAZENBY.

160.

March 17th, 1858.

[*Romilly, M.R.*—*Seton*, 4th ed. 237 ; cited 41 *L. J.*, *Ch.* 354.]

Injunction granted to restrain the defendant from using upon sauces not of the plaintiff's manufacture labels or trade marks similar to those placed by the plaintiff upon his "Harvey's Sauce."

R. *v.* SMITH.

161.

April 24th, 1858.

[*C. C. R.*—*D. & B.* 556 ; 8 *Cox* 32 ; 27 *L. J.*, *M. C.* 225 ; 4 *Jur.*,
N. S. 1003 ; 31 *L. T.* 135 ; 6 *W. R.* 495 ; 47 *C. C. C.*
Sess. Pap. 269 ; 48 *ib.* 8.]

On an indictment for forgery, the prisoner having had printed a large number of wrappers in imitation of those

used on Borwick's baking powders and egg powders, having the name of Borwick in a prominent position, but with his signature, and the notice that without that no powder was genuine, omitted, and the prisoner having sold a quantity of spurious powder in these wrappers,

Held that, although the prisoner might have been convicted of obtaining money by false pretences, the offence was not that of forgery, and that the conviction must be quashed. The prisoner subsequently pleaded guilty to an indictment for obtaining money by false pretences.

Per Pollock, C.B.—“The issuing of this wrapper without the stuff within it would be no offence. In the printing of these wrappers there is no forgery; the real offence is the issuing them with fraudulent matter in them.”

Per Bramwell, B.—“Forgery supposes the possibility of a genuine document, and that the false document is not as good as the genuine document, and that the one is not as efficacious for all purposes as the other. In the present case one of these documents is as good as the other—the one asserts what the other does—the one is as true as the other, but the one is improperly used.”

162.

MARSHALL v. WATSON.

April 28th, 1858.

[*Romilly, M.R.*—25 *Beav.* 501.]

The plaintiff being one of two joint proprietors of two newspapers, called *The Northern Daily Express* and *The Northern Weekly Standard*, and having agreed to sell his interest to his partner, the defendant, the latter, while the contract for purchase was still incomplete, and a suit by the plaintiff for specific performance of the contract was pending, published statements as to the profits and loss of the papers, with a view to the formation of a company to carry them on.

Motion by the plaintiff, for an injunction to restrain the

defendant from publishing such statements, on the ground that they were injurious to the interests of the newspapers and himself, refused.

ANSELL v. GAUBERT.

163.

June 5th, 1858.

[*Wood, V.C.—Seton, 4th ed. 235.*]

Injunction granted to restrain the defendant from using the names belonging to the plaintiff's preparations for the hair, and using labels imitated from the plaintiff's, and making preparations after the plaintiff's secret recipes, and publishing advertisements and circulars representing that the defendant was carrying on the plaintiff's business and manufacturing the plaintiff's goods.

THE COLLINS COMPANY v. REEVES.

164.

June 29th, 1858.

[*Stuart, V.C.—28 L. J., Ch. 56; 4 Jur., N. S. 865; 33 L. T. 101; 6 W. R. 717.*]

The plaintiffs being American manufacturers of edge-tools, which they stamped with the words, "Collins & Co., Hartford Cast Steel, Warranted," the defendant marked goods of his own make in the same manner, in obedience to an order from English merchants.

An interim injunction having been granted, motion by the plaintiffs for decree for a perpetual injunction, refused, the defendant alleging a trade custom for makers' marks to be placed by their orders upon goods made for them, and that the plaintiffs had themselves ordered this to be done in other cases, which was not contradicted by the plaintiffs. But injunction continued for a year, the plaintiffs being required to bring an action at law within that time.

“The plaintiffs, if they have an exclusive right to the use of the trade marks in question, are entitled to the protection of this Court in the enjoyment of such use. Though they are aliens, they are entitled to sue in this Court against any fraudulent invasion of their right, and that notwithstanding that the tools stamped with the marks, the fraudulent use of which is complained of, are not usually sold by them in this country.”

165.

MACDONALD v. RICHARDSON.

July 26th, 1858.

[*Stuart, V.C.*—1 *Giff.* 81; 5 *Jur., N. S.* 9; 32 *L. T.* 237.]

Partnership suit.

The plaintiffs, being the residuary legatees of one of two partners in the business of a commission agent, sought to make the surviving partner, who was also an executor of the deceased partner, account for the estate of the latter.

Held (among other things), that the value of the testator's share of the goodwill of the partnership business at his death should be ascertained, and that the executor should make good to the testator's estate what should be found to be due to it for such share of goodwill and interest.

[166.]

FENN v. BOLLES.

Sept., 1858.

[*N. Y. Super. Ct.*— } —7 *Abb. Pr.* 202.]
Hoffman, J.

The defendant, being the surviving partner in the firm of “Hobart Fenn & Co.,” continued after the death of his partner to trade in the old name.

On motion by the administratrix of the estate of the deceased partner, injunction granted to restrain the defendant from using the name “Hobart Fenn,” or “Hobart

Fenn & Co.," on the ground that either the partnership name died with the partnership, or, if it survived, was the common property of the surviving partner and the estate of the deceased one.

MYERS v. BAKER.

167.

Nov. 22nd, 1858.

[*Exchequer*—3 *H. & N.* 802; 28 *L. J., Ex.* 90; 32 *L. T.* 133; 7 *W. R.* 66.]

Action brought under 5 & 6 Will. IV. c. 83, s. 7, to recover a penalty for marking patent penholders with the mark "K. & G., Patent Elastic," without the licence of the patentee.

Held, that it was no defence to say that the invention was not new, and the patent therefore bad; but that a fraudulent intention on the part of the defendants must be proved.

Cockburn, C.J., told the jury at the trial that "the intention of the defendants was of the essence of the offence; that the plaintiffs were bound to show that the defendants had put the marks upon the articles in question with the intention of imitating the marks used by the plaintiffs on their patented articles, that unless they thought that the marks on the pens and penholders manufactured by the defendants were substantially the same as, and intended to counterfeit, the plaintiffs' marks, they should find for the defendants."

COOPER v. HOOD.

168.

Dec. 3rd, 1858.

[*Romilly, M.R.*—26 *Beav.* 293; 28 *L. J., Ch.* 212; 4 *Jur., N. S.* 1266; 32 *L. T.* 171; 7 *W. R.* 83.]

Suit for the specific performance of a contract for the purchase of a share in a business.

Held, that specific performance would not be refused on account of one of the items to be purchased being described in the contract only as "goodwill, &c.," those words having a sufficiently definite meaning; but specific performance refused on other grounds.

"The words are, 'goodwill, &c.' Now these words are connected together, and unite such other things as are necessarily connected with and belong to the goodwill, many of which are easily pointed out; for instance, the use of trade marks, and a covenant by the vendor not to carry on a similar business in Great Britain, for a reasonable time, to be limited in the conveyance, having regard to the nature of such undertakings. All these would be included in the words *et cætera*, and would be included in the conveyance."

169.

BURGESS v. HATTEL.

Dec. 14th, 1858.

[*Romilly, M.R.*—26 *Beav.* 249.]

The plaintiffs being manufacturers of "Essence of Anchovies," the defendant sold another sauce in bottles labelled in imitation of the plaintiffs'.

Suit for an injunction.

On motion by the plaintiffs for decree, the defendant stating that no application had been previously made to him, and that he had acted in ignorance of the plaintiffs' rights, and would have submitted if previous application had been made to him, but he having made no offer to pay the costs,

Held, that an injunction must be granted, and that the defendant must pay the whole costs, since he was the aggressor, by invading the plaintiffs' rights.

BURGESS v. HILLS.

170.

Dec. 7th, 1858.

[*Romilly, M.R.*—26 *Beav.* 344; 28 *L. J., Ch.* 356; 5 *Jur., N. S.* 233; 32 *L. T.* 328; 7 *W. R.* 158.]

The defendant sold a sauce similar to the plaintiffs' "Essence of Anchovies" under the name of "John Burgiss & Sons' Original and Superior Essence of Anchovies."

Suit for an injunction and account.

On motion for decree, the defendant having offered to submit to an injunction, but declined to pay costs,

Held, that the defendant must pay the whole costs of the suit, though he had acted in ignorance of the plaintiffs' rights.

"If the defendant had offered the plaintiffs all they were entitled to, and after that the plaintiffs had proceeded in the suit, I most certainly should not have given the plaintiffs a penny of the costs incurred after that period, indeed, I should have endeavoured to make them pay them."

THE COLLINS COMPANY v. WALKER.

171.

Jan. 26th, 1859.

[*Kindersley, V.C.*—7 *W. R.* 222.]

The plaintiffs being American manufacturers of edge tools, which they stamped with the words "Collins & Co., Hartford Cast Steel, Warranted," the defendant, in accordance with a customer's orders, made knives and stamped them with the plaintiffs' mark.

Suit for an injunction.

The defendant stating that he had acted in ignorance of the plaintiffs' existence, and offering to give up the stamp, but refusing to pay the costs,

Held, that he must submit to a perpetual injunction, and pay the costs.

172.

CHURTON *v.* DOUGLAS.

March 17th, 1859.

[Wood, V.C.—Johns. 174 ; 28 L. J., Ch. 841 ; 5 Jur., N. S. 887 ;
33 L. T. 57 ; 7 W. R. 365.]

The defendant, John Douglas, a partner in the firm of "John Douglas & Co.," having sold his share in the business and goodwill to his partners, the plaintiffs, who continued the business as "Churton, Bankart & Hirst, late John Douglas & Co.," afterwards set up another business in the same neighbourhood as "John Douglas & Co.," and otherwise represented himself to be carrying on business in continuation of the old concern.

On motion by the plaintiffs, injunction granted to restrain the defendant from so doing.

P. 187. "The sale of the goodwill of a business, without more, does not imply a contract on the part of the vendor not to set up again a *similar* business himself."

P. 188. "'Goodwill,' I apprehend, must mean every advantage, every positive advantage, if I may so express it, as contrasted with the negative advantage of the late partner not carrying on the business himself, that has been acquired by the old firm in carrying on its business, whether connected with the premises in which the business was previously carried on, or with the name of the late firm, or with any other matter carrying with it the benefit of the business."

P. 189. "The name of a firm is a very important part of the goodwill of the business carried on by the firm. . . . The question of trade mark is, in fact, the same question. The firm stamps its name on the articles. It stamps the name of the firm which is carrying on the business on each article, as a proof that they emanate from that firm ; and it becomes the known firm to which applications are made, just as when a man enters a shop in a particular locality. And when you are parting with the goodwill of a business, you mean to part with all that good disposition which customers entertain towards the house of business identified by the particular name or firm, and which may induce them to continue giving their custom to it."

BRADBURY v. DICKENS.

173.

*March 26th, 1859.**[Romilly, M.R.—27 Beav. 53 ; 28 L. J., Ch. 667 ; 33 L. T. 54.]*

The parties being the proprietors of a weekly journal called "Household Words," on the dissolution of partnership between them, the defendant, who had also acted as editor, put out advertisements in which he announced his intention of publishing a new periodical, and the discontinuance of the old one.

On motion by the plaintiffs for an injunction to restrain him from so doing,

Held, that the defendant was at liberty to advertise the discontinuance of his connexion with the periodical, but that he must not advertise simply that the publication would be discontinued, for the goodwill of the publication, if of any value, was the property of the partnership.

"The property in a literary periodical like this is confined purely to the mere title, and the title of this work is "Household Words," and that forms part of the partnership assets, and must be sold for the benefit of the partners, if it be of any value."

CLEMENT v. MADDICK.

174.

*April 27th, 1859.**[Stuart, V.C.—1 Giff. 98 ; 5 Jur. N. S. 592 ; 33 L. T. 117.]*

The plaintiffs being the proprietors of a newspaper called "Bell's Life in London," the defendants began to publish another newspaper under the name of "The Penny Bell's Life and Sporting News."

On motion by the plaintiffs, injunction granted to restrain the defendants from publishing any newspaper under that name, or any other name in which the words "Bell's Life" should occur.

"This is an application in support of the right to property. . . . The absence of a fraudulent intention is no defence against an application to the Court for an injunction by the person whose property has been injured."

175.

INGRAM v. STIFF.

June 3rd, 1859.

[*Knight Bruce & Turner, L.JJ.*—5 *Jur.*, *N. S.* 947; 33 *L. T.* 105.]

The plaintiff being the proprietor and publisher of a periodical called "The London Journal," the defendant, the former proprietor and publisher of that journal, advertised a new periodical to be published by him under the name of "The London Daily Journal."

On motion by the plaintiff, injunction granted by V. C. Wood to restrain the defendant from so doing, and continued on appeal.

176.

SMITH v. EVERETT.

June 30th, 1859.

[*Romilly, M.R.*—27 *Beav.* 446; 29 *L. J., Ch.* 236; 5 *Jur.*, *N. S.* 1332; 34 *L. T.* 58; 7 *W. R.* 605.]

The defendant, being the survivor of two partners in a banking business, sold the goodwill of the business for a considerable sum.

Suit by the widow and executrix of the deceased partner for the purpose of obtaining half the proceeds of the goodwill for her testator's estate.

Held, that the estate of a deceased partner was entitled to a share in the value of the goodwill of the business, but that, in ascertaining the share, regard must be had to the rights of the surviving partner; and that, in the case in question, the share of the estate of the deceased partner in

the proceeds of the goodwill must be ascertained, regard being had to the facts that (1) the premises on which the business was carried on belonged to the survivor; (2) the survivor was entitled to carry on a banking business at the same place after the sale of the goodwill; (3) the sole right of issuing bank-notes survived to the survivor.

MELLERSH v. KEEN.

177.

July 12th, 1859 ; July 6th, 1860.

[*Romilly, M.R.*—27 *Beav.* 236 ; 28 *Beav.* 453.]

Partnership suit.

Held, (1) that partners in a banking business, who had obtained the whole benefit of the goodwill and firm name, must account to the retiring partner for his share of the value of the goodwill, &c., as at the date of the dissolution; (2) that, in estimating such value, regard must be had to the fact that the continuing partners were at liberty to carry on the business and issue notes, without that being treated as part of the goodwill; (3) that the value had been correctly estimated by the Chief Clerk at one year's net annual profits, calculated on an average of the three years preceding the dissolution.

28 *Beav.* 456. "The difficulty of ascertaining the value of the goodwill of a business is very great. . . . But the Court is bound to look at it in this point of view:—What would it have produced, if it had been sold in the most advantageous manner, and under such circumstances that it would have produced the largest sum for all the parties interested?"

[178.]

DAYTON v. WILKES.

Sept., 1859.

[N. Y. Super. Ct.— } ———17 How. Pr. 510; R. Cox 224.
Hoffman, J.

Partnership suit.

Held, that on the dissolution of partnership between the proprietors of a newspaper called "Porter's Spirit of the Times," the goodwill, title, &c., of the paper were partnership assets, and must be protected and disposed of for the benefit of the creditors of the firm, or of the partners jointly.

[179.]

WOLFE v. GOULARD.

Oct. 1859.

[N. Y. Sup. Ct.— } ———18 How. Pr. 64; R. Cox 226.]
Ingraham, J.

The plaintiff being the manufacturer of "Wolfe's Schiedam Schnapps," the defendant began to sell another spirit as "Voldner's Schiedam Schnapps."

On motion by the defendant, injunction which had been granted to restrain the defendant from so doing, dissolved, on the ground that there was nothing distinctive in the words "Schiedam Schnapps," which alone had been imitated.

"No person can acquire a right to the exclusive use of words, applied as the name of an article sold by him, if in their ordinary acceptation they designate the same or a similar article."

[180.]

COMSTOCK v. WHITE.

Feb. 1860.

[N. Y. Sup. Ct.— } ———18 How. Pr. 421; R. Cox 232.]
Sutherland, J.

The plaintiffs and defendants having carried on business as pill manufacturers in partnership, under the name of

"A. J. White & Co.," the defendants left the plaintiffs and carried on the same business on their own account, under the old name.

On motion by the defendants, injunction which had been granted, continued, so far as it restrained the defendants from applying to their pills the term "Dr. Morse's Indian Root Pills," in imitation of the plaintiffs', but dissolved, so far as it restrained the use by the defendants, in connexion with the manufacture of pills, of the name of their firm, "A. J. White & Co.," the name of one of the defendants being "A. J. White," and

Held, that exaggerated commendations of their medicines did not disentitle the plaintiffs as against defendants who had been engaged with them in the same business.

CROOKES v. PETER.

181.

Feb. 16th, 1860.

[*Romilly, M.R.*—6 *Jur. N. S.* 1131 ; 3 *L. T., N. S.* 225.]

The plaintiff being the editor of a journal called *The Photographic News*, under an agreement with the defendants, the proprietors of the journal, by which it was provided that the title should not be altered without mutual consent, the defendants terminated the agreement with the plaintiff, and omitted his name from the title-page.

Motion by the plaintiff for an injunction to restrain the defendants from so doing, refused, on the ground that the name of the editor, appearing on the title-page, formed no part of the title.

182.

R. v. JONES.

March, 1860.

[Middlesex Sessions—Lloyd on Trade Marks, p. 11: Poland on the Merchandise Marks Act, 1862, p. 33.]

On an indictment for obtaining money by false pretences, the prisoner having used spurious wrappers similar to those in which Borwick's Baking Powder was enclosed, Prisoner convicted—3 years penal servitude.

183.

R. v. GRAY & GOSLING.

[Lloyd on Trade Marks, p. 11.]

On an indictment for obtaining money by false pretences, the prisoners having fraudulently used labels imitated from those placed on Allsopp's ales, Prisoners convicted—12 months' hard labour.

[184.]

BARROWS v. KNIGHT.

March 1860.

[Rhode I. Sup. Ct.—6 R. I. 434; R. Cox 238.]

The plaintiff being a manufacturer of cotton cloth, which he stamped with the words "Roger Williams' Long Cloth," the defendants marked other cotton cloth with the name "Roger Williams."

Action on the case.

Demurrer overruled, and

Held, (1) that the name was a good trade mark, being the name of a dead celebrity; (2) that exact imitation was not requisite to entitle the plaintiff to his remedy.

HOWE v. SEARING.

[185.]

March, 1860.

[N. Y. Super. Ct.—6 Bos. 354 ; 10 Abb. Pr. 284 ; 19 How. Pr. 14 ;
R. Cox 244.]

The plaintiff sold the goodwill of his baking business at New York, known as "Howe's Bakery," to B., covenanting not to resume the same business in the same city without B.'s consent. He afterwards purchased from B. the right to resume business at New York, covenanting not to interfere with the latter's business. The defendant bought the bakery from B., and continued to trade in the old name of "Howe's Bakery."

Action for an injunction.

Held, that the plaintiff was entitled to an injunction to restrain the defendant from using the old name of "Howe's Bakery," and otherwise using the plaintiff's name in the business, on the ground that the sale of a goodwill did not of itself give a right to the use of the trade name.

Per Hoffman, J.—"It is, I apprehend, a well settled rule that the goodwill of a partnership business does not survive to a continuing partner. It belongs to the firm as much as the ordinary stock-in-trade, and must be disposed of in some manner for the benefit of the firm."

COLLADAY v. BAIRD.

[186.]

1860.

[Phila. C. P.— }
Ludlow, J. } —4 Phila. 139 ; R. Cox 257.]

The plaintiff being a manufacturer of cotton goods, known as "Aramingo Check," which he sold ticketed with a label on which the words "Aramingo Mills" were prominent, the defendant began to sell other goods also bearing a label on which the name "Aramingo Mills" appeared.

Injunction to restrain the defendant from the use of the words "Aramingo Mills," refused, on the ground that the manner in which the defendant used the words was so different from that in which the plaintiff used them that deception was not to be anticipated.

[187.]

CORWIN v. DALY.

June, 1860.

[*N. Y. Super. Ct.*—7 *Bos.* 222 ; *R. Cox* 265.]

The plaintiffs selling gin in bottles labelled "Club-House Gin," the defendants sold other gin in bottles labelled "London Club-House Gin."

Injunction to restrain the defendants from using the term "Club-House" gin, refused, on the ground that the term was generally understood to be indicative of a certain superior quality, and not of the plaintiffs' manufacture.

[188.]

BYASS v. SULLIVAN.

July, 1860.

[*N. Y. Sup. Ct.*— }
Bonney, J. } ———21 *How. Pr.* 50 ; *R. Cox* 278.]

The defendants sold bottled porter labelled in imitation of the plaintiff's labels with the words "Best Stout Porter from R. B. Byass, London," and a fac-simile of his signature.

On a reference to ascertain the damages sustained by the plaintiffs by reason of the defendants' wrongful conduct,

Held, that the defendant was privileged from answering certain questions, and producing books or papers, which might tend to convict him of a criminal offence, but that in other respects he must make full discovery.

ROBERTSON v. QUIDDINGTON.

189.

*July 17th, 1860.**Romilly, M.R.—28 Beav. 529.*

The owner of a two-thirds share in a partnership business having bequeathed two-thirds of his share in the goodwill alone to his son-in-law, and his share in the partnership property, apart from the goodwill, having been assigned by his executors to the surviving partner,

Held that, notwithstanding that the executors had assented to the bequest of the share of the goodwill, it was not competent for the son-in-law and legatee to file a bill against the legatee of the remaining one-third part of the testator's share of the goodwill, and the surviving partner, who was entitled to all the rest of the goodwill, to have the bequest specifically made good, and also, on the authority of *Lewis v. Langdon*, that the firm name survived to the surviving partner.

“The goodwill is a valuable and tangible thing in many cases, but it is never a tangible thing unless it is connected with the business itself, from which it cannot be separated, and I never knew a case in which it has been so treated.”

BROOK v. EVANS.

190.

July 26th ; Aug. 2nd, 1860.

[*Stuart, V.C.—29 L. J., Ch. 616 ; 6 Jur., N. S. 1025 ; 2 L. T., N. S. 740.*]

[*Knight Bruce & Turner, L.JJ.—29 L. J., Ch. 617 ; 3 L. T., N. S. 571.*]

The plaintiffs having instituted a suit for an injunction to restrain the defendants from selling thread under the name of “Glacé,” in infringement of their rights, the motion for injunction was, on the ground of the plaintiffs' delay, ordered to stand over, liberty being given to bring

an action. The plaintiffs in the suit printed and distributed a report of the proceedings, containing, among other things, a statement that they had established their claim to be the first who had used the word in question, the fact being that no evidence had been gone into.

Motion by the defendants for an injunction to restrain the publication of this report, refused, on the ground that it was not calculated to obstruct the course of justice.

[191.]

HOBBS v. FRANÇAIS.

Sept. 1860.

[*N. Y. Super. Ct.*— }
Bosworth, C.J. } ———19 *How. Pr.* 567; *R. Cox* 287.]

The plaintiff being the manufacturer of a skin-powder which he called "Meen Fun," and sold in boxes bearing a particular label, the defendant sold another powder in boxes bearing a substantially identical label.

Motion by the plaintiff for an injunction to restrain the defendant from infringing his rights, refused, on the ground that the plaintiff's own labels falsely represented his American compound to be made in England and patronized by the Queen, and also, that it was not established that the term "Meen Fun" was indicative of the plaintiff's manufacture.

192.

WADE v. JENKINS.

Nov. 20th, 1860.

[*Stuart, V.C.*—2 *Giff.* 509; 30 *L. J., Ch.* 633; 7 *Jur., N. S.* 39;
 3 *L. T., N. S.* 464.]

Partnership suit.

On the determination of a partnership carried on under articles which provided that "the goodwill should belong to the partners in the proportion of their shares in the

business, but should not be taken into account in the accounts of the partnership;" and also that "on the determination of the partnership, a general account and valuation of the property and effects of the partnership should be taken,"

Held, that in the valuation of the partnership property the goodwill must be included.

HARPER v. PEARSON.

193.

Dec. 20th, 1860.

[*Wood, V.C.*—3 *L. T., N. S.* 547.]

On the expiration of a lease to the plaintiffs, Messrs. Harpers & Moore, of certain fire-brick works, those works, but not the mines from which the clay there worked was obtained, were leased by the defendants, who then issued cards and circulars in which they styled themselves "E. & J. Pearson (late Harpers & Moore)," and which were calculated to lead the public to the belief that the former lessees had retired from business, though they were, in fact, continuing to carry on business elsewhere.

On motion by the plaintiffs, injunction granted to restrain the issue of the cards and circulars, and the misrepresentations; and

Held, that an injunction would, if asked for by him, have been granted, almost as a matter of course, to the owner of the mines of fire-clay leased by the plaintiffs, but not by the defendants.

DIXON v. FAWCUS.

194.

Jan. 22nd, 1861.

[*Queen's Bench.*—3 *Ell. & Ell.* 537; 30 *L. J., Q. B.* 137; 7 *Jur., N. S.* 895; 3 *L. T., N. S.* 693; 9 *W. R.* 414.]

The plaintiff having, in accordance with the defendant's

order, manufactured fire-bricks marked with the name "Ramsay," that name being the trade mark of one G. H. Ramsay, the latter filed a bill in Chancery against the plaintiff for an injunction and an account, which resulted in the plaintiff compromising the matter at a considerable expense.

Action by the plaintiff for the recovery from the defendant of the loss which his order had occasioned to the plaintiff.

Demurrer, on the ground that the defendant had no right to compromise the suit, since the absence of fraudulent intention on his part prevented him from being liable in equity—overruled, and

Held, that the plaintiff was justified in compromising the suit, though innocent of intentional fraud, since that would have been no defence in equity, and that he was entitled to recover from the defendant.

[195.]

DALE v. SMITHSON.

Feb., 1861.

[*N. Y. C. P.*—12 *Abb. Pr.* 237; *R. Cox* 282.]

The plaintiffs being manufacturers of thread, which they sold in packets labelled with the words, "Courtria Flax. Thomas Nelson & Co. Warranted fast colours, & 16 oz.," the defendants sold other thread in packages similarly labelled.

Action at law.

Judgment having been rendered for the plaintiffs,

Held, on appeal, that the plaintiffs were entitled to succeed, notwithstanding that the name placed by them on their label was fictitious, since the manner in which it was there stated was adopted without any fraudulent intention or actual deception of the public.

DENT v. TURPIN.

196.

TUCKER v. TURPIN.*April 22nd, 1861.*

[*Wood, V.C.*—2 *J. & H.* 139 ; 30 *L. J., Ch.*, 495 ; 7 *Jur., N. S.* 673 ;
4 *L. T., N. S.* 637 ; 9 *W. R.* 548.]

E. J. Dent, who carried on at three several shops the business of a watchmaker, and marked his goods with the trade mark, "Dent, London," bequeathed the business carried on at two of these shops to F. Dent, and that carried on at the third shop to R. Dent, which persons thenceforward carried on distinct businesses at these shops, and each continued to use the trade mark. After the deaths of both these persons the defendants began to deal in watches marked with their trade mark.

Suits for injunction and account by the representatives of both firms.

On demurrer in the first suit,

Held, that each plaintiff might, without averring special damage, sue alone for an injunction, and for the delivery up of the marked articles for erasure, and also for an account of profits and for payment to the respective plaintiff of the part of such profits to which she was entitled, and that the demurrer must be overruled.

THE EMPEROR OF AUSTRIA v. DAY AND KOSSUTH. 197.*May 4th ; June 12th, 1861.*

[*Stuart, V.C.*—2 *Giff.* 628 ; 30 *L. J., Ch.* 690 ; 7 *Jur., N. S.* 483 ;
4 *L. T., N. S.* 274 ; 9 *W. R.* 568.]

[*Lord Campbell, C.*
Knight Bruce & Turner, L.JJ. } —3 *De G. F. & J.* 217 ; 30 *L. J.,*
Ch. 690 ; 7 *Jur., N. S.* 639 ; 4 *L. T.,*
N. S. 494 ; 9 *W. R.* 712.]

The plaintiff being the Emperor of Austria and King of Hungary, the defendants, without his authority, issued notes purporting to be Hungarian notes.

Injunction granted to restrain the defendants from issuing such notes, on the ground of property in the Emperor.

Per Lord Campbell, C., 3 De G. F. & J. 240.—“I consider that this Court has jurisdiction by injunction to protect property from an act threatened, which, if completed, would give a right of action. I by no means say that in every such case an injunction may be demanded as of right, but if the party applying is free from blame, and promptly applies for relief, and shows that by the threatened wrong his property would be so injured that an action for damages would be no adequate redress, the injunction will be granted.”

Per Turner, L.J., *ib.* 253.—“I agree that the jurisdiction of this Court in a case of this nature rests upon injury to property, actual or prospective, and that this Court has no jurisdiction to prevent the commission of acts which are merely criminal, or merely illegal, and do not affect any rights of property, but I think there are here rights of property quite sufficient to found jurisdiction in this Court.”

198.

HENDERSON v. JOESS.

June 21st, 1861.

[*Wood, V.C.*—*Seton, 4th ed.* 236 ; *Cited in Lloyd on Trade Marks, p. 54.*]

The plaintiff's cloths being exported to the Chinese market, and stamped with the figure of a lion or elephant, from which the cloths had come to be known as the “lion chop,” or “elephant chop,” the defendants exported other cloths also stamped with a lion or elephant, so as to produce deception.

Injunction granted to restrain the defendants from so doing, and

Held, that the fact that round the figures the respective names of the parties appeared was not sufficient to prevent deception in China, or to operate as a defence.

CARTIER v. WESTHEAD.

199.

July 11th, 1861.[*Wood, V.C.*]

The plaintiff being a French cotton manufacturer, who sold his cotton in parcels labelled with a cross and the letters "C. B." (from which the cotton had come to be known as "cross cotton"), the defendants began to deal in cotton of another make, labelled with an anchor (the flukes of which were concealed by the wrapping thread) and the letters "W. T.," and supplied such cotton, so marked, in answer to an inquiry for "cross embroidery cotton."

On motion by the plaintiff, injunction granted to restrain the defendants from selling cotton, not the plaintiff's, under the name of "French cross embroidery cotton," or "cross embroidery cotton," or "cross cotton," and from using deceptive labels.

CARTIER v. MAY.

200.

July 12th, 1861.[*Wood, V.C.*—Cited in *Lloyd on Trade Marks*, pp. 55—77.]

An injunction having been granted in April, 1859, to restrain the defendant from selling cotton in parcels labelled in imitation of the plaintiff's, which bore a cross and the initials "C. B.," from which it had acquired the name of "cross cotton," the defendant adopted an altered label, containing the words "cross cotton," and calculated in other respects to deceive.

Motion to commit refused, the defendant having avoided a breach of the injunction, and the plaintiff having delayed to enforce his rights for fifteen months; but the injunction enlarged to cover the new fraud, and the defendant to pay all costs of the application.

[201.]

BOWMAN v. FLOYD.

Nov., 1861.

[*Mass. Sup. Ct.*— } ———85 *Mass.* (3 *Allen*) 76.]
Merrick, J. }

Two of the defendants having been in business with J. G. Loring, under the style of "John G. Loring & Co.," after his death they took the two remaining defendants into partnership, and continued to use the old name as before, both as their trade name and as a trade mark on their goods.

Suit by the executors of J. G. Loring, for an injunction to restrain the defendants from so doing.

Held that, so far as the name was used as a trade mark on goods, the defendants had acquired by user a right to continue so to use it, but that, so far as it was used as a trade name, the representatives of J. G. Loring were entitled, under the Massachusetts Statute (Gen. St. c. 56), to restrain them from continuing to use it without their consent.

202.

TURNER v. MAJOR.

Jan. 15th, 1862.

[*Stuart, V.C.*—3 *Giff.* 442; 8 *Jur.*, *N. S.* 909; 5 *L. T.*, *N. S.* 600;
 10 *W. R.* 243.]

Partnership suit.

On a dissolution of partnership between two partners, whose business had been carried on at two distinct establishments in separate localities, superintended by the partners respectively, it was agreed that the partnership premises, stock, goodwill, &c., should be sold for the benefit of the partners, and until sale should vest in receivers.

On motion by the one partner, injunction granted to restrain the other, until the sale, from carrying on the business in one of the localities on his own account.

HOWE v. MCKERNAN.

203.

Feb. 10th, 1862.

[*Romilly, M. R.*—30 *Beav.* 547.]

The defendant, who had been the London agent of the plaintiff, an American maker of sewing machines, called "The Howe Sewing Machines," continued, after dismissal, to advertise himself as the plaintiff's agent, and to sell as the "Howe" sewing machines, machines not manufactured by the plaintiff.

Suit for an injunction and damages or an account.

On exceptions to interrogatories, the defendant having refused discovery of all the machines sold by him, the price, profit, names of the purchasers, and other particulars, on the ground that he would thereby disclose the names of his customers and secrets of his business,

Held, that full discovery must be made.

CARTIER v. CARLILE.

204.

March 7th, 1862.

[*Romilly, M. R.*—31 *Beav.* 292; 8 *Jur.*, *N. S.* 183.]

The plaintiff made and sold cotton for embroidery, which became known as "Cross Cotton," from its being labelled with the trade mark of a cross, together with the letters "C. B." The defendants manufactured and sold cotton similarly marked, except that for "C. B." was substituted "C. S."

Suit for an injunction to restrain the defendants from infringing the plaintiff's rights.

Held, that an injunction must be granted, and also an account, notwithstanding that the defendants stated themselves to have been ignorant of the rights, and even of the existence of the plaintiff.

“I am of opinion that the liability to account for the profits is incident to the injunction, and that the fact of the defendant not knowing to whom the trade mark he copies belongs, does not in the slightest degree affect the right of the owner to an injunction and to an account of the profits, as soon as he ascertains that it is imitated and used.”

205.

YOUNG *v.* MACRAE.

March 21st, 1862.

[*Wood, V. C.*—9 *Jur.*, N. S. 322.]

The plaintiffs being the owners of a patent for the distillation of “Paraffin” and “Paraffin Oil,” the defendant began to deal in another oil, under the name of “Paraffin Oil,” or “American Paraffin Oil.”

Motion by the plaintiffs for an injunction to restrain the defendant from using those names, refused, on the ground that, although (1) a fancy name, “and the more ridiculous it is, the better it is,” which is recognised as indicating the goods of a particular manufacturer, will be protected; (2) where a person “has found out an article which is a natural product, and has given that natural product a name,” that name becomes designatory of the natural product and may be generally used, and (3) if the name has been usually applied to goods manufactured by a particular person, not because they are of his make, but because he, as having taken out a patent, could alone make them, then, after the expiration of the patent, the name may be generally used; or even during the continuance of the patent, if a new means of getting at the natural product is discovered, which does not infringe the patent.

PARSONS v. HAYWARD.

206.

April 28th ; June 11th, 1862.

[*Romilly, M. R.*—31 *Beav.* 199; 31 *L. J. Ch.* 666; 8 *Jur., N. S.* 474; 6 *L. T., N. S.* 523; 10 *W. R.* 531.]

Lord Westbury, C.—31 *L. J. Ch.* 666; 8 *Jur., N. S.* 924; 6 *L. T., N. S.* 628; 10 *W. R.* 651.]

Partnership suit.

The plaintiff and defendant entered into partnership as tailors for seven years, the plaintiff being a mere sleeping partner, and the business being managed by the defendant alone, and in his name. No notice of dissolution having been given, the defendant continued, after the expiration of the seven years, to carry on the business upon the same premises and in his own name.

Held, that the defendant must account to the plaintiff for his share of the profits since the expiration of the seven years.

Per M. R.—“It is quite clear that” at the end of the seven years “the place of business should have been sold; for although it is true that a house may be of little value in itself, if held at rack rent, still it may be of great value as a place for carrying on the business, and there may be a peculiar species of value attached to a particular spot where a business has for a long time been carried on, and which may be an asset of the partnership of very high value.”

BURROWS v. FOSTER.

207.

May 8th, 1862.

[*Knight Bruce and Turner, L. J.*—1 *N. R.* 156; 32 *Beav.* 18; *Seton*, 4th ed. 257.]

It having been agreed by deed that the two partnership firms of Foster, Lacy & Co., and Bashall, Lacy & Co., insurance brokers, should be dissolved, and their estates

liquidated by the plaintiff and another, the plaintiff to "have the benefit and advantages of the businesses and connexions" of the former two partnership firms, and to be at liberty to carry on the businesses in a new partnership with Lacy, who had been a partner in both firms, the defendant, who had been a partner in Foster, Lacy & Co, issued circulars to the connexions of his old firm, stating the dissolution, and his intention to continue to carry on business, and asking for orders.

Injunction granted to restrain the defendant from representing by circular or letter that his new business was a continuation of the business of either of the former firms, and from soliciting the customers of the former firms.

208.

BURFIELD v. ROUCH.

June 13th, 1862.

[*Romilly, M. R.*—31 *Beav.* 241.]

Partnership suit.

The parties having carried on business in partnership under articles which provided that, on the dissolution of partnership, the defendant should have the option of taking over the lease of the partnership premises, stock in trade, &c., at a valuation (the lease of the premises being the private property of the plaintiff), but made no mention of the goodwill,

Held that, in the valuation of the lease, the plaintiff was precluded by the articles from having any consideration paid to the fact that a business had long been carried on upon the premises, since that would be to add the value of the goodwill to the value of the lease.

OLDHAM v. JAMES.

209.

Nov. 5th, 1862; Jan. 27th, 1863.[*Smith, M. R. of I.*—13 *Ir. Ch.* 393.][*Brady, C. of I. and Blackburne, L. J.*—14 *Ir. Ch.* 81.]

The respondents being the proprietors of a compound which they called "Lieutenant James' Blistering Compound," and sold under a particular trade mark, and the petitioner having sold another compound under a similar trade mark, an agreement was entered into between the parties, by which all claims of the respondents in respect of the infringement were compromised, both with regard to the infringer himself, and to persons who had purchased from him. The respondents subsequently took proceedings against persons who had purchased the spurious goods from the petitioner before the compromise, and were still selling them.

Petition for specific performance of the agreement.

Held, (1) that the agreement only compromised sales made before its date, and did not authorise future sales, even of goods bought before such date; (2) and further that, even if it did profess to authorise them, it would involve a fraud on the public, and could not be specifically enforced, so as to prevent the owner of the trade mark from suing the persons selling the spurious goods.

CLARK v. LEACH.

210.

Dec. 4th, 1862; Jan. 30th, 1863.[*Romilly, M. R.*—32 *Beav.* 14; 32 *L. J., Ch.* 290; 9 *Jur., N. S.* 165; 8 *L. T., N. S.* 40; 11 *W. R.* 227; 1 *N. R.* 155.][*Lord Westbury, C.*—1 *De G. J. and S.* 409; 32 *L. J., Ch.* 290; 9 *Jur., N. S.* 610; 8 *L. T., N. S.* 40; 11 *W. R.* 351.]

Partnership suit.

The parties carried on business in partnership under

articles, by which it was provided that they should be partners for seven years, and that, in certain events, the one should have a right to give notice to the other of the termination of the partnership, in which case the partner receiving the notice should "be considered as quitting the business for the benefit of the partner giving the notice." After the expiration of the seven years such notice was given by the plaintiff to the defendant, who then set up business in the neighbourhood as "R. Leach & Co., late Leach & Clark," the plaintiff continuing to use the old name of "Leach & Clark."

Held that, the seven years having expired, the partnership had become a partnership at will, and the clause did not apply to the altered circumstances.

Per M.R., 32 Beav. 18.—"Has not the defendant a right to say that he lately belonged to a certain firm, and cannot he advertise that fact? The difficulty is, if he cannot be prevented from carrying on the same business, is he not at liberty to solicit the public at large, and to do so by telling, as is the truth, that he belonged to a late firm?"

[211.]

JURGENSEN v. ALEXANDER.

Dec., 1862.

[*N. Y. C. P.*— }
Brady, J. } ————24 *How. Pr.* 269; *R. Cox* 298.]

The plaintiff being a maker of watches, which he stamped with the name "Jules Jurgensen, Copenhagen," the defendant exposed other watches for sale, bearing a similar stamp.

Action for an injunction to restrain the defendant from so doing.

Held, that the injunction must be granted, and that the marked watches must be produced for the spurious marks to be erased, and that the defendant must pay the costs.

WOODWARD v. LAZAR.

[212.]

Jan., 1863.

[*Cal. Sup. Ct.*—21 *Cal.* 448; *R. Cox* 300.]

The plaintiff having erected on a plot of land of which he was tenant a hotel which he called "The What Cheer House," and having afterwards built a new "What Cheer House" on an adjoining plot, and surrendered the former plot, the defendants purchased the first plot and house from the owners, after the surrender, and opened a hotel there, under the name of "The Original What Cheer House" ("original" being in small letters on the sign).

Injunction granted to restrain the defendants from using the name "What Cheer House" as the name of any hotel in the same city.

"*Per Norton, J.*—"A person may have a right, interest, or property in a particular name, which he has given to a particular house, and for which house, under the name given to it, a reputation and goodwill may have been acquired; but a tenant, by giving a particular name to a building which he applies to some particular use, as a sign of the business done at that place, does not thereby make the name a fixture to the building, and transfer it irrecoverably to the landlord."

EDELSTEN v. EDELSTEN.

213.

Jan. 28th, 1863.

[*Lord Westbury, C.*—1 *De G. J. & S.* 185; 9 *Jur.*, *N. S.* 479; 7 *L. T.*, *N. S.* 768; 11 *W. R.* 328; 1 *N. R.* 300.]

The plaintiff being a manufacturer of wire which he sold with metal labels, or tallies, attached to it, bearing his trade mark, an anchor, from which his wire had acquired the name of "Anchor Brand Wire," the defendants made and sold wire with tallies bearing an anchor and small crown, and called the wire "Crown and Anchor Wire."

Suit for an injunction and account.

Held, (1) that the plaintiff was entitled to an injunction to restrain the infringement; (2) that an account would only be given with the injunction in respect of any user by a defendant after he had become aware of the prior ownership; (3) that proof of fraud was of the essence of the action at law, but that the Court of Chancery would "act on the principle of protecting property alone," and that the plaintiff need not prove fraud or inferiority of quality; (4) that if the goods were sold for the purpose of being resold in the market, the plaintiff would have his equitable remedy, though all the immediate purchasers knew that the goods were not the plaintiff's; (5) that proof of actual deception was not necessary in equity, if the Court were satisfied that the resemblance was such as to be likely to cause the one mark to be mistaken for the other; (6) that where the plaintiff was found entitled to the relief he asked, he would be entitled to the costs of the suit in which it was given.

214. **THE LEATHER CLOTH CO. (LIMITED) v. HIRSCH-
FIELD (1).**

March 11th, 1863.

[*Wood, V. C.*—1 *N. R.* 551 (*and see 1 H. & M.* 295).]

The plaintiffs being manufacturers of leather cloth, the defendants, trading as "The Anglo-American Leather Cloth Co.," sold a similar article under a trade mark similar to the plaintiffs'.

Suit for an injunction to restrain the defendants from so doing.

Held, that an injunction must be granted, and an inquiry as to damages directed, notwithstanding that the plaintiffs' trade mark contained the words "tanned leather

cloth, patented Jan. 24th, '56," and that the plaintiffs' leather cloth was, in fact, no longer tanned or patented, since the statement was correct when it was first inserted in the trade mark.

HALL v. BARROWS.

215.

March 16th; Dec. 21st, 1863.

[*Romilly, M. R.*—32 *L. J., Ch.* 548; 9 *Jur., N. S.* 483; 8 *L. T., N. S.* 227; 11 *W. R.* 525; 1 *N. R.* 543.]

[*Lord Westbury, C.*—4 *De G. J. & S.* 150; 33 *L. J., Ch.* 204; 10 *Jur., N. S.* 55; 9 *L. T., N. S.* 561; 12 *W. R.* 322; 3 *N. R.* 259.]

The plaintiffs were the executors of one of two partners in an ironmaster's business carried on under articles which gave the last surviving partner the option of taking over the "stock belonging to the partnership" at a valuation.

Suit for an account, sale of the business, and goodwill, &c.

Held, by the *M. R.*, (1) That the business and goodwill must be sold as a going concern; (2) that the trade mark "B. B. H." with a crown, used by the firm, (the initials being those of the original partners in the firm), was a personal and not a local mark, and could not be sold with the goodwill, since it would induce a belief that the purchaser was the old firm, and so deceive the public; (3) that the surviving partner could not be prevented from using the mark after the sale of the goodwill of the business, but that he would, on the contrary, retain the exclusive right of using it.

Held, by *Lord Westbury, C.*, (1) that the surviving partner having an option, under the partnership articles, of taking over the business at a valuation, the value must be ascertained in chambers, and not by means of a sale;

(2) that there was no evidence to show that the trade mark was personal—that it, therefore, was a subject of sale, and as such must be taken into account in the valuation to the surviving partner; (3) that the goodwill of the business must be taken into account and valued, as being included in the “stock belonging to the partnership;” (4) that the valuation must be made on the footing of the surviving partner being at liberty to set up and carry on the same business as that of the partnership.

Per M. R.—“The interference of a Court of Equity cannot depend on the length of time the manufacturer has used the trade mark.”

Per L. C.—“A name, though originally the name of the first maker, may in time become a mere trade mark or sign of quality, and cease to denote or to be current as indicating that any particular person is the maker. In many cases a name once affixed to a manufactured article continues to be used for generations after the death of the individual who first affixed it. In such cases the name is accepted in the market either as a brand of quality, or it becomes the denomination of the commodity itself, and is no longer a representation that the article is the manufacture of any particular person.

“There can be no right to the exclusive ownership of any symbols or marks universally in the abstract; thus an ironfounder who has a particular mark for his manufactures in iron could not restrain the use of the same mark when impressed on cotton or woollen goods; for a trade mark consists in the exclusive right to the use of some name or symbol as applied to a particular manufacture or vendible commodity, and such exclusive right is property.

“Imposition on the public is necessary for the plaintiff’s title, but in this way only, that it is the test of the invasion by the defendant of the plaintiff’s right of property; for there is no injury if the mark used by the defendant is not such as is mistaken, or is likely to be mistaken, by the public for the mark of the plaintiff; but the true ground of this Court’s jurisdiction is property.”

HOPKINS v. HITCHCOCK.

216.

April 20th, 1863.

[*Common Pleas*—14 *C. B.*, *N. S.* 65 ; 32 *L. J.*, *C. P.* 154 ; 9 *Jur.*, *N. S.* 896 ; 8 *L. T.*, *N. S.* 204 ; 11 *W. R.* 597 ; 2 *N. R.* 32.]

The firm of "Snowden & Hopkins" having manufactured bar iron and stamped it with "S. & H." and a crown, when that firm was replaced by the new firm of "Hopkins & Co." the latter stamped the same quality of iron with "H. & Co." and a crown. The defendant bought iron from Hopkins & Co., described in the bought and sold notes as "S. & H. (crown) common bars," but the iron, when tendered, being found to be marked "H. & Co." with a crown, was rejected.

Action for non-acceptance.

The jury having found a verdict for the plaintiffs, on the ground that the mark was not a material part of the bargain, and that the defendant had substantially what he had bargained for ;

Held, that the contract was for iron of a particular quality, and not for iron bearing a particular brand, and that the plaintiffs were entitled to recover.

WOOLLAM v. RATCLIFF.

217.

May 27th, 1863.

[*Wood, V. C.*—1 *H. & M.* 259.]

The plaintiff being a silk throwster, who was in the habit of making up his silk in a distinctive manner, and affixing to each bundle a label with the mark, "St. A*****" (St. Alban's), the defendant, in obedience to an order, made up silk in the same manner, omitting the trade mark.

Injunction to restrain the defendant from infringing the plaintiff's rights, refused, on the ground that there was no actual deception proved, and that, though there was the express order to imitate the plaintiff's bundle, with the omission of the mark, it was not established that deception was probable.

218.

BATTY v. HILL.*May 28th, 1863.*

[*Wood, V. C.*—1 *H. & M.* 264; 8 *L. T., N. S.* 791; 11 *W. R.* 745; 2 *N. R.* 265.]

The plaintiff being a prize medallist at the London International Exhibition, 1862, the defendant, who had not exhibited or obtained any medal there, placed on his goods the words, "Prize Medal, 1862."

Motion by the plaintiff, for an injunction to restrain the defendant from so doing, refused, on the ground that no one could obtain a right of property in the nature of a trade mark in a prize medal, since all medallists could use it, and that even if it were possible to do so, the defendant had used it first.

219.

SCHIELE v. BRAKELL.*May 30th, 1863.*

[*Stuart, V. C.*—11 *W. R.* 796; *Seton, 4th ed.*, 253.]

The plaintiffs having carried on business at North Moor, Oldham, as "C. Schiele & Co," or "Christian Schiele & Co," the defendants bought their manufacturing business, and obtained from them a lease of their business premises and exclusive licences for the use of certain patents owned by them. The defendants caused all letters addressed to "C. Schiele & Co." to be brought to them,

and executed orders intended for the plaintiffs, for the manufacture of articles under other patents than those which the defendants were licensed to use.

Injunction granted to restrain the defendants from opening such letters, executing such orders, &c.

McINTYRE v. BELCHER.

220.

June 5th, 1863.

[*Common Pleas*—14 *C. B.*, *N. S.* 654; 32 *L. J.*, *C. P.* 254; 10 *Jur.*, *N. S.* 239; 8 *L. T.*, *N. S.* 461; 11 *W. R.* 889; 2 *N. R.* 324.]

The plaintiffs having entered into an agreement with the defendant for the sale to him of a surgeon's practice and the goodwill of it, and having thereby further contracted not to practise in the neighbourhood for ten years, to introduce the defendant to his patients, &c., the defendant contracting to pay the plaintiffs a certain proportion of the profits at the end of each of the first four years, the defendant incapacitated himself from carrying on the business and from obtaining any receipts from it.

Action on the agreement.

Held that, though there was no special undertaking, there was an implied undertaking to keep up the practice.

THE LONDON ASSURANCE v. THE LONDON AND WESTMINSTER ASSURANCE CORPORATION (LIMITED).

221.

June 11th, 1863.

[*Stuart, V. C.*—32 *L. J.*, *Ch.* 664; 9 *Jur.*, *N. S.* 497; 8 *L. T.*, *N. S.* 497.]

Motion by the plaintiffs for an injunction to restrain the defendants from using their name (as above) or any other name resembling that of the plaintiffs, refused.

222.

BURY v. BEDFORD.*June 25th, 1863 ; May 3rd, 1864.*

[*Romilly, M. R.*—32 *L. J.*, *Ch.* 741 ; 9 *Jur.*, *N. S.* 956 ; 8 *L. T.*,
N. S. 847 ; 11 *W. R.* 973 ; 1 *N. R.* 5.]

[*Knight Bruce and Turner, L. JJ.*—4 *De G. J. & S.* 352 ; 33 *L. J.*,
Ch. 465 ; 10 *Jur.*, *N. S.* 503 ;
10 *L. T.*, *N. S.* 470 ; 12 *W. R.*
726 ; 4 *N. R.* 180.]

The defendant, John Bedford, a steel manufacturer at Sheffield, acquired from the Cutlers' Company, though not a member of the company, a mark consisting of the figure of a lion couchant, surmounted by crossed arrows, with the initials "J. O. B. S." (John Bedford, Oughtibridge, Sheffield) written in the spaces formed by the crossings of the arrows. He also purchased the mark "Wm. Ash & Co." On his entering into partnership with certain other persons, the articles of partnership provided that the corporate mark should be used by the partnership, and should be a partnership asset, and that at the expiration of the partnership the several partners should be entitled to use it for the remainder of their lives. The corporate mark was used by the firm on certain classes of goods, "Wm. Ash & Co." on others. The partnership property and the separate estates of the partners having been assigned by a creditors' deed to trustees for the creditors of the firm, the plaintiff bought from the trustees the partnership property and trade marks.

Suit for an injunction to restrain John Bedford from using or granting the right to use the trade marks.

Held, by the *M. R.*, that, as to the corporate mark, the injunction could only be granted to restrain an assignment of the right to use, and not to restrain the use of the mark by the defendant, and that no order as to the mark "Wm. Ash & Co." should be made.

Held, by the L. JJ., (1) that, at all events, where owned by a non-freeman of the Cutlers' Company, a Cutlers' corporate mark was assignable; (2) that the assignability of a mark containing a personal element must depend upon the circumstances of the particular case; (3) that the corporate mark in question was not so personal as to be incapable of assignment; (4) that all the interest of the defendant in the mark passed to the trustees under the creditors' deed; (5) that the purchase by the plaintiff from the trustees was good; (6) that the plaintiff thereby acquired a right to exclude the defendant from the use of the mark; (7) that the mark "Wm. Ash & Co." passed to the partnership on its formation, there being no express provision to the contrary; and that, therefore, the injunction must go to the full extent prayed.

Per Turner, L. J., 4 De G. J. & S. 374.—"The whole trade is carried into the partnership, and the trade mark is but an element of the trade."

**THE LEATHER CLOTH CO. (LIMITED) v. THE
AMERICAN LEATHER CLOTH CO. (LIMITED).**

223.

July 8th; Dec. 21st, 1863; May 12th, 1865.

[*Wood, V. C.*—1 *H. & M.* 271; 32 *L. J., Ch.* 721; 8 *L. T., N. S.* 829; 11 *W. R.* 931; 2 *N. R.* 481.]

[*Lord Westbury, C.*—4 *De G. J. & S.* 137; 33 *L. J., Ch.* 199; 10 *Jur., N. S.* 81; 9 *L. T., N. S.* 558; 12 *W. R.* 289; 3 *N. R.* 264.]

[*House of Lords*—11 *H. L. C.* 523; 35 *L. J., Ch.* 53; 11 *Jur., N. S.* 513; 12 *L. T., N. S.* 742; 13 *W. R.* 873; 6 *N. R.* 209.]

Suit for an injunction to restrain the infringement of a complicated stamp on leather cloth.

Held, by the V. C., (1) that the general similarity of the stamps was such as to render the one likely to be taken for the other; (2) that the plaintiffs were not disentitled

by the fact that their stamp contained the words "tanned patented," although the stamp was usually applied to cloth neither tanned nor patented, since the statement was correct when first made, and no one could be deceived as to the tanning; (3) that the plaintiffs were not disentitled by the fact that their stamp contained the words "J. R. and C. P. Crockett, Manufacturers," the plaintiffs being entitled to use the name of those to whose business they had succeeded; (4) that the plaintiffs were not prevented from suing by the fact that there was another person in existence who might have, but had not, used the name "Crockett"; (5) that persons who had been in Crockett's employ were justified in styling themselves "late with Crockett," in such a manner as not to produce deception (1 H. & M. 279); (6) that an injunction must be granted, with costs, but without any damages or account (see 11 W. R. 933).

Held, by the L. C., that, assuming the stamps to be similar, so that the one would be an infringement of the other, the plaintiffs were disentitled by reason of the misstatements contained in their stamp (4 De G. J. & S. 147), of which the principal were the false statement of "tanned patented" and the use of the words "J. R. & C. P. Crockett, Manufacturers," which was calculated to attribute the manufacture of the cloth to those persons individually, though the plaintiffs might have styled their cloth "Crockett's Leather Cloth." Decision reversed, but without costs, on account of the defendants' disingenuous conduct.

Held, by the House of Lords, (1) that the defendants' stamp was not so similar to the plaintiffs' as to be an infringement; (2) that, if it had been, the plaintiffs would have been disentitled by their misrepresentations.

Held, further, by the L. C., that the stamps were not trade marks at all, but mere labels.

Per V. C. (1 H. & M. 290).— "Every case must rest on its own

circumstances ; but the general principle is that one person shall not be allowed to proclaim his goods as the goods of another, and if it appear that the mark used does not indicate the plaintiff more than a multitude of other persons (as in the case where 'Prize Medal' was the symbol), then a defendant who uses it does not bring himself within the prohibition."

Per L. C. (4 De G. J. & S. 141).—"The mistake of buyers in the market, under which they, in fact, take the defendant's goods as the goods of the plaintiff, that is to say, imposition on the public, becomes the test of the property in the trade mark having been invaded and injured, and not the ground on which the Court rests its jurisdiction."

P. 142.—"It is correct to say that there is no exclusive ownership of the symbols which constitute a trade mark, apart from the use or application of them ; but the word "trade mark" is the designation of these marks or symbols as and when applied to a vendible commodity, and the exclusive right to make such user or application is rightly called property. The true principle, therefore, would seem to be that the jurisdiction of the Court in the protection given to trade marks rests upon property, and that the Court interferes by injunction, because that is the only mode by which property of this description can be effectually protected."

P. 144.—"It is true that a name or the style of a firm may by long usage become a mere trade mark, and cease to convey any representation as to the fact of the person who makes, or the place of manufacture ; but where any symbol or label claimed as a trade mark is so constructed or worded as to make or contain a distinct assertion which is false, I think no property can be claimed in it, or, in other words, the exclusive use of it cannot be maintained."

P. 148.—"I cannot receive it as a rule, either of morality or equity, that a plaintiff is not answerable for a falsehood, because it may be so gross and palpable as that no one is likely to be deceived by it. If there be a wilful false statement, I will not stop to inquire whether it be too gross to mislead."

Per Lord Cranworth (11 H. L. C. 533).—"The right which a manufacturer has in his trade mark is the exclusive right to use it for the purpose of indicating where, or by whom, or at what manufactory, the article to which it is affixed was manufactured."

"But I further think that the right to a trade mark may, in general, treating it as property, or as an accessory of property, be sold and transferred upon a sale and transfer of the manufactory of the goods on which the mark has been used to be affixed, and may be lawfully used by the purchaser. Difficulties, however, may arise where the trade mark consists merely of the name of the manufacturer."

P. 535.—“No general rule can be laid down as to what is or is not a mere colourable variation. All that can be done is to ascertain in every case, as it occurs, whether there is such a resemblance as to deceive a purchaser using ordinary caution.”

Per Lord Kingsdown (p. 538).—“A man may mark his own manufacture, either by his name, or by using for the purpose any symbol or emblem, however unmeaning in itself, and if such symbol or emblem comes by use to be recognized in trade as the mark of the goods of a particular person, no other trader has a right to stamp it upon his goods of a similar description.”

P. 542.—“If a manufacturing house uses the name of a firm, and stamps the name of its firm upon its goods, though the name of the firm no longer represents the same persons as at first, it is no fraud upon the public.”

P. 544.—“If the trade mark represents the article as protected by patent, when in fact it is not so protected, I cannot think that it can make any difference whether the protection never existed or has ceased to exist.”

“Though a man may have a property in a trade mark, in the sense of having a right to exclude any other trader from the use of it in selling the same description of goods, it does not follow that he can in all cases give another person a right to use it, or to use his name.”

THE LEATHER CLOTH CO. (LIMITED) *v.*
HIRSCHFELD (2).

July 16th, 1863.

[*Wood, V.C.*—1 *H. & M.* 295 ; 11 *W. R.* 933.]

The defendant having been directed to account for all goods sold by him impressed with a particular mark,

Held, that he was compellable to disclose the names of all persons to whom he had sold goods so marked, and that if he could not give such information precisely, he might then, and then only, be required to disclose the names of all customers to whom he had sold goods which he would not positively swear to have been unmarked.

WILLIAMS v. SPENCE.

[225.]

July, 1863.

[*N. Y. Super. Ct.*— }
Monell, J. } ————25 *How. Pr.* 366 ; *R. Cox* 305.]

The plaintiff being a manufacturer of soap, which he sold under the name of "Genuine Yankee Soap," the defendant sold other soap under the same name, and in boxes, and with labels, handbills, &c., only colourably differing from the plaintiff's.

On motion by the plaintiff, injunction granted to restrain the defendant from infringing the plaintiff's rights.

BRAHAM v. BUSTARD.

226.

Aug. 3rd, 1863.

Wood, V.C.—1 *H. & M.* 447 ; 9 *L. T., N. S.* 199 ; 11 *W. R.* 1061 ;
 2 *N. R.* 572.

The plaintiffs being the manufacturers of a kind of soap which they sold under the name of "Excelsior White Soft Soap," the defendants began to sell another soap of their own make as "Bustard and Co.'s Excelsior White Soft Soap."

On motion by the plaintiffs,

Held, (1) that the word "Excelsior" was a fancy name and not a mere word of quality, as "superfine" or "superior;" (2) that the plaintiffs' right to an injunction was not affected by the fact that the defendants had never used the word except in conjunction with their firm name, or by the fact that the plaintiffs had recently adopted a distinctive trade mark ; (3) and that an injunction must be granted to restrain the defendants from selling their soap under the name given by the plaintiffs to their article.

“The additional trade mark adopted by the plaintiffs in March last does not, to my mind, affect the question. The name ‘Conveyance Company’ (in *Knott v. Morgan*) was not a trade mark, and I cannot hold it to be any justification for a defendant to say ‘the plaintiff has two ways of identifying his goods, and I have only stolen one of them.’”

[227.]

WOTHERSPOON & CO. v. GRAY & CO.

Nov. 10th, 1863.

[*Ct. of Session—Ct. of Sess. Cas., 3rd Ser., II. 38.*]

The plaintiffs being manufacturers of confectionery, who sold lozenges of their make in packets bearing the words “Wotherspoon’s Machine-made Cinnamon (or Clove, Musk, Rose, &c.) Victoria Lozenges,” on the front, and announcements as to their process of manufacture, &c., on the side, the defendants sold lozenges of their own in packets with the words “Cinnamon Victoria Lozenges” on the front, and “John Gray & Co.’s Machine-made Victoria Lozenges,” on the side.

Interdict to restrain the defendants from using the name “Victoria,” and from imitating the plaintiffs’ announcements, refused, on the ground that the name “Victoria” was in common use, and that, in any case, the name “Gray & Co.’s Victoria Lozenges” was distinguishable from “Wotherspoon’s Victoria Lozenges,” and that the defendants’ wrappers and announcements thereon were essentially different from the plaintiffs’.

228.

KINAHAN v. BOLTON.

Dec. 10th, 1863.

[*Brady, C. of I.—15 Ir. Ch. 75.*]

The petitioners being makers of whiskey, which they sold in bottles, &c., labelled with the letters “L. L.” and a

coronet, the respondent sold whiskey in bottles, &c., labelled with the same letters.

On petition, injunction granted to restrain the respondent from selling whiskey marked with those letters, and

Held, that acquiescence in the infringement of the trade mark was not established by proof of the publication of advertisements which, though in some instances they infringed the petitioners' rights, did not do so uniformly or continuously.

"In such suits, in order to found the jurisdiction of this Court, there must be established, first, the existence of the trade mark; next, the fact of an imitation, whether a direct imitation, or one with such variation that the Court must regard them as merely colourable; and, thirdly, the fact that the imitations were made without licence, or anything that this Court could regard as acquiescence in their use."

PONSARDIN v. PETO; Ex parte UZIELLI.

229.

Dec. 10th, 1863.

[*Romilly, M.R.*—33 *Beav.* 642; 33 *L. J., Ch.* 371; 10 *Jur., N. S.* 6; 9 *L. T., N. S.* 567; 12 *W. R.* 198; 3 *N. R.* 237.]

An injunction having been granted to restrain a dock company from parting with wine spuriously marked with the plaintiffs' mark;

On motion by a third person who had advanced money on the dock-warrants, in ignorance of the spuriousness of the marks, for the wine to be delivered to him,

Held, that the applicant was entitled to have the wine delivered to him, on its being re-corked, but that he must pay the costs of the application.

"The dock company would have the first charge on the wine for their expenses, Mr. Uzielli the second for his advances and his costs, and the plaintiffs the third for their costs of suit."

230.

BROWNE v. FREEMAN (1).*Jan. 11th; July 12th, 1864.**[Wood, V. C.—12 W. R. 305; 4 N. R. 476.]*

The plaintiff being the inventor of a medicine to which he gave the name of "Chlorodyne," and which he sold in bottles labelled with the words "Dr. J. Collis Browne's Chlorodyne," and "The only Genuine Chlorodyne," the defendant began to sell a preparation as "Chlorodyne," and afterwards as "The Original Chlorodyne," the plaintiff having in the meantime procured the dismissal with costs of a bill which he had filed to restrain the defendant from using the name "Chlorodyne."

On motion for an injunction (12 W. R.), and at the hearing of the cause (4 N. R.),

Held, (1) that, although the word "Chlorodyne" might originally have been protected as a fancy name, the plaintiff had abandoned all claim to an exclusive right in it, by dismissing the suit which he had commenced to restrain the use of it; and (2) that the plaintiff was not entitled to an injunction to restrain the defendant from styling his "The Original Chlorodyne," since there was no evidence that the assumption of that title by him caused his medicine to be supposed to be of the plaintiff's manufacture.

No costs given.

TAYLOR v. BEMIS.

[231.]

Jan., 1864.

[U. S. C. C., N. Dt. of Ill.— } —4 Diss. 406.]
Drummond, J.

Suit by execution creditors of H. V. Bemis, one of the partners in the firm of "Downer, Bemis & Co.," brewers,

for a sale of the defendant's interest in the name or trade mark of Downer, Bemis & Co.

Held, that such sale must be refused, on the ground that the defendant's interest in the mark was merely a right to a part of it, and that such right was of no value apart from the connexion of the partnership business.

PHALON v. WRIGHT.

[232.]

1864.

[*Phila. C. P.*— } —5 *Phila.* 464 ; *R. Cox* 307.]
Thompson, P. J. }

The plaintiff being the maker of a perfume, which he sold under the name of "Night Blooming Cereus," the defendants sold another perfume under the name of "Wright's Night Blooming Cereus."

On motion by the plaintiff for an injunction to restrain the defendants from using the name,

Held, (1) that, the perfume not being made from that flower, the use of the title was a misrepresentation ; (2) that, if the perfume had been made from the flower, the name would have been merely descriptive of the origin of the perfume, and therefore could not be a valid trade mark ; (3) that the labels were not similar, and that the defendants' name appeared prominently on theirs ; (4) and that the injunction must be refused.

"The trade mark, to be capable of an exclusive use, must be such as will identify the article to which it is affixed as that of the person naming it, and distinguish it from others. A word which is the name of the article, or indicates its quality, cannot be so appropriated. Every one has the right to manufacture the same article and to call it by its name or descriptive character."

[233.]

McCARDEL v. PECK.*March, 1864.*[*N. Y. Sup. Ct.*—28 *How. Pr.* 120 ; *R. Cox* 312.]

The "McCardel House" having been established and carried on by W. Hitchcock for the benefit of the plaintiff's husband, the plaintiff, after the death of her husband, required the defendant, who had purchased the business from W. Hitchcock, to discontinue the use of the name.

Injunction granted to restrain the defendant from using the name, it having been used by W. Hitchcock and the defendant by virtue of a licence, which was capable of being, and had been revoked; and an attachment for contempt issued against the defendant, who had violated the injunction by continuing to use the name.

234.

Mc ANDREW v. BASSETT.*March 4th ; May 7th, 1864.*[*Wood, V. C.*—33 *L. J., Ch.* 561 ; 10 *Jur., N. S.* 492 ; 10 *L. T., N. S.* 65, 442 ; 4 *N. R.* 12.][*Lord Westbury, C.*—4 *De G. J. & S.* 380 ; 33 *L. J., Ch.* 566 ; 10 *Jur., N. S.* 550 ; 10 *L. T., N. S.* 442 ; 12 *W. R.* 777 ; 4 *N. R.* 123.]

The plaintiffs having recently begun to sell liquorice of their manufacture stamped with the word "Anatolia," the defendants began to sell other liquorice under the same stamp.

Suit for an injunction to restrain the defendants from so doing.

Held, (1) that the word "Anatolia" was a good trade mark on liquorice, being used as a fancy name, and not as indicative of the origin of the liquorice; (2) that the

plaintiffs had acquired an exclusive right therein, though they had only used it for about six weeks; (3) (10 Jur. N. S. 495) that it was not a case in which an account need be directed; (4) that the defendants must pay costs, although they had offered to submit, since they had not offered to pay the costs of the proceedings up to the time of the offer.

Per L. C., p. 384.—“An element of the right to the property in a trade mark may be represented as being the fact of the article being in the market as a vendible article, with that stamp or trade mark, at the time when the defendants imitate it. The essential ingredients for constituting an infringement of that right probably would be found to be no other than these:—First, that the mark has been applied by the plaintiffs properly, that is to say, that they have not copied any other person’s mark, and that the mark does not involve any false representation; secondly, that the article so marked is actually a vendible article in the market; and thirdly, that the defendants, knowing that to be so, have imitated the mark for the purpose of passing in the market other articles of a similar description.”

P. 386.—“Property in the word (Anatolia) for all purposes cannot exist; but property in that word, as applied by way of stamp upon a particular vendible article, as a stick of liquorice, does exist the moment the article goes into the market so stamped, and there obtains acceptance and reputation whereby the stamp gets currency as an indication of superior quality, or of some other circumstance which renders the article so stamped acceptable to the public.”

MOET v. COUSTON.

235

May 3rd, 1864.

[*Remilly, M.R.*—33 *Beav.* 578; 10 *L. T.*, N. S. 395; 4 *N. R.* 86.]

The defendants having purchased and resold in England a quantity of the plaintiffs’ champagne, marked as “Moet’s,” the plaintiffs filed a bill for an injunction and an account, and after answer the defendants offered to submit to an injunction, each party paying his own costs.

Held, that the injunction must be granted, but no account and no costs, the plaintiffs having asked for an account, to which they were not entitled.

10 L. T., N. S. 396.—“If a man manufactures goods himself, and puts upon them the trade mark of another, though he may not know to whom that mark belongs, he must at least know that he has himself no right to the mark. That knowledge makes him liable to account for the profits he may have realised by his conduct. But if a man buys goods from a third party, believing them to be genuine, while in fact they are spurious, it is not until he has been told that they are so that he can be considered to be guilty of any fraud, or to be liable to render any account.”

33 Beav. 581.—“If the defendants had offered to submit to the injunction and to pay the costs, and the plaintiffs had afterwards brought the case to a hearing, I should have given the defendants their costs subsequent to that offer.”

236. **THE COLONIAL LIFE ASSURANCE COMPANY v. THE HOME AND COLONIAL ASSURANCE COMPANY (LIMITED).**

May 9th, 1864.

[*Romilly, M.R.*—33 Beav. 548 ; 33 L. J., Ch. 741 ; 10 Jur., N. S. 967 ; 10 L. T., N. S. 448 ; 12 W. R. 783 ; 4 N. R. 129.]

Motion for an injunction to restrain the defendants from using their name (as above) or any other name resembling that of the plaintiffs, refused, on the ground that the real object of the motion was to obtain a monopoly of the word “Colonial.”

237.

EDGINGTON v. EDGINGTON.

Nov. 7th, 1864.

[*Wood, V.C.*—10 L. T., N. S. 299.]

Injunction to restrain the defendant from falsely representing himself to be carrying on the plaintiff's business,

or to be carrying on business in connexion with, or in succession to him, refused, but without costs, the only case in which an attempt at personation was proved being a case in which the defendant had opened a letter addressed to the plaintiff, and had attempted, but without success, to obtain the custom thereby offered to the plaintiff.

JOHNSON v. HELLELEY.

238.

Nov. 8th; Dec. 21st, 1864.

[*Romilly, M.R.*—34 *Beav.* 63; 34 *L. J., Ch.* 32; 10 *Jur., N. S.* 1041; 11 *L. T., N. S.* 295; 13 *W. R.* 38; 5 *N. R.* 4.]

[*Knight Bruce and Turner, L.JJ.*—2 *De G. J. & S.* 446; 34 *L. J., Ch.* 179; 11 *L. T., N. S.* 581; 13 *W. R.* 220; 5 *N. R.* 211.]

Partnership suit.

The goodwill of a partnership business carried on under the name of "Samuel Johnson & Sons" having been directed to be sold, upon the death of one of the partners, in a suit commenced by the surviving partner for the purpose of having the business wound up, and the Chief Clerk proposing to give the purchaser the exclusive right to hold himself out as the successor of the firm of "Samuel Johnson & Sons,"

Held, that the surviving partner retained the right to set up a similar business in the old neighbourhood, and that the advertisements and particulars of sale must give purchasers notice to that effect.

239.

HUNT v. MANIERE.*Dec. 8th, 1864 ; Jan. 28th, 1865.*

[*Romilly, M.R.*—34 *Beav.* 157; 34 *L. J., Ch.* 142; 11 *Jur., N. S.* 28;
11 *L. T., N. S.* 469; 13 *W. R.* 212; 5 *N. R.* 181.]

[*Knight Bruce and Turner, L.J.*—34 *L. J., Ch.* 144; 11 *Jur., N. S.*
73; 11 *L. T., N. S.* 723; 13
W. R. 363; 5 *N. R.* 295.]

The plaintiffs, being wharfingers with whom spurious champagne, marked with a counterfeit brand of "Veuve Clicquot, Ponsardin & Co.," was warehoused, and who had notice of the spurious mark and of the intention of the injured party to apply for an injunction, refused to deliver up the wine to the indorsee of the dock warrants, who thereupon commenced an action for damages against them.

Suit for an injunction to restrain the action.

Held, that the wharfingers were justified in acting as they had done, and that the injunction must be granted.

[240.]

BINNINGER v. WATTLES.*Jan., 1865.*

[*N. Y. C. P.*— }
Brady, J. } —28 *How. Pr.* 206; *R. Cox* 318.]

The plaintiffs being vendors of gin, which they sold in bottles labelled with the words "Old London Dock Gin," the defendant sold other gin similarly labelled.

On motion by the defendant to dissolve an injunction which had been granted to restrain him from infringing the plaintiffs' rights,

Held, (1) that the name "Old London Dock Gin," was descriptive of the article, and therefore could not be exclusively appropriated, and further, that any person of the same name could not be prevented from selling "Bin-

ninger's Old London Dock Gin;" (2) but that the motion must be refused, on the ground that the defendant's labels were intended and calculated to deceive.

ORR EWING v. CHOONEELOLL MULLICK.

[241.]

Jan. 16th, 1865.

[*Bengal High Ct.—* } ——— *Cor. 150.*
Morgan, J. }

The plaintiffs being a Glasgow firm of manufacturers of cotton goods which they exported to India and sold there with certain trade marks in the form of tickets affixed, the defendant, a dealer in the Burra Bazaar at Calcutta, sold goods there similarly marked.

On motion by the plaintiffs, injunction granted to restrain the defendant from so doing, notwithstanding that he had not himself affixed the spurious marks to his goods but had purchased the goods so marked from the importers, and was, further, only proved to have sold goods spuriously marked on one occasion, and that to the plaintiffs' agent.

MONTAGUE v. MOORE.

242.

March 1st, 1865.

[*Wood, V.C.—Seton, 4th ed. 238.*]

The plaintiffs being the managers of the "Christy's Minstrels," the defendants, who had been members of their company, represented themselves to be "The Christy's Minstrels."

On motion by the plaintiffs, injunction granted to restrain the defendants from representing themselves to be the successors or representatives of that company, and from representing the plaintiffs to have been connected with the defendants' company.

243.

SOUTHORN v. REYNOLDS.*March 10th, 1865.*[*Wood, V.C.*—12 *L. T., N. S.* 75.]

The plaintiff being a manufacturer of "Southorn's Broseley Pipes," the defendant took into his employment a workman of that name and from that place, and sold pipes under the same name.

Suit for an injunction.

Held, that the plaintiff was entitled to an injunction to restrain the defendant from selling clay tobacco pipes in boxes, &c., labelled so as to indicate that they were manufactured by Southorn of Broseley, notwithstanding that the defendant had a workman of that name and from that place in his employ, and notwithstanding that the plaintiff's brother, who did not join in the suit, had an equal right to the use of the mark "Southorn, Broseley," with himself.

Account also granted, and an enquiry as to damages.

244.

HARRISON v. TAYLOR.*May 1st, 1865.*[*Wood, V.C.*—11 *Jur., N. S.* 408; 12 *L. T., N. S.* 339.]

The plaintiffs being manufacturers of mustard, which they sold with a label affixed, the conspicuous feature of which was the figure of an ox, the defendants sold other mustard with a very similar label, but having their own name substituted for the plaintiffs'.

On motion by the plaintiffs, injunction granted to restrain the defendants from infringing their rights, notwithstanding that there was some evidence that a certain class of customers were in the habit of ordering "Harrison's"

mustard, and not "ox" mustard, and although the plaintiffs had delayed commencing proceedings from Aug., 1863, till May, 1864.

But *Held* that no account of profits before the filing of the bill could be given, on account of the plaintiffs' delay.

SWIFT v. DEY.

[245.]

May, 1865.

[*N. Y. Super. Ct.*—4 *Robertson* 611; *R. Cox* 319.]

An injunction having been granted to restrain the defendant from selling matches in boxes labelled in imitation of the plaintiff's, the defendant changed his labels, but, as the plaintiff thought, insufficiently.

Motion by the plaintiff for the committal of the defendant for contempt, refused, on the ground that the defendant's new label would not deceive ordinary purchasers.

Per Robertson, C. J.—"It is the unwary, and not the wary, who are to be protected, as most likely to be taken in by the counterfeit."

Per McCunn, J.—"The great principle laid down and applied in all the cases of trade marks is that, if persons of ordinary understanding purchasing the article would be placed on their guard, and would be led to enquire whether they were being deceived by the article they were purchasing, that fact is sufficient for the Court to refuse its interference."

THE CORRESPONDENT NEWSPAPER CO. (LIMITED)
v. SAUNDERS.

246.

June 1st, 1865.

[*Wood, V.C.*—11 *Jur.*, *N. S.* 540; 12 *L. T.*, *N. S.* 540; 13 *W. R.* 804.]

The plaintiffs being a company which had been formed for the purpose of publishing a newspaper to be called

The Correspondent (which paper had been registered at Stationers' Hall on April 8th, 1864, under 5 & 6 Vict. c. 45, but was not issued till May 3rd, 1865, when another entry was made on the register), the defendants registered a publication under the same title on March 3rd, 1865, and published the first number as *The Public Correspondent*, on May 6th, 1865.

Motion by the plaintiffs for an injunction to restrain the defendants from publishing any newspaper containing the word "Correspondent," refused, on the ground that (1) the entry on the register was of no avail without actual publication; (2) it was doubtful whether in any case registration would protect the title as being included in the copyright; (3) the difference between the dates of the respective first publications was so slight as to render the exclusive right of the plaintiffs in the title, by way of trade mark, too doubtful for an interlocutory injunction to be granted; (4) the plaintiffs had delayed giving the defendants notice of their claim till they had brought out their own paper, eight days after they became aware of the defendants' intentions.

247.

GLENNY v. SMITH.

July 18th, 1865.

[*Kindersley, V.C.*—2 *Drew. & Sm.* 476; 11 *Jur.*, N. S. 964; 13 *L. T.*, N. S. 11; 13 *W. R.* 1032; 6 *N. R.* 363.]

The plaintiffs being Thresher, Glenny & Co., of 152, Strand, the defendant, one of their employés, left their service and opened a shop in Oxford Street, where he placed his own name over the door, but on the brass plates and awning the words "from Thresher & Glenny," the word "from" being in very small letters.

Injunction granted to restrain the defendant from using the name of the plaintiffs' firm in any way so as to deceive, and

Held, that the fact that the defendant had cautioned a shopman not to permit deception, was evidence against the defendant, as showing that he doubted the propriety of his use of the name.

"There is no question but that if a man, having been in the employment of a firm of reputation, sets up in business for himself, he has a right in any way in which he thinks fit, provided it is done in accordance with the rule I have stated (*i.e.*, so as not to deceive), to inform the public that he has been in such employment, and in that way to appropriate to himself some of the benefit arising from the reputation of his former employers. But in so doing he must take especial care that it is done in such a way as not to mislead the public to the detriment of his former employers."

"It does not signify, for the purpose of the plaintiffs' right to relief, whether the defendant has acted with a fraudulent intention or not; it is enough if, even without any unfair intention, he has done that which is calculated to mislead the public. . . . And it is not the question whether the public generally or even a majority of the public, is likely to be misled; but whether the unwary, the heedless, the incautious portion of the public would be likely to be misled."

BANKS v. GIBSON.

248.

July 21st, 1865.

[*Romilly, M.R.*—34 *Beav.* 566; 34 *L. J., Ch.* 591; 11 *Jur., N. S.* 680; 13 *W. R.* 1012; 6 *N. R.* 373.]

The plaintiff's husband and the defendant entered into a partnership for fifteen years, as pencil-makers, under the firm name of "Banks & Co.;" at the end of ten years the plaintiff's husband died, and the plaintiff replaced him in the partnership for four years longer, when the partnership was dissolved and the assets were divided, but no arrangement was come to with respect to the firm name. The plaintiff

continued to carry on the same business in the same town, but not on the old premises, and the defendant continued to do so on the old premises, each under the old name of "Banks & Co."

Injunction to restrain the defendant from using the name of "Banks & Co.," or "Banks," in his business, refused, with costs.

"The name or style of the firm of 'Banks & Co.,' in which the defendant had been engaged for a period of fourteen years, was an asset of the partnership, and if the whole concern and the goodwill of a business have been sold, the name, as a trade mark, would have been sold with it. If, by arrangement, one partner takes the whole concern, there must be a valuation of the whole, including the name or style of the firm. But if the partners merely divide the other partnership assets, then each is at liberty to use the name just as they did before. It is the same as if two persons, who alone carried on the business of 'Child & Co.,' thought fit to separate, each would be entitled to use the name by which they carried on their business."

[249.]

DERRINGER v. PLATE.

Oct., 1865.

[*Cal. Sup. Ct.*—29 *Cal.* 292 ; *R. Cox* 324.]

The plaintiff being a Philadelphian pistol-maker, who marked his goods "Derringer, Philadel.," the defendant, a Californian, sold other pistols similarly marked.

Action at law.

Demurrer overruled, and

Held, (1) that the right of property in a trade mark was not limited in its enjoyment by territorial bounds, so that a person owning a mark in one American State owned it in all, and, therefore, that the plaintiff could be protected in California; (2) that the plaintiff's right of property in his trade mark could be protected at Common Law, though he had not complied with the requirements of the Californian Statute of 1863.

BRADLEY v. NORTON.

[250.]

Nov., 1865.

[*Conn. Sup. Ct.*—33 *Conn.* 157; *R. Cox* 331.]

The plaintiff being a manufacturer, under an exclusive licence from the inventor and patentee, of an agricultural compost, which he sold under the name of "Coe's Superphosphate of Lime," the defendants sold an article under the same name.

Injunction granted to restrain the defendants from so doing.

Per M'Curdy, J.—"It is well settled that the imitation of a trade mark to render a party liable need not be a precise copy. If there is a substantial similarity, so that the community would be likely to be deceived, it is a sufficient infringement of the right."

BEARD v. TURNER.

251.

Nov. 8th, 1865.

[*Wood, V.C.*—13 *L. T., N. S.* 746.]

The plaintiffs being manufacturers of needles, which they sold in packets labelled with a trade mark, consisting of a crest of an elephant's head on a coronet, and the words "Kirby's ne plus ultra," the whole embossed in white on a blue ground, the defendant sold other needles with a label bearing a general resemblance to the plaintiffs'.

Suit for an injunction to restrain the defendant from infringing the plaintiffs' rights.

Held, (1) that the words "ne plus ultra" and the white device embossed on blue were proved to be common to the

trade; (2) that a trade mark might consist of a crest, but that the defendant, having used a lion's head instead of an elephant's head, and having placed "Turner & Co." in place of "Kirby & Co.," the other elements being common, not only to the parties, but to the trade generally, had not adopted a mark likely to deceive; (3) that it was an element strongly in favour of the defendant's *bona fides* that he had exhibited his needles and labels side by side with the plaintiffs' at the Exhibition of 1862; (4) that the injunction could not be granted; (5) that, even if relief could have been granted, the plaintiffs, having lain by for two years after they became aware of what the defendant was doing, could have had no account or costs, by reason of that delay.

252. **THE LEATHER CLOTH COMPANY v. HIRSCHFELD** (3).

Nov. 15th, 1865.

[*Wood, V.C.*—*L. R. 1 Eq.* 299; 13 *L. T., N. S.* 427; 14 *W. R.* 78.]

The plaintiffs, having obtained an injunction to restrain the infringement of their trade mark, and an inquiry as to damages, failed to prove special damage, but claimed the amount of profits which they would have made if they had sold the amount of cloth which the defendant had sold under their mark.

On adjourned summons,

Held, that the burden lay on the plaintiffs to prove special damage by loss of custom or otherwise, and that it could not be assumed that the same quantity would have been bought of the better goods at the higher price as had been bought of the inferior goods at the lower price, and therefore, that in the case in question no damage could be said to have been suffered.

BARNETT v. LEUCLARS.

253.

Dec. 4th, 1865.[*Stuart, V.C.*—13 *L. T., N. S.* 495 ; 14 *W. R.* 166.]

The plaintiffs being inventors and manufacturers of toy fireworks, called "Pharaoh's Serpents," the defendant sold similar fireworks, and by the request of his customers, and without making any false representations, placed them in old boxes bearing the plaintiffs' labels.

Suit for an injunction.

Held, (1) that the injunction must be granted, notwithstanding that the defendant had placed the fireworks in those boxes only at the request of customers, and without making any false representations; (2) but that no costs could be given, the defendant having acted *bonâ fide*, and having discontinued the objectionable practice immediately on the plaintiffs serving on him their notice of motion.

"According to the principle which governs these cases, an owner has an exclusive right to a trade mark or label, and that right is to be regarded as his property."

WILLIAMS v. OSBORNE.

254.

Dec. 8th, 1865.[*Wood, V.C.*—13 *L. T., N. S.* 498.]

The plaintiffs having purchased the perfumery business formerly carried on by Robert Hendrie, deceased, from his executors, the defendants, who had been long in Hendrie's employ, set up business in partnership, and used labels and made representations which the plaintiffs considered to amount to an infringement of their rights.

Suit for an injunction to restrain the defendants from selling their goods as Hendrie's, or representing themselves as his successors in business.

Held, (1) that, having been long in his service, they were justified in placing on their shop their names, with the words, "from the late R. Hendrie," and in styling themselves on placards "managers and manufacturers to the late R. Hendrie," and using Hendrie's name on their labels, in conjunction with their own, if they only used the name fairly and without mis-statements; (2) that no case of fraudulent intention was proved, though, if the defendants had continued to act in a certain way after it had been pointed out to them that the public were deceived, what was not at first fraudulent would have become so; (3) that the bill must be dismissed, and having been filed too hastily, with costs.

255.

CHUBB v. GRIFFITHS.

Dec. 15th, 1865.

[*Romilly, M.R.*—35 *Beav.* 127.]

The plaintiff being a manufacturer of iron safes, the defendant, being still an infant, sold spurious secondhand iron safes marked with the plaintiff's trade mark.

Suit for an injunction.

Held that, notwithstanding his infancy, the defendant must pay the costs of the suit, although he submitted at once, and alleged that he had acted in ignorance.

SEIXO v. PROVEZENDE.

256.

Jan. 22nd, 1866.

[Lord Cranworth, C.—L. R. 1 Ch. 192 ; 12 Jur., N. S. 215 ; 14 L. T., N. S. 314 ; 14 W. R. 357.]

The plaintiff being a Portuguese wine-grower, who sold his wine in casks stamped with a crown and eagle and "B. S." on the head of the cask, and a crown, "Seixo," and a date at the bunghole, from which the wine had acquired the name of "Crown Seixo" wine, the defendants sold their wine in casks stamped on the head and at the bunghole with a crown, "C. B.," "Seixo de Cima," and "1861."

Injunction granted to restrain the defendants from using the brand of a crown and "Seixo," or any other marks likely to cause their wine to be mistaken for the "Crown Seixo" wine, although the marks were not similar when seen side by side.

"In order to entitle a party to relief, it is by no means necessary that there should be absolute identity. What degree of resemblance is necessary is, from the nature of things, a matter incapable of definition *à priori*. All that courts of justice can do is to say that no trader can adopt a trade mark so resembling that of a rival as that ordinary purchasers, purchasing with ordinary caution, are likely to be misled. It would be a mistake, however, to suppose that the resemblance must be such as would deceive persons who should see the two marks placed side by side. The rule so restricted would be of no practical use. If a purchaser, looking at the article offered to him, would naturally be led, from the mark impressed on it, to suppose it to be the production of the rival manufacturer, and would purchase it in that belief, the Court considers the use of such a mark to be fraudulent. But I go further. I do not consider the actual physical resemblance of the two marks to be the sole question for consideration. If the goods of a manufacturer have, from the mark or device he has used, become known in the market by a particular name, I think that the adoption by a rival trader of any mark which will cause his goods to bear the same name in the market may be as much a violation of the rights of that rival as the actual copy of his device."

257.

AINSWORTH *v.* WALMSLEY.

Jan. 24th, 1866.

[*Wood, V.C.*—*L. R.* 1 *Eq.* 518 ; 35 *L. J., Ch.* 352 ; 12 *Jur., N. S.* 205 ; 14 *L. T., N. S.* 220 ; 14 *W. R.* 363.]

The plaintiff's thread being known in the market by the name "Ainsworth's Thread," and marked with a graduated scale of numbers, the defendants bought thread from a firm of thread-winders, who were known to wind the plaintiff's thread, and sold this thread, bearing the winders' name, but invoiced under the plaintiff's system of numbers, and accompanied by an assurance that it was of the plaintiff's make, to a retail dealer, who re-labelled it with the plaintiff's name and sold it as his. The thread turned out not to be the plaintiff's, but inferior to it.

Suit for an injunction to restrain the defendants from selling thread, not being the plaintiff's, as his.

Held, that the defendants having sold the thread to the retail dealer with the name of the winders on it, and not that of the plaintiff, an injunction could not be granted against them, but that their conduct in making the representations, and especially in the use of the plaintiff's system of numbers, was so improper as to disentitle them to costs.

"If a manufacturer does not carry on a trade in iron, but carries on a trade in linen, and stamps a lion on his linen, another person may stamp a lion on iron; but when he has appropriated a mark to a particular species of goods, and caused his goods to circulate with this mark upon them, the Court has said that no one shall be at liberty to defraud that man by using that mark, and passing off goods of his manufacture as being the goods of the owner of that mark. And inasmuch as the Court protects the owner of the mark, he is entitled to authorize another, when he hands over his business to him, to place that mark on his goods. That is a right which, being protected by this Court, may be disposed of for value, may be bought and sold, and is therefore, in that sense of the word, property."

“Is not a man’s name as strong an instance of trade mark as can be suggested?—subject only to this inconvenience, that if a Mr. Jones or a Mr. Brown relies on his name, he may find it a very inadequate security, because there may be several other manufacturers of the same name.”

STANDISH v. WHITWELL.

258.

March 9th, 1866.

[*Wood, V.C.*—14 *W. R.* 512.]

The plaintiffs carrying on business as “The Eagle Coal and Iron Company,” and having long stamped their iron with the figure of an eagle, from which it had acquired the name of “eagle iron,” the defendants began to sell their iron stamped with an “eagle brand.”

On motion by the plaintiffs,

Held, (1) that an injunction must be granted, to restrain the defendants from stamping the figure of an eagle on their iron, notwithstanding that they alleged it to be their family crest; (2) that the costs of an affidavit, making charges of fraud which were not substantiated, must be disallowed.

AINSWORTH v. BENTLEY.

259.

March 16th, 1866.

[*Wood, V.C.*—14 *W. R.* 630.]

The plaintiff having purchased from the defendant “Bentley’s Miscellany,” on which occasion the defendant covenanted not to publish, &c., any periodical of a like nature, the defendant began to publish another periodical called “Temple Bar,” with his name on the cover.

On motion by the plaintiff,

Held, that an injunction must be granted to restrain the defendant from publishing the magazine with his name on it, but that he could not be restrained from publishing the magazine without his name appearing in connexion with it.

260.

DICKSON v. McMASTER & CO.

May 28th, 1866.

[*Brady, C. of I.*—18 *Ir. Jur.* 202.]

Partnership suit.

Held, that upon the true construction of a partnership agreement, which provided for accounts being taken of the partnership "stock-in-trade, goods, chattels, and effects," the continuing partner in the firms of "Dunbar, McMaster & Co.," and "Dunbar, Dickson & Co.," who was the owner of the premises on which the partnership business was carried on, and who was entitled, on the termination of the partnership, to take over the shares of the retiring partners at a valuation, was also entitled to take over the goodwill, trade name, and trade marks of those firms, without further payment on a separate valuation of those particulars (those particulars being held not to be included in the term "stock-in-trade, goods, chattels, and effects"), but that he was not entitled to use the names of the retiring partners.

261.

HUDSON v. BENNETT.

June 30th, 1866.

[*Stuart, V.C.*—12 *Jur.*, *N. S.* 519; 14 *L. T.*, *N. S.* 698; 14 *W. R.* 911.]

The plaintiffs having obtained an interim injunction to restrain the defendant from infringing their trade mark on

beer, the defendant offered to pay the costs of the suit, as between solicitor and client, and to give an undertaking in the terms of the first part of the prayer of the bill, amounting to an offer of all material relief, but refused to insert an apology in the newspapers.

The plaintiffs having, nevertheless, brought the case to a hearing,

Held that, although the perpetual injunction must be granted, no costs could be given, the plaintiffs having refused the defendant's offer at their peril in respect of costs.

GREEN v. SHEPHERD.

[262.]

July 4th, 1866.

[*Ct. of Session.*—*Ct. of Sess. Cas., 3rd Ser., IV. 1028; 2 Scot. L. Rep. 168.*]

The plaintiff being an English chemist and manufacturer of washing powder, the defendant, a Scotch manufacturer of the same article, sold his goods under the plaintiff's trade mark.

Action for damages and an interdict.

Motion by the plaintiff for an interim interdict, refused, on the ground that the summons was framed on the footing that the plaintiff had no case for an interim interdict, but undertook to prove his right by recovering damages, as a preliminary to obtaining an interdict.

SHERWOOD v. ANDREWS.

[263.]

Aug. 1866.

[*Chicago Super. Ct.*—*5 Am. L. Reg., N. S. 588.*]

The plaintiffs being manufacturers of "Holbrook's School Apparatus" (that apparatus having been first

manufactured by J. Holbrook, afterwards by his son, D. Holbrook, and next by a company organized by D. Holbrook, and called "The Holbrook School Apparatus Company," which company had recently been dissolved by the plaintiffs, the sole stockholders therein), the defendants began to sell another apparatus under the same name.

Injunction to restrain the defendants from using the name "Holbrook" or "Holbrook's" on such apparatus, refused, and

Held, (1) that the name, having been used by several persons other than the plaintiffs or their predecessors, had become generic and descriptive and incapable of protection as a trade mark; (2) that even if the company had had a valid right in the mark, it did not pass to the plaintiffs as being the stockholders at the time of the dissolution; (3) that a trade mark should not be protected in the hands of an executor, assignee, or other person claiming through its first adopter, unless such person added to it words indicative of the relation between himself and the first adopter of the mark, since otherwise a fraud would be committed on the public.

264.

MAXWELL v. HOGG.

Nov. 8th, 1866; Jan. 15th, 1867.

[*Stuart, V.C.*—12 *Jur. N. S.* 916; 15 *L. T., N. S.* 204; 15 *W. R.* 84.]

[*Turner and Cairns, L.JJ.*—*L. R.* 2 *Ch.* 307; 36 *L. J., Ch.* 433; 16 *L. T., N. S.* 130; 15 *W. R.* 467.]

The defendants having, in 1863, registered, under the Copyright Acts, the name "Belgravia," as the title of a new magazine, but not having published the magazine, the

plaintiff registered the same name in 1866, and went to considerable expense in respect of his intended publication. The defendants, having discovered this in August, hastened on their own publication, and announced it on Sept. 24th, and published it on the 25th. The plaintiff's magazine was brought out in October.

Injunction to restrain the defendants from using the name, refused, on the ground that the name had been first used on an actual publication by the defendants, and that the expense which the plaintiff had been at in the preparation of the work, advertisements, &c., could not give him an exclusive right in the name.

Per Turner, L. J.—“It seems to me that there is a great distinction between the case of advertisement followed by publication and a case resting upon advertisement only. In the case of advertisement followed by publication, the party publishing has given something to the world, and there is some consideration for the world's giving him a right; but in the case of mere advertisement he has neither given, nor come under any obligation to give, anything to the world, so that there is a total want of consideration for the right which he claims.”

Per Cairns, L. J. (p. 310).—“It always appeared to me that *Clark v. Freeman* might have been decided in favour of the plaintiff, on the ground that he had a property in his own name.”

P. 314.—“All the definitions which have been given in this Court of the nature of the right to protection in the case of trade marks seem to me to be opposed to the idea that protection can be given where there has been no sale, or offering for sale, of the articles to which the name is to be attached.”

P. 315.—“I am prepared to hold, without any hesitation, that the mere intention, and the declaration of intention, to use a name will not create any property in that name, and to hold also that there can be no protection in this Court for the intended name during the course of manufacture of the article which is to bear that name.”

265.

HOGG v. MAXWELL.

Nov. 8th, 1866; Jan. 15th, 1867.

[*Stuart, V.C.*—12 *Jur.*, N. S. 916; 15 *L. T.*, N. S. 204; 15 *W. R.* 84.][*Turner and Cairns, L.JJ.*—*L. R.* 2 *Ch.* 316; 36 *L. J.*, *Ch.* 437; 16 *L. T.*, N. S. 133; 15 *W. R.* 470.]Cross suit by the defendants in *Maxwell v. Hogg*.

Injunction to restrain the plaintiff in that suit from using the name "Belgravia" as the title of a magazine, refused, on the ground that the prior registration of the name under the Copyright Acts by the plaintiffs in the cross suit, without actual publication, gave them no exclusive right in the name; and, further, that they could not be protected in the assertion of such a right in respect of their short actual prior user, by reason of their uncandid conduct in receiving and inserting in other publications of their advertisements of the forthcoming rival magazine under the title in dispute, at the very time when they were hastening on their own publication.

No costs given on either side, in either suit.

[266.]

DEIZ v. LAMB.

Nov. 1866.

[*N. Y. Super. Ct.*—
Monell, J. } —29 *N. Y. Super. Ct.* (6 *Robertson*), 537.]

The plaintiff having purchased the "Prescott House" Hotel, the defendant, a coach-proprietor, who had had a revocable licence from the former proprietor of the hotel to place the name "Prescott House" upon his coaches, continued so to use the name of the hotel.

On motion by the plaintiff, injunction granted to restrain the defendant from so doing, on the ground that the licence had determined upon the sale of the hotel to the plaintiff.

MORGAN v. McADAM.

267.

Dec. 5th, 1866.[*Wood, V.C.*—36 *L. J., Ch.* 228 ; 15 *L. T., N. S.* 348.]

The plaintiffs being manufacturers of crucibles, who traded under the name of "The Patent Plumbago Crucible Co.," and sold their crucibles as "Patent Plumbago Crucibles," the defendants began to trade under the same name, and to sell their crucibles under the same name.

Injunction to restrain the defendants from so doing, refused, on the ground that the plaintiffs' crucibles were not and never had been the subject of a patent, though the plaintiffs stated that they had been informed by one of the persons from whom they had bought the secret of the construction of the crucibles, that there was an American patent ; and

Held that, since the objection to the plaintiffs' title had already been brought to their notice by the dismissal on that ground of a summons brought by them before a magistrate, under the Merchandise Marks Act, 1862, the bill must be dismissed with costs.

Held, further, that where an article had, during the existence of a patent, been sent into the market as "patent pins," "patent wire," &c., on the expiration of the patent the marked articles might still be sold, though it would be better to place on them the date of the patent.

"All that this Court has to determine is, has the plaintiff who comes here to seek relief, any ground whatever for asking the Court to assist him in the protection of that right which he sets up ? If the Court finds it to be a right founded upon fraud, and certainly, in effect, this is such, the Court says it cannot assist a person in carrying on a fraud."

268.

SCOTT v. SCOTT.

Dec. 13th, 1866.[*Wood, V.C.*—16 *L. T., N. S.* 143.]

On the dissolution of the partnership of "Robert & Walter Scott," the interest of the plaintiff, W. Scott, in the partnership premises was purchased by his partner R. Scott, and it was agreed that each should be at liberty to carry on the business, but that the old name should not be used by either, except for winding up the affairs of the partnership. The defendants, having been placed in possession of the old premises by R. Scott, began to style themselves on a doorplate "Scott & Nixon, late Robert & Walter Scott."

On motion by the plaintiff, injunction granted to restrain the defendants from using a doorplate with an inscription representing that they were carrying on business in continuation of or in succession to the old firm, on the ground that the effect of the new plate was to represent the plaintiff as having retired from business, and to appropriate his interest in the goodwill of the old firm.

[269.]

GILLOTT v. ESTERBROOK.

Jan. 1867 ; Jan. 1872.[*N. Y. Sup. Ct.*—47 *Barb.* 455 ; *R. Cox* 340.][*N. Y. Comm. of App.*—48 *N. Y. (3 Sickels)* 374 ; 8 *Amer. Rep.* 553.]

The plaintiff being a penmaker who stamped his pens "Joseph Gillott, Extra Fine, 303," and sold them in boxes labelled with the same name and figures, the defendants began to sell other pens similarly stamped, in boxes similarly

labelled, except that they put their name, "Esterbrook & Co.," in place of "Joseph Gillott."

Injunction granted to restrain the defendants from using the figures "303," with damages and costs.

Per Potter, J. (R. Cox 347).—"The principle, in short, is that no man has a right to sell his own goods as the goods of another, and the Courts will lend their aid to prevent the imposition; but there is a limitation to this right. The trade mark which is entitled to protection must be such as will identify the article to which it is affixed as that of the person adopting it, and distinguish it from others."

P. 348.—"A word that is well known in the language, and which is the name of an article, or words that merely indicate the quality of an article, cannot, it seems, be so exclusively appropriated as a trade mark. Nor can the appropriated name of a manufactured article, if the article is a known substance or production, be exclusively used as a trade mark, except by those who have an exclusive property in the article itself, though a mere name may be protected as a trade mark where it is used merely to indicate the true origin or ownership of the article offered for sale, or when a new preparation or compound is made, and a distinctive and specific name is necessarily given to it, which has not before by adoption and use become known."

MATSELL v. FLANAGAN.

[270.]

Jan. 1867.

[N. Y. C. P.— }
Brady, J. } ———2 *Abb. Pr. N. S.* 459 ; *R. Cox* 367.]

The plaintiffs being the proprietors and publishers of *The National Police Gazette*, commonly known as *The Police Gazette*, the defendants began to publish another paper under the name of *The United States Police Gazette*.

Motion by the defendants to dissolve an injunction, which had been granted, on motion by the plaintiffs, to restrain them from publishing a paper under that name, refused, there being evidence of actual deception.

“The enforcement of the doctrine that trade marks shall not be simulated does not depend entirely upon the alleged invasion of individual rights, but as well upon the broad principle that the public are entitled to protection from the use of previously appropriated names or symbols, in such a manner as may deceive them, by inducing or leading to the purchase of one thing for another.”

[271.]

DIXON v. JACKSON.

Jan. 29th, 1867.

[*Ct. of Session—Ct. of Sess. Cas., 3rd Ser., V., 326 ; 3 Scot. L. Rep. 188.*]

The plaintiffs being iron-masters at Govan, who were in the habit of marking their bar iron “Govan,*” from which they alleged that it had acquired the name of “star iron;” the defendant, who was an iron-master at Coats, and had been in the habit of marking his bar iron with the word “Coats” simply, began to mark it “Coats.*”

Interim interdict granted to restrain the defendant from so doing.

272

GRAVELEY v. WINCHESTER.

March 14th, 1867.

[*Wood, V.C.—Seton, 4th ed. 257.*]

The plaintiffs being a firm of engineers, who had purchased the business of Winchester & Co., the defendant began to carry on business under the name of “Winchester & Co.”

On motion by the plaintiffs, injunction granted to restrain the defendant from so doing, and from representing that he was carrying on business in succession to that carried on by that firm, with directions for the delivery up of trade cards or circulars, and an inquiry as to damages.

STEPHENS v. PEEL.

273.

March 21st, 1867.[*Wood, V.C.*—16 *L. T., N. S.*, 145.]

The plaintiffs being ink-makers, who sold their ink in bottles bearing labels consisting in part of white letters on a red ground, in part of white letters on a blue ground, and in part of blue letters on a white ground, with a white crown, and the words "Stephens' Blue Black Writing Fluid" in white, the defendant began to sell other ink in bottles similarly labelled, but having the word "Steelpens" substituted for "Stephens'."

On motion by the plaintiffs, injunction granted to restrain the defendant from using labels calculated to deceive.

BLACKWELL v. CRABB.

274.

April 25th, 1867.[*Wood, V.C.*—36 *L. J. Ch.* 504.]

The plaintiffs being manufacturers of pickles, which they sold in bottles bearing a label composed of a number of details, the defendant began to sell other pickles in similar bottles labelled very similarly.

Motion by the plaintiffs for an injunction to restrain the defendant from selling pickles in bottles so labelled, refused, on the ground that, though there was a considerable general resemblance between the two, the name, to which a customer would look to discover the identity, was conspicuously different, and there were other points of difference, besides that the elements combined in the labels were, for the most part, of common right.

275.

FARINA v. CATHERY.*April 26th, 1867.*[*Wood, V.C.—L. J. Notes of Cases 1867, p. 134.*]

The plaintiff being a German manufacturer of Eau de Cologne, which he sold in bottles bearing a special label, the defendants, as agents for another German manufacturer, sold other Eau de Cologne in bottles labelled in exact imitation of the plaintiff's, except that the word "Josephs" was substituted for the word "Jülichs."

Injunction granted to restrain the defendants from so doing, and

Held, that a defence that the defendants' labels had been exhibited in the United Kingdom many years previously, and that their use was not prohibited by Prussian law, failed, on the ground that progressive alterations had been made in the labels, producing greater and greater similarity to the plaintiff's, and varying the device to which a right was alleged to have been acquired in Germany.

[276.]

SMITH v. WOODRUFF.*April, 1867.*[*N. Y. Sup. Ct.—48 Barb. 438 ; R. Cox 373.*]

The plaintiffs being compounders of a perfume, which they sold under the name of "Sweet Opoponax of Mexico," the defendant began to sell another perfume under the same name.

Injunction granted to restrain the defendant from so doing, and

Held, (1) that that name had become indicative of the plaintiffs' article, though it had been used by others before them; (2) that evidence produced by the defendant, to show the absence of opoponax from the plaintiffs' composition, being contradicted, and that fact, even if established, not proving any flagrant imposition on the part of the plaintiffs, a defence based on the plaintiffs' own alleged misstatements failed.

BURNETT v. PHALON.

[277.]

June, 1867.

[*N. Y. Super Ct.*—22 *Monthly L. R.* (12 *N. S.*) 220; 9 *Bos.* 193; *R. Cox* 376.]

[*N. Y. Ct. of App.*—3 *Keyes*, 534; 3 *Trans. App.* 167; 5 *Abb. Pr.*, *N. S.* 212; *R. Cox* 397.]

The plaintiffs being manufacturers of a hair-oil which they sold under the name of "Cocaine," the defendants began to sell an oil of their own under the name of "Cocaine."

Injunction granted to restrain the defendants from selling their oil under that name, or any other name imitated from the name applied by the plaintiffs to their oil, that name being held not to be descriptive of the ingredients composing the article.

Per Pierrepont, J.—"Every man has a right to the reward of his skill, his energy, and his honest enterprise; and when he has appropriated, as his trade mark, letters combined into a word before unknown, and has used that word, and has long published it to the world as his adopted trade mark, he has acquired rights in it which the Courts will protect."

[278.]

FABER v. FABER.

June, 1867.

[*N. Y. Sup. Ct.*— } ————49 *Barb.* 357; 3 *Abb. Pr., N. S.*, 115; *R. Cox*
Sutherland, J. } 401.]

The plaintiff being a maker of lead pencils, which he stamped "A. W. Faber," the defendant, John H. Faber, sold other pencils stamped with his name.

Motion to continue an injunction which had been granted to restrain the defendant from so doing, refused, on the ground that the defendant was entitled to use his own name without fraud.

[279.]

FULTON v. SELLERS.

1867.

[*Penn. Sup. Ct.*—4 *Brews.* 42.]

The plaintiffs (respondents) being the proprietors, by assignment, of a medical preparation, which they sold under the name of the original inventor, as "Dr. J. M. Lindsey's Improved Blood Searcher," the defendants (appellants) began to sell another compound under a similar name.

Suit for an injunction to restrain the defendants from infringing the plaintiffs' rights.

Held, (1) that the words in question constituted a legitimate trade mark; (2) that such trade mark passed to the plaintiffs, under their agreement with the original inventor for the purchase of all his right, title, and interest in the article known by the name in question, and of a right to take his name and all his interest, so far as was necessary; (3) that the plaintiffs were not disentitled by reason of their using the name without words to mark their derivative title; (4) and that the injunction must be granted.

“A manufacturer or vendor cannot adopt words in common use, descriptive of similar articles, and call upon a court to prevent other parties from using them. Such words cannot be made trade marks, nor can words which simply define the nature, kind, or quality of articles sold. If a trade mark consists of words, as it may, they must be specific and distinctive in their meaning. They must point to the articles, and to nothing else. It is undoubtedly true that the name of an inventor or discoverer, or manufacturer, may be employed as a part of a trade mark. It may give to other parts of the appellation a distinctive character, or, rather, it may make words distinctive that, without the name, would not be. Such trade marks are recognised as legitimate.”

“The right to use his (the vendor's) name and all his interest must include the right to the use of the trade mark. That was an interest of the vendor, he had a property in the trade mark.”

“We do not think the position tenable that the complainants are not entitled to relief because they are only assignees of the trade mark, and use it without designating themselves assignees. We do not perceive how their using the mark after they bought it, without giving notice that they are not the original owners of it, can be fraud upon the public, of which the defendant can avail himself. A trade mark, like the goodwill of a shop or manufacturing establishment, is a subject of commerce, and it has many times been held entitled to protection at a suit of the vendees.”

FIELD v. LEWIS.

280.

Aug. 3rd, 1867.

[*Wood, V.C.—Seton, 4th ed. 237.*]

The plaintiffs having long manufactured and sold soap under the name of “United Service” soap, the defendant began to sell other soap under the same name.

Injunction granted to restrain the defendant from using the name in question, with costs, notwithstanding that the defendant had placed his own name on his own label, and that there was no evidence of actual deception, and that the bill had been filed without any previous intimation being given to the defendant.

[281.]

DAVIS v. KENNEDY.

Sept. 3rd, 1867.

[*Canada West Chanc.*— } ———— *Codd. Dig.* 236.]
Mowat, V.C.

The plaintiff being the inventor and manufacturer of a medical preparation, which he called and labelled "Perry Davis' Vegetable Pain Killer," the defendant began to manufacture and sell a similar article, under the name of "The Great Home Remedy, Kennedy's Pain Killer," but with quite different labels.

Injunction granted to restrain the defendant from using the words "Pain Killer" in connexion with his preparation, that term being held to be a fancy name indicative of the plaintiff's article.

[282.]

NEWMAN v. ALVORD.

Sept., 1867 ; Sept., 1872.

[*N. Y. Sup. Ct.*—49 *Barb.* 588 ; 35 *How. Pr.* 108 ; *R. Cox* 404.]
 [*N. Y. Comm. of App.*—51 *N. Y.* (6 *Sickels*) 189 ; 10 *Amer. Rep.* 588.]

The plaintiffs manufacturing cement at Akron, in Erie County, New York, which they sold in packages labelled "Newman's Akron Cement Co., Manufactured at Akron, N. Y. The Hydraulic Cement, known as the Akron Water Lime," the defendants, who manufactured cement at Syracuse, in Onondaga County, New York, began to sell it in packages labelled "Alvord's Onondaga Akron Cement, or Water Lime, manufactured at Syracuse, New York."

Injunction granted to restrain the defendants from using the word "Akron" in connexion with their cement, although, if the defendants had manufactured at Akron, the decision might have been different.

Per Daniels, J. (R. Cox 413).—"Where words or names are in common use, the law does not permit an appropriation of them as trade marks to be made, so far as they are comprehended by such use. And for that reason words and names having a known or established signification cannot, within the limits of such specification, be exclusively appropriated to the advancement of the business purposes of any particular individual, firm, or company. The inability to make such appropriation of them arises out of the circumstance that, on account of their general or popular use, every individual in the community has an equal right to use them, and that right is in all cases paramount to the rights and interests of any one person, firm, or company. What alike may be claimed and used by all cannot be exclusively appropriated to advance the interests of any person. . . . But while this limitation is entirely reasonable, there can be no propriety in extending it beyond the circumstance upon which it is founded ; and accordingly any member of the community whose interests and business may be promoted by doing so, should be at liberty to apply even names and words in common use to the products of his industry, in such a manner as to indicate their origin or particular manufacture, where such application will not intrench upon and be in no way included in their use by the public. By doing so, the rights of no member of the community can be in any manner infringed, and no public inconvenience whatever can be occasioned by it. The public will still be left at full liberty to use such words or terms as they were used before ; while for a special purpose a new office or purpose may be imposed upon them."

ROGERS v. TAINTOR.

[283.]

Oct., 1867.

[*Mass. Sup. Ct.*—97 *Mass.* (1 *Browne*) 291.]

Fay, Joslin, Rogers, and Taintor manufactured machinery in partnership at Worcester (Mass.), under the name of "Fay & Co." Fay, Joslin, Rogers, and Cheney did the same at Cincinnati, under the same name. After Fay's death the two businesses continued to be carried on as before by the respective surviving partners, until the dissolution of the Worcester firm, when the defendant Taintor, one of the partners in that firm, bought the business and

goodwill, and continued to carry on business in the same name, but as a vendor of machines not manufactured by him.

Suit by the Cincinnati firm for an injunction to restrain him from using the name in his business or on machines not made by the plaintiffs.

Injunction to restrain him from so doing, refused, on the ground that, (1) the name in question was not that of any of the plaintiffs; (2) the representative of Fay was not a party to the suit (this refers to the Mass. Gen. St., c. 56); (3) the defendant was carrying on business in continuation of the Worcester firm, and did not assume any connexion with the plaintiffs; (4) the defendant, if he had a right to use the name at all, had a right to use it as he pleased, on goods of his own make, or otherwise; (5) the plaintiffs could not have acquired, by the dissolution of the Worcester firm, which was quite distinct from theirs, any special rights in the name beyond such as they had already.

[284.]

HOWE v. THE HOWE MACHINE COMPANY.

Nov., 1867.

[*N. Y. Sup. Ct.*—50 *Barb.* 236; *R. Cox* 421.]

The plaintiff, A. B. Howe, being a manufacturer of sewing machines, which he made under a licence from his brother, Elias Howe, the patentee, and stamped with the name "Howe," the defendant company, claiming under Elias Howe, began to manufacture other machines, and to stamp them in the same way.

On appeal from an order dissolving an injunction which had been granted to restrain the defendants from so doing,

Held, (1) that the plaintiff was entitled to appropriate the name as his trade mark on sewing machines, to the

exclusion of his brother Elias Howe, the original inventor and patentee of the particular machine, which the plaintiff only made by his licence, and also of the defendant company; but (2) that, there being a question whether Elias Howe was not entitled to use the trade mark under an agreement between him and the plaintiff, no injunction could be granted before the trial.

R. v. SUTER AND COULSON.

285.

Nov. 16th, 1867.

[*C. C. R.*—10 *Cox* 577; 17 *L. T., N. S.* 177; 16 *W. R.* 141.]

On an indictment for obtaining money on false pretences, *Held*, that the prisoners, who had obtained money by falsely representing a spurious stamp on a watch to be a genuine hall mark of the Goldsmiths' Company, and to prove the watch to be of 18-carat gold, were rightly convicted.

Per Kelly, C.B.—"There is no difference in principle between a misrepresentation of a mark, and one that an acceptance was the acceptance of John Jones, or any other person."

**THE LIEBIG'S EXTRACT OF MEAT COMPANY
(LIMITED) v. HANBURY.**

286.

Nov. 19th, 1867.

[*Wood, V.C.*—17 *L. T., N. S.* 298.]

The plaintiffs being manufacturers and vendors of "Liebig's Extract of Meat," the defendants began to prepare meat in accordance with Liebig's recipe, and to sell it under the same name.

Injunction to restrain the defendants from using the name, refused, on the ground that the name had for some

time past been in common use as descriptive of an article prepared in a particular manner, and that it would be injurious to the defendants to require them to change the name of their article.

287.

R. v. HUNTER.**R. v. CARTER.***Nov. 23rd, 1867.*[*C. C. R.*—10 *Cox* 642 ; 17 *L. T., N. S.* 321 ; 16 *W. R.* 342.]

On indictments for obtaining money under false pretences,

Held, that the prisoners, who were coal-hewers, and had obtained payment for more work than they had done, by removing the tokens or tickets of others from the tubs of coal and substituting their own, were rightly convicted.

288.

LAMPLOUGH v. BALMER.*Dec. 3rd, 1867.*[*Wood, V.C.*—*W. N.* 1867, p. 293.]

The plaintiff selling a medical compound as "Pyretic Saline," the defendant began to sell another article under the name of "Balmer's Pyretic Salts."

Motion by the plaintiff for an injunction to restrain the defendant from so doing, refused, on the ground that the plaintiff's labels contained the words, "Royal Letters Patent," he not having taken out any patent, and notwithstanding an explanation by the plaintiff that he had used the term in consequence of his having long paid duty on his medicine as a patent medicine.

CASWELL v. DAVIS.

[289.]

Dec. 1867; Sept. 1874.[*N. Y. O. P.*—4 *Abb. Pr.*, *N. S.* 6; 35 *How. Pr.*, 76; *R. Cox* 429.][*N. Y. Ct. of App.*—58 *N. Y.* (13 *Sickels*) 223.]

The plaintiffs being the compounders of a medicine which they called "Ferro-phosphorated Elixir of Calisaya Bark," the defendant, who had been in the plaintiffs' employ, began to sell another preparation as "Davis & Sons' original and genuine Ferro-phosphorated Elixir of Calisaya Bark."

Suit for an injunction to restrain the defendant from so doing.

Held, on appeal, that an injunction could not be granted to restrain the defendant from using the word "Ferro-phosphorated," the word being descriptive of the composition of the medicine.

Per Folger, J. (58 *N. Y.* 233)—"There is no principle more firmly settled in the law of trade marks than that words or phrases which have been in common use and which indicate the character, kind, quality, and composition of the thing may not be appropriated by any one to his exclusive use. In the exclusive use of them the law will not protect. Nor does it matter that the form of words or phrases adopted also indicate the origin and maker of the article. The combination of words must express only the latter. It is the result of all the decisions that known words and phrases indicative of quality and composition are the common property of all mankind. They may not be appropriated by one to mark an article of his manufacture, when they may be used truthfully by another to inform the public of the ingredients which make up an article made by him."

PEABODY v. NORFOLK.

[290.]

Jan., 1868.

[*Mass. Sup. Ct.*— } —98 *Mass.* (2 *Browne*) 452.]
Gray, J.

The plaintiff having invented a secret process of manufacture of cloth, and the defendant Norfolk having, on

entering into the plaintiff's service, undertaken not to give information in regard to the process to any one, the defendant Norfolk left the plaintiff's employ, and entered into an arrangement with other persons, by which they were to build another factory for the purpose of manufacturing there according to the plaintiff's secret process, which the defendant Norfolk was to communicate to them.

Injunction granted, to restrain the defendant Norfolk from carrying out such arrangement and making such communication, and also to restrain the defendant Cook, who was one of the persons with whom the arrangement had been made, and who was fully aware of the circumstances, from acting in execution of such arrangement.

[291.]

CURTIS v. BRYAN.

Jan., 1868.

[*N. Y. C. P.*—2 *Daly* §12; 36 *How. Pr.* 33; *R. Cox* 434.]

The plaintiffs being the makers of a medicine for children, which they sold under the name of "Mrs. Winslow's Soothing Syrup," and in bottles stamped and labelled in English, French, German, and Spanish, the defendant began to sell another medicine under the same name, in similar bottles, similarly labelled.

Injunction granted to restrain the defendant from infringing the plaintiffs' rights, and

Held, (1) that the plaintiffs were not disentitled by merely collateral misrepresentations, if established; (2) that a defendant who had imitated the plaintiffs' article could not be heard to say that it was injurious.

Per Van Vorst, J.—"I cannot understand how the right of a plaintiff to be protected in a trade mark adopted by him is to be affected by advertisements of his article in the newspapers. The trade mark is one thing, the notices or commendations of his medi-

cines, when the inventor offers them for sale, are quite another. If the trade mark contained a false statement, and the advertisement of the plaintiff tended to establish it, they might be used for that purpose, and, except as it bore on that question, it would not answer to determine the right of a plaintiff to protection in his trade mark by the standard of credit allowed to an advertisement of the qualities of the article."

KELLY v. HUTTON.

292.

Feb. 8th; July 30th, 1868.

[*Stuart, V.C.*—37 *L. J., Ch.* 297; 17 *L. T., N. S.* 591.]

[*Wood and Selwyn, L.JJ.*—*L. R. 3 Ch.* 703; 37 *L.J., Ch.* 917; 19 *L. T., N. S.* 228; 16 *W. R.* 1182.]

Suit for the establishment of the plaintiff's claim to one moiety of the *Sporting Life* newspaper.

Held, (on appeal) that the registration at Stationers' Hall, under the Copyright Acts, of an assignment of a share in the newspaper, was of no effect, the title of a newspaper not being a subject of copyright.

Per Wood, L. J.—"It appears to us that there is nothing analogous to copyright in the name of a newspaper, but that the proprietor has a right to prevent any other person from adopting the same name for any other similar publication; and that this right is a chattel interest capable of assignment was held in *Longman v. Tripp* and *Ex parte Foss*.

BARNARD v. PILLOW.

293.

March 19th, 1868.

[*Lord Romilly, M.R.*—*W. N.* 1868, p. 94.]

The plaintiff being a writer and composer of songs and music, under the name of "Claribel," the defendants, music publishers, published and sold certain songs, of which the

plaintiff had written the words, but not composed the music, with the words, "Song, written by Claribel," on the title-page.

Motion by the plaintiff, for an injunction to restrain the defendants from publishing the songs in that manner, as being calculated to mislead as to the authorship of the music, refused, on the ground that the words "written by" did not mean the same as "written and composed by," and that ordinary purchasers using ordinary caution would not be deceived.

294.

BOULNOIS v. PEAKE.

March 19th, 1868.

[*Giffard, V.C.*—*W. N. 1868, p. 95.*]

The plaintiffs being carriage-dealers, who had for many years sold carriages at the "Carriage Bazaar" in Baker Street, the defendant set up in business as a carriage-dealer at a house also in Baker Street, which at first he styled the "Carriage Repository," but afterwards began to style the "New Carriage Bazaar," and to describe as "opposite Madame Tussaud's," which was not strictly correct.

On motion by the plaintiffs, injunction granted to restrain the defendant from applying those designations to his shop on the ground that the defendant had acted with the intention of gaining an unfair advantage over the plaintiffs.

[295.]

STEPHENS v. DE CONTO.

March, 1868.

[*N. Y. Super. Ct.*— } ———4 *Abb. Pr., N. S. 47*; 30 *N. Y. Super. Ct.*
Monell, J. } (7 *Robertson*) 343; *R. Cox* 442.]

The plaintiff being the proprietor of a newspaper called

La Cronica, the defendant began to publish another paper under the name of *El Cronista*.

Injunction, which had been granted to restrain the defendant from so doing, dissolved, on the ground that the names were sufficiently dissimilar to prevent deception.

FALKINBURG v. LUCY.

[296.]

April, 1868.

[*Cal. Sup. Ct.*—35 *Cal.* 52; *R. Cox* 448.]

The plaintiffs being manufacturers of washing powder, which they sold in packets labelled with a complicated design, the defendants began to sell other washing powder in packets somewhat similarly labelled.

On appeal, injunction, which had been granted to restrain the defendants from infringing the plaintiffs' rights, dissolved, on the ground that the design which constituted the plaintiffs' trade mark had not been copied, and that the particulars in which the defendants' label resembled the plaintiffs' were in the nature of directions for use, words in common use, &c., and not the subjects of a right of trade mark.

STEVENS v. PAINE.

297.

June 11th, 1868.

[*Giffard, V.C.*—18 *L. T., N. S.* 600.]

The defendants, having been in the employ of the plaintiffs' firm of "Clayton & Co.," left them, and began to issue circulars calculated to mislead the public into the belief

that the firm of Clayton & Co. had ceased to carry on business, and that they had been succeeded by the defendants.

On motion by the plaintiffs, injunction granted to restrain the defendants from so doing.

298.

SCHWEITZER v. ATKINS.

July 16th, 1868.

[*Malins, V.C.*—37 *L. J., Ch.* 847; 19 *L. T., N. S.* 6; 16 *W. R.* 1080.]

The plaintiff being the manufacturer of a preparation of cocoa, which he sold in packets labelled with the words "Schweitzer's Cacoatina, or Anti-Dyspeptic Cocoa, Registered," the defendant Atkins, who had been in the plaintiff's employ, left him, and went into partnership with the defendant Otto Schweitzer, and began to sell another preparation under the name of "Otto Schweitzer, Atkins & Co.'s Cacaotine, Registered," in packets labelled in imitation of the plaintiff's.

On motion by the plaintiff, injunction granted to restrain the defendants from infringing the plaintiff's rights.

299.

RIVERO v. NORRIS.

July 30th, 1868.

[*Giffard, V.C.*—*Seton, 4th ed.* 236.]

The defendant had at the Docks boxes of cigars branded and labelled in imitation of the plaintiff's trade mark and label.

On motion by the plaintiff, injunction granted to restrain the defendant from passing such boxes of cigars from the Docks into the market.

MESSEROLE v. TYNBERG.

[300.]

Sept. 1868.

[N. Y. C. P.— } ———4 *Abb. Pr.*, N. S. 410; 36 *How. Pr.* 14;
Brady, J. } *R. Cox* 479.]

The plaintiffs being manufacturers of paper collars, which they sold with the name "Bismarck" on them, the defendant began to sell the same article bearing the same name.

Motion by the defendant to dissolve an injunction, which had been granted to restrain him from so doing, refused.

"Whenever a trade mark is employed to designate a particular manufacture, whether the term used is a popular one, formed of words or symbols common to the world, or one expressly created for the purpose to which it is applied, and the manufacture acquires reputation and becomes valuable as an article of merchandise, an imitator thereof, for a kindred or similar manufacture, is presumed to intend wrongfully, and the burden rests upon him to show that there is either no property in the term or symbol, arising from priority of use for the article to which it has been applied, or that no deceit or injury can result from the imitation."

ROWLEY v. HOUGHTON.

[301.]

Sept., 1868.

[*Phila. C. P.*— } ———2 *Brews.* 303; 7 *Phila.* 39; *R. Cox* 486.]
Ludlow, J. }

The plaintiff being a manufacturer of glass jars, which he stamped with the words "The Hero," and who afterwards began to stamp his jars with the words "The Heroine," the defendant began to stamp other jars with the words "The Heroine," before the plaintiff adopted those words as an alternative for "The Hero."

Injunction granted to restrain the defendant from using

the name "The Heroine," although he had used that name before the plaintiff had adopted it as an alternative for his mark "The Hero."

"No right can be absolute in a name as a name merely. It is only when that name is printed or stamped upon a particular label or jar, and thus becomes identified with a particular style and quality of goods, that it becomes a trade mark."

[302.] **BOARDMAN v. THE MERIDEN BRITANNIA COMPANY.**

Sept., 1868.

[Conn. Sup. Ct.—35 Conn. 402; R. Cox 490.]

The plaintiffs being makers of teaspoons, which they sold in packets bearing labels, of which the principal features were their names and a number, coupled with some other particulars, the defendant company began to sell other teaspoons in packets with labels similar in general appearance to the plaintiffs', and with the same numbers, but with the name of the company.

Injunction granted to restrain the defendants from infringing the plaintiffs' rights.

Per Carpenter, J.—"The object or purpose of the law, in protecting trade marks as property, is twofold—first, to secure to him who has been instrumental in bringing into market a superior article of merchandise the fruit of his industry and skill; second, to protect the community from imposition, and furnish some guarantee that an article purchased as the manufacture of one who has appropriated to his own use a certain name, symbol, or device as a trade mark, is genuine. Consequently, the violation of property in trade marks works a twofold injury: the appropriator suffers, in failing to receive that remuneration for his labours to which he is justly entitled, and the public in being deceived and induced to purchase articles manufactured by one man, under the belief that they are of the production of another."

"It may be difficult to give to bare numbers the effect of indicating origin or ownership, and it may be still more difficult to show that they were originally designed for that purpose; but if it be

once shown that that was the original design, and that they have had that effect, it may not be easy to assign a reason why they should not receive the same protection, as trade marks, as any other symbol or device. But in this case the numbers were associated with the name of the plaintiffs, and the form, colour, and general arrangement of the labels; and, by virtue of that connexion, form an important part of the trade mark itself."

NEWLING v. DOBELL.

303.

Nov. 19th, 1868.

[*Malins, V.C.*—38 *L. J. Ch.* 111; 19 *L. T., N. S.* 408.]

The defendant, after having sold to the plaintiff the goodwill of his tailor's business, and covenanted "not to carry on or be concerned or interested in" the business of a tailor within five miles of his former shop, entered as a journeyman into the service of his nephew, who carried on the same trade, and under the same name, within the five miles.

On motion by the plaintiff, injunction granted to restrain the defendant from so committing a breach of his covenant.

CAVE v. MYERS.

304.

Dec. 3rd, 1868.

[*Giffard, V.C.*—*Seton, 4th ed.* 238.]

The plaintiffs carrying on business at 31A, Wigmore Street and 1, Edwards Street, Portman Square, as manufacturers and sellers of trunks and ladies' dress baskets (for which they had gained a first prize at the Paris Exhibition of 1867) under the name of "H. J. Cave & Sons," and having been, since 1863, appointed to supply

their goods to the Princess of Wales, the defendant, who occupied a shop at the corner of Wigmore Street and Marylebone Lane, close to the plaintiffs' shop, adopted the name of "Cavendish House" for his establishment, and had it painted up by his express order over the frontage, in place of his name "Myers," in such a manner that "Cave" alone appeared on the Wigmore Street side, the remaining letters being over the angle and in Marylebone Lane; and he also exhibited a board to the following effect:—"Paris Exposition, 1867. By Her Majesty's Royal Letters Patent. The only prize awarded for the Royal Alexandra expanding and collapsing dress baskets. Designed for Her Royal Highness the Princess of Wales, 1865. The Dublin Exhibition;" the fact being that, while the defendant had gained the only prize at Dublin, the plaintiffs had gained the only prize at Paris, though the defendant had competed. The defendant also exhibited a letter from a member of the household of the Princess of Wales, acknowledging the receipt of an application by the defendant for the appointment of trunk-maker to the Princess, but containing no promise of such an appointment, in such a manner as to cause it to be taken as containing an actual appointment.

On motion by the plaintiffs for an injunction to restrain the defendant from representing his business to be the plaintiffs', and from using any name, inscription, or device calculated to mislead the public,

Held, (1) That the plaintiffs were not disentitled by reason of having described themselves as patentees, they having secured the exclusive manufacture of their baskets by registration as a design, though not by letters patent; (2) that the plaintiffs were not disentitled by reason of a moderate delay, but that they were justified in a certain degree of delay in order to obtain evidence of actual deception, which they had succeeded in doing in several cases;

(3) that the defendant had acted in a manner intended and calculated to deceive, and which had deceived, and that the injunction must be granted.

COLTON v. THOMAS.

[305.]

Dec., 1868.

[*Phila. C. P.—*
Allison, P. J. } ———7 *Phila.* 257 ; 2 *Brews.* 308 ; *R. Cox* 507.

The plaintiff practising as a dentist under the name of "The Colton Dental Association," the defendant, who had been in the plaintiff's employ, left him, and set up in business as a dentist, and began to style himself on his door and on his cards "Dr. F. R. Thomas, late operator at the Colton Dental Rooms," the words "late operator at the" being in very small letters.

Injunction granted to restrain the defendant from using such signs and cards, and from representing his place of business to be the plaintiff's.

"An imitation with partial difference, such as the public would not observe, does as much harm as an entire counterpart. If such variations impose on a portion or class of customers only, it is evident that the damage is of the same character, though varied in amount or degree."

TOWN v. STETSON.

[306.]

Dec., 1868.

[*N. Y. C. P.——5 Abb. Pr. N. S.* 218 ; 3 *Daly* 53 ; *R. Cox* 514.]

The plaintiff being a dealer in "Desiccated Codfish," the defendant began to sell fish under the same name.

On motion by the defendant, injunction which had been granted on motion by the plaintiff to restrain the defendant

from using that name for his fish, dissolved, the name being purely descriptive of the article.

Per Barrett, J. "No manufacturer can acquire a special property in an ordinary term or expression, the use of which as an entirety is essential to the correct and truthful designation of a particular article or compound."

[307.]

FERGUSON v. THE DAVOL MILLS.

Dec., 1868.

Phila. C. P.—
Allison, P. J. } ———— 2 *Brews.* 314 ; 7 *Phila.* 253 ; *R. Cox* 516.

The plaintiffs being manufacturers of cotton goods, which they sold ticketed with a label containing the letter K in a double circle, with the words "No." and "Yds.," the defendants sold other cotton goods with a similar label.

Injunction to restrain the defendants from using the label, refused, on the ground that the label was not indicative of the manufacturer.

[308.]

PALMER v. HARRIS.

Jan., 1869.

Penn. Sup. Ct.—60 *Penn.* 156 ; *R. Cox* 523 ; 8 *Am. L. Reg. N. S.* 137.]

The plaintiff being a maker of cigars, which he sold in boxes bearing labels on which the words "Golden Crown" and other matters were printed, the defendant began to sell other cigars in boxes very similarly labelled.

Injunction to restrain the defendant from infringing the plaintiff's rights, refused, on the ground that the plaintiff's labels contained false statements, as to his cigars being made in Havannah, &c., and that, notwithstanding that the statements were in the Spanish language, and not in English.

EMERSON v. BADGER.

[309.]

Jan., 1869.[*Mass. Sup. Ct.*—101 *Mass. (5 Browne)* 82.]

Charles Emerson, the inventor of a razor strop which he called "Emerson's Elastic Razor Strop," and sold in cases labelled (among other things) with the words "Charles Emerson, Emerson Place, Charlestown," taught the trade to five of his nephews, and allowed such of them as left him in his lifetime, and set up on their own account, to use his labels; B. Badger being the earliest of them. At Charles Emerson's death intestate, the plaintiff, being one of the five nephews, and bearing the same name, bought his premises, but the business was not conveyed to any one, and the customers were distributed among the four nephews (exclusive of B. Badger), and the stock in trade among the five. B. Badger continued to carry on his own trade till his death, and the defendant, his son, after him; and the latter used labels describing his razor strops as "Genuine Emerson's Elastic Razor Strop," and stating him to be the "son and successor of B. Badger, senior successor to the original Charles Emerson, Emerson Place, Charlestown," and stating the facts and dates correctly.

Suit by Charles Emerson, junior, for an injunction to restrain the defendant from using the name, address, &c.

Injunction refused, on the ground that no fraud was shown, and that the defendant had acted within his rights.

BASS v. DAWBER.

310.

Jan. 21st, 1869.[*Lord Romilly, M.R.*—19 *L. T., N. S.* 626.]

The plaintiffs being brewers, the prominent features of whose trade mark consisted of a red pyramid, the words

“Bass & Co.’s Pale Ale,” and the fac-simile of the signature “Bass & Co.,” the defendants began to use labels bearing a somewhat general resemblance to the plaintiffs’, but containing a red Spanish shield reversed, the words “East India Pale Ale,” and a fac-simile of the signature “Dawber & Co.”

Injunction to restrain the defendants from infringing the plaintiffs’ rights, refused, with costs, the defendants having offered to print their crest in black on the shield.

“If a person has *bond fide* taken a label or trade mark which does resemble the label of another person, and this is not done with the intention to deceive, the Court will not require him to change it completely, because a change in a trade mark is a serious thing. . . . No tradesman likes to alter his trade mark completely; it is like beginning a new firm; and therefore in dealing with cases of this description, if the defendant has acted *bond fide*, the Court will not compel him by injunction to make a totally different thing.”

311.

DIXON v. HOLDEN.

Feb. 24th, 1869.

[*Malins, V.C.*—*L. R.* 7 *Eq.* 488; 20 *L. T., N. S.* 357; 17 *W. R.* 482.]

On motion by the plaintiff, injunction granted to restrain the defendant from publishing an advertisement falsely stating that the plaintiff was a member of a bankrupt firm, as being calculated to affect injuriously his property in his name and reputation.

312.

DuBOULAY v. DuBOULAY.

March 15th, 1869.

[*Privy Council*—*L. R.* 2 *P. C.* 430—441; 6 *Moo. P. C. N. S.* 31; 38 *L. J. P. C.* 35—38; 22 *L. T., N. S.* 228—231; 17 *W. R.* 594.]

On appeal from the Windward Is. Ct. of App., injunction to restrain the defendant from assuming the plaintiff’s

family name, refused, on the ground that there was no right of property in a name, apart from a business.

Per Lord Chelmsford.—"In this country we do not recognise the absolute right of a person to a particular name to the extent of entitling him to prevent the assumption of that name by a stranger. The right to the exclusive use of a name in connexion with a trade or business is familiar to our law; and any person using that name, after a relative right of this description has been acquired by another, is considered to have been guilty of a fraud, or, at least, of an invasion of another's right, and renders himself liable to an action, or he may be restrained from the use of the name by injunction. But the mere assumption of a name which is the patronymic of a family by a stranger who had never before been called by that name, whatever cause of annoyance it may be to the family, is a grievance for which our law affords no redress."

FILLEY v. FASSETT.

313.]

March, 1869.

[*Missouri Sup. Ct.*—44 *Mo.* 173; *R. Cox* 530; 8 *Am. L. Reg. N. S.* 402.]

The plaintiff being a maker of stoves, which he sold stamped with the words "Charter Oak," and a sprig of oak leaves, the defendant sold other stoves stamped with the words, but not with the sprig of leaves.

Injunction granted to restrain the defendant from infringing the plaintiff's rights, notwithstanding that only a portion of the plaintiff's mark appeared on his stoves.

And *Held*, that it was no defence that other persons had used the same words subsequently to the plaintiff, without his knowledge, he having taken proceedings in two instances which had become known to him.

Per Currier, J.—"The imitation of an original trade mark need not be exact or perfect. It may be limited and partial; nor is it requisite that the whole should be pirated. Nor is it necessary to show that any one has, in fact, been deceived, or that the party complained of made the goods; nor is it necessary to prove inten-

On motion by the plaintiffs, injunction granted to restrain the defendants from infringing the plaintiffs' trade mark, notwithstanding that the defendants had only sold the goods marked in the same manner as when received from Scotland, and that no fraudulent intention was proved.

"It is not enough to say that there was no fraudulent intention. That is no reason why an injunction should not be granted. I do not think I have any option if the marks which the defendants have used are those of the plaintiffs; no matter what their intention was, a perpetual injunction would be granted. In the meantime an interlocutory injunction must issue. There is obviously a close imitation."

MARSHALL v. ROSS.

316.

July 30th, 1869.

[*James, V.C.*—*L. R. 8 Eq. 651; 39 L. J., Ch. 225; 21 L. T., N. S. 260; 17 W. R. 1086.*]

The plaintiffs being manufacturers of thread at Shrewsbury, who sold their thread labelled with the words "Shrewsbury—Marshall & Co.—Patent Thread," foreign thread labelled "Schrewsbury—Marchal—Patent Thread," was consigned to the defendant, a shipping agent, from abroad.

On motion by the plaintiffs, injunction granted to restrain the defendant from dealing with or disposing of the thread, notwithstanding that the plaintiffs had no patent for the thread, on the ground that such use of the word "patent" had, by long usage, come only to denote the character of the thread, and did not imply the existence of any patent.

CHANCE v. SHEPPARD.

317.

July 30th, 1869.

[*Malins, V.C.*]

The plaintiff being the proprietor of a newspaper called *The Bedfordshire Express and General Advertiser for the*

Counties of Cambridge, Hertfordshire, Huntingdonshire, and Middlesex, the defendant began to publish another paper under the name of *The Bedfordshire Express and General Advertiser for the County*, the words "The Bedfordshire Express" being printed by the defendant in the same style as by the plaintiff.

On motion by the plaintiff, injunction granted to restrain the defendant from so doing.

[318.] **NEWBY v. THE OREGON CENTRAL RAILWAY COMPANY.**

Aug. 3rd, 1869.

[*U. S. C. C., Dt. of Oregon—* } ——— *Deady*, 609; 9 *Amer. Rep.* 331 n.]
Deady, J.

The plaintiff being a bondholder and creditor of the "Oregon Central Railway Co." the defendant company was started under the same name.

Suit for an injunction to restrain the defendant company from assuming the name, on the ground that such a course of conduct was calculated to depreciate the property of the original company.

On demurrer,

Held, that the original company would be entitled to an injunction, but that the plaintiff was not entitled to sue, until that company had refused itself to bring the suit.

[319.] **LOCKWOOD v. BOSTWICK.**

Sept., 1869.

[*N. Y., C. P.—* } ——— 2 *Daly*, 521; *R. Cox* 555.]
Daly, C.J.

The plaintiffs, being the assignees of the business of a certain clarifying company, manufactured, in succession

to the company, a pomade under the name of "Bovilene." The defendants began to sell another pomade under the name of "Bovina."

Motion by the defendants, to dissolve an injunction which had been granted to restrain them from infringing the plaintiffs' rights, refused.

"There is a right of property in a trade mark which is capable of being transferred to another."

BRADBURY v. BEETON.

320.

Nov. 3rd, 1869.

[*Malins, V.C.*—39 *L. J.*, *Ch.* 57; 21 *L. T.*, *N. S.* 323; 18 *W. R.* 33.]

The plaintiffs being the proprietors of "Punch," published weekly at 3*d.*, the defendant began to publish another weekly comic paper at 1*d.*, under the name of "Punch and Judy."

Motion by the plaintiffs, for an injunction to restrain the defendant from so doing, refused, on the ground that deception was not probable, the names, title pages, and prices being sufficiently dissimilar.

"Every person who uses a trade mark, be it a label on a bottle, or the name or title of a periodical or magazine, by his appropriation and user of the name acquires a property in that name, and has a right to restrain any other person from using the same name in such a manner as would lead, or be calculated to lead, the public to believe that they are purchasing one thing when in truth they are purchasing another."

TONGE v. WARD.

321.

Nov. 8th, 1869.

[*Lord Romilly, M.R.*—21 *L. T.*, *N. S.* 480.]

The plaintiffs being cloth manufacturers who marked their goods with the name "Tonge's," the defendants'

manager, in obedience to an order from a customer, but without the defendants' own knowledge, affixed to goods of the defendants' make tickets with the name "Tung's."

Injunction granted to restrain the defendants from infringing the plaintiffs' rights, and

Held, that the defendants must also pay costs, although they had stated their ignorance, and offered to give an undertaking to pay £50 to a charity, since they had not offered to submit to a decree in the terms prayed.

"The defendants are bound to know what their agents do, and if they do not know, they are responsible exactly as if they did know."

322. **THE WHEELER AND WILSON MANUFACTURING
COMPANY v. SHAKESPEAR.**

Nov. 10th, 1869.

[James, V.C.—39 L. J., Ch. 36.]

The plaintiffs being American sewing-machine manufacturers, the defendant, who had been their agent for the sale of their sewing machines, continued to represent himself to be such agent after the determination of his agency.

Injunction granted to restrain the defendant from so doing; but

Held, that no injunction could be granted to restrain the use of the words "Wheeler & Wilson," since they were indicative of a machine manufactured on a certain principle, whether by the plaintiffs or others.

"It seems to me that the name 'Wheeler & Wilson' machine has come to signify the thing manufactured according to the principle of the patent. That being so, I cannot restrain anybody, after the expiration of the patent, from representing his article as being the article which was so patented. A man cannot prolong his monopoly by saying 'I have got a trade mark in the name of a thing which was the subject of the patent.'"

HUDSON v. OSBORNE.

323.

Nov. 11th, 1869.

[James, V.C.—39 L. J., Ch. 79 ; 21 L. T., N. S. 386.]

The plaintiffs, Hudson Brothers, having purchased the goodwill, stock-in-trade, &c., of the business carried on at "Osborne House," Ludgate Hill, by the defendant George Osborne, from his assignees in bankruptcy, the defendants, Osborne and Parker (the latter having formerly been Osborne's manager), set up in business in the Old Bailey, and styled their new establishment "Osborne House," and put out circulars, advertisements, &c., representing that they were carrying on the business formerly carried on by the defendant Osborne and sold to the plaintiffs.

On motion by the plaintiffs, injunction granted to restrain the defendants from so doing, and

Held, that an objection that the plaintiffs were disentitled by reason of having retained on their door a brass plate bearing the defendant Osborne's name, failed.

"In substance there is no distinction between a sale by a man himself of his business and the goodwill of it, and the sale by the assignees in bankruptcy of all a bankrupt's assets of every kind."

"It has been settled that there is no implied covenant of any kind in the sale by an individual himself of the goodwill of his business; but it seems to be settled that a trader, whose business and the goodwill of whose business have been sold by himself, or by any person deriving title under him, has no right to represent himself as carrying on that identical business; he has no right to use the trade marks which were the marks of that business, or by the use of the name, or of a title of the firm, to represent himself as being the continuer of that identical business which was sold."

324. THE LEATHER CLOTH COMPANY v. LORSONT.

Nov. 12th, 1869.

[James, V.C.—L. R. 9 Eq. 345 ; 39 L. J., Ch. 86 ; 21 L. T., N. S. 661 ; 18 W. R. 572.]

Suit for an injunction to restrain the defendant from manufacturing leather-cloth in breach of contract, and from using trade marks alleged to be similar to the plaintiffs'.

Injunction to restrain the use of the trade marks, refused, on the ground that the plaintiffs were disentitled by reason of their marks wrongfully containing the word "patent," there never having been a patent for the cloth, and there being no evidence, as in *Marshall v. Ross*, to show that it indicated a particular kind of article; and

Held, that no costs could be given as to this part of the suit, though the defendant would have been entitled to them if he had not, as manager of the plaintiffs, been personally concerned in the adoption and wrongful use of the marks by the plaintiffs.

325.

LEE v. HALEY.

Dec. 9th ; Dec. 18th, 1869.

[Malins, V.C.—21 L. T., N. S. 546 ; 18 W. R. 181.]

[Giffard, L.J.—L. R. 5 Ch. 155 ; 39 L. J., Ch. 284 ; 22 L. T., N. S. 251 ; 18 W. R. 242.]

The plaintiffs being coal merchants, carrying on business at 22, Pall Mall, as "The Guinea Coal Co.," the defendant, their former manager, set up for himself at Beaufort Buildings, Strand, as the "Pall Mall Guinea Coal Company," and afterwards removed to 46, Pall Mall.

On motion by the plaintiffs, injunction granted to restrain the defendant from trading under that name in Pall Mall; and

Held, that defences of misrepresentation by the plaintiffs, and of sale of short weight by them, failed on the evidence, and that the plaintiffs were justified in delaying proceedings from August till November, for the purpose of obtaining evidence of actual deception.

Per Malins, V.C. (21 L. T., N. S. 547).—"Put the case of a well-established shop or inn, or of a publication; directly the name is established so as to constitute a reputation, no person can adopt the same name (which, although not a copyright, is in the nature of a trade mark), because by doing so he leads the public to believe that they are dealing with the party who has established the name, when in truth they are dealing with another person."

Per Giffard, L. J. (L. R. 5 Ch. 161).—"I quite agree that the plaintiffs have no property in the name (Guinea Coal Co.), but the principle upon which the cases on this subject proceed is, not that there is property in the word, but that it is a fraud on a person who has established a trade and carries it on under a given name, that some other person should assume the same name, or the same name with a slight alteration, in such a way as to induce persons to deal with him in the belief that they are dealing with the person who has given a reputation to the name."

"It is a fraud on the part of a defendant to set up a business under such a designation as is calculated to lead and does lead other people to suppose that his business is the business of another person."

DEL VALLE v. MAYER.

326.

Jan. 20th, 1870.

[*James, V.C.*—*Seton, 4th ed.* 236.]

Injunction granted, to restrain the defendant from passing into the market from the docks goods marked in imitation of the plaintiff's.

[327.] THE DELAWARE AND HUDSON CANAL COMPANY
v. CLARK.

Jan. 1870 ; Dec. 1871.

[U. S. C. C. ; S. Dt. of N. Y.— } —7 Bl. C.C. 112.]
Blatchford, J.

[U. S. Sup. Ct.—13 Wallace 311 ; 5 Am. L. T. 135 ; 1 U. S. Pat.
Gaz. 279.]

The plaintiffs being dealers in coal, which they raised from the Lackawanna Valley, and called by that name, the defendant sold coal also raised in that valley, but not by the plaintiffs, as "Lackawanna Coal."

Injunction to restrain the defendant from using the word "Lackawanna," refused, although the plaintiffs had long exclusively raised coal there and used the name, on the ground that it correctly described the origin of the defendant's coal.

Per Strong, J., 13 Wall. 323.—"No one can claim protection for the exclusive use of a trade mark or trade name which would practically give him a monopoly in the sale of any goods other than those produced or made by himself. If he could, the public would be injured rather than protected, for competition would be destroyed. Nor can a generic name, or a name merely descriptive of an article of trade, of its qualities, ingredients, or characteristics, be employed as a trade mark, and the exclusive use of it be entitled to legal protection."

P. 327.—"No one can apply the name of a district of country to a well-known article of commerce, and obtain thereby such an exclusive right to the application as to prevent others inhabiting the district, or dealing in similar articles coming from the district, from truthfully using the same designation. It is only when the adoption or imitation of what is claimed to be a trade mark amounts to a false representation, express or implied, designed or incidental, that there is any title to relief against it."

MILNER v. REED.

328.

Feb. 3rd, 1870.

[*Lancaster Chanc.—* }
Wickens, V.C. } ————*Bryce on Trade Marks, 90.*

A surgeon, resident in a place called "Oldfield Lane," having acquired a considerable local reputation as "The Oldfield Lane Doctor," the plaintiff, who had been his assistant and afterwards his partner, continued to practise under the same name for some years after the death of the person to whom it was originally applied. The defendant, who had come into occupation of the premises formerly occupied by the partnership in Oldfield Lane, began to describe himself by the name of "The Oldfield Lane Doctor."

Injunction granted to restrain the defendant from so doing.

WOTHERSPOON v. CURRIE.

329.

Feb. 25th ; July 5th, 1870 ; April 18th, 1872.[*Malins, V.C.—22 L. T., N. S. 260 ; 18 W. R. 562.*][*James, L. J.—42 L. J., Ch. 130 ; 23 L. T., N. S. 443 ; 18 W. R. 942.*][*House of Lords—L. R. 5 H. L. 508 ; 42 L. J., Ch. 130 ; 27 L. T., N. S. 393.*]

The plaintiffs being manufacturers of "Glenfield Starch," carrying on business in succession to the original makers, at first at Glenfield, afterwards at another place, the defendant obtained possession of a small plot of land at Glenfield, and began to manufacture starch and to sell it in packets on which the word "Glenfield" appeared in large and conspicuous letters.

Injunction granted to restrain the defendant from using the word "Glenfield" in connexion with his starch, notwithstanding that his own name had also been placed on his packets.

Per Lord Hatherley, C. (L. R. 5 H. L. 517).—"It has been long ago pointed out in decided cases that it is not upon a *malis mexis* towards the first purchaser that the decision of these cases rests."

Per Lord Chelmsford (p. 519).—"For the purpose of establishing a case of infringement, it is not necessary to show that there has been the use of a mark in all respects corresponding with that which another person has acquired an exclusive right to use, if the resemblance is such as not only to show an intention to deceive, but also such as to be likely to make unwary purchasers suppose that they are purchasing the article sold by the party to whom the right to use the trade mark belongs."

Per Lord Westbury (p. 522).—"I have no doubt that this case comes within the principle on which the jurisdiction is founded—the principle being to prevent a party from fraudulently availing himself of the trade mark of another which has already obtained currency and value in the market, by whatever means he may devise for the purpose, provided the means are devised in order to give him a colourable title to the use of the word, and provided it be shown from the manner in which he has employed those means that his object was from the beginning to invade the property of the appellants."

[330.]

GENIN v. CHADSEY.

[*New York*.—Cited, 2 *Brews.* 330 ; *R. Cox* 567.]

The plaintiff being the proprietor of an oyster saloon, over the door of which he placed a sign, bearing the words "The Captain's Live and Let Live Oyster and Dining Saloon," the defendants carried on the same business next door, and put up a sign with the words "G. W. Chadsey & Co.'s Great Eastern Live and Let Live Dining Saloon."

Injunction granted to restrain the defendants from using the words "Live and Let Live."

THE DIXON CRUCIBLE COMPANY v. GUGGENHEIM. [331.]*March, 1870.*

[*Phila. C. P.*— } ———7 *Phila.* 408 ; 2 *Brews.* 321 ; 3 *Am. L. T.* 288 ;
Paxson, J. } *R. Cox* 559.]

The plaintiffs being makers of stove polish, which they sold labelled with the words "Stove Polish—Dixon's Prepared Carburet of Iron," the defendants began to sell stove polish labelled "J. C. Dixon's Stove Polish—Carburet of Iron."

Injunction granted to restrain the defendants from infringing the plaintiffs' rights.

"The property or right to a trade mark may pass by an assignment, or by operation of law, to any one who takes at the same time the right to manufacture or sell the particular merchandise to which the said trade mark has been attached. As a mere abstract right, having no reference to any particular person or property, it is conceded that it cannot exist, and so cannot pass by an assignment, or descend to a man's legal representative."

McCARTNEY v. GARNHART. [332.]*March, 1870.*

[*Missouri Sup. Ct.*—45 *Mo.* (4 *Post*) 593.]

The plaintiffs being whiskey manufacturers, who sold their whiskey in barrels branded with a device consisting of two anchors and the initials "S. McC.," the defendant began to sell whiskey in barrels branded with two picks, a pair of scales, and the words "J. H. Garnhart's Old Bourbon."

Injunction to restrain the defendant from infringing the plaintiffs' rights, refused, on the ground that the resemblance between the two brands was not sufficiently close to

render deception probable, and that no intention to deceive was shown.

“To justify an injunction it should at least appear that the resemblance between the two brands is sufficiently close to raise the probability of mistake on the part of the public, or design and purpose to mislead and deceive on the part of the defendant.”

[333.]

STONEBRAKER v. STONEBRAKER.

April, 1870.

[*Maryland Ct. of App.*—33 *Md.* 252.]

The plaintiff, Henry Stonebraker, having invented and manufactured a series of medicines, known as “Stonebraker’s Medicines,” the defendants, of whom two had been in partnership with the plaintiff, but had covenanted on dissolution not to imitate his medicines, &c., and another was the plaintiff’s brother, began to use the brother’s name, and to manufacture and sell medicines as “Stonebraker’s Medicines,” in some cases introducing the plaintiff’s certificates and testimonials.

Injunction granted to restrain the defendants from imitating the plaintiff’s medicines, and selling medicines under the same names, imitating the plaintiff’s trade marks, labels, &c.; and

Held, that the defendants must account for profits made on goods actually sold by them with the prohibited marks, &c., but not for goods manufactured but not sold, and not for goods forming part of the stock of the former partnership, which the former partners retained the right to sell, under the terms of dissolution.

RILLET v. CABLIER.

[334.]

June 6th, 1870.

[*N. Y. Sup. Ct.*— } ———61 *Barb. S. C.* 435; 11 *Abb. Pr. N. S.*
Pratt, J. } 186.]

The plaintiff manufacturing from pomegranate juice a syrup which he called "Grenadine" and "Grenade Syrup," the defendant began to sell another syrup as "Grenade Syrup."

Motion by the defendant to dissolve an injunction which had been granted to restrain him from selling a syrup under that name, refused, on the ground that the plaintiff had acquired a right of trade mark in the word "Grenade," as applied to syrup, by being the first to adopt it in America, notwithstanding that the word was an ordinary French one signifying "pomegranate," and that the term "Grenade Syrup" was in common use in France, and notwithstanding that the defendant used the term in combination with other words.

GILLIS v. HALL (1).

[335.]

July, 1870.

[*Phila. C. P.*— } ———7 *Phila.* 422; 2 *Brewster* 342; *R. Cox* 580.]
Paxson, J. }

The defendant, having sold to the plaintiff his interest in the firm of "R. P. Hall & Co.," and in the secret of a certain preparation called "Hall's Vegetable Sicilian Hair Renewer," and in the use of the name, covenanting not to use his name in the manufacture of similar articles, nor to manufacture such articles, nor to impart the secret, subsequently formed a partnership with another person under the same name of "R. P. Hall & Co.," and commenced to manufacture and sell the same article under the same name and with a trade mark imitated from the plaintiff's.

Injunction granted to restrain the defendant from making and selling such preparations, or using his name in connexion therewith, or imitating the plaintiff's labels, although liquidated damages, to be forfeited in case of breach of the contract, were specified in the contract.

[336.]

CHOYNSKI v. COHEN.*July, 1870.*[*Cal. Sup. Ct.*—39 *Cal.* 501 ; 2 *Amer. Rep.* 476 ; *R. Cox* 593.]

The plaintiff's place of business being styled "The Antiquarian Book Store," the defendant began to style his establishment "The Antiquarian Book and Variety Store."

Injunction to restrain him from so doing, refused, on the ground that the name was merely descriptive of the particular class of books sold, and could not be exclusively appropriated by any one.

337.

HOVENDEN v. LLOYD.*July 20th, 1870.*[*Bacon, V.C.*—18 *W. R.* 1132.]

S. Lloyd having invented a toilet preparation which he termed "Lloyd's Euxesis," after his death intestate, in 1854, his son, A. S. Lloyd, who had been in his employ, continued to make the article, but without taking out administration to his father. A. S. Lloyd died in 1868, and the plaintiff was the purchaser of the goodwill of his business, together with what right he had to the trade mark.

Suit for an injunction to restrain the widow of A. S. Lloyd from manufacturing the article and using the name.

Held, that A. S. Lloyd had acquired no title to the trade mark capable of being enforced, or of being transferred to the plaintiff, and, further, that if A. S. Lloyd had had any title, it would have been waived by his having taken no proceedings during a period of fifteen months preceding his death, for which time the defendant had carried on her business, and that the injunction must be refused.

HARGREAVES v. SMITH.

338.

Aug. 8th, 1870.

[*Manchester Assizes—* }
Lush, J. }

The plaintiffs being the executors of a bleacher, dyer, and finisher of gray cloths, whose trade mark consisted of his arms, crest, and initials, with a scroll and a border in blue, white, and gold, the defendant began to use a trade mark, consisting of his own arms, crest, and initials, similarly arranged and coloured, before the testator's death, and continued to do so afterwards.

Action for damages.

Held, at the trial, by Lush, J., that the points for the jury were: (1) whether the plaintiffs' trade mark was a good one; (2) whether the plaintiffs' trade mark had been copied; (3) whether the resemblance, if any, had been produced with the intention of diverting customers from the plaintiffs to the defendant.

Verdict for the plaintiffs.

[339.] **CANDEE, SWAN & CO. v. DEERE & CO.**

Sept., 1870.

[*Ill. Sup. Ct.*—54 *Ill.* 439 ; 5 *Amer. Rep.* 125 ; 4 *Am. L. T.* 266 ;
10 *Am. L. Reg., N. S.* 694.]

The respondents (plaintiffs) being manufacturers of ploughs at Moline, which they stamped with the words "John Deere, Moline, Ill.," the appellants (defendants) made ploughs at the same place and stamped them "Candee, Swan & Co., Moline, Ill."

On appeal, injunction which had been granted to restrain the appellants (defendants) from using the word "Moline," dissolved, on the ground that the word was only indicative of the place of manufacture, to which all inhabitants of the town had an equal right, and

Held, that no exclusive right could be claimed in the letters and figures "A. No. 1," "A. X. No. 1," "No. 1," "X. No. 1," "No. 3," and "B. No. 1," used to designate the different qualities of the ploughs.

Per Breese, J. (5 *Amer. Rep.* 136).—"It is the actual use of the trade mark, affixed to the merchandise of the manufacturer, and this alone, which can impart to it the element of property. The mere declaration of a person, however long and however extensively published, that he claims property in a word as his trade mark, cannot even tend to make it his property."

P. 141.—"The law is well settled that no circular, price list, or advertisement, no matter how frequently repeated, can constitute a trade mark."

[340.] **HOLMES, BOOTH & HAYDENS v. THE HOLMES,
BOOTH & ATWOOD MANUFACTURING CO.**

Sept., 1870.

[*Conn. Sup. Ct.*—37 *Conn.* 278 ; 9 *Amer. Rep.* 324.]

Holmes & Booth, having been two of the principal promoters of the plaintiff corporation, established under

the above name, left it and set up the defendant company under a very similar title.

Injunction granted to restrain the defendant company from using the names of Holmes & Booth.

Per Carpenter, J.—“The ground on which Courts of Equity afford relief in this class of cases is the injury to the party aggrieved, and the imposition upon the public, by causing them to believe that the goods of one man or firm are the production of another. The existence of these consequences does not necessarily depend upon the question whether fraud or an evil intent does or does not exist. The *quo animo*, therefore, would seem to be an immaterial inquiry.”

EX PARTE KING.

[341.]

Sept. 19th, 1870.

[U. S. Patent Office— }
Fisher, Comm. } —U. S. Pat. Comm. Decis. 1870, 109.]

Application for a grant of letters patent for a design for a trade mark, refused, on the ground that, since the U. S. Statute of 1870, the only proper statutory mode of obtaining the exclusive use of a trade mark was by procuring its registration under that Act as a trade mark, and not by patenting it as a design, or otherwise.

IN RE ENGLISH.

[342.]

Nov. 2nd, 1870.

[U. S. Patent Office— }
Fisher, Comm. } —U. S. Pat. Comm. Decis. 1870, 142.]

On an application for the registration of certain trade marks on brooms, of which one consisted of the words and letters “R. W. English’s X Broom. Buffalo, N. Y. Order English’s X Brooms,” and the others were the same, except that the X was changed into XX and XXX,

Held, (1) that the fact that X and XX had been used as descriptive of quality in the liquor trade did not disqualify those symbols from being arbitrarily adopted as trade marks in an entirely different trade, and that the trade marks must be admitted to registration; (2) that a separate application must be made for the registration of each separate variation in the label by the addition of an X, the X, XX, &c., being in each case a mere arbitrary symbol.

343.

NIXEY v. ROFFEY.

Nov. 14th, 1870.

[*Malins, V.C.*—*W. N.* 1870, p. 227].

The plaintiff being a manufacturer of black lead, which he sold under special labels, on which he was described as "Manufacturer and Patentee," though he had taken out no patent for the article in question, the defendant sold other black lead under similar labels.

Suit for an injunction to restrain the defendant from imitating the plaintiff's labels.

An injunction having been granted on motion by the plaintiff, and the defendant having since ceased to use the labels, and sold his business,

Held, on motion for decree, that the plaintiff's use of the words "Manufacturer and Patentee" was equivalent to his describing his article as "patent," and that this being incorrect, the bill must be dismissed without costs.

LAZENBY v. WHITE (1).

344.

Nov. 18th, 1870 ; Jan. 16th, 1871.

[Lord Romilly, M.R.—Cited *L. R.*, 11 *Eq.* 448 ; 40 *L. J.*, *Ch.* 576 ; 24 *L. T.*, *N. S.* 380 ; 19 *W. R.* 595 ; *Seton*, 4th ed. 237.]

[*James and Mellish*, *L.JJ.*—41 *L. J.*, *Ch.* 354.]

The plaintiffs being the successors in business of the inventor of "Harvey's Sauce," that name having become open to the use of all manufacturers of the sauce, the defendant began to sell a sauce under the name of "The Original Lazenby's Harvey's Sauce."

Injunction granted to restrain the defendant from so doing, and

Held, that a defence that the plaintiffs were disentitled by reason of their own delay, failed.

CLOWES v. HOGG.

345.

Dec. 17th, 1870 ; Feb. 17th, 1871.

[*Malins*, *V.C.*—*W. N.* 1870, p. 268 ; *L. J. Notes of Cases*, 1870, p. 267.]

[*James and Mellish*, *L.JJ.*—*W. N.* 1871, p. 40.]

The plaintiffs being the proprietors of a magazine called *London Society*, the defendant, who had formerly owned the magazine, and had, on mortgaging it to another firm, covenanted to do nothing to injure it, began to publish a magazine which he called *English Society*, in a cover calculated to induce the belief that it was a substitute for or continuation of *London Society*.

On motion by the plaintiffs, injunction granted to restrain the defendant from so doing.

On appeal, the defendant having in the meantime

adopted a new style of cover to which the plaintiffs did not object,

Held, that the injunction must be dissolved, the defendant undertaking to use the new cover until the hearing.

346.

LAZENBY v. WHITE (2).

Dec. 22nd, 1870.

[*James, L. J.*—*L. R. 6 Ch. 89 ; 19 W. R. 291.*]

On motion by the defendant, his appeal against the injunction which had been granted to restrain him from selling his sauce under the name of "The Original Lazenby's Harvey's Sauce," advanced to the head of the list of appeals for the next term, on the ground of the irreparable damage which would be occasioned to the defendant by the continuance of the injunction.

[347.]

GRAHAM v. PLATE.

Jan., 1871.

[*Cal. Sup. Ct.*—*40 Cal. 593 ; 6 Amer. Rep. 639 ; 4 Am. L. T. 75.*]

In an action to recover damages for an infringement by the defendant of the trade mark of Henry Derringer, of whose estate the plaintiff was administrator, the whole profits made by the defendant by the sale of the spuriously marked goods were awarded as damages.

Held, on appeal, that the damages were not excessive.

Per Crockett, J.—"Every consideration of reason, justice, and sound policy demands that one who fraudulently uses the trade mark of another should not be allowed to shield himself from liability for the profit he has made by the use of the trade mark on the plea that it is impossible to determine how much of the profit is due to the trade mark, and how much to the intrinsic value of the commodity. The fact that it is impossible to apportion the profit renders it just that he should lose the whole."

ELLIS v. ZEILEN & CO.

[348]

Jan., 1871.

[Georgia Sup. Ct.—42 Ga. 91.]

The plaintiffs (defendants in error), having purchased a medicine called "Dr. Simmons' Liver Regulator, or Medicine," the defendants (plaintiffs in error), began to sell a medicine of their own as "Dr. A. Q. Simmons' Genuine Liver Medicine."

Suit for an injunction to restrain the defendants from using similar packages and wrappers to the plaintiffs'.

Demurrer by the defendants, overruled, on the ground that, although the trade marks did not appear so similar as to be likely to deceive, it must be assumed from the pleadings, for the purpose of the demurrer, that the defendants had acted with a view "to take advantage of the reputation" of the plaintiffs; and

Held, that another ground of demurrer, that the plaintiffs' medicine was a quack remedy, and a deceit upon the public, failed, on the principle that in such cases the Court would only adjudicate between the conflicting claims of the parties, and not with a view to the guardianship of the public with respect to the qualities of nostrums, except where injury to the public health or morals was to be apprehended.

R. v. ARDLEY.

349.

Jan. 31st, 1871.

[C. C. R.—L. R. 1 C. C. R. 301; 12 Cox 23; 40 L. J. M. C. 85; 24 L. T., N. S. 193; 19 W. R. 478.]

On an indictment for obtaining money by false pretences, the prisoner having induced the prosecutor to purchase a gold chain spuriously stamped "15 ct." on

every link, in imitation of the hall mark, on a representation that it was made of 15 carat gold, and that the mark was genuine,

Held, that the conviction was right and must be affirmed, on the ground that the prisoner's statement was not mere exaggerated commendation of the article of which he wished to dispose, but a deliberate misstatement of what was not a matter of opinion, but a matter of fact.

350.

SHIPWRIGHT v. CLEMENTS.

Feb. 20th, 1871.

[*Malins, V.C.—19 W. R. 599.*]

The defendant, having been in partnership with the plaintiff as perfumers, assigned to the plaintiff, on the dissolution of the partnership, all his interest in the partnership premises, and effects, without specifically referring to the goodwill or trade marks, and covenanted not to interfere with the plaintiff, but he nevertheless subsequently represented that the old business had been removed to his new premises, and sold a perfume called "The Zingari Bouquet" under the name and mark which the partnership had used for it.

Injunction granted to restrain the defendant from infringing the plaintiff's rights, but on account of the smallness of the amount, no account given.

"The sale of a business is a sale of the goodwill. It is not necessary that the word 'goodwill' should be mentioned. The defendant sold the business, and with it everything producing profit. . . . In the sale of a business a trade mark passes, whether specially mentioned or not."

COCKS v. CHANDLER.

351.

March 3rd, 1871.

[*Lord Romilly, M.R.*—*L. R.* 11 *Eq.* 446; 40 *L. J., Ch.* 575; 24 *L. T., N. S.* 379; 19 *W. R.* 593.]

The plaintiff being the successor in business of the inventor of "Reading Sauce," the defendant began to sell a sauce under the name of "The Original Reading Sauce."

Injunction granted to restrain the defendant from so doing.

"Where there are a great number of persons who produce the same article, 'original' means that the article so called is that made by the first inventor. That is the meaning of the word 'original' which the Court of Chancery has always recognized."

RODGERS v. PHILP.

[352.]

1871.

[*Columbia Sup. Ct.*— } —1 *U. S. Pat. Gaz.* 29.]
Wylie, J.

The plaintiffs being a firm of Sheffield cutlers, who stamped their cutlery with the name "Rodgers," or "Rodgers & Sons," or "J. Rodgers & Sons," together with a star and Maltese cross, the defendants sold other cutlery marked with "Rogers & Son," and the same symbols, alleging that such cutlery had been manufactured by a German firm, and sold so marked, for twenty-five years.

On motion by the plaintiffs for an injunction to restrain the defendants from so doing,

Held, (1) that the marks on the defendants' goods, though not identical with those on the plaintiffs', constituted an infringement of the plaintiffs' rights; (2) that a licence from the King of Prussia to the German manu-

facturers to use the fraudulent marks, if it existed, could be no defence; (3) that the plaintiffs were not disentitled by reason of not having registered their trade marks in America, under the U. S. Statute of 1870, since registration was not made obligatory; (4) but that the plaintiffs were disentitled to an injunction, at all events as regarded innocent purchasers of goods spuriously marked, by a delay of twenty-five years in arresting the infringement, and that the motion must therefore be refused.

[353.]

GILLIS v. HALL (2).

1871.

[*Phila. C. P.*— } —8 *Phila.* 231; 3 *Brews.* 509; *R. Cox* 596.]
Paxson, J. }

The defendant, having been restrained by injunction from using the names "Hall," "R. P. Hall," &c., in connexion with a preparation called "Hall's Vegetable Sicilian Hair Renewer," sold an article which he styled "R. P. Hall's improved preparation for the hair," and enclosed it in wrappers containing a statement that the preparation was entirely different from "Hall's Vegetable Sicilian Hair Renewer," but was compounded by the same inventor, R. P. Hall.

Attachment issued against the defendant for contempt.

[354.] **THE CONGRESS AND EMPIRE SPRING CO. v. THE
 HIGH ROCK CONGRESS SPRING CO.**

April, 1871.

[*N. Y. Sup. Ct.*—57 *Barb.* 526; *R. Cox* 599.]

[*N. Y. Ct. of App.*—45 *N. Y.* (6 *Hand*) 291; 10 *Abb. Pr.*, *N. S.* 348; 6 *Amer. Rep.* 82; 4 *Am. L. T.* 168; *R. Cox* 624.]

The plaintiffs, being the purchasers of the "Congress Spring" at Saratoga, continued, as their predecessors had

long done, to sell the medicinal water from the spring as "Congress Water," and in bottles and cases so labelled. The defendants began to use the name "Congress" in their corporate name and in connexion with their water from another spring.

On appeal from an order dissolving an injunction which had been granted, on motion by the plaintiffs, to restrain the defendants from so doing,

Held, (1) that the exclusive owner of a natural spring had a right to designate the water of the spring by a trade mark exclusively his own; (2) that the purchase of the spring conveyed to the plaintiffs the right to the name and mark which their predecessors had used, and therefore (3) that a new trial must be granted.

Per Folger, J. (R. Cox 626.)—"It is held that the right of property in a trade mark can be said to exist only, and can be tested only, by its violation. But its violation is when one adopts or imitates, and applies to an article of his manufacture the name or mark previously used by another as a designation for his production. The wrong done is the sale by the first of his goods as and for the goods of the last. The violation and the wrong are the same, whether the commodity is one which the hand of man has made, or which nature has put into the hand of man—certainly so, if into the hand of but one man has it been put. It is a matter of property, and the profitable use of property."

P. 630.—"A property in trade mark may be obtained by transfer from him who has made the primary acquisition, though it is essential that the transferee should be possessed of the right either to manufacture or sell the merchandise to which the trade mark has been attached. And it may also pass by operation of law to any one who at the same time takes that right."

FABER v. D'UTASSEY.

[355.]

April, 1871.

[N. Y. Super. Ct.— }
Brady, J. } —11 *Abb. Pr.*, N. S. 399.]

Action for damages for an infringement by the defendants of the plaintiff's trade mark.

On motion for judgment against one of the defendants, on his answer, by which he denied any knowledge of the plaintiff's ownership, or any intention to do wrong, and alleged that only a single sale of the article wrongly marked had occurred, and that to the plaintiff or his agent,

Held, that such answer was not frivolous, since, even if the statements made afforded no defence, they were at all events important on the question of damages, and that the motion must be refused.

356.

CARVER v. PINTO LEITE.

April 15th; Nov. 21st, 1871.

[*Lancaster Chanc.*— } ——— *L. R. 7 Ch. 92; 41 L. J., Ch. 93; 25 L. T.,*
 Wickens, V.C. } *N. S. 724; 20 W. R. 135.]*

[*James and Mellish, L.JJ.*— *L. R. 7 Ch. 90; 41 L. J., Ch. 92; 25*
 L. T., N. S. 722; 20 W. R. 134.]

The defendants, being commission agents, exported to Portugal cotton goods having the plaintiffs' trade marks impressed upon them.

Suit for an injunction to restrain the defendants from so doing.

An order having been made for the production of documents by the defendants, the defendants sealed up parts of various books and documents, and objected to disclose them.

Held, on appeal, that they were not bound to disclose the names of their customers, or the prices at which the goods were bought or sold by them, or the names or addresses of any persons to or from whom any letters produced were written or received (with a specified exception), but that they must disclose the places to which they exported the marked goods, the names and addresses of

the writers or recipients of the excepted letters, the marks in connexion with which the alleged spurious marks had been used, and the directions given to the defendants with respect to those marks.

Per James, L. J.—"In such cases it is important to consider whether the discovery is material for the purpose of enabling the plaintiff to establish his case at the hearing, or material only for the subsequent purposes of the suit, in case the plaintiff should succeed. I am not at all disposed to grant discovery when I am satisfied that it is likely to be injurious to the defendant, and am not satisfied that there is any real prospect of its being of material service to the plaintiff at the hearing."

IN RE HAUTHAWAY (1).

[357.]

April 24th, 1871.

[*U. S. Patent Office.—* } — *U. S. Pat. Comm. Decis., 1871, 97.*
Leggett, Comm. }

Application to register the words "Beeswax oil" as a trade mark, refused, on the ground that the words were purely descriptive of the substance and qualities of the article.

IN RE PORTER BLANCHARD'S SONS.

[358.]

April 24th, 1871.

[*U. S. Patent Office.—* } — *U. S. Pat. Comm. Decis., 1871, 97.*
Leggett, Comm. }

The words "The Blanchard Churn" admitted to registration as a trade mark on churns, on the ground that such a phrase was capable of constituting a good trade mark previously to the U. S. Statute of 1870, and that the phrase was also not obnoxious to the clause in that statute by which "the name of a person, firm, or corporation only, unaccompanied by a mark sufficient to distinguish it from the same name when used by other persons," was refused registration, since other words were coupled with the name.

[359.]

IN RE ROBERTS (1).*April 24th, 1871.*

[*U. S. Patent Office.—* } ——— *U. S. Pat. Comm. Decis., 1871, 113.*
Leggett, Comm. }

The words "A luxury. R. J. Roberts' Razor-steel Scissors. The best in the world. The best is the cheapest. For sale here," admitted to registration as a trade mark.

[360.]

IN RE ROBERTS (2).*April 25th, 1871.*

[*U. S. Patent Office.—* } ——— *U. S. Pat. Comm. Decis., 1871, 100.*
Leggett, Comm. }

The words "An exquisite pleasure to shave with R. J. Roberts' Diamond-edged Razors," admitted to registration as a trade mark.

[361.]

IN RE ROBERTS (3).*April 25th, 1871.*

[*U. S. Patent Office.—* } ——— *U. S. Pat. Comm. Decis., 1871, 101.*
Leggett, Comm. }

The words "R. J. Roberts' Diamond-edge Razor. Every razor warranted," admitted to registration as a trade mark.

[362.]

IN RE ROBERTS (4).*May 17th, 1871.*

[*U. S. Patent Office.—* } ——— *U. S. Pat. Comm. Decis., 1871, 100.*
Leggett, Comm. }

Application for the registration of the words "Razor-steel" as a trade mark in respect of cutlery, refused, on the ground that the words were purely descriptive of the substance and qualities of the article.

GRAY *v.* KOCH.

[363.]

1871.

[*Michigan C. C.—* } ———2 *Mich. N. P.* 119.]
Sutherland, J. }

The plaintiff having begun to style his establishment for the sale of ready-made clothes "The Mammoth Wardrobe," and having placed those words over his door, and advertised them, but always in connexion with his name and address, the defendant, who kept an establishment next door to the plaintiff's, placed the same words over his shop.

Motion by the plaintiff for an injunction to restrain the defendant from allowing those words to remain, refused, on the ground that the words in question were descriptive of an establishment of the kind, and were truthfully used by the defendant; and that, further, the different names used in connexion with those words would probably suffice to prevent deception.

"The plaintiff has no right to appropriate a sign or symbol which, from the nature of the fact it is meant to signify, others may employ with equal truth for the same purpose. Names having a definite and established meaning in the language, and which do not indicate ownership or origin, or something equivalent, cannot be appropriated by one so as to exclude a similar use by others. No property can be acquired in words or marks which do not denote the goods, or property, or peculiar place of business of a person."

 THE ALLEGHANY FERTILIZER CO. *v.* WOODSIDE. [334.]

[*U. S. C. C., Dt. of Md.—* } ———1 *Hughes* 115.]
Giles, J. }

The plaintiff company manufacturing, at Boston, an agricultural compost, under the name of "Eureka Ammo-

niated Bone Superphosphate of Lime," the defendants, a Baltimore firm, who had been the plaintiffs' agents, began to sell another article as "Baltimore 'Eureka' Ammoniated Bone Superphosphate of Lime."

Injunction granted to restrain the defendants from infringing the plaintiffs' rights, on the ground that the word "Eureka" was a valid trade mark, though the remaining descriptive words could not be exclusively appropriated.

"The natural or proper designation of an article can never become a trade mark, because anybody making the article has a right to call it by its proper name. But a purely arbitrary or fanciful appellation, for the first time used to distinguish an article to which it has no natural or necessary relation, does, by virtue of that very appropriation and subsequent use, become a trade mark."

[365.]

GARDNER v. BAILEY.

1871.

[*U. S. C. C., Dt. of Penn.—Codd. Dig. 131.*]

The plaintiffs being owners of certain mills called "The Stark Mills," and manufacturers there of seamless bags, on which they placed the word "Stark" over a semi-circular arch, with the letter "A" beneath, the defendants made and sold similar goods, similarly marked, except that they substituted the word "Star" for "Stark."

Injunction granted to restrain the defendants from infringing the plaintiffs' rights.

[366.]

HOSTETTER v. VOWINKLE.

1871.

[*U. S. C. C., Dt. of Neb.—* } —1 *Dill. 329.*
Dillon and Dundy, JJ. }

The plaintiffs being manufacturers of "Hostetter's Celebrated Stomach Bitters," which they sold in bottles

labelled with that name, directions for use, a device of St. George and the Dragon, a likeness of the inventor, and a fac-simile signature "Hostetter & Smith," the defendants began to sell other bitters under the plaintiffs' label without alteration, but afterwards changed "Hostetter" to "Holsteter," and "Hostetter & Smith" to "Holsteter & Smyte."

Injunction granted to restrain the defendants from infringing the plaintiffs' rights, and damages assessed at the amount of profits which the plaintiffs would have made, if they had sold the same quantity of their cordial as the defendants had sold of theirs under the spurious label.

SOHL v. GEISENDORF.

[367.]

1871.

[*Indianapolis Super. Ct.*— } —1 *Wilson (Ind.)* 60.]
Rand, J.

The plaintiffs being flour-dealers, the defendants sold flour under similar trade marks.

On motion by the plaintiffs, injunction granted to restrain the defendants from infringing the plaintiffs' rights, and

Held, (1) that the fact that the plaintiffs had purchased part of their trade mark and invented the rest did not interfere with their exclusive right; (2) that an abandonment of their mark by the plaintiffs was not proved by the fact that some isolated features of their mark had been used by others; (3) that the fact that the mark to some extent indicated quality did not disentitle the plaintiffs; (4) that the defendants could derive no title under a sale from one of the persons who had previously sold to the plaintiffs.

"If the two marks were seen at different times or places, a majority of purchasers would not distinguish the one from the other, unless their attention was specially called to the difference. If such be the case, the law is well settled that the defendants' trade mark is an infringement of the plaintiffs', even if the marks, side by side, would not mislead."

[368.]

REEVES v. DENICKE.*June, 1871.*

[*N. Y. Super. Ct.*— } ———12 *Abb. Pr.*, *N. S.* 92.]
Monell, J. }

The plaintiffs trading as “E. H. Reeves & Co.,” the principal partner being “E. H. Reeves,” the defendants, who had formerly been in partnership with E. H. Reeves, as “E. H. Reeves & Co.,” and to whom E. H. Reeves had assigned his interest in the property of that partnership, traded under the name of “Robert C. Reeves, successor to E. H. Reeves & Co.”

Injunction granted and continued to restrain the defendants from continuing to use the name “E. H. Reeves & Co.,” even in that combination.

369.

UPMANN v. ELKAN.*June 5th; Dec. 5th, 1871.*

[*Lord Romilly, M.R.*—*L. R.* 12 *Eq.* 140; 40 *L. J.*, *Ch.* 475; 24
L. T., *N. S.* 896; 19 *W. R.* 867.]

[*Lord Hatherley, C.*—*L. R.* 7 *Ch.* 130; 41 *L. J.*, *Ch.* 246; 25 *L. T.*,
N. S. 813; 20 *W. R.* 131.]

The plaintiffs, being cigar manufacturers in Cuba, discovered that boxes of spurious cigars, bearing their marks, had arrived in the St. Katharine Docks, and were entered in the names of the defendants, Messrs. Elkan, forwarding agents.

Suit for an injunction to restrain those defendants from dealing with the boxes of cigars in question, and from infringing their trade marks.

Held, (1) that the defendants, Messrs. Elkan, were not protected from the injunction by the fact that they did not

deal in the goods, but only acted as forwarding agents; (2) that, on their undertaking to give immediate notice of fresh consignments of marked cigars, they should not have to pay the plaintiffs' costs, since they had offered to give what information they could, had not participated in the fraud, and had submitted to act as the Court should direct; (3) that they were not entitled to receive their costs from the plaintiffs, not having submitted unconditionally; (4) that innocent consignees of the goods spuriously marked were entitled to the costs occasioned by their being made parties to the suit; (5) that those consignees must pay their own costs of the appeal, having appeared, though informed that no alteration in the order as affecting them would be asked; (6) that the Dock Company who held the goods in the name of Messrs. Elkan were entitled to their costs; (7) that the consignors should be at liberty to intervene, and that, if they did not do so, the spurious marks should be erased, and the plaintiffs should have a lien on the cigars for their costs and the costs of the Dock Company.

Per M.R.—"It is his duty (*i.e.*, the duty of the person in whose name the Dock Company hold the goods spuriously marked) at once to give all the information required, and to undertake that the goods shall not be removed or dealt with until the spurious brand has been removed, and to offer to give all facilities to the person injured for that purpose. If, after that, the person injured files a bill, though he will be entitled to all that he asks in the shape of relief, as he might have got it all without suit, he will not get from such defendants the costs of the suit, and he may have to pay them. I do not mean by this to lay down that the plaintiff—by which I mean the person whose trade mark is fraudulently imitated—may not file a bill without making any inquiry at all."

370. **THE ANGLO-SWISS CONDENSED MILK CO. v. THE SWISS CONDENSED MILK CO.**

July 6th, 1871.

[*Malins, V.C.*—*IV. N. 1871, p. 163*; *L. J., Notes of Cases, 1871, p. 154.*

The plaintiffs selling their condensed milk in tins bearing labels with the figure of a milk-maid, with a medal on either side, the defendants began to sell milk in tins labelled with the figure of a milkman, with the arms of Switzerland in a medallion on either side, and having other particulars imitated from the plaintiffs' labels.

On motion by the plaintiffs, injunction granted to restrain the defendants from infringing the plaintiffs' rights; but the plaintiffs not having taken any proceedings on hearing of the arrival of the first small consignment, but having waited for the arrival of a larger quantity before doing so, the injunction not to extend to the milk already arrived and warehoused in London.

“It is not necessary, in order to enable the Court to interfere, that there shall be absolute identity; but there certainly is so close a resemblance between the two as to deceive an ordinary purchaser.”

[371.]

IN RE THE DUTCHER TEMPLE CO.

Sept. 21st, 1871.

[*U. S. Patent Office—* } — *U. S. Pat. Comm. Decis., 1871, 248.*
Leggett, Comm. }

The letter “D,” enclosed within a lozenge, admitted to registration as a trade mark on loom temples, on the ground that it was sufficiently distinctive of the origin of the goods, and was not descriptive of kind or quality.

WILDER v. WILDER.

[372.]

[*Kentucky Chancery*—Cited, 2 *Sawyer* 78—89.]

Injunction granted to restrain the defendants from selling a compound under the name of "J. B. Wilder & Co.'s Stomach Bitters," and from imitating the bottles in which the plaintiff's compound was contained, or the labels affixed to them.

MOORMAN v. HOGE.

[373.]

Oct., 1871.

[*U. S. C. C., Dt. of Cal.*— } —2 *Sawyer* 78; 4 *Am. L. T.* 217;
Sawyer, J. } 6 *Am. L. Rev.* 365.]

The plaintiffs being whiskey manufacturers, who sold their article in a barrel of peculiar dimensions, which had acquired the name of "The Cutter Barrel," after the plaintiffs' predecessor in business, and which, together with the brands impressed upon it, had been duly registered as a trade mark in the U. S. Registry, the defendants acted as agents for the sale of whiskey contained in barrels of similar dimensions, but having entirely different brands.

Injunction to restrain the defendants from infringing the plaintiffs' rights, refused, on the ground that (1) a certificate by the commissioner of patents, of registration as a trade mark, did not preclude the Court from considering whether a mark placed on the registry was a good one or not; (2) that a barrel of peculiar dimensions could not become a trade mark, to be protected irrespective of the brands on it, although if the brands were partially imitated, an imitation of the peculiar barrel would be an element in deciding the question of fraudulent intention.

"I find no case where the use of a package of peculiar form and dimensions has been restrained, without having imprinted upon, or connected with it, some other symbol, word, letter, or form, adopted as a trade mark."

[374.]

SELTZER v. POWELL.

Nov., 1871.

[*Phila. C. P.*— } —8 *Phila.* 296.]
Parson, J. }

The plaintiffs having manufactured whiskey, and sold it as "Silver Grove" whiskey, since 1867, though it did not appear that the name was generally known, the defendant began in 1870 to sell whiskey under the name of "Silver Brook" whiskey.

On motion by the defendant, injunction which had been granted to restrain him from using those words, dissolved, on the ground that the prior appropriation by the plaintiffs was not sufficiently clearly made out, and that they must establish their claim at law before they could obtain an injunction.

[375.]

IN RE FRANCIS & MALLON.

Nov. 8th, 1871.

[*U. S. Patent Office*— } —*U. S. Pat. Comm. Decis.*, 1871, 263.]
Leggett, Comm. }

The word "Beaverine" admitted to registration as a trade mark on boots and shoes made partly of beaver cloth and partly of leather, on the ground that, though the word was suggestive of the material of which the article was in part made, it was not a word known to the language and in common use, but a fancy word newly-coined for the purpose of being used on the applicants' goods.

IN RE BLAKESLEE & CO.

[376.]

Nov. 15th, 1871.

[U. S. Patent Office— }
 Leggett, Comm. } ———U. S. Pat. Comm. Decis. 1871, 284.]

Application for registration of the words and letters "Cundurango Ointment, C. O.," as a trade mark in respect of ointment containing cundurango, a South American plant, refused, on the ground that the words were descriptive of the article, and that the letters did not add the requisite distinctiveness.

IN RE HAUTHAWAY (2).

[377.]

Nov. 15th, 1871.

[U. S. Patent Office— }
 Leggett, Comm. } ———U. S. Pat. Comm. Decis. 1871, 284.]

An application to register the words "Beeswax Oil" as a trade mark having been refused on the ground of their being merely descriptive [*In re Hauthaway* (1)],

Motion to re-open the case, on the ground that the practice of the office had been changed since that decision, refused, and

Held, that there was no change in the practice.

IN RE PALMER.

[378.]

Nov. 16th, 1871.

[U. S. Patent Office— }
 Leggett, Comm. } ———U. S. Pat. Comm. Decis. 1871, 289.]

Application for the registration of the word "Invisible" as a trade mark in respect of packets of face powder, refused, on the ground that, though the word might be a trade mark if used in a non-natural sense, yet, when applied to face powder, it was merely indicative of a quality of the article.