

But it is essential that there be a contract to transfer the stock, and it must not be unconscionable, tainted with fraud, or against public policy, else specific performance will be refused. So also will it be refused if the contract to transfer is conditional, and the condition or contract upon which it depends has not been performed. And the opinion is ventured that while contracts to convey shares in private companies are commonly specifically enforced in equity, yet, if a case should arise wherein the stock, although private, was readily purchasable at well-known prices, by reason of which damages at law would constitute an adequate remedy, then equity should refuse specific enforcement of a contract to transfer such shares.

ADELBERT HAMILTON.

Chicago.

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RECENT ENGLISH DECISIONS.

*House of Lords.*

THE SINGER MANUFACTURING CO. v. LOOG.

A trader has a right to make and sell machines similar in form and construction to those made and sold by a rival trader, and in describing and advertising his own machines, to refer to his rival's machines and his rival's name, provided he does this in such a way as to obviate any reasonable possibility of misunderstanding or deception.

APPEAL from a decision of the Court of Appeal, reported Law Rep., 18 Ch. Div. 395. The facts are sufficiently stated in the opinion.

*Aston*, Q. C., and *Benjamin*, Q. C. (*Rigby*, Q. C., and *B. Coleridge*, with them), for appellants.

*Webster*, Q. C., *Everitt*, Q. C., and *Abrahams*, for respondents.

Lord SELBORNE, L. C.—The plaintiffs (appellants here) are the same American company who were appellants in the case of “*The Singer Manufacturing Co. v. Wilson*,” decided by this House in 1877. They are the successors in business of an American manufacturer of, and dealer in, sewing machines, named Singer. Mr. Singer was not originally the inventor or patentee of any machines,

but he held a license to manufacture and sell them from a patentee named Howe. The plaintiffs succeeded to his business on their first incorporation, in 1863, and they have since carried on a large and successful trade, both in this country and in America. They became proprietors of, or interested in, several patents (some American, some English) for improvements, or supposed improvements, upon the machines manufactured and sold by them. All these patents, however, had expired some time before the acts were done which are complained of in this suit. The plaintiffs say that the machines which they now make and sell, and have for a considerable time past made and sold, are not in any important respect (except that most of them have what is called the "needle and shuttle" action) identical with any sewing machines which were ever patented; and they have from time to time varied the form and construction of their machines so that those which they make now are different from those which they and Mr. Singer before them, formerly made. They allege that the word "Singer," as applied to sewing machines, is understood in the trade to signify machines of their own manufacture (of which there are several known varieties) and nothing else. They have used that name or word on the brass plates or labels which they have affixed to all the machines sold by them. They admit that every body is at liberty to make and sell machines exactly similar, both in form and in construction to their own, but they deny the right of any one to use the word "Singer" in any way whatever in connection with machines not of their manufacture. The presentation was brought by them for an injunction and damages against the defendant (the agent in this country of a sewing machine manufacturing company established at Berlin) on the ground, as alleged in the tenth paragraph of the statement of claim, that by "representing sewing machines sold or offered for sale by him, as Singer machines," he had "endeavored to obtain, and succeeded in obtaining, for the machines sold by him, some of the reputation attaching to the plaintiff's manufacture, and had induced" (and unless restrained would continue to induce) "purchasers of his machines to believe that the machines sold by him were in fact machines of the plaintiffs' manufacture, or (in the case of purchasers whose attention had not been called to the plaintiffs' firm) to believe that machines sold by him were machines made by the manufacturers of the machines by which the reputation of the name 'Singer' had been

acquired." If the case so stated were established, there could be no doubt of the plaintiffs' right to some relief, upon the ordinary principles applicable to trade-marks and trade-names. To a certain extent the case was established and indeed was not contested by the defendant. It was not in controversy that to some of the machines manufactured by the Berlin company and sold by the defendant (exactly similar in form, pattern and construction to some of those manufactured and sold by the plaintiffs) a brass plate or label, also similar in form, size and position to the brass plates or labels engraved with the plaintiffs' trade-mark had been attached; on which brass plate or label the word "Singer" appeared, though associated with other words, which if carefully read might inform a customer that the machine was manufactured by the Berlin company. The defendant as representative in this country of the Berlin company was a wholesale dealer only; and all persons who bought direct from him knew that the machines which he sold were of the Berlin company's manufacture, and not of the manufacture of the plaintiffs. But the machines bearing those brass plates or labels, though supplied by him to wholesale customers who could not be themselves deceived, would be liable to pass from them by retail into the hands of other persons, some perhaps ignorant and unwary, who, seeing upon them a brass plate or label with the same appearance as the plaintiffs, and also having the word "Singer" upon it, might mistake that plate or label for the plaintiffs' trade-mark, and believe that those machines were really of the plaintiffs' manufacture. The principles applicable to such a case are well established, and have been several times recognised and illustrated in your lordships' House; the most recent authority in this House being *Johnson v. Orr Ewing*, 7 App. Cas. 219. The imitation of a man's trade-mark in a manner liable to mislead the unwary cannot be justified by showing either that the device or inscription upon the imitated mark is ambiguous and capable of being understood by different persons in different ways, or that a person who carefully and intelligently examined and studied it might not be misled. The plaintiffs have obtained an injunction to the full extent necessary to protect their trade-mark. But the Vice-chancellor by whom the action was tried went further and also prohibited the defendant (in effect) from using the word "Singer" in any way whatever, with respect to any machine not manufactured by the plaintiffs' company. The lords-justices on appeal, thought when

the trade-mark was out of the case nothing else was shown by the evidence to have been done or intended, or likely to be done by the defendant against which he ought to be enjoined. They therefore discharged that part of the Vice-chancellor's order which went beyond the protection of the plaintiffs' trade-mark, and the question upon the appeal is whether they were right in doing so. It is necessary for this purpose to consider what the defendant (representing the Berlin company) has actually done, beyond the use of the objectionable brass plate or label, which must be taken to have now finally ceased, and what may be reasonably presumed, from the nature of his business and course of dealing, to be the intention or the probable effect of what he has done, or is likely hereafter to do.

The plaintiffs take exception to the employment of the word "Singer" in a certain manner, in four documents, of which the defendant makes use for the purposes of the Berlin company's business. One of them is a broad sheet or advertisement, printed on both sides, and headed on one side "The improved Wheeler-Wilson and Singer systems, manufactured by the Sewing Machine Manufacturing Company, late Frister & Rossmann, Berlin." In this title, the words "Wheeler-Wilson," "Singer," and "Frister & Rossmann," are all in large type, and all equally conspicuous. It is divided into two equal parts by an engraving of the Berlin Company's manufactory, in the margin of which the addresses of their agents in nine continental cities, besides London, are given. Below these follows half a page of letter press in small type, in the course of which the phrases "The Wheeler-Wilson," and "The Singer System," several times occur: also, "Our Singer machines, pronounced on unquestionable authority to be superior to the so-called original Singer machine:" also, "Wheeler-Wilson's," and "Singer's" in a context evidently referring to the "two systems;" also a statement that "our Singer machines" are made in a way which causes them to work without noise, "contrary to the very noisy Singer machine of our competitors." On the other side of the broad sheet fifteen different numbers of machines are figured, of which the first are described as on the "Wheeler-Wilson" system, and the last five as on the "Singer system," and in the middle of that side, to the left, is a "list of attachments given with every Frister & Rossmann machine, Singer system." The second document is a small price-list, headed "The Sewing Machine Manufacturing Company, late

Frister & Rossmann, limited, 128 London Wall, London, E. C. Price list. Private." It is divided into two parts, the first entitled "Wheeler and Wilson Improved System," the second, "Singer Improved System." That (except the prices attached) is all. Of the third document, the title page is "Directions for the use of Frister & Rossmann's shuttle sewing machine, on Singer's improved system," the word "Singer" being printed in large letters, but not more conspicuously than "Frister and Rossmann's." The directions themselves, which extend over sixteen pages, do not contain the word "Singer," but they are headed "Instructions for use of the family shuttle-machine on the Singer system." The fourth and last document was an invoice given to a witness, who purchased one of defendant's machines, representing himself to be in the trade, in which the article sold was described as "one Singer hand-machine, No. 14." None of these documents (unless it be the "directions for use") were of a nature or character which, according to the course of the defendant's business, could be intended, or would be likely to come into the hands of any retail dealer to whom machines sold by the defendant might afterwards be resold. The defendant's business was, as has been stated, exclusively wholesale; he would not circulate or deliver these documents or any of them to any person "not in the trade." Two of them (the price list marked "private," and the invoice showing the wholesale prices of the machines sold) were manifestly not addressed to retail customers, nor likely, in the ordinary course of the business of any persons who bought the defendant's machines, to be communicated to them. It was admitted by the plaintiffs' witnesses, and to me it seems clear, that no purchaser of the class to whom alone these documents were issued by the defendant could possibly be thereby deceived or misled into supposing that the machines sold by the defendant were of the plaintiffs' manufacture, or that the business carried on by the defendant was the plaintiffs' business. All such purchasers must necessarily have understood that the articles which they ordered or bought were manufactured by the Berlin company, though some of them were made upon a "system," which was called the "Singer system." The invoice is the only document which, even if it had got into the hands of a careless retail purchaser, might (in my opinion) have been reasonably capable of being otherwise understood. It is, therefore, in my judgment, superfluous to enter into a close comparison between these documents, or any of them, and that Dublin

price list of the defendants in the case of the *Singer Manufacturing Company*, 3 App. Cas. 376, on which Lord CAIRNS, in this House, made certain observations from which I in no way dissent. That was a price list, materially different in its form and phraseology from any of these documents, which in the ordinary course of Messrs. Wilson & Co.'s business (who were retail as well as wholesale dealers) was liable to pass into the hands of ignorant and unwary customers. The present documents (except the "directions") could not do so, without a deviation from the settled course of the defendants, and from the natural and presumable course of his customers' business. It was contended that the acts of the defendant enabled his wholesale customers to show these documents to their own retail customers, for the purpose of passing off the goods bought from the defendant as the plaintiffs' manufacture. The answer is that unless the documents were fabricated with a view to such a fraudulent use of them, or unless they were in themselves of such a nature as to suggest, or readily and easily lend themselves to, such a fraud (which in my opinion they were not) the supposed consequence is too remote, speculative and improbable, to be imputed to the defendant, or to be a ground for the interference of a court of justice with the course of the defendant's business. There is no evidence that, in point of fact, any such use was ever made of them.

The directions for use," spoke unmistakably of "Frister & Rossmann's shuttle sewing machine;" and no one, however careless, could read, in that document, the words "on Singer's improved system," without seeing and understanding their context. The question, therefore, is whether the defendant, not representing the machines which he sells as of the manufacture of the plaintiffs, but, on the contrary, representing them as manufactured by the Berlin company, is at liberty to say that he makes them "on the Singer system." I agree with the Court of Appeal in thinking that he is at liberty to do so, and that by so doing (if, in substance, he does no more) he infringes no right of the plaintiffs. The plaintiffs have insisted, throughout the suit, that the words "the Singer system" (so used) are misleading, arbitrary and unmeaning; that there is no system or principle whatever, distinctive or characteristic of any class or classes of machine manufactured either by themselves or by the Berlin company, to which that term can rationally be applied; and, therefore, that it can only be intended,

and can only have a tendency, to deceive. I will assume, without deciding) that if it were so this might be some evidence of an intention on the part of the defendant and his company, and those dealing with them, to pass into the general market goods manufactured by the Berlin company under the denomination of "Singer machines," in order that they might obtain the benefit of the plaintiffs' reputation, and be supposed (more or less extensively) to be of the plaintiffs' manufacture. But on this point, the contention of the plaintiffs appears to me to be disproved by the evidence. I am satisfied that the phrase "Singer system," whether scientific or not, whether exact or loose, is used by the defendant and by other persons in the same trade, to signify not a figment but a fact. The defendant, as agent of the Berlin company, deals in two only of the several varieties of machines which the plaintiffs also make, viz., those styled the "Family" and the "Medium" machines; the "Medium" scarcely, if at all, differing from the "Family," except in size. He also, it must be recollected, deals in other machines, at least as prominently put forward in his advertisement sheets and price lists, which he describes as manufactured on the "Wheeler-Wilson system." There are, in fact, a good many different kinds of sewing machines, well known to the trade, which have come to be described by appellations derived from the names of their original inventors, patentees or manufacturers, of which appellations "Wheeler-Wilson" is one. Messrs. Wheeler and Wilson (like Mr. Singer) formed a company for the manufacture of sewing machines; and that company, like the plaintiffs in the present case, sought to restrain the use of the name "Wheeler-Wilson" by other manufacturers. It was decided, however, by Vice-chancellor JAMES, in 1869 (39 L. J. (N. S.) Chan. p. 36), that this name, "Wheeler-Wilson," had come to signify in the trade, not the particular manufacture of Messrs. Wheeler & Wilson, or of the Wheeler-Wilson Company, but the kind or kinds of machines which they made, the manufacture of which was *publici juris*. The injunction therefore asked in that case was refused. Your lordships have not now to review that decision, nor do I assume that it was or that it was not right; but it is part of the history of the trade in those sewing machines in which the present defendant now deals, and it is manifest, on the face of the defendant's advertisement sheets and price list, that he has used the words "Singer system" in exactly the same sense relatively to the plaintiffs and their predecessors in bus-

iness, in which he uses the words "Wheeler-Wilson system" relatively to Messrs. Wheeler & Wilson's and the company carrying on business under that name.

The defendant's witness, Mr. Newton Wilson, says: "Every sewing machine, as it came into the English market, successively, from America, came to be known in the first place by its outward form, and secondly by the arrangement of parts which constitute that machine, and that arrangement of parts, combined with that peculiar outward form, constitutes a type or class." This is evidently what the defendant and others in the trade who used the same phraseology with the defendant mean by the word "system." In the ninth paragraph of his statement of defence the defendant avers that the words "Singer system," and "Singer machines," as he uses them, are, and are understood in the trade to be descriptive of certain special characteristics of outward form and internal construction which he there specifies; and this statement is supported (with only, as it seems to me, verbal and immaterial variations) by the evidence of a scientific witness for the defendant, Mr. Imray. That witness divides sewing machines into three principal classes. 1. The lock stitch, working with a needle and shuttle. 2. The chain stitch. 3. The double chain stitch. To the first or "lock stitch" type of machines he says, all those known under the appellations "Howe," "Thomas," "Singer," and "Wheeler & Wilson" belong, and he specifies the distinctive characters of each kind and (among them) in much detail, those of the machines known (according to him) under the name of "Singer." The names, he says, "always convey to my mind a distinctive idea of a distinct thing," that is of "great similarity;" "there might be varieties in detail, and yet the broad construction and form might be the same." I believe this evidence. It is in substance confirmed by facts admitted in cross-examination by the plaintiffs' own manager Mr. Woodruffe, and also by a considerable body of documentary evidence, some of which proceeds from sources independent of the parties to the present litigation, and some is traceable to the plaintiffs themselves. Among the defendant's exhibits were circulars of two German houses (unconnected, so far as appears, with the Berlin company) carrying on business respectively at Frankfort and Hamburg, in which sewing machines, made or sold by them, are classified under the general appellations of "system Wheeler & Wilson," "system Singer," "system Grover & Baker," "system Howe,"

and "system Wilcox & Gibbs," showing that these are known denominations of particular kinds of machines upon the continent of Europe. It may be (as was said by the plaintiffs' counsel) that all these were issued after 1870, the time to which the plaintiffs refer the commencement in this country of that use of the name "Singer," by other manufacturers, which they allege to be unlawful. No such explanation, however, can be given of the circulars of M. Callebaut, a French manufacturer, who, in 1865, obtained a gold medal, at the Paris Exhibition, for a machine or machines of the plaintiffs' own manufacture, for which medal the plaintiffs, in their own circulars, claimed credit, and to whom the plaintiffs by agreement relinquished the exclusive right of manufacturing that class of machines in France. In this circular, of M. Callebaut published, certainly before 1870, the words "système Singer" are used to describe the machines of his own French manufacture. Nay more, the plaintiffs themselves, in the same circulars in which they reckoned M. Callebaut's gold medal among the premiums obtained by them at various industrial and international exhibitions, said: "The principle of the Singer Manufacturing Company's sewing machines has never been changed since their first introduction to the public; yet many beautiful labor-saving additions have been attached," &c., and they described their family machine as "constructed on sound mechanical principles which have been thoroughly tested with a view to obtain the greatest possible degree of simplicity and durability without liability to derangement," and as sewing "with a straight needle, thus obtaining the greatest possible amount of strength and power to pass seams and irregularities in the work, which *manifestly can never be equalled by any system using a curved needle.*" (The italics are in the circular.) This language, the plaintiffs' manager, Mr. Woodruffe, tried, in his cross-examination, to explain away by saying that it "had no meaning," and was "very stupid" and "deceived people," and that the plaintiffs were "capable of doing stupid things as well as other people." It is superfluous to say that the fact appears to me of much more value than the explanation. There were also expressions of an import which, in my opinion, amounts to much the same thing in the specifications of several patents taken out in this country by the plaintiffs or their agents for improvements in their machines.

In Newton's specification of 1863 (the invention patented being a communication from Mr. Singer), mention is made of "an ordi-

nary Singer machine fitted with a novel arrangement," and of "Singer's well known construction of sewing machines."

In Woodruffe's specification of 1865, "the means shown for operating the needle and shuttle" are said to "require no special explanation" because it is "the well known arrangement of Singer machines." I think it unnecessary to pursue this point further. It may be true, as the plaintiffs say, that the machines to which they now attach that appellation vary in points, which may possibly be useful and important, from their older machines by which it was originally acquired; but the conclusion to which I am brought unhesitatingly by the whole evidence is, that there has been, for many years past, sufficient continuity and identity of method in the construction of the plaintiffs' lock-stitch machines (particularly of machines of those classes which they describe as "Family" or "Medium," and which are also manufactured by the Berlin company) to make the term "Singer system," as used with respect to these machines, a *bona fide* and intelligible description, which has obtained extensive currency both in England and on the continent of Europe, of some really distinctive character or characters in that method of construction. It follows that in my opinion the use of that phraseology by the defendant is not evidence of any fraudulent purpose or intent. It was urged, however, that it ought not to be regarded separately from the use of the brass plate or label which has been adjudged to be an infringement of the plaintiffs' trade-mark, and that it is one of a series of acts designed with a view to, and practically terminating in, the use of the plate or label; and that all such acts being so connected together ought to be alike prohibited. In this view I cannot agree. I think that the representations made by the defendant to his wholesale customers, whether orally or by broad sheet, price list, or invoice have no natural or necessary connection in intention or in fact with any deception of retail customers which might possibly arise from the use of the brass plate or label. No one could contend that there was any such connection if, in these representations to the defendant's wholesale customers, the word "Singer" had not occurred; and the case is really the same if (as I think) the word "Singer" was so used as to obviate any reasonable possibility of misunderstanding or deception. The counsel for the appellant lastly argued that the plaintiffs, trading under Mr. Singer's name, and using his trade-mark, had acquired such a right of property in that name as to entitle

them to restrain any rival in trade from introducing it into any of his price lists, circulars or advertisements, even in such a way as might exclude the possibility of its being understood to represent, directly or indirectly, that the goods sold by him were manufactured by the plaintiffs, or that his trade or business was identified or connected with the trade or business of the plaintiffs. For that argument no authority was cited; and it cannot, in my opinion, be maintained upon any principle. The reputation acquired by machines of a particular form or construction is one thing; the reputation of the plaintiffs as manufacturers is another. If the defendant has no right, under color of the former, to invade the latter, neither have the plaintiffs any right under color of the latter to claim (in effect) a monopoly of the former. If the defendant has (and it is not denied that he has) a right to make and sell in competition with the plaintiffs, articles exactly similar in form and construction to those made and sold by the plaintiffs, he must also have a right to say that he does so, and to employ for that purpose, the terminology common in their trade, provided always that he does this in a fair, distinct and unequivocal way.

The Court of Appeal has thought that (apart from the infringement of the trade-mark) this is all that he has done. I think the same, and I therefore move your lordships to dismiss this appeal.

BLACKBURN, WATSON and BRAMWELL, L.JJ., delivered concurring opinions.

The *Singer Manufacturing Co. v. Wilson*, decided by the House of Lords in 1877 (L. R., 3 App. Cas. 376), and referred to by Lord Chancellor SELBORNE in his very elaborate judgment in the principal case, decided that S. having made a sewing machine which became known by his own name which he gave to it, and having afterwards taken other persons into partnership with him for the sale of such machines, which machines were made in great variety, and with many modifications, but though not protected by patents were established in public favor under the name of the "S." sewing machines; and W., having sold sewing machines and advertised among

others "S." sewing machines, but used his own trade-mark on the machines, and expressly stated in his advertisements that the machines sold by him were manufactured by himself—this nevertheless constituted a wrongful invasion of the property of S., and W. might be restrained by injunction, fraud not being necessary to be averred or proved in order to obtain protection for a trade-mark.

The next case cited by Lord SELBORNE was that of *Johnston v. Orr Ewing*, 7 App. Cas. 219. The principles there enunciated are, as stated by the Lord-Chancellor, that "the imitation of a man's trade-mark in a manner liable to

mislead the unwary cannot be justified by showing either that the device or inscription upon the imitated mark is ambiguous and capable of being understood by different persons in different ways, or that a person who carefully and intelligently examined and studied it might not be misled." But that was not the question before the House of Lords in *Singer Manufacturing Co. v. Loog*, for "the plaintiffs," in that case, "had obtained an injunction to the full extent necessary to protect their trade-mark; but the Vice-Chancellor, by whom the action was tried, went further, and also prohibited the defendant (in effect) from using the word "Singer" in any way whatever with respect to any machine not manufactured by the plaintiffs' company. The lords justices discharged that part of the order, and the question before the House of Lords was, were they right in so doing? We may, therefore, eliminate the question of infringement of the trade-mark from our consideration. The exception taken by the plaintiffs was to the employment of the word "Singer" in a certain manner.

The Lord Chancellor then referred to the case of *The Wheeler-Wilson Manufacturing Co. v. Shakespear*, 39 L. J. (Ch.) 36, in which it was decided that "where articles of a particular kind have become known in commerce under the name of the original manufacturer or patentee, as the case may be, any person has a right, after the expiration of the patent, to manufacture such articles and sell them under that name; but he may not, by inserting the name, as a proper name, on his shop front or otherwise, lead the public to believe that he is selling as the agent for the original manufacturer."

In *Singer v. Wilson*, Lord BLACKBURN queried whether there is property in a name, and whether it is necessary to prove fraud in the person who without warrant adopts it.

Lord GORDON entertained "no doubt that different principles of law might be

applicable to a trade-name from those applicable to a trade-mark."

The House held that at all events in the case of a trade-mark it is not necessary either to aver or prove fraud in order to obtain protection for it. But a trade-name appears to be based upon a somewhat different principle, and it is the fraudulent use of it that constitutes the injury, and the mere adoption of it, as a word of terminology common in the trade, if done "in a fair, distinct and unequivocal way," will not entitle the representative of an original trade-name to claim a monopoly. The reputation of the machines is one thing, the reputation of the manufacturers is another. If one manufacturer has a right to make and sell, in competition, a particular character of machine exactly similar to those sold by another manufacturer, he must also have a right to describe them by the name by which they are known in the trade, always assuming that such name has become descriptive, and is used not as a figment but a fact—that fact being that the original name of the inventor, for instance, had come to signify in the trade, not the particular manufacture of the original individual or his successors, but the kind or kinds of machines which they made, the manufacture of which was open to public competition. The whole question resolves itself into a matter of *bona fides*. Does the assumption of the original name of an inventor with the word "system" prefixed or appended by another manufacturer convey an intelligible description which has obtained currency far and wide of some really distinctive character in the method of construction?

Of course, if under cover of such a description an innuendo is conveyed that a competitor is the agent of the original manufacturer there at once arises the question of fraud, expressed or implied, but no such ingredient entered into the principal case, since the defendant had been restrained by injunction in the

court below from using a brass plate similar in appearance to the brass plates engraved with plaintiff's trade-mark, and the only question in the House of Lords was as to the validity of that part of the Vice-Chancellor's order which went beyond the injunction against the infringement of the trade-mark.

The case of *Howard v. Park*, 2 Am. Law Reg., (N. S.) 644, appears somewhat at conflict with this more recent decision of the House of Lords. In the American case the Supreme Court of New York decided that the trade-name of a firm is property, and no other person, without the firm's consent, and not having the same name, can use it in trade to the disadvantage or injury of such firm, and that such name may be assigned to a successor firm, which thereby obtains the same rights in said name as its predecessor had. And further that a dealer in a commodity identical in manufacture and character with that dealt in by such firm and its successor, would be enjoined from the sale of such commodity in a wrapper countersigned with such trade-name without authority, even though the dealer purchased the commodity from the original manufacturers, who were authorized to affix the trade-name to such of their products as were designed for such firm. In the note to that case reference is made to the decision of the Court of Appeal in the principal case, and also to the case of *Singer Manufacturing Co. v. Wilson*. Upon a careful perusal and comparison it will be seen that there is no inconsistency in the decisions.

The decree in *Singer v. Wilson* was reversed without prejudice to any question in the case; and the case was remitted to the Chancery division with liberty to the defendant to make again application for leave to adduce *viva voce* evidence in reply to the plaintiffs.

The Lord Chancellor (Lord CAIRNS) said: "In the present case the question must, as it seems to me, be: Are the

advertisements of the defendant, having regard to the evidence in the case, calculated to mislead an unwary purchaser of the machines?"

With respect to a trade-name Mr. Upton observes that "A trade-mark consists of a right of property in a mere name, figure, letter-mark, device or symbol, when used as a designation of a thing;" Upton's Treatise on the Law of Trade-marks, pp. 14, 15. Yet a mere trade-name cannot be registered as a trade-mark under the Act of Congress of 1881, the words of sect. 3 of that act being very specific—"No alleged trade-mark which is merely the name of the applicant shall be registered." The decision in the principal case did not, however, turn at all upon the question of the infringement of a trade-mark, as we have already seen, but both it and that in *Singer v. Wilson*, rested upon the *bona* or *mala fides* of the transaction. Indeed the fundamental rule, said Lord KINGSDOWNE, "is that no man has a right to put off his goods as the goods of a rival trader, and he cannot, therefore, in the language of Lord LANGDALE, in the case of *Perry v. Truefit*, 6 Beav. 66, be allowed to use names, marks or other *indicia*, by which he may induce purchasers to believe that the goods which he is selling are the manufacture of another person:" *Leather Cloth Co. v. American Leather Cloth Co.*, 11 H. L. C. 523. And the same rule, it appears, would apply to tradesmen not being manufacturers. Vice-Chancellor KINDERSLEY—*Glenny v. Smith*, 2 Dr. & Sm. 476; s. c. 11 Jurist (N. S.) 964; 13 L. T. R. (N. S.) 11; and 6 New Rep. 363. (See 20 Am. Law Reg. (N. S.) 304, on Trade-marks.)

This decision of the House of Lords is not irreconcilable with *Howard v. Park*, *supra*. In the latter case the Supreme Court of New York drew an inference from the defendants' conduct, in not pursuing the information which they had received, that they did not desire