

Legal Notes.

PROPERTY IN A NAME.—The selection of a suitable title for a business is a matter of no small difficulty, for the reason that many conflicting interests must often be considered and that the good-will which attaches to the name of a firm of long standing is not to be weighed lightly. A frequent cause of trouble between firms carrying on the same trade is the adoption of similar trade names. It is a matter of common knowledge that if one trader adopts the name of another a court will presume that he has done so for a sinister motive. But there are other forms of this piracy which demand much closer investigation. In a recent number of *Engineering*, these various forms have been classified and shrewdly analyzed from the standpoint of British law. The classes include, (a), cases of a person using his own name, which happens to be the same as that of some firm doing a similar business; (b), the cases of a firm taking in a partner whose name when added to that of an existing firm gives rise to confusion; and (c), the case of a firm adopting a title similar to, but still substantially different from that of a trade rival.

A case which comes under the first head is that of *Aerators, Ltd.*, against *Automatic Aerator Patents, Ltd.* The plaintiff company, who are the proprietors of the well-known "Sparklets," sought to restrain the defendants from using the name *Automatic Aerator Patents, Ltd.*, on the ground that it so nearly resembled its own name as to be calculated to deceive. An injunction to restrain the use of the defendant company's name was refused, for the reason that, giving words their ordinary meaning, no one was likely to be deceived. Further, it was not competent for any company or person to claim the sole proprietorship of any words in common use. Perhaps still clearer was the case of *Holloway vs. Holloway*. The defendant Henry Holloway commenced selling pills as H. Holloway's pills in boxes similar to those of the plaintiff, Thomas Holloway, intending to pass off his pills as the plaintiff's. He was restrained by injunction. Again, where a man named Day, having obtained the authority of one Martin to use his name, set up in business as *Day & Martin* and sold blacking in bottles with labels similar to those of the well-known firm. He was restrained by injunction. These cases illustrate the proposition that fraud vitiates everything.

In the absence of fraud, however, a man may use his own name in his own business, no matter what may be the consequences to his neighbors. The case of *Turton vs. Turton* is regarded in England as a leading authority in support of this proposition. The plaintiff had for many years carried on the business of steel manufacture in Sheffield, under the title of *Thomas Turton & Sons*. The defendants were John Turton and his two sons. John Turton had commenced a business very similar to that of the plaintiff's in partnership with one Lawton, under the name of *Turton & Lawton*. After a few years Lawton retired, and the sons of John Turton entered into partnership with their father under the firm name of *John Turton & Sons*. When the case came up on appeal the court held that the defendant did nothing in the way of his trade which tended to give another meaning to the name in which he carried on his business, or which could give any other meaning to it, than the mere fact that he did carry on his business and was in partnership with his sons. The plaintiffs had no right to say a man may not use his own name. In this country the court would undoubtedly inquire whether the public suffered by the similarity in names; whether it bought the goods of one man under the supposition that it was buying the goods of the other.

The next question to consider is whether a trader has the right to use a particular title in describing goods acquired by him. In dealing with this question it is necessary to point out the difference between a trade-mark and a trade name. A trade-mark is invented and assumed by a man for the purpose of selling his goods, and there is no necessity for anybody else putting that mark upon other goods, unless the mark is meant to identify them in such a way as to represent that they are the goods of somebody else whose goods are identified in the same way. With regard to a trade title it is a question of degree; that is to say, the court has to decide whether by a particular course of dealing a man has acquired the right to monopolize the use of a particular word or phrase. Thus, in one case it was held that there was no monopoly in the use of the word "magnolia" as applied to metal, as it had become well-known in the trade as a substance peculiarly adapted for bearings in machinery. In this country it is held that where a trade name is so intimately identified with the object to which it is applied, that the object cannot be readily identified without it, the public acquires the right to use it, after the usual statutory conditions have been fulfilled. Where a brewer had manufactured ale at Stone for a number of years

so that his ale became known as Stone ale, an injunction was granted to restrain the defendant, who had only recently come to the town, from selling ale under the appellation of Stone ale or Montgomery Stone ale.

In cases between trade rivals, the plaintiff, as a general rule argues: "I complain that you have passed off your goods as mine, which they are not;" or "You are passing off my goods as yours, which they are not." The English and American courts are inclined to prevent both forms of piracy. The case of *Bullivant vs. Wright* illustrates what kind of passing off will be restrained. The plaintiffs were wire-rope manufacturers and contractors for aerial tramways and cableways. The defendants, who were also wire-rope manufacturers, published a trade catalogue, which contained two diagrams or pictures of aerial cableways, which had been designed and erected some years before by the plaintiffs' predecessors in title. The plaintiffs alleged that the publication of these diagrams by the defendants in their catalogue, was a representation that the same had been erected by the defendants. They claimed an injunction to restrain the further publication of the catalogue, and an order for the delivery of all the catalogues in existence. As a matter of fact, what the defendants had done was to supply new wire cables as they were required during several years. Mr. Justice Kekewich, in the course of his judgment, said: "No reasonable man, seeing these pictures in a book of this kind, would have any doubts that the defendants intended it to be understood that they had erected the tramway. It is as distinct a representation to that effect as if it had been expressed in plain language."

If it is proved to the satisfaction of the court in a case of this kind that the defendants did in truth say that the plaintiffs' goods were theirs, I think that, as between rivals in trade, the court would be justified in drawing the inference that the wide circulation of such a statement would necessarily damage the plaintiffs quite as much as in the ordinary case of the passing off of goods." These observations seem to show that if the plaintiffs had been able to prove that had they themselves erected the cable-way they would have had judgment; but the case was decided against them on another point. We may draw the following conclusions: That if Jones sells or advertises boots and shoes manufactured by himself in such a way as to make the public believe they are Brown's, and so obtain the benefit of Brown's good name, he may be restrained by injunction.

FOREIGN PUBLICATIONS AND THE UNITED STATES COPYRIGHT LAW.—The *Chicago Tribune*, by agreement with the *London Times*, secured for use in the *Tribune's* columns the war news especially gathered by the *Times*, and its editorial comments thereon. The *Times* released its copyright of such articles as the *Tribune's* correspondent might choose to forward to his paper, the *Tribune* undertaking to copyright its daily edition simultaneously with the *Times*. On the other hand, the *London* correspondent of the *Associated Press*, buying the *Times* as it appeared upon the streets, selected such items as they wished and forwarded them to America. This news the *Tribune* strove to restrain the *Associated Press* from using, and asked damages in the sum of \$100,000. The case (*Tribune Company of Chicago vs. the Associated Press*, 116 Fed. Rep., 126) was heard on bill and answer.

The questions raised are important and novel, involving on the one hand the rights of the *Tribune* Company to the fruits of its enterprise and expenditure under its contract arrangement with the *Times*, and on the other hand, the rights of the public to news published in the leading English newspaper. The solution of the problem depends upon the construction of the copyright statutes of the United States, and not upon the common law rights of literary property. Literary property is protected at common law to the extent only of possession and use of the manuscript and its first publication by the owner. With voluntary publication the exclusive right is determined at common law, and the statutory copyright is the sole dependence of the owner for a monopoly in the future publication. Unless the United States statute were applicable to protect the *Tribune's* publications in question, clearly the motion for an injunction would fail.

The copyright is obtained by depositing in the post office in Chicago on the evening before publication the general title of the newspaper, with serial number and date, and by like deposit, immediately after publication, of copies of the completed paper, addressed to the Librarian of Congress, and followed by registration and certificates in due course. No special matter is thereby indicated as subject to copyright, but the newspaper is entered as an entirety. It has been held in the United States courts that such a general copyright cannot with any propriety be applied to a work of so fluctuating and fugitive a form as a newspaper. Whatever this rule may be with reference to original matter published in a newspaper, it is certain there

can be no general copyright of a newspaper composed in a large part of matter not entitled to protection.

Aside from this view affecting the validity of the copyright, on the showing that the defendant obtained its matter for publication directly from the *London Times*, and without knowledge or notice of any selection from the complainant, the statute, in the court's opinion, was not applicable unless through the contract rights of the *Tribune*, which operated to exclude from general publication all cablegrams and editorials appearing in the *London Times*. The contract gave to the *Tribune* the right to publish in America such cablegrams and editorials as it chose "to telegraph to America from the *Times*," and the *Times* abandoned in favor of the *Tribune* "any copyright in those telegrams so far as publication in America is concerned." The optional rights acquired by the *Tribune* extended to all cablegrams appearing in the *Times*, although the purported surrender for copyrights related to the extracts only. After the *Tribune* had both made and published its selections, no means were open to the public to ascertain the portion thus excluded from use. Many of the cablegrams in the *Times*, moreover, were not its exclusive property. Since the exclusive right of publication at common law terminated with the publication in *London*, the court held that no protection existed beyond that specially given by the statute. Before the amendment authorizing copyright in America on foreign publications under prescribed conditions where the publication is simultaneous, such foreign property right was left unprotected. Under the amendment general rights may be vested either in the *Times* or in the *Tribune* through contract, to copyright any editorials as special matter. The court was satisfied that the right could be exercised only for matter distinctly set aside for the purpose and so distinguished in the publication, and that publication in this country must be substantially identical with that in the foreign country to bring it within the intent of the statute.

This decision is of supreme importance to publishers, for it reiterates in decided terms the opinion formerly expressed in the United States courts that there can be no general copyright as an entirety of a daily newspaper which is composed in a large part of matter not entitled to protection.

IMPROVEMENT AND INVENTION.—That all improvements are not necessarily inventions is clearly brought out in the case of *Galvin vs. the City of Grand Rapids*, recently decided in the Circuit Court of Appeals for the Sixth Circuit (115 Fed. Rep. 511) in favor of the defendant, who had won in the lower court. Judge Jay, in delivering the opinion of the court, stated that an improvement of a patent combination, which consists merely in carrying forward the old idea by a mechanical change in the form of one of the elements so as to produce a better result, but without changing the mode of operation, does not amount to patentable invention. The case under discussion involved the validity of the Lynch patent for a valve embodying an improvement on the valve of the Galvin patent. The Lynch patent was held void for lack of invention because it merely changed the form of certain wedges employed to close the disks. The improvement was one involving mechanical skill only.

It is said to Dr. Winkler, a lawyer of Lucerne, Switzerland, belongs the honor of having settled what is probably the longest lawsuit in the history of any country. Since 1370 a boundary dispute has been going on between Hungary and Galicia. The area in dispute is a tract of land about seventy miles south of Cracow, owned partly by Prince Hohenlohe, a German, and Count Zamoyski, an exiled Polish noble from Posen. This dispute of 500 years duration has led to much bitter feeling in the neighborhood, as both Hungarians and Poles have hotly contested the question and loudly asserted their claims. The arbitrator has decided in favor of the Galician claim, and allows Hungary only twenty acres to straighten her boundary.

LIMITATION OF THE SUBJECT OF DESIGN PATENTS.—The well-known rule that a design patent cannot be sustained on the ground that the article has mechanical utility, but that to be valid it must relate to a matter of ornament and have an æsthetic value, was once more enunciated in the case of *Eaton vs. Lewis* (115 Fed. Rep. 635). In accordance with this principle it was held that a fastening for machinery belts is not an appropriate subject for a design patent.

ANTICIPATION.—The *Davidson* patent for improvements in tubular ball mills for pulverization of various materials was rejected seven times on references to prior patents, notably the British patent to Redfern, and was finally granted on an amendment to the claim with expressed reluctance. The United States Circuit Court of Appeals has just declared it void for anticipation and dismissed a bill filed to restrain an infringement.