

*Brewery Company v. The Liverpool Vinegar Company and Holbrook*, Law J. N. C. 99, 1888; 4 Times Rep. 613; W. N. 1888, p. 139, an interlocutory injunction was granted by Mr. Justice North, his lordship being of opinion that what the defendants had done amounted to fraud. The defendant Holbrook had authorised the plaintiff company to sell sauces of their manufacture under his name, he being their traveller. On his being discharged from their employment he assigned to the defendant company the right to use his name in connection with sauces manufactured by them, and this Mr. Justice North held not to be a legitimate proceeding. The learned Judge considered that, even if Holbrook were selling his own goods under his own name, it would be his duty, under the circumstances, to take care that in so doing he was not passing off his goods as those of the plaintiff company, which had become well known and acquired a reputation in the market under Holbrook's name. So, in *Holt v. Smith*, 4 Times Rep. 329, Mr. Justice Kay also granted an interlocutory injunction.

The reported cases in 1889 were two in number, that of *Warner v. Warner*, 5 Times Rep. 327, 359, being the earlier. There the Court of Appeal agreed with Mr. Justice Stirling in thinking that an interlocutory injunction ought to be granted to restrain the defendant, whose name was Warner, from applying to a proprietary medicine which he had purchased, known as "Ashton's great gout and rheumatic cure," the name of "Warner's gout and rheumatic cure," which so closely resembled the preparations sold by the plaintiff Warner under the title "Warner's safe cures" as to be calculated to mislead the public. The defendant also sold medicines as "Warner's cures." The inference which the court drew from the evidence was that the defendant was not really honestly advertising his medicines under his own name, but was doing it in such a way as to acquire a portion of the reputation previously acquired by the plaintiff. The other case in 1889, *Turton v. Turton*, 58 Law J. Rep. Chanc. 677; L.R. 42 Chanc. Div. 128, is a most important one, mainly because of the clear and comprehensive judgments of the learned Judges of the Court of Appeal.

The plaintiffs in that case had for many years carried on business under the name of "Thomas Turton & Sons." The defendant, John Turton, had for many years carried on a similar business in the same town under the name, first of "John Turton," and afterwards of "John Turton & Co." He then took his sons into partnership and traded as "John Turton & Sons." There was no evidence of imitation of trade-marks, or attempts to deceive the public. It was held by the Court of Appeal, reversing the decision of Mr. Justice North, that, although the public might occasionally be misled by the similarity of names, the defendants could not be restrained from using the name of "John Turton & Sons," which was an accurate and strictly true description of their firm. Mr. Justice North had gone to the length of granting an injunction against the defendants, although his lordship was quite satisfied that they had acted honestly, and that, independently of the use of the name of their firm, which they had used in the honest belief that they were entitled to do so, they had made no attempt to pass off their goods as those of the plaintiffs. The learned Judge considered, however, that he was bound to come to the conclusion