

respondent's agent represented his starch as "Glenfield starch," and that he thereby got an increased sale for the article. Lord Justice James dissolved an injunction granted by Vice-Chancellor Malins restraining the respondent from using the word "Glenfield" on his labels, or from representing his starch as Glenfield starch. Hence the present appeal, which was successful. Lord Chancellor Hatherley having mentioned that the appellants were right in not relying on the shape or form of the packets, in which the respondent's starch was made up, went on to say: "There is one remark that I have made on many other occasions with regard to the similarity of packets used by different manufacturers in a particular trade. For instance, packets of needles are often done up in much the same way as the packets of starch in this case were, viz., in dark blue packets, with a green label." His Lordship then referred to a case of that description which had previously come before him, when he took occasion to remark "where there is so much general similarity it does become more necessary to take care that the mark which is to distinguish the article shall be really distinguishing, and that when you have got all the other combinations, so that persons do not look at the shape of the packet or at any other *indicia* than the particular distinguishing mark, those things should, by people who wish to deal honestly by each other, be kept very distinct." Lord Chelmsford was satisfied that the evidence brought the case within the principle that, where the trade-mark is not actually copied, fraud is a necessary element in the consideration of every question of this kind; the party accused of piracy must be proved to have done the act complained of with the fraudulent design of passing off his own goods as those of the party entitled to the exclusive use of the trade-mark. For the purpose of establishing a case of infringement it is 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. Lord Westbury stated the principle

upon which the jurisdiction is founded to be that of preventing a person 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 colorable 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 other.

Vice-Chancellor Bacon, upon the conclusion of the arguments in *Kelly v. Byles*, admitted that the question raised in that case was a novel one, and suggested that the only question he had to decide was whether, by doing that which he had announced an intention of doing, the defendant would unlawfully injure the plaintiff's property, that property being the title and appellation of the plaintiff's work. "No case has been referred to," said his Lordship, "in which it has been suggested that the taking a part of the title of a registered copyright work without fraud and without anything from which the *animus furandi* can be inferred is an infringement of the present or of the preceding copyright acts." Another ground of relief remained to be considered, namely, the contention that, inasmuch as the plaintiff had assumed the title of his directory, it had become as much his property as if it were a trade-mark; that it was in fact the device or symbol by which he vended his wares, and that no other person could adopt or use it without doing that which was calculated to deceive the public, and to induce persons who desired to become purchasers of the book to be put off by having in its stead the defendant's sold to them. This contention was not admitted, and judgment was entered for the defendant.

The case is undoubtedly one in which some new features are introduced. Apparently, however, it is made to depend upon the principles illustrated by the propositions:

1. That the defendant had not been wanting in good faith.
2. That the mere taking a part of the title of a registered copyright without fraud is not an infringement of the copyright acts.
3. That the rule, that a manufacturer who has marked upon his wares any device for the purpose of distinguishing them from all others