

defendants' delinquencies: relief may of course, and ordinarily should, be granted against such deception causing such a loss; but, if in truth granting such relief should aid the plaintiff in a more serious deception of the public to their loss, such relief should not be granted.

The plaintiff's claim was a peculiar one: he had been for only a few years engaged in the business in question—indeed such a business had sprung into existence within a time which might be not inaccurately described as only a few years; and he had been carrying on that business in the name of a company, though he was not a company nor was he in company with any one in it.

The plaintiff claimed the exclusive right to the use of the words "real cake cones" in his business of a maker of ice-cream "cones."

With the past few years the making of such cones had begun and had since grown enormously. Originally, apparently, the cones were not made of cake, though they looked as if they were; and hence, apparently, the need for the use of the word "real" in connection with cake as descriptive of cones actually made of cake.

The combination of real cake and real ice-cream in a way in which both could be eaten together without the aid of a spoon, and standing or walking as well as sitting, and at any time, gave a great impetus to the trade in ice-cream and made an extensive new trade in "cones." So that now, if any one could by any means acquire a monopoly of the real cake cone trade, a fortune could be soon made by him out of that large portion of the public which indulged in ice-cream cones.

It was not contended that the plaintiff exclusively controlled the words "cake cones." But, if he should succeed in this action, he would be in substantially the same position as if he did rightly so claim, and so have a monopoly of the cake cone trade, through a deception of the public, to their loss, by means of the judgment and order of the Court.

For, if the Court restrain all other makers of cones from using the words "real cake" as descriptive of the material of which these cones are made, what conclusion is the public likely to draw except that the plaintiff is the only maker of real cake cones, that all other makers are at best makers only of imitation cake or false cake cones? And in these days, as well as others, it need hardly be said that a monopoly means higher prices.

No one has a right to appropriate to his own use such words as "real cake" and then ask any Court to aid him in putting them to any such possible base uses.

But, quite apart from any such considerations, how was it possible to say, upon any evidence adduced in this action, that the words "real cake," as applied to ice-cream cones, had, by reason of the plaintiff's use of them, lost their real meaning and acquired