

said that anybody can always use his own name as a description of goods which he sells, whatever may be the consequences of it, or whatever may be the motive of doing it. It is obvious, however, that there can be no dishonesty, even in the strictest sense, in a man using his own name for the purposes of his trade, or in stating that he is carrying on business exactly as he is carrying it on. At the same time, he must not employ any artifice to attract to himself the business of a rival trader of the same name, and he must not attempt to pass off his own goods as those of the other trader. To debar a man from trading honestly under his own name would be manifestly unjust. Indeed, it would lead to most serious consequences if people having acquired a business reputation with a name could prevent any man of the same name from carrying on the same business. But where a person sells goods under a particular name, and another person, not having that name, adopts it, the Court will presume that he does so in order to represent the goods sold by himself as the goods of the person whose name he uses. As was said by Lord Langdale in the leading case of *Croft v. Day*, 7 Beav. 84, 88; Tud. Merc. Law, 482: "No man has a right to sell his own goods as the goods of another . . . no man has a right to dress himself in colors, or adopt and bear symbols, to which he has no peculiar or exclusive right, and thereby personate another person, for the purpose of inducing the public to suppose, either he is that other person, or that he is connected with and selling the manufacture of such other person, while he is really selling his own." The learned Judge went on to observe that the right which any person might have to the protection of the Court did not depend upon any exclusive right which he might be supposed to have to a particular name or to a particular form of words. "His right is to be protected against fraud, and fraud may be practised against him by means of a name, though the person practising it may have a perfect right to use that name, provided he does not accompany the use of it with such other circumstances as to effect a fraud upon others." It is a question of evidence in each case whether there is a false representation or not. However, according to the decision of the same learned Judge in *Clark v. Freeman*, 11 Beav. 112, unless a person would be damaged in his business by the adoption of his name by another person for any particular purpose, he has no ground of complaint. That case does not appear to have ever been overruled, but it came as a surprise to the profession, and can hardly be accepted as sound law. Nevertheless, on the authority of that decision, Mr. Justice Kay, in *Williams v. Hodge & Co.*, 84 L. T. 135, held that he could not grant an interlocutory injunction where the name of a medical man had been wrongfully coupled with a certain surgical instrument by the manufacturer thereof. His lordship expressed some doubt as to the correctness of Lord Langdale's decision, observing that, if the point before him had been a *res nova*, he would have decided differently. In *Re Riviere's Trade-mark*, 53 Law J. Rep. Chanc. 578; L. R. 26 Chanc. Div. 48, Lord Langdale's decision in *Clark v. Freeman* was severely criticised, Lord Selborne referring to it as a case that "had seldom been cited but to be disapproved." Another somewhat unsatisfactory case is that of *Hendriks v. Montagu*, 50 Law J. Rep. Chanc. 456; L. R. 17 Chanc. Div. 638.