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CLAIMS OF EXCLUSIVE RIGHT IN TITLES OF BOOKS.

The law of copyright and trade-marks has been the subject of many legal decisions. Nevertheless, questions of more or less novelty arise from time to time, as in the recent case of *Kelly* v. *Byles*, 40 L. T. Rep. (N.S.) 623, which was heard by Vice-Chancellor Bacon. In that case the plaintiff had been in the habit since 1852 of publishing numerous county and trade directories, which he had always called "Post-Office" directories, and was the registered proprietor, under the copyright act, of, amongst others, "The Post-Office Directory of the West Riding of Yorkshire." The defendants had, with the assistance of the postmaster at Bradford, compiled a directory for that town, which they proposed to call the "Post-Office Bradford Directory." In an action by the plaintiff to restrain the intended publication by the defendants of their directory with the words "Post-Office" forming part of the title, and from in any way representing their directory as a "Post-Office" directory, or from doing anything which might induce the public to believe that their directory was in any way connected with the plaintiff, Vice-Chancellor Bacon had to consider whether the taking of a part of the title of a registered copyright without fraud and without any circumstance from which an *animus furandi* could be inferred, was an infringement. For the plaintiff it was argued that an injunction will be granted where the title is threatened, and even though the title is innocently appropriated; that there is copyright in the name and title-page as well as in the letter-press; that apart from any question of copyright, the plaintiff was entitled to the exclusive use of the name he had adopted by his *quasi* trade-mark, and that where a person had acquired property in a name either in a book or as a trade-mark of the goods he sold, the important words or peculiar collocation of words could not be made use of by any other person in such a way as to induce purchasers to believe that the spurious article they offered for sale was the article manufactured by the person who had so acquired a property in the name. On the other hand it was urged that, in order to establish his right to an injunction, the plaintiff had to establish four things: first, that he was the original inventor of the name: secondly, that the name is an arbitrary or fancy word: thirdly, that his user was exclusive; and, fourthly, that the defendant colorably imitated the name or trade-mark.

There is a distinction between the case of a newspaper and that of a book. The Court of Appeal decided in *Kelly* v. *Hutton*, 19 L. T. Rep. (N.S.) 228, that there is nothing analogous to copyright in the name of a newspaper, although the proprietor can prevent the adoption of the same name for a similar publication, and it is a chattel interest capable of assignment.

The argument that there is no copyright in a title was urged upon the authority of *The Correspondent Newspaper Company* v. *Saunders*, 11 Jur. (N.S.) 540. This was a motion for an injunction to restrain the publication of a periodical called *The Public Correspondent*, and also to restrain the use of the title "Correspondent" without the license of the plaintiffs. Vice-Chancellor Wood merely decided that no copyright is acquired under 5 & 6 Vict., ch. 45, by the registration of a book before its actual publication. This case, like the later decision in *Maxwell* v. *Hogg*, 16 L. T. Rep. (N.S.) 130, has no direct bearing upon the case before Vice-Chancellor Bacon. In the case before Vice-Chancellor Wood the question was thus stated: there being two persons equally honest, and one of them, *e. g.*, the plaintiff, having given notice that he was about to produce an article with a certain name, and the other, the defendant, contemplating the same thing, did the first, by bringing out his article a day or two sooner than the other, acquire a right by way of trade-mark? The defendants in perfect good faith, and not knowing of the dormant plaintiff company, brought out their advertisements, and the plaintiffs laid by for eight days and gave no notice to the defendants. Under these circumstances the Vice-Chancellor refused to grant an injunction until further evidence was