

For the accomplishment of a fraud in such cases as this, two circumstances are required: First, to mislead the public, and, next, for defendant to preserve his own individuality.

Action to restrain defendants from infringing plaintiff's trade-marks. Plaintiff had for many years previous to the commencement of the action manufactured a soap designed for cleaning and polishing, which was named "Sapolio." It had extensively advertised this preparation, and it became known in the market and by numerous consumers under the name mentioned. The soap was sold in cakes of a convenient size. Each cake was inclosed in two wrappers, one a square sheet of paper covered with tin-foil, and the other a strip of paper about an inch and a half wide, which was blue on the outside. Each wrapper contained the name "Sapolio," and cuts and printing referring to the article and its use. The devices on the wrappers were registered as trade-marks. Defendant, after plaintiff's article became well known, began the manufacture of a similar article, which he named "Saphia Transparent." He offered it for sale in cakes similar in size to those made by plaintiff, inclosed in two wrappers (tin-foil and blue) of the same size and shape of plaintiff's, but containing different cuts and printed words. The general appearance of the packages made by defendant and plaintiff was the same, and the general public would be easily led into purchasing one for the other. Such other facts as are material will appear in the opinion.

LAWRENCE, J. It is quite difficult in actions of this character, to precisely draw the line between those cases in which the plaintiff is entitled to relief and those in which relief should be denied. The decisions are conflicting, and many of them irreconcilable, but in this case, after fully considering the evidence, I am of the opinion that the plaintiffs are entitled to a portion at least of the relief which the complaint demands.

Upon principle no man should be allowed to sell his goods as the goods of another, nor should he be permitted so to dress his goods as to enable him to induce purchasers to believe that they are the goods of another. In the consideration of this case, I shall lay out of view the United States statute in relation to trade-marks, because that provides that "no-

thing in this chapter shall lessen, impeach, or avoid any remedy at law or in equity which any party aggrieved by any wrongful use of any trade mark might have had, if the provisions of this chapter had not been enacted."

I do not therefore regard the plaintiffs as being compelled, in order to obtain the relief they seek in this action, to show that there has been an imitation of the trade-mark, which the plaintiffs have filed in the patent office.

It would seem that the true rule is laid down in the case of *Edelston v. Vick*, 23 English Law and Equity Reports, pp. 51 and 53, where Vice-Chancellor Wood, adopting the language of Lord Langdale in *Groft v. Day*, 7 Beaven, pp. 84 and 87, says: "That what is proper to be done in cases of this kind depends on the circumstances of each case. * * * That for the accomplishment of a fraud in each case, two circumstances are required, *first to mislead the public, and next to preserve his own individuality.* Commenting further upon the language of Lord Langdale in *Groft v. Day*, the vice-chancellor proceeds: "Now in that case of *Groft v. Day*, there was, as Lord Langdale said, many distinctions between the two labels, and in this case before me just as in that of *Groft v. Day*, any one who takes upon himself to study the two labels, will find even more marks of distinction than were noticed in argument. *But in this case as in that, there is the same general resemblance in color. Here there is the same combination of colors, pink and green.* There is the same heading, "Her Majesty's Letters Patent" and "Solid Headed Pins" and the name D. F. Taylor, with the words "exclusively manufactured" upon the two labels, which are of precisely the same size, and the scrolls in the same form, "and exclusive patentee" in an exactly similar curved line, nor does it rest only with the general resemblance of the outer wrappers: *The papers in which the defendant's pins are stuck bear also a very great similarity; they are as like as can be to the papers in which the plaintiff's pins are stuck.*"

Then, after stating that he agrees that there must be an intent to deceive the public, the vice-chancellor holds that the defendants, both in the outer and inner wrapper, made a palpable imitation, with the intent to deceive the public, and he accordingly restrained them. I have referred to this case at length because it