

The Board of Trade, however, in the very recent case of *Re Stapley and Smith's Trade Mark "Alpine"* attempted to set up a distinction between words newly inserted and existing words used in a new application, which has never hitherto been recognized either in English or American law, and which, if established in England, would set up a new *differentia* between the law of trade marks in force here, and that in force elsewhere, and might be productive of considerable difficulties in connection with the registration in England of the trade marks of foreign owners. In support of the contention of the Board of Trade, reliance was placed on the words "not in common use" as showing that a registrable fancy word must be newly coined, but Mr. Justice Chitty fortunately found himself able to take the view that an existing word might constitute a "fancy word not in common use" if applied to an article with which it had no natural or established connection.

Newly coined words are especially open to the objection that they may easily come to be descriptive of a special article, and so cease to be distinctive, as "linoleum" was held to be descriptive: *Linoleum Manufacturing Company v. Navin*, 38 L. T. Rep., N. S. 448; 7 Ch. Div. 834; whereas such appellations as "Eureka" shirts, "Sefton" cloth, "Crown Seixo" wine, or "Dogshead" beer, are not nearly so much exposed to the same risk. On all grounds Mr. Justice Chitty's decision is on the side of the balance of convenience: if the point were determined the other way, it would be necessary for traders to endeavor to get the act amended. Although the decision in the "Alpine" case is so recent, there has already been time for it to receive support from Mr. Justice Pearson's ruling in the case of *Slazinger v. Mallings* in which he held that the words "The Lawford," which had been registered as a fancy name for lawn-tennis raquettes, were properly registered and capable of protection. We ought not to omit to mention that in the "Alpine" case Mr. Justice Chitty very properly ridiculed a contention by the Board of Trade that a word not distinctive in itself could be made so by prefixing "The" to it, so that according to their argument, "Alpine" would be a bad trade mark, but "The Alpine" a good one.

It seems difficult to conjecture who could have invented such a theory.—*Law Times* (London.)

#### GENERAL NOTES.

It is to be hoped that Prince Albert Victor before he has been long a member of an Inn of Court will be able to modify the rather gloomy view of the meaning of the words 'in Chancery' which he has gathered as an apt student of 'Bleak House.' Writing of a drive through the wilds of Australia, the royal midshipmen say: 'In many places we drive as through an open English park, only it is a park in Chancery, with the trees fallen and dead and the stumps protruding here and there, and pools uncared for, and the grass growing by their sides, dark and lank.' 'In Chancery' in its opprobrious sense is, like 'drunk as a lord' and other phrases, a survival historically imbedded in the language, used perhaps so marking progress, but happily recording a fact some-time past and gone.—*Law Journal* (London.)

A case which is of much interest was tried at Ottawa on Thursday last before Judge Lyon with a jury, in which Mr. M. Pennington, of Montreal, was the plaintiff, and Mr. Octave Noel, of Ottawa, defendant. Mr. Noel, who is in business, had over his store a sign on which was written M. M. Noel. A traveller of Mr. Pennington sold the defendant two bills of goods, and at each time he called defendant was in the store, seeming to have complete management of same, and really to be proprietor of the business. He gave the orders with the initials 'M. M. Noel.' Enquiries were made by the plaintiff, who naturally supposed that "M. M. Noel" was the party who transacted the business with his traveller, and nothing could be learned to the contrary; accordingly he addressed all invoices and letters to "M. M. Noel, Esq., as a man, and no intimation, it was alleged, was ever given by the defendant to the plaintiff that he was mistaken in so addressing the correspondence. The defendant withdrew from store-keeping and went into contracting without the knowledge of the plaintiff, and when the bills became due said that he never was proprietor of the business, "M. M." being his wife's initials, that she alone had been owner, and to look to her for the money as he was not going to pay his wife's debts. She, of course, had nothing. Mr. Pennington then sued Octave Noel for the amount, believing that the business had belonged to him; that he had been guilty of sharp practice and deception, and that such sign over his door was misleading—"M. M." instead of "Mrs." or "Mary M. Noel." After the examination of several witnesses counsel for both parties reviewed the case at length. Mr. W. H. Barry, of Ottawa, the plaintiff's counsel, in his address to the jury, pointed out the danger of loss to which the mercantile community would be subjected if a man could with impunity go into business, get credit and act in such a manner as to make his creditors believe that it was his, and afterwards tell them to look to his wife for payment, as he was not responsible. A verdict was returned in favor of the plaintiff for the full amount of claim with costs—*Ex.*