

CONTRACTS IN RESTRAINT OF TRADE—THE LAW OF TRADE MARKS.

are reasonable. The main consideration, however, appears to be whether the restraint is larger than the necessary protection of the party with whom the contract is made, is unreasonable and void, as being injurious to the interests of the public on the grounds of public policy. In the *Leather Cloth Company v. Lorrson*, L. Rep. 7 Eq. 355, Vice-Chancellor James stated that all restraints upon trade are bad as being in violation of public policy, unless they are natural and not unreasonable for the protection of the parties in dealing legally with some subject-matter of contract. His Lordship explained that the same public policy which enables a man to sell what he has in the best market, enables him to enter into any stipulation, however restrictive it is, provided that restriction, in the judgment of the court, is not unreasonable, having regard to the subject-matter of the contract. Restrictions even indefinite in time have been held valid, as in *Bunn v. Guy*, 4 East, 190, or for a life of the party restrained, as in *Hitchcock v. Coker*, 6 A. & E. 438. Again, Vice-Chancellor Leach, in *Bryson v. Whitehead*, 1 S. & S. 74, enforced an agreement by a trader upon selling a secret in his trade to restrain himself for twenty years absolutely from the use of such secret, and intimated that the trader might restrain himself generally. Mr. Justice Fry, relying upon the *Leather Cloth Company v. Lorrson* and other cases, came to the conclusion that the plaintiffs had established a right to an injunction.

—*Law Times*.

THE LAW OF TRADE MARKS.

Scarcely a week passes during the legal year without some addition being made to the authorities upon the Law of Trade Marks. In a case which was heard on the 24th instant, on appeal from the Master of the Rolls (*Re Worthington's Trade Mark*), the question for decision was whether certain brewers were entitled to register a trade-mark which consisted of a triangle with the picture of a church inside, and the name and address of the firm around it. One of the well-known brewery firms had already adopted a triangle of a different colour and without the picture inside. Was the former

mark so like the latter that it was "calculated to deceive" within the meaning of the Trade Marks Registration Act? The Master of the Rolls decided the question in the affirmative. He thought that, if the applicants were allowed to register the proposed mark, they might subsequently colour it red, the colour of the trade mark already registered, so as to obscure the church, and that the proposed mark was in fact an unfair attempt to gain advantage by adopting a mark as nearly as possible resembling the other. Registration was accordingly refused. On appeal this decision was upheld by Lords Justices James, Brett and Cotton. What is the object of the Trade Marks Registration Act? In the words of Lord Justice James, it is to prevent the mischief arising from one trader adopting a similar mark to that already used by another trader. His Lordship admitted that, if the marks were used in black and white only, there would be a substantial difference between them. The Act, however, founded no distinction upon differences of colour. Hence, if the appellants' marks were registered, there would be nothing to prevent them from adopting a red colour. Lord Justice Brett thought there were two questions—one of law, the other of fact, the former being whether, in construing the Act, the marks were to be looked at only as printed in the advertisements, or as they would probably be used in the trade. Nothing was said in its provisions about outline, form, or design. The thing to be registered was stated to be "a distinctive device, mark, heading, label or ticket." "That being so," said his Lordship, "and the mischief being one which was to be done in the course of the trade, it would be a narrow construction to say that you were only to look at the mark as printed in the advertisements, and not as it would be used in the trade. There is nothing in the Act to prevent a trade-mark from being used in any colour. In registering a trade-mark, not only the outline or design as registered will be protected, but the trade-mark which can be used in the trade." The question then was resolved into this: assuming both trade-marks to be registered, and the owner of