

facts being that from 1896 to 1905 the plaintiffs had manufactured tires for cycles and motor cycles under the name of "Warwick," so that by the year 1905 the name had become distinctive of the plaintiffs' tires. In 1905 they transferred their business, with the exclusive right to manufacture and sell "Warwick" tires to the Dunlop Company; but they did not assign their goodwill in their trade name of "Warwick." The plaintiffs never manufactured or sold tires for motor cars, nor did the Dunlop Company sell motor tires under the name of "Warwick." The defendants, on the other hand, only manufactured and sold motor tires, and in 1908 the name of their managing director being Warwick, they commenced to sell tires made by them as "Warwick motor tires," and the present action was brought to restrain them from so doing on the ground that they were passing off their goods as those of the plaintiffs. The Dunlop Company was not a party to the action. Two points were made by the defendants, first, that motor tires were distinct from cycle tires, and that as the plaintiffs did not make motor tires there was no ground for assuming that the defendants' goods were those of the plaintiffs, and, secondly, that in the absence of the Dunlop Company the plaintiffs were not entitled to relief. Neville, J., decided both points against the defendants, considering that the name "Warwick" had become a distinctive title of the plaintiffs' tires, and could not be applied by defendants to motor tires made by them, although the plaintiffs did not make motor tires; and as the plaintiffs still retained their goodwill in the name it was unnecessary to make the Dunlop Company parties.

TRADE MARK—INNOCENT INFRINGER OF TRADE MARK—DAMAGES.

*Slazenger v. Spalding* (1910) 1 Ch. 257. This was an action to restrain an infringement of the plaintiffs' trade mark as applied to golf balls of their make. The defendants were innocent infringers of this trade mark, and on being notified of the plaintiffs' rights, they at once undertook to remove the mark from balls sold by them, and also from their catalogues. The plaintiffs insisted that they were entitled to an account of sales of golf balls bearing the objectionable mark. The defendants declined to render an account and offered £10 as damages. This the plaintiffs refused to accept and brought the case to trial before Neville, J., who held on the authority of *Edelstein v. Edelstein*, 1 D.J. & S. 185, that the plaintiffs were not, in the circumstances, entitled to substantial damages or to an inquiry,