to the trade or to the public as his mark and thus operates to distinguish his goods from the goods of other persons, he is entitled in equity to an injunction against the user of the same or any colourable imitation of the same which is in any manner calculated to deceive the trade or the public. Equity has never imposed any limitation on the kind of word entitled to this protection. but in every case it has to be proved that the mark has by user become in fact distinctive of the plaintiff's goods."

In some instances, as where a secondary meaning has been acquired by a surname, the use of it, even by one of the same name would deceive and would be restrained by Court of Equity. *Burgess* v. *Burgess*, 3 De G. M. & G. 896; *Holloway* v. *Holloway*, 13 Beav. 209; *Tussaud* v. *Tussaud*, 44 Ch. D. 678; *Christie* v. *Christie*, L.R. 8 Ch. 422.

The mere fact that confusion is likely to result is not sufficient. "If all that a man does is to carry on the same business (as another trader), and to state how he is carrying it on, that statement being the simple truth, and he does nothing more with regard to the respective names he is doing no wrong. He is doing what he has an absolute right by the law of England to do and you cannot restrain a man from doing that which he has an absolute right by the law of England to do." (*Per* Lord Esher, M.R., in *Turton & Sons, Ltd.* v. *Turton*, 42 Ch. D. 128.) In the same case, Cotton, L.J., said:—

"The court cannot stop a man from carrying on his own business in his own name, although it may be the name of a better-known manufacturer, when he does nothing at all in any way to try and represent that he is that better known and successful manufacture."

[See *Re Horlick's Malted Milk* (1917), 35 D.L.R. 516, and annotations thereto at p. 519.]

ACQUIESCENCE IN USE OF NAME BY ANOTHER.—Where, however, a person has allowed another to use his name, and acquire a reputation under it, he will not afterwards be allowed to himself use his name so as to deceive, nor to empower others to use it so as to produce that result. *Birmingham Vinegar Brewing Co., Ltd.* v. *Liverpool Vinegar Co., Ltd.*, 4 T.L.R. 613.

RIGHT OF VENDOR OF BUSINESS TO USE NAME.—The vendor of a business and goodwill, when there is no convention to the contrary, may establish a similar business in the neighborhood and may deal with his former customers, although he may be enjoined from soliciting business from them. *Leggott* v. *Barrett* (1880), L.R. 15 Ch. 306; *Cruttwell* v. *Lye* (1810), 17 Ves. 346, 34 E.R. 129; *Labouchere* v. *Dawson* (1872), L.R. 13 Eq. 322. In *Thompson* v. *McKinnon*, 21 L.C.J. 355, a biscuit manufacturer was held to have conveyed with the sale of the business and goodwill, the exclusive right to use the name "McKinnon's" as well as the device of a boar's head grasping in its jaws a bone, and he was restrained from subsequently making use of the name and device. The Court of Review in this case referred with approval to the rule laid down by the foregoing English cases.

LOAN OF NAME FOR PURPOSES OF DECEPTION.—It is not permissible for a man to lend his name to a third person and induce that third person to start in business in opposition to someone else who is using that name and has an established business under it. *Rendle* v. *Rendle & Co.*, 63 L.T.N.S. 94; *Brinsmead* v. *Brinsmead*, 12 T.L.R. 631; *Mappin & Webb* v. *Leapman*, 22 R.P.C. 398.