

RECENT ENGLISH DECISIONS.

tially unchanged. Such variations might not unreasonably be supposed to have been made by the owners of the plaintiff's trade-mark themselves for reasons of their own." Later on he says:—"It is true that deception in fact, is not in this case proved; but there is a large body of trustworthy evidence to the effect that such deception would be liable and very likely to occur, at all events with the more ignorant class of consumers . . . Nor am I able to conceive any satisfactory explanation, under all the circumstances of this case, of the adoption by the defendants of that particular device . . . unless it was because they had a desire and intention to approach to the plaintiff's trade-mark as nearly as they possibly could. For such desire and intention no motive can be suggested except that of getting some part of the benefit of the goodwill and reputation of the plaintiff's trade." So, too, Lord Blackburn says, that as regards the defendants in this case their own conduct was evidence as against them, that the resemblance was calculated to deceive, for they were quite aware what the plaintiff's trade-mark was and the view taken of it by the Eastern buyers, and they were sending out yarns for the express purpose of competing with the plaintiff's. "I think," he adds, 'that the differences were so great that the defendants hoped that no Court would say that the use of the elephants (the principle feature in the trade-mark) could mislead.' Lord Watson states the law in a general as follows:—"When a prominent and substantial part of a long and well known trade-mark, denoting the manufacture of a particular firm, appears as a prominent and substantial part of the new trade-mark of a rival, it seems reasonable to anticipate that the goods of the latter may be mistaken for, or sold as, the manufacture of the firm to which the older trade-mark belong . . . The reproduction of a prominent part of another merchant's trade-mark upon a new ticket does not *per se* establish that the latter was prepared by its owner with a view to deceive by himself sell-

ing, or by enabling others to sell, his goods as the manufacture of that other merchant. But no man, however honest his personal intentions, has a right to adopt and use so much of his rival's established trade-mark as will enable any dishonest trader, into whose hands his own goods may come, to sell them as the goods of his rival . . . I am of opinion that, having regard to what they knew about the trade and trade-mark of the respondents (plaintiffs), it was eminently the duty of the appellants (defendants) in adopting a ticket of their own to avoid every feature of the older trade-mark which could by any possibility create the risk of their yarns being sold by some interested and unscrupulous dealers, as the respondents." The result, therefore, was that the plaintiff obtained his injunction.

Before leaving this case, which it has appeared desirable to note at considerable length, there are some dicta of Lord Selborne and Lord Blackburn to be noticed. At p. 227 Lord Selborne says: "Your Lordships are not called upon to decide whether a ticket, which was a rightful and *bona fide* trade-mark of the trader using it, could be excluded by injunction from particular markets, though unimpeachable everywhere else, merely because in those markets it might be liable to be called by a name which the mark of another trader had already acquired there. To that proposition I should not myself, as at present advised, be prepared to assent." At p. 228 Lord Selborne says: "Trade-marks have sometimes been likened to letters patents and sometimes to copyrights, from both of which they differ in many respects. And I think, to borrow a phrase used by Lord Ellenborough in *Waring v. Cox*, 1 Camp. 369, with reference to a different branch of the law, "Much confusion has arisen from similitudinary reasoning on the subject."

STATUTE OF LIMITATIONS—R. S. O. 108, SS. 4, 5.

The purport of the next case, *Pugh v. Heath*, p. 235, is best given in the following passage of Lord Cairn's judgment: "A legal mortgage of freehold land in 1856; no possession by