

them, and this Mr. Justice North held not to be a legitimate proceeding. The learned judge considered that, even if Holbrook were selling his own goods under his own name, it would be his duty, under the circumstances, to take care that in so doing he was not passing off his goods as those of the plaintiff company, which had become well known and acquired a reputation in the market under Holbrook's name. So, in *Holt v. Smith*, 4 Times Rep. 329, Mr. Justice Kay also granted an interlocutory injunction.

The reported cases in 1889 were two in number, that of *Warner v. Warner*, 5 Times Rep. 327, 359, being the earlier. There the Court of Appeal agreed with Mr. Justice Stirling in thinking that an interlocutory injunction ought to be granted to restrain the defendant, whose name was Warner, from applying to a proprietary medicine which he had purchased, known as 'Ashton's greatgout and rheumatic cure, the name of 'Warner's gout and rheumatic cure,' which so closely resembled the preparations sold by the plaintiff Warner under the title 'Warner's safe cure,' as to be calculated to mislead the public. The defendant also sold medicines as 'Warner's cures.' The inference which the Court drew from the evidence was that the defendant was not really honestly advertising his medicines under his own name, but was doing it in such a way as to acquire a portion of the reputation previously acquired by the plaintiff. The other case in 1889, *Turton v. Turton*, 58 Law J. Rep. Chanc. 677; L. R. 42 Chanc. Div. 128, is a most important one, mainly because of the clear and comprehensive judgments of the learned judges of the Court of Appeal.

The plaintiffs in that case had for many years carried on business under the name of 'Thomas Turton & Sons.' The defendant, John Turton, had for many years carried on a similar business in the same town under the name, first of 'John Turton,' and afterwards of 'John Turton & Co.' He then took his sons into partnership and traded as 'John Turton & Sons.' There was no evidence of imitation of trade-marks, or attempts to deceive the public. It was held by the Court of Appeal, reversing the decision

of Mr. Justice North, that, although the public might occasionally be misled by the similarity of names, the defendants could not be restrained from using the name of 'John Turton & Sons,' which was an accurate and strictly true description of their firm. Mr. Justice North had gone to the length of granting an injunction against the defendants, although His Lordship was quite satisfied that they had acted honestly, and that, independently of the use of the name of their firm, which they had used in the honest belief that they were entitled to do so, they had made no attempt to pass off their goods as those of the plaintiffs. The learned judge considered, however, that he was bound to come to the conclusion which he did by the authority of *Hendriks v. Montagu*. He thought that that case showed that it was not necessary for the plaintiffs to prove fraudulent intention on the part of the defendants. Whether or not Mr. Justice North was right in his view of what was laid down in *Hendriks v. Montagu*, it was perfectly evident that his decision in *Turton v. Turton* could not be allowed to stand. The Court of Appeal did not regard *Hendriks v. Montagu* as rendering it incumbent upon Mr. Justice North to decide *Turton v. Turton* as he did. Lord Justice Cotton observed that Mr. Justice North had founded his decision on *Hendriks v. Montagu* 'without considering what was the subject the learned judges were dealing with in their judgment when they used the expressions on which he relied.' Lord Justice Cotton then proceeded to explain the *ratio decidendi* in *Hendriks v. Montagu*.

Among the cases relating to trade names decided this year, perhaps the most important is *Tussaud v. Tussaud*, 59 Law J. Rep. Chanc. 631; L. R. 44 Chanc. Div. 678. There Mr. Justice Stirling granted an interlocutory injunction to the plaintiff company, Madame Tussaud & Sons (Lim.), proprietors of the famous wax-works exhibition, to restrain the registration of a proposed new company, under the name of 'Louis Tussaud (Lim.);' which was promoted by Louis Tussaud, and of which he was to be manager, for the purpose of carrying on a similar business or exhibition. The defendant had