The Legal News.

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LORD COLERIDGE'S VISIT.

The Lord Chief Justice and party are expected to arrive August 23. The following rather extensive tour has been arranged by Mr. E. F. Shepard, chairman of the committee of arrangements of the N. Y. State Bar Association:—Monday, August 27, to Irvington by train. W. D. Sloane's reception. Tuesday, August 28, and Wednesday, August 29, at Saratoga. Garden party, etc., at the Grand Union Hotel, fireworks in Congress park. Judge Hilton will entertain the party. Trip to Mt. McGregor. Thursday, August 30, and Friday, August 31, at Newport. Saturday, September 1, at Windsor, Vt., William M. Evarts' guests. Sunday, September 2, rest at the Profile House, White Mountains. Monday, September 3, Fabyan's Twin Mt. House, Glen House, etc. Tuesday, September 4, leave the White Mountains and arrive at Boston. Wednesday, September 5, guests of Gov. Butler and the Commonwealth of Massachusetts; take part in the exercise of the "Manufacturers' and Mechanics' Institute for the purpose of the General Improvement of Manufacturing and Mechanical Interests and the holding of Industrial Exhibitions Annually." Thusday, September 6, in Boston, attending receptions and dinners. Friday, September 7, to Portland and Bangor. Saturday, September 8, at Fredericton, N. B., where Lord Coleridge will visit his old friend, the Bishop of Fredericton, N. B. From Fredericton the party go St. John and Quebec. At the latter place there will be a reception and dinner. At Montreal there will be a reception. Also at Ottawa. At Toronto a reception by the bar of the Province. Thence the party will proceed to Niagara Falls, the Thousand Islands, Watkins Glen, Rochester, Buffalo (reception), Cleveland, Sandusky, Toledo, Detroit, Chicago (reception by State bar), Milwaukee, St. Paul, Minneapolis, Sioux City, Omaha, Council Bluffs, St. Joseph, Kansas City, St. Louis, Decatur, Logansport, Indianapolis, Dayton, Cincinnati, Springfield, Columbus, Wheeling, Chattanooga, Pittsburgh, Washington, Baltimore, Philadelphia, Mansfield, Salamanca, Rochester, Syracuse, Albany and New York. The date for the Albany visit has not been settled as yet. In New York the Lord Chief Justice will be given the public reception by the New York State Bar Association, on the conclusion of the trip, which will be in the latter part of October.

PREGNANCY AS GROUND FOR AVOIDING MARRIAGE.

It is quite well settled that there is no implied warranty of chastity on the part of a woman contracting marriage. *Varney* v. *Varney*, 52 Wis. 130; S. C., 38 Am. Rep. 726. In the case of concealed pregnancy by another man at the time of the marriage, however, the courts have generally given relief to the deceived husband. The most recent case on this subject is *Allen's Appeal*, 99 Penn. St. 196. Here the late Chief Justice Sharswood said: "Thus it is well settled that want of chastity on the part of the woman—ante-nuptial incontinence—even though she may have expressly represented herself as virtuous—forms no ground for avoiding the contract. * * * This seems also to be the dictate of humanity and in conformity to the gospel which so strongly throughout inculcates the duty of mutual forgiveness. For otherwise, one of strong passions, led astray or seduced by the wicked arts of others, could have no hopes for reform. In such cases it is best for society that the past should be entirely buried in oblivion, and that the poor erring creature should have the best chance of a new life of respectability and honor. It is best that the other party should know, when the sin is afterward revealed to him, that it can do no good, but unmixed evil, to make it public by applying for a divorce. They must learn to submit to the inevitable. * * * And if ante-nuptial incontinence be a sufficient ground of nullity as against the woman, it is not easy to see why it should not be so likewise against the man, and the consequence of such a doctrine it is not easy to predict. Actual pregnancy at the time of the marriage presents an entirely different question. It introduces a different element. The marriage status of the parties is changed. The man is then necessarily put to the alternative of either publishing his wife's shame, or submitting to have the child of a

stranger, an alien to his blood, introduced, recognized and educated as his own legitimate offspring." And in this case the submission of the question of fraud to the jury was held to have been proper. The child was born seven months after the marriage.

In *Scroggins* v. *Scroggins*, 3 Dev. (N. C.), 535, the child was born five months after the marriage, and the husband would not swear that he believed her chaste at the time of the marriage. Ruffin, J., said: "Concealment is not a fraud in such a case—disclosure is not looked for—active misrepresentations and studied and effectual contrivances to deceive are at least to be required, to give it that character; and the other party must appear not to have been voluntarily blind, but to have been the victim of a deception which would have beguiled a person of ordinary prudence. I know not how far the principle contended for would extend. If it embrace a case of pregnancy, it will next claim that of incontinence; it will be said the husband was well acquainted with the female and never suspected her, and has been deceived; then, that he was a stranger to her, smitten at first sight, and drawn on the sudden into a marriage with a prostitute; that he was young and inexperienced, hurried on by impetuous passion, or that he was in his dotage, and advantage taken of the lusts of his imagination, which were stronger than his understanding. From uncleanness it may descend to the minor faults of temper, idleness, sluttishness, extravagance, coldness, or even to fortune inadequate to representations, or perhaps expectations. There is in general no safe rule but this: that persons who marry agree to take each other as they are. * * * He who marries a wanton, knowing her true character, submits himself to the lowest degradation, and imposes on himself. No fraud can be said to be practiced on him by mere silence and concealment of other observations. * * * His attention must have been attracted to the person of the woman he was about marrying, and the long intimacy and courtship which he mentions must have enabled him to detect her situation. Why did he marry her? It may be possible that he was deceived, and not by his own negligence, at that period. But it is impossible that any art or device could have long prevented him from knowing the truth, that is, as far as this, that she was pregnant. If not by him, why did he live with her?" This was followed in *Long* v. *Long*, 77 N. C. 304; S. C, 24 Am. Rep. 449.

In *Reynolds* v. *Reynolds*, 3 Allen, 605, the wife was delivered five months after marriage; and the husband was 17, the wife 30 years old. The marriage was set aside. Bigelow, C. J., said: "The material distinction between such a case and a misrepresentation as to the previous chastity of a woman is obvious and palpable. The latter relates only to her character and conduct prior to the contract, while the former touches her actual present condition and her fitness to execute the marriage contract and take on herself the duties of a chaste and faithful wife. It is not going too far to say, that a woman who has not only submitted to the embraces of another man, but who also bears in her womb the fruit of such illicit intercourse, has during the period of her gestation incapacitated herself from making and executing a valid contract of marriage with a man who takes her as his wife in ignorance of her condition and on the faith of representations that she is chaste and virtuous. In such a case, the concealment and false statement go directly to the essentials of the marriage contract, and operate as a fraud of the gravest character on him with whom she enters into that relation." The court lay stress on the difficulty of ascertaining the fact before marriage by personal intercourse or inquiry, or after marriage, "where, as in the case at bar, the husband was immature and inexperienced." The court also expressly concede the doctrine of continuance of cohabitation, after good reason to know the fact, and except the case where the pregnancy was known beforehand and the husband was deceived into the belief that he was the father. (The latter state of facts existed in *Foss* v. *Foss*, 12 Allen, 26, and a divorce was denied; and much to the same effect is *Hoffman* v. *Hoffman*, 30 Penn. St. 417.) *Reynolds* v. *Reynolds* was followed in *Donovan* v. *Donovan*, 9 Allen, 140, where it was also held that evidence of express representations of chastity was unnecessary.

In *Baker* v. *Baker*, 13 Cal. 87, the child was born between four and five months after the marriage. The divorce was granted. The court said: "We do not attach much importance to the suggestion that the plaintiff must have discovered the situation of the defendant

long previous to the birth of the child, and that his silence thereupon must be regarded as an acknowledgment of its paternity. We cannot assume that he detected her pregnancy, and if he had reason to suspect it, that he must have done so at so early a period after marriage as to have referred it to ante-nuptial incontinence. To one, who we must believe from the evidence, possessed a strong affection for his wife, the suspicion of a want of chastity would never arise. Affection will give every excuse for appearances, except that of dishonor." The Court dwelt on the fact that the child would be presumptive heir of the husband's estate, and continued: "A woman, to be marriageable, must at the time be able to bear children to her husband, and a representation to that effect is implied in the very nature of the contract. A woman who has been pregnant over four months by a stranger, is not at the time in a condition to bear children to her husband, and the representation in this instance was false and fraudulent." After enlarging on the disgraceful situation of the husband, the court concluded: "By no principle of law or justice can a man be held to this humiliating and degrading position, except upon clear proof that he has voluntarily and deliberately subjected himself to it." Disapproving *Scroggins* v. *Scroggins*.

In *Morris* v. *Morris*, Wright, 630, the complainant was "an honest simple fellow" of 28, "but little used to female society," and the defendant was a Quaker of 35. The child was born in less than a month from the marriage. The marriage ceremony took place in the dusk, without lights, "under circumstances as to the position and movement of the bride, with an arrangement of the full Quaker dress of the ladies, which excited the suspicion of the clergyman. The husband and wife lived together without his suspicions being awakened until the wife was taken in labor pains, and presented her wondering spouse a full grown child before the expiration of the honeymoon." A divorce was granted.

In *Ritter* v. *Ritter*, 5 Blackf. 81, the husband discovered the wife's condition the next night after the wedding and immediately left her. The statute authorized divorces for certain causes, and for another cause when in their discretion the court should think it reasonable and proper. The court below refused a divorce, but this was reversed, the court observing that "the court did not exercise its discretion in a sound and legal manner, having due regard to the rights of the injured party, and the purity of public morals."

In *Carris* v. *Carris*, 9 C. E. Green. 516, the child was born two months and a half after the marriage, the husband had had no previous connexion with the mother, was very young, and was deceived by artifice of dress and conduct. A divorce was granted by the Court of Errors and Appeals, overruling the Chancellor. The court exclude cases of mere incontinence, and mistake of the husband who had had previous connexion. The Court cited the Massachusetts and California cases. Two judges dissented.

Mr. Schouler says (Husb. and Wife, § 27): "We apprehend that the woman who brings surreptitiously to the marriage bed the incumbrance of some outside illicit connection, introduces a disqualification to the union as real as the physical impotence of a man would be, resulting from his own lasciviousness."—*Albany Law Journal.*

NOTES OF CASES.

COUR SUPÉRIEURE.

MONTRÉAL, 9 juillet 1883.

Coram RAINVILLE, J.

LUREAU v. DEBEAUFORT, et les mêmes sur demande incidente.

Chose jugée—Délai pour appeler—Cautionnement pour frais seulement—Identité d'objet.

Jugé, qu'il y a chose jugée entre les parties même pendant le délai accordé par la loi pour appeler d'un jugement.

Que lorsqu'une partie porte un jugement en appel, mais consent à l'exécution du jugement, et ne donne cautionnement que pour les frais, l'appel n'a pas l'effet en droit d'empêcher qu'il y ait chose jugée entre les parties.

Qu'un jugement renvoyant un plaidoyer à une saisie-revendication d'une partie de certains effets par le propriétaire, est chose jugée à l'encontre du même plaidoyer produit par le même défendeur dans une action où le propriétaire réclamait le prix de l'autre partie de ses effets vendue par le défendeur.

Le jugement suivant explique suffisamment les faits de la cause et la contestation liée entre les parties.

"La Cour après avoir entendu les parties par leurs avocats sur la demande incidente faite et produite par le demandeur en cette cause, examiné la procédure, les pièces produites et la preuve et délibéré;

"Attendu que le demandeur allègue qu'en février 1879 il aurait chargé le défendeur de lui vendre des marchandises à commission à raison de dix pour cent sur le prix de chaque vente; qu'à différentes dates à compter de mai 1879, il aurait expédié au défendeur des marchandises pour un montant considérable, que le défendeur aurait vendu des marchandises pour un montant de $3,259.85, lui donnant droit à une commission de $325.98, et laissant en faveur du demandeur une somme de $2,933.87; que le défendeur était obligé de lui remettre les deniers provenant du prix des marchandises après chaque vente; qu'il n'a rien remis au demandeur, et qu'il retient encore la dite somme de $2,-933.87;

"Attendu que le défendeur a plaidé que lors des offres à lui faites par le demandeur de vendre de ses marchandises à commission, le défendeur était employé comme commis-voyageur pour la vente de vins et liqueurs, et qu'au moyen de ce négoce il se faisait un revenu de deux à trois mille piastres par année; que le demandeur s'était engagé d'envoyer au défendeur une quantité considérable de liqueurs pour vendre à commission, que sur la foi de cet engagement le défendeur a laissé son premier emploi pour se consacrer exclusivement à la vente des dites marchandises à commission; que dans ce but il s'est monté un magasin, a fait des dépenses considérables pour s'installer et a déboursé à cet effet $1,190.13; que le montant d'affaires que le dit défendeur aurait pu faire par année était de $40,000, sur lequel montant, il aurait pu réaliser un bénéfice considérable; que le demandeur n'ayant pas rempli son engagement et ayant cessé d'envoyer des marchandises au défendeur, ce dernier s'est trouvé sans emploi par la faute du demandeur, et qu'en outre de la somme déboursée comme susdit, il a souffert des dommages pour $3,000, pour perte de salaire et de bénéfice; que les dites deux sommes réunies sont plus que suffisantes pour compenser le montant réclamé par le demandeur, et que le défendeur a droit de garder les sommes dont il peut être redevable au demandeur pour se payer de sa réclamation;

"Attendu que le demandeur principal, par sa demande incidente, allègue les faits de la demande principale, et ceux de la défense par laquelle le défendeur plaide compensation;

"Attendu que le demandeur incident allègue de plus que dans une action instituée devant cette Cour sous le No. 732, le dit demandeur a poursuivi le défendeur par saisie-revendication pour obtenir la restitution de cette partie des marchandises qu'il lui avait expédiées pour être vendues à commission, et qui se trouvent encore en nature entre les mains du défendeur; qu'à cette action le défendeur a plaidé par une exception alléguant les mêmes dommages que ceux allégués dans son exception à la présente action, et qu'il prétend lui avoir été causés comme susdit, et concluant à ce qu'il fût déclaré que le défendeur n'est pas obligé de remettre les effets saisis-revendiqués tant que le demandeur ne lui aura pas payé sous forme de compensation les dits dommages; que depuis l'institution de la présente action et la contestation liée sur icelle par la production du plaidoyer, un jugement a été rendu sur la première exception, savoir dans la dite cause No. 732, lequel jugement est devenu exécutoire et a obtenu force de chose jugée; que par le dit jugement la saisie-revendication a été maintenue, et l'exception du défendeur, basée sur les dits dommages, renvoyée comme n'ayant aucun fondement;

"Attendu que le demandeur incident conclut à ce que le plaidoyer de compensation produit dans la présente action soit renvoyé, en autant qu'il y a chose jugée entre les parties sur la dite exception par le jugement rendu dans la dite cause numéro 732;

"Attendu que le défendeur, se portant défendeur incident, a répondu à la dite demande incidente que les faits sur lesquels le jugement dans la cause numéro 732 est basé, et ceux articulés dans la dite demande incidente ne sont pas les mêmes; que le jugement dans la dite cause No. 732 a été rendu le 29 novembre 1881, et est encore susceptible d'appel, le délai pour l'appel n'étant pas encore expiré; que de fait le défendeur a le 4 janvier 1882 interjeté appel du dit jugement dans la cause No. 732, et a

fourni le cautionnement voulu par la loi; et qu'en conséquence le dit jugement n'a pas obtenu force de chose jugée;

"Attendu que le demandeur incident a répondu spécialement à l'exception produite par le défendeur incident à la demande incidente, en disant que le dit défendeur incident n'avait, sur son appel dans la cause No. 732, donné cautionnement que pour les frais d'appel, et avait produit au greffe de la Cour une déclaration qu'il ne s'opposait pas à l'exécution du dit jugement; qu'en conséquence il y a chose jugée; et qu'antérieurement au dit appel le dit défendeur incident avait acquiescé directement et indirectement au jugement rendu dans la dite cause No. 732;

"Attendu que le dit demandeur incident a obtenu permission de produire une réplique spéciale *puis d'arrein continuance* à la susdite exception du défendeur incident, et qu'il allègue dans la dite réplique spéciale que le jugement rendu dans la dite cause No. 732 le 29 novembre 1881 a été le 24 mars 1883, confirmé par le jugement de la Cour d'Appel, lequel jugement est maintenant final et sans appel;

"Considérant que la contestation engagée dans la présente cause est la même que celle engagée dans la dite cause No. 732, est entre les mêmes parties, pour la même cause et pour le même objet quant à la question des dommages réclamés par le défendeur;

"Considérant que par le dit jugement rendu dans la cause No. 732, le défendeur principal a été débouté de ses prétentions pour les dommages qu'il pouvait réclamer du demandeur, et et que les dommages qu'il reclame par son exception en cette cause sont basés sur les mêmes faits que ceux allégués dans son exception dans la dite cause No. 732;

"Considérant que la demande incidente pour faire déclarer chose jugée a été produite le 4 janvier 1882, et que l'appel dans la dite cause No. 732 a été pris le 14 janvier 1882;

"Considérant que le dit appel n'a pas eu l'effet en droit d'empêcher l'effet de la chose jugée, en autant que le défendeur n'a donné cautionnement que pour les frais, et a consenti à l'exécution du dit jugement quant au principal;

"Considérant que la dite demande incidente est bien fondée, en ce qu'il y a chose jugée sur l'exception produite par le défendeur principal;

"Considérant en outre que la dite réponse spéciale produite par le demandeur incident et sa réplique spéciale *puis d'arrein continuance* sont bien fondées, les maintient; déclare qu'il y a chose jugée entre les parties sur l'exception produite par le défendeur principal à l'action du demandeur; déclare la demande incidente bien fondée, et la maintient, et déboute le défendeur incident de sa défense à la demande incidente, et déboute le défendeur principal de son exception à la demande principale, avec dépens de contestation sur la demande incidente contre le dit défendeur et défendeur incident, distraits à Messieurs Barnard, Beauchamp et Creighton, avocats du demandeur incident."

Barnard, Beauchamp & Creighton, pour le demandeur incident.

A. Mathieu, pour le défendeur incident.

(J. J. B.)

TRADE-MARK CONTAINING MISREPRESENTATION NOT PROTECTED.

SUPREME COURT OF THE UNITED STATES.

MARCH 30, 1883.

MANHATTAN MEDICINE CO. v. WOOD.

A court of equity will extend no aid to sustain a claim to a trade-mark of an article which is put forth with a misrepresentation to the public as to the manufacture and as to the place where it is manufactured.

Appeal from the Circuit Court of the United States for the District of Maine. The opinion states the case.

FIELD, J. This is a suit in equity to restrain the defendants from using an alleged trade-mark of the complainant, upon certain medicines prepared by them, and to compel an accounting for the profits made from its use in their sale of the medicines; also the payment of damages for their infringement of the complainant's rights.

The complainant, a corporation formed under the laws of New York, manufactures in that State medicines designated as "Atwood's Vegetable Physical Jaundice Bitters;" and claims as its trade-mark this designation, with the accompanying labels. Whatever right it possesses it derives by various mesne assignments from one Moses Atwood, of Georgetown, Massachusetts. The bill alleges that the complainant is, and for a long time previous to the grievances complained of was, the manufacturer and vendor of the medicine mentioned; that it is put up and

sold in glass bottles with twelve panel-shaped sides, on five of which in raised words and letters "Atwood's Genuine Physical Jaundice Bitters, Georgetown, Mass." are blown in the glass, each bottle containing about a pint, with a light yellow printed label pasted on the outside designating the many virtues of the medicine, and the manner in which it is to be taken; and stating that it is manufactured by Moses Atwood, Georgetown, Mass., and sold by his agents throughout the United States.

The bill also alleges that the bottles thus filled and labelled are put up in half-dozen packages with the same label on each package; that the medicine was first invented and put up for sale about twenty-five years ago by one Dr. Moses Atwood, formerly of Georgetown, Massachusetts, by whom, and his assigns and successors, it has been ever since sold "by the name, and in the manner, and with the trade-marks, label and description substantially the same as aforesaid;" that the complainant is the exclusive owner of the formula and recipe for making the medicine, and of the right of using the same name or designation, together with the trade-marks, labels, and good will of the business of making and selling the same; that large sales of medicine under that name and designation are made, amounting annually to twelve thousand bottles; that the defendants are manufacturing and selling at Portland, Me., and at other places within the United States, unknown to the complainant, an imitation of the medicine, with the same designation and labels, and put up in similar bottles, with the same, or nearly the same words raised on their sides, in fraud of the rights of the complainant and to its serious injury; that this imitation article is calculated and was intended to deceive purchasers, and to mislead them to use it instead of the genuine article manufactured by the complainant, and has had, and does have, that effect. The bill therefore prays for an injunction to restrain the defendants from affixing or applying the words "Atwood's Vegetable Physical Jaundice Bitters," or either of them, or any imitation thereof, to any medicine sold by them, or to place them on any bottles in which it is put up, and also from using any labels in imitation of those of the complainant. It also prays for an accounting of profits and for damages.

Among the defences interposed are these: that Moses Atwood never claimed any trade-mark of the words used in connection with the medicine manufactured and sold by him; and assuming that he had claimed the words used as a trade-mark, and that the right to use them had been transferred to the assignors of the complainant, it was forfeited by the misrepresentation as to the manufacture of the medicine on the labels accompanying it, a misrepresentation continued by the complainant.

In the view we take of the case, it will not be necessary to consider the first defence mentioned, nor the second, so far as to determine whether the right to use the words mentioned as a trade-mark was forfeited absolutely by the assignor's misrepresentations as to the manufacture of the article. It is sufficient for the disposition of the case, that the misrepresentation has been continued by the complainant. A court of equity will extend no aid to sustain a claim to a trade-mark of an article, which is put forth with a misrepresentation to the public as to the manufacturer of the article, and as to the place where it is manufactured, both of which particulars were originally circumstances to guide the purchaser of the medicine.

It is admitted that whatever value the medicine possesses was given to it by its original manufacturer, Moses Atwood. He lived in Georgetown, Massachusetts. He manufactured the medicine there. He sold it with the designation that it was his preparation, "Atwood's Vegetable Physical Jaundice Bitters," and was manufactured there by him. As the medicine was tried and proved to be useful, it was sought for under that designation, and that purchasers might not be misled, it was always accompanied with a label, showing by whom and at what place it was prepared. These statements were deemed important in promoting the use of the article and its sale, or they would not have been continued by the assignees of the original inventor. And yet they could not be used with any honest purpose when both statements had ceased to be true. It is not honest to state that a medicine is manufactured by Moses Atwood, of Georgetown, Massachusetts, when it is manufactured by the Manhattan Medicine Company in the City of New York.

Any one has an unquestionable right to affix to articles manufactured by him a mark or device not previously appropriated, to distinguish them

from articles of the same general character manufactured or sold by others. He may thus notify the public of the origin of the article and secure to himself the benefits of any particular excellence it may possess from the manner or materials of its manufacture. His trade-mark is both a sign of the quality of the article and an assurance to the public that it is the genuine product of his manufacture. It thus often becomes of great value to him, and in its exclusive use the court will protect him against attempts of others to pass off their products upon the public as his. This protection is afforded not only as a matter of justice to him, but to prevent imposition upon the public. *Manufacturing Company* v. *Trainer*, 101 U. S. 54.

The object of the trade-mark being to indicate, by its meaning or association, the origin or ownership of the article, it would seem that when a right to its use is transferred to others, either by act of the original manufacturer or by operation of law, the fact of transfer should be stated in connection with its use; otherwise a deception would be practised upon the public and the very fraud accomplished, to prevent which courts of equity interfere to protect the exclusive right of the original manufacturer. If one affix to goods of his own manufacture signs or marks which indicate that they are the manufacture of others, he is deceiving the public and attempting to pass upon them goods as possessing a quality and merit which another's skill has given to similar articles, and which his own manufacture does not possess in the estimation of purchasers. To put forth a statement, therefore, in the form of a circular or label attached to an article, that it is manufactured in a particular place, by a person whose manufacture there had acquired a great reputation, when in fact it is manufactured by a different person at a different place, is a fraud upon the public which no court of equity will countenance.

This doctrine is illustrated and asserted in the case of *Leather Cloth Co.* v. *American Leather Cloth Co.*, which was elaborately considered by Lord Chancellor Westbury, and afterward in the House of Lords on appeal from his decree. 4 De Gex, Jones and Smith, 147, and 11 Clark's H. of L. Cas. 523.

In that case, an injunction was asked to restrain the defendant from using a trade-mark to designate leather cloth manufactured by it, which trade-mark the complainant claimed to own. The article known as leather cloth was an American invention, and was originally manufactured by J. R. and C. P. Crockett, at Newark, New Jersey. Agents of theirs sold the article in England as "Crockett's Leather Cloth.' Afterward a company was formed entitled "The Crockett International Leather Cloth Company," and the business previously carried on by the Crocketts was transferred to this company, which carried on business at Newark, in America, as a chartered company, and at West Ham, in England, as a partnership. In 1856, one Dodge took out a patent in England for tanning leather cloth and transferred it to this company. In 1857 the complainant company was incorporated, and the international company sold and assigned to it the business carried on at West Ham, together with the letters patent, and full authority to use the trade-mark which had been previously used by it in England. A small part of the leather cloth manufactured by the complainant company was tanned or patented. It however used a label which represented that the articles stamped with it were the goods of the Crockett International Leather Cloth Company; that they were manufactured by J. R. and C. P. Crockett; that they were tanned leather cloth; that they were patented by a patent obtained in 1856, and were made either in the United States or at West Ham, in England. Each of these statements or representations was untrue so far as they applied to the goods made and sold by the complainant.

The defendant having used on goods manufactured by it a mark having some resemblance to that used by the complainant, the latter brought suit to enjoin the use. Vice-Chancellor Wood granted the injunction, but on appeal to the lord chancellor the decree was reversed and the bill dismissed. In giving his decision the lord chancellor said that the exclusive right to use a trade-mark with respect to a vendible commodity is rightly called property; that the jurisdiction of the court in the protection of trade-marks rests upon property, and that the court interferes by injunction because that is the only mode by which property of that description can be effectually protected. But he added: "When the owner of the trade-mark applies for an injunction to restrain the defendant from injuring his property by making false representations to the public, it is essential that the plaintiff should not in his trade-mark, or in the business connected with it, be himself guilty of any false or misleading representation; for if the plaintiff makes any material false statement in connection with the property he seeks to protect, he loses, and very justly, his right to claim the assistance of a court of equity." And again: "Where a symbol or label, claimed as a trade-mark, is so constructed or worded as to make or contain a

distinct assertion which is false, I think no property can be claimed in it, or in other words, the right to the exclusive use of it cannot be maintained."

When the case reached the House of Lords the correctness of this doctrine was recognized by Lord Cranworth, who said that the justice of the principle no one could doubt; that it is founded in honesty and good sense, and rests on authority as well as on principle, although the decision of the House was placed on another ground.

The soundness of the doctrine declared by the lord chancellor has been recognized in numerous cases. Indeed, it is but an application of the common maxim that he who seeks equity must present himself in court with clean hands. If his case discloses fraud or deception or misrepresentation on his part, relief there will be denied.

Long before the case cited was before the courts, this doctrine was applied when protection was sought in the use of trade-marks. In *Pidding* v. *How*, 8 Sim. 477, which was before Vice-Chancellor Shadwell in 1837, it appeared that the complainant was engaged in selling a mixed tea, composed of different kinds of black tea, under the name of "Howqua's Mixture," in packages having on three of their sides a printed label with those words. The defendant having sold tea under the same name, and in packages with similar labels, the complainant applied for an injunction to restrain him from so doing. An *ex parte* injunction, granted in the first instance, was dissolved, it appearing that the complainant had made false statements to the public as to the teas of which his mixture was composed, and as to the mode in which they were procured. "It is a clear rule," said the vice-chancellor, "laid down by courts of equity, not to extend their protection to persons whose case is not founded in truth."

In *Perry* v. *Truefitt*, 6 Beav. 66, which was before Lord Langdale, Master of the Rolls, in 1842, a similar ruling was had. There it appeared that one Leathart had invented a mixture for the hair, the secret and recipe for mixing which he had conveyed to the plaintiff, a hair-dresser and perfumer, who gave to the composition the name of "Medicated Mexican Balm," and sold it as "Perry's Medicated Mexican Balm." The defendant, one Truefitt, a rival hair-dresser and perfumer, commenced selling a composition similar to that of plaintiff, in bottles with labels closely resembling those used by him. He designated his composition and sold it as "Truefitt's Medicated Mexican Balm." The plaintiff thereupon filed his bill, alleging that the name or designation of "Medicated Mexican Balm" had become of great value to him as his trade-mark, and seeking to restrain the defendant from its use. It appeared however that the plaintiff, in his advertisements to the public, had falsely set forth that the composition was "a highly concentrated extract from vegetable balsamic productions" of Mexico, and was prepared from "an original recipe of the learned J. F. VonBlumenbach, and was recently presented to the proprietor by a very near relation of that illustrious physiologist;" and the court therefore refused the injunction, the Master of the Rolls holding that in the face of such a misrepresentation, the court would not interpose in the first instance, citing with approval the decision in the case of *Pidding* v. *How*.

In a case in the Superior Court in the city of New York, *Fetridge* v. *Wells*, 4 Abb. Pr. 144, this subject was very elaborately and ably treated by Chief Justice Duer. The plaintiff there had purchased a recipe for making a certain cosmetic, which he sold under the name of "The Balm of a Thousand Flowers." The defendants commenced the manufacture and sale of a similar article, which they called "The Balm of Ten Thousand Flowers." The complainant, claiming the name used by him as a trade-mark, brought suit to enjoin the defendants in the alleged infringement upon his rights. A temporary injunction was granted, but afterward, upon the coming in of the proofs, it was dissolved. It appeared that the main ingredients of the compound were oil, ashes and alcohol, and not an extract or distillation from flowers. Instead of being a balm, the compound was a soap. The court said it was evident that the name was given to it and used to deceive the public, to attract and impose upon purchasers; that no representation could be more material than that of the ingredients of a compound recommended and sold as a medecine: that there was none so likely to induce confidence in its use, and none, when false, that would more probably be attended with injurious consequences. And it also said: "Those who come into a court of equity, seeking equity, must come with pure hands and a pure conscience. If they claim relief against the frauds of others, they must themselves be free from the imputation. If the sales made by the plaintiff and his firm are effected, or sought to be, by misrepresentation and falsehood, they cannot be listened to when they complain that by the fraudulent rivalry of others, their own fraudulent profits are diminished. An exclusive privilege for deceiving the public is assuredly not one that a court of equity can be required to aid or sanction. To do so would be to forfeit its name and character." See also *Seabury* v. *Grosvenor*, 14 Blatch. 262; *Hobbs* v. *Francais*, 19 How. Pr. 567; *Connell* v. *Reed*, 128 Mass. 477; *Palmer* v. *Harris*, 60 Penn. St. 156.

The doctrine enunciated in all these cases is founded in honesty and good sense; it rebukes fraud and encourages fair dealing with the public. In conformity with it, this case has no standing before a court of equity. The decree of the court below dismissing the bill must therefore be affirmed; and it is so ordered.—28 Albany Law Journal, 89.