

And this deed then concludes with a proviso in these words: "Provided always, and it is the true intent and meaning of these presents, that if the said Thomas Clagett shall well and truly pay, repay, and satisfy the said Charles Salmon for all advances of

33 Md. 252. One tradesman has no right to use the trade-marks or names previously adopted and used by another, so as to induce purchasers to believe, contrary to the fact, that they are buying the articles to which the marks were originally applied. *Ibid.*

No one can claim protection for the exclusive use of a trade-mark or trade name, which would practically give him a monopoly in the sale of any goods other than those produced by himself. *Canal Co. v. Clark*, 13 Wallace, 311. Nor can a generic name, or a name merely descriptive of an article of trade, of its qualities, ingredients or characteristics be employed as a trade-mark, and the exclusive use of it be protected. *Ibid.* Letters or figures affixed to merchandise by a manufacturer, for the purpose of denoting its quality only, cannot be appropriated by him to his exclusive use as a trade-mark. *Manufac. Co. v. Trainer*, 101 U. S. 51.

And so a publisher or author has, either in the title of his work, or in the application of his name to it, or in the particular marks which designate it, a species of property similar to that which a trader has in his trade-mark, and may, like a trader, claim the protection of equity against such a use or imitation of the name, marks or designation, as is likely, in the opinion of the Court, to be a cause of damage to him in respect of that property. This doctrine has been held applicable to such periodical publications as newspapers, magazines and almanacs. To entitle a complainant to relief he must clearly show a property right in himself, and a fraudulent or colorable imitation by the defendant. *Robertson v. Berry*, 50 Md. 591. In *Walter v. Emott*, 53 L. T. Rep. (N. S.) 437, an application by the proprietor of the Evening Mail to restrain the publication of a paper called the Morning Mail was refused.

Equity will not interfere in cases of this kind if there is any lack of truth in the plaintiff's case, or if the trade-mark or label sought to be protected contains a misrepresentation. *Siegert v. Abbott*, 61 Md. 276. Nor will equity interfere where the testimony in regard to the right of ownership of the trade-mark is conflicting and contradictory, so that it is difficult to determine on which side the weight of evidence preponderates. *Witthaus v. Mattfelt*, 44 Md. 304. Where a trade-mark is used to designate the place and person by whom the goods are made, the right thereto passes to the purchaser of the business and manufactory at which the goods are made. *Ibid.* But the mere sale of a trade-mark apart from the article to which it is affixed confers no right of ownership, because no one can claim the right to sell his goods as goods manufactured by another. To permit this to be done would be a fraud upon the public. *Ibid.*

The Acts of Congress providing for the registration and protection of trade-marks were declared to be unconstitutional in the *Trade-Mark Cases*, 100 U. S. 82.

XIV. INJUNCTIONS AGAINST PUBLIC OFFICERS. Equity has jurisdiction to enjoin the illegal proceedings of public functionaries. *Balt. v. Porter*, 18 Md. 285. *Holland's Case*, 11 Md. 186. See *supra*, *Municipal Corporations*. Discretionary power of Commissioners to lay out a new road or street will not be restrained. *Worthington v. Bicknell*, 1 Bland, 186, note; *Pascault v. Com'rs*, *Ibid.*, 584, note. Injunction against officers of Registration, refused.