

Certainly it is fair to say that the two concerns practically divided the market for "Clark's thread" between them. The business was so arranged and systematized that there was no clashing. For some time prior to 1892 the expression in question meant either the complainant's thread, or the "Mile-End" thread, but generally the complainant's. It seems to be tacitly admitted that if the complainant at the commencement of the action had the sole right to use the expression "Clark's thread," so that it had acquired a secondary meaning in connection with complainant's thread alone, that its use by the defendant should be restrained. The argument is that this right is lost because the complainant did not possess it exclusively; that because the "Mile-End" Clarks have a right to use the expression all other Clarks have an equal right. The court does not so understand the law. The contrary is, it is thought, asserted by the following authorities: *Newman v. Alvord*, 51 N. Y. 189, 195; *William Rogers Manuf'g Co. v. Rogers & Spurr Manuf'g Co.*, 11 Fed. 495; *Croft v. Day*, 7 Beav. 88. It is true that these cases are not precisely similar, on the facts, to the case at bar. No two cases are exactly alike. It is always possible to distinguish. The effort, however, in these and similar cases is to arrive at justice. The broad principle underlying them all is that property shall be protected from unlawful assaults. That where a party has for long years advertised his goods by a certain name so that they are distinguished in the market by that name the court will not permit a newcomer, by assuming that name, to destroy or impair an established business even though others may have acquired the right to use the name legitimately. A., who has a right to a trade name, may prevent C., who has no right, from using it even though B., who has an equal right with A., does not object to the use by C. One who has an interest in the preserve can without the co-operation of his cotenant, punish the common poacher.

It follows that the complainant is entitled to a decree for an injunction restraining the defendant from using the word "Clark," or "Clark's" in connection with the thread manufactured by "The William Clark Company." Of course the court does not intend to intimate that the defendant may not use the corporate name of said company in any way he may desire, provided it is not printed in such a manner as to be a practical violation of the injunction against the use of the word "Clark." The letters N. E. W. are chiefly mischievous in connection with the word "Clark's"; their use at this time need not be restrained. As the complainant has succeeded only in part it should not recover costs.

HARPER et al. v. RANOUS.

(Circuit Court, S. D. New York. May 7, 1895.)

1. COPYRIGHT—INFRINGEMENT—DRAMATIZED NOVEL.

Under the act of March 3, 1891, amending Rev. St. § 4952, so as to give to authors or their assigns the exclusive right to dramatize and translate their copyrighted works, the owner of the copyright of a novel is entitled

to an injunction against the public production of a play or drama which presents characters, plot, incidents, dramatic situations, and dialogues appropriated from the novel.

2. SAME—NAME OF NOVEL.

The owner of the copyright of the novel "Trilby" is not entitled to protection against the use of that name in connection with a dramatic composition which does not present any scenes, plot, or dialogue imitated or adapted from the novel; for it is the name in connection with the novel, and not the name alone, which the copyright protects.

This was a suit by John W. Harper and others against William V. Ranous for infringement of the copyright of the novel "Trilby." Complainants moved for a preliminary injunction.

A. J. Dittenhoefer and George L. Rives, for complainants.
John J. Thomasson, for defendant.

LACOMBE, Circuit Judge. The act of March 3, 1891 (26 Stat. 1106), amends section 4952 of the United States Revised Statutes so that it now contains this provision: "Authors or their assigns shall have the exclusive right to dramatize and translate all of their works for which copyright shall have been obtained under the laws of the United States." Complainants' title to the copyright of the novel "Trilby," as set forth in the bill, is not seriously disputed; and the affidavits show quite plainly that defendant's drama or play called "Trilby" presents characters, plot, incidents, dramatic situations, and dialogue appropriated from the novel thus copyrighted. Complainants may take an injunction pendente lite restraining the defendant, his agents and servants, from producing or publicly performing any play or drama presenting the scenes, incidents, plot, or dialogue of the said novel, "Trilby," or any substantial part thereof, or any simulated or colorable imitation or adaptation thereof. The application, however, for an injunction against the mere use of the name "Trilby" as the title of any dramatic composition which does not present such scenes, incidents, plot, or dialogue, or simulated or colorable imitation or adaptation thereof, is denied. It is the name in connection with the novel, not the name alone, which the copyright law protects.

OLIVER DITSON CO. v. LITTLETON et al.

(Circuit Court of Appeals, First Circuit. April 25, 1895.)

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COPYRIGHT—MUSICAL COMPOSITIONS—MANUFACTURE IN UNITED STATES.

The proviso in section 3 of the copyright act of March 3, 1891, that "in the case of a book, photograph, chromo, or lithograph," the two copies required to be delivered to the librarian of congress shall be manufactured in this country, does not include mere musical compositions though published in book form, or made by lithographic process. 62 Fed. 597, affirmed.

Appeal from the Circuit Court of the United States for the District of Massachusetts.