1896, App. Cas. 199), or “ Stone Ales ” for ales brewed at Stone *(Montgomery* v. *Thompson,* 1891, App. Cas. 217), may be shown to have acquired by long use a “ secondary distinctive meaning,” and, in fact, to mean the goods of a particular trader. And where a defendant is not selling the genuine goods indicated by the name, as where the composition of the goods is a secret, even if the name might otherwise be taken as merely that of the goods, he cannot rely on the defence that the name is descriptive *(Birmingham Vinegar Co.* V. *Powell,* 1897, App. Cas. 710; the “ Yorkshire Relish Case”). If, however, the primary meaning of the word is simple and well known, it is extremely difficult to establish a secondary meaning exclusive of the primary one *(Hommel v. Bauer & Co.,* 1905, 22 R.P.C. 43; “ Haematogen,” a preparation for forming blood, secondary meaning not established; cf. *Fells* v. *Hedley & Co.,* 1904, 21 R.P.C. 91; “Naphtha soap,” secondary meaning not established; *Wurm* v. *Webster & Girling,* 1904, 21 R.P.C. 373; “White Viennese Band,” secondary meaning not established ; *Cellular Clothing Co.* v. *Maxton,* 1899, A.C. 326, “ cellular ” as applied to cloth, secondary meaning not established). But although a name may not, owing to the fact that it consists of well-known or descriptive words, be inherently entitled to protection, a distinctive scroll or device, in which it is embodied, may be so. Thus, in a case *(Weingarten Brothers* v. *Bayer & Co.,* 1905, 21 Times L.R. 418; and see 19 Times L.R. 604) which sharply divided judicial opinion in England, the defendants were restrained from selling corsets in boxes bearing the name “ Erect Form Corsets” scrolled thereon by the plaintiffs in a distinctive manner. No monopoly, of course, could be claimed in the words, but it was otherwise with the scroll. The use of a fancy name “ iron oxide tablets ” has been restrained where it was found likely to cause deception as being used to supersede in the market certain well-known “ Iron Ox ” tablets *(Iron Ox Remedy Co.* v. *Co-operative Wholesale Society Ltd.,* 1907, 24 R.P.C. 425). (2) A trader cannot be prevented from trading under his own name, if he is using it honestly (bona fide) ; even though from its similarity to the name of another trader—even one previously well-established— it may injure the business of the latter *(Burgess* v. *Burgess,* 1853, 3 De Gex, M. & G. 896; *Turton v. Turton,* 1889, 42 Ch. D. 128; *Dunlop Pneumatic Tyre Co.* v. *Dunlop Motor Co.,* 1907, App. Cas. 430). This right is recognized by the Trade Marks Act 1905, s. 44, which provides that registration of a trade mark under the act shall not interfere with any bona fide use by any person of his own name or place of business or that of any of his predecessors in business. But if a trader has never carried on such a business on his own account or in parthership with others, he cannot, by promoting and registering a joint-stock company with a title of which his name forms part, confer on the company the rights which he as an individual possesses in the use of his name *(Fine Cotton Spinners, &c.. Associa­tion Ltd. and John Cash & Sons Ltd.* ν. *Harwood Cash & Co. Ltd.,* 1907, 2 Ch. 184). If a trader’s own name has, before he entered the trade, become the trade name of some other person’s goods, he would probably not be allowed to use it without taking steps to prevent deception. This rule does not debar him from using “ any bona fide description of the character or quality of his goods ” (1905, s. 44). A name can become universally known as referring to the goods of a particular maker, *i.e.* as having a secondary meaning. This does not give exclusive rights to use of the name, but only to prevent other firms from using the goods so as to pass off their goods as those of the person whose name is in question *(Joseph Rodgers & Sons Ltd.* v. *Hearnshaw,* 1906, 23 R.P.C. 348).

It is provided by the Companies Act 1862 (s. 20), that no company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling it as to be calculated to deceive, unless the subsisting company is in process of being wound up and consents to such registration; and provision is also made for a change of the name of any company which, through inadvertence or otherwise, is registered under a name coming within the statutory prohibition. It is to be observed (cf. Buckley, *Companies Acts,* 8th ed. p. 27) that (*a*) the Companies Act 1862 applies only to the case of taking the name of a subsisting company already registered, and not to a case where a new company proposes to register in the name of, or in a name closely resembling, the name of an old-established company which is not registered, or of a firm or individual trader; (*b*) that as soon as the new company is registered the act ceases to apply; and (c) that the act forbids registration irrespectively of the question whether the business proposed to be carried on by the new company is the same as that of the subsisting company or not. But the provisions of the Companies Act on this subject are merely supplemental to the common law, and any company trading in the United Kingdom may restrain persons from registering a new company to carry on a rival business under a name identical with or so similar as to be calculated to deceive, and a company already registered under such a name may be restrained from carrying on a rival business under it. The right to interfere depends not upon fraud but upon the tendency of the similarity to cause confusion, deception or mistake (Fine Cotton Spinners case above cited; *Birmingham Small Arms Co.* v. *Webb,* 1907, 24 R.P.C. 27; *Star Cycle Co.* V. *Frankenburgs,* 1907, 24 R.P.C. 405; *re Reddaway & Co.,* 1907, 24 R.P.C. 203). In such proceedings evidence is admissible to show how the existing company has used the name, and what, by reason of its connecting that name with its goods, the public have come to attribute to it *(Daimler Motor Car Co.* ν. *London Daimler Co.,* 1907, 24 R.P.C. 379). A new company will not be allowed to take the whole name of a subsisting company, even although that name is of a descriptive character *(Manchester Brewery Co. Ltd.* v. *North Cheshire and Manchester Brewery Co. Ltd.,* 1899, App. Cas. 83).

The purchaser of the goodwill of a business has the right to use the trade name under which the business is known, and to restrain others from using it or such imitations of it as may mislead the public. But he is not entitled by the use of the trade name to make the vendor liable, under the doctrine of “ holding out,” for debts of the business incurred after the sale. And if the vendor of the goodwill gave his name to the business, he cannot (in the absence of any restrictive condition in the agreement for sale) be prevented from beginning to trade in his own name again, unless it be shown that in so doing he is attempting to deceive the public into the belief that he is st ill the owner of the old business. In construing the words “ calculated to deceive ” (s. 20) the courts will adopt principles closely analogous to those applicable in “ passing off" cases in which the question is raised whether a trade name or the description or get-up of a particular class of goods is or is not likely to deceive *(British Vacuum Cleaner Co.* v. *New Vacuum Cleaner Co.,* 1907, 2 Ch. 312; *Aerators Ltd.* v. *Totlett,* 1902, 2 Ch. 319, 324). When the names of the two companies contain terms of common ordinary meaning descriptive of an article, s. 20 will be applied less readily than where the words said to create the confusion are of the character of fancy words relating rather to the maker than the article (Vacuum Cleaner Case).

IV. *Merchandise Marks.—*The first attempt to make the falsification of trade marks a criminal offence was in the Mer- chandise Marks Act 1862 (25 & 26 Vict. c. 88). That statute provided that the forgery of a trade mark with intent to defraud, and the false application of a trade mark to goods with the like intent, should be misdemeanours, but left upon the prosecutor the burden of establishing the fraudulent intent. The act contained no provision for summary prosecutions, and did not provide for the seizure of falsely-marked goods on importation from abroad. The international convention for the protection of industrial property, made at Paris in 1883, to which Great Britain acceded in 1884, contains a provision that all goods illegally bearing a trade mark or trade name may be seized on importation into those states of the union where the mark or name has a right to legal protection, and that the seizure shall be effected at the request of either the proper public department or of the interested party, pursuant to the internal legislation of each country. The law had to be amended in order to carry out this article in the convention, and the Merchandise Marks Act 1887 was passed to effectuate this object and generally to make better provision for the protection of merchandise. It was subsequently amended in 1891 and 1894. The effect of the provisions of these statutes may be briefly stated. Any person is guilty of an offence, punishable on indictment or summary conviction by fine or imprisonment, who does any of the five following acts, unless he proves as regards the first four of them that he acted without intent to defraud (there is a special defence to No. v. which is noted below): (i). forges any trade mark, or makes, disposes of, or has in his possession for such purpose any die or instrument; (ii.) falsely applies any trade mark or a colourable imitation of any trade mark to goods; (iii.) applies any false trade description to goods; (iv.) causes any of the above offences to be committed; (v.) sells or exposes for sale, or has in his possession for sale, trade or manu- facture, any goods or things to which any forged trade mark or false trade description is applied, or any trade mark or colourable imitation of a trade mark is falsely applied, unless *the defendant* proves that, having taken all reasonable precautions, he had no ground to suspect the genuineness of the mark, &c., and also that on demand he gave to the prosecutor all the information in his power as to the person from whom be obtained the goods, &c., or proves that he otherwise acted “innocently.” (See *Thwaites & Co. v. McEυilly,* 1903, 20 R.P.C. 663).

“ Trade description ” is defined as any descriptive statement or other indication as to the measurement, quantity (not *quality,* it should be observed), or weight, place or mode of production, or