DECISIONS RELATING TO PATENTS, TRADE MARKS, ETC.

United States Circuit Court.—District of New Jersey.

THE BATE REFRIGERATING CO. *vs* B. W. GILLETT *et al.*—FOREIGN PATENT EXTENSIONS.

Nixon, D. J.:

On petition to dissolve injunction.

On the 14th of November, 1881, a decree was entered in the above case, sustaining the validity of complainants' letters patent, and ordering an account and an injunction against the defendants, restraining them from further infringement.

The defendants now file a petition, setting forth that the letters patent for the infringement of which the suit was brought were the letters patent of the United States, numbered 197,314, granted to John J. Bate, of the city of Brooklyn, N. Y., on the 20th of November, 1877, for the term of seventeen years from that date, for "Improvements in the process for preserving meats during transportation and storage." That prior thereto, to wit, on the 9th of January, 1877, letters patent of the Dominion of Canada, No. 6,938, were granted to the said Bate for the same invention or discovery for the term of five years from January 9, 1877; that the said term for the foreign patent expired on the 9th of January, 1882, by reason whereof the letters patent of the United States, No. 197,314, expired at the same time as the said Canadian letters patent, as provided for by Section 4,887 of the Revised Statutes of the United States.

The petition further alleges that the invention or discovery of Bate, having previously been patented by him in the Dominion of Canada, the said letters patent of the United States should have been so limited as to expire with the same time as the foreign Canadian patent; and the granting of the patent in the United States for the term of seventeen years from the 20th of November, 1877, was in direct violation of Section 4,887 of the Revised Statutes, by reason whereof the same were and are null and void.

The prayer of the petition is that the injunction hereto fore ordered and issued may be dissolved

The inventor Bate first took out Canadian letters patent for five years. He afterward procured extensions: first on December 12, 1881, for five years from January 9, 1882; and secondly, on December 13, 1881, for another five years, to be computed from the expiration of the prior extension, to wit, from January 9, 1887.

What effect had these extensions on the life of the United States patent? Under the provisions of Section 4,887, must its term be made to expire with the term of the foreign patent in force when the letters patent were granted, or do these extensions of the foreign patent save the domestic patent from lapsing, when the term ends, which was running at the grant of the domestic patent?

The question is an interesting one, and has already received examination and answer in other circuits.

It first came before the late Justice Clifford, in the First Circuit, in the case of *Henry vs. The Providence Tool Company*, decided in 1878, and reported in XIV. *Off. Gaz.*, 855. In that case, the United States patent had been issued under the act of July 8, 1870, for the full term of seventeen years, although at the time of the grant there was an English patent for the same invention in force, which had been granted to the patentee in Great Britain, for fourteen years from the 15th of November, 1860.

The defendants claimed that the United States patent expired, by operation of law, at the same time with the English patent. The complainant, on the other hand, insisted that the language of the statute extended not only to the term of the foreign patent in force when the United States patent was obtained, but also to the term of any prolongation which the patentee might secure from the foreign government, and that as he had obtained an extension of four years to the original term, the owners of the domestic patent were entitled to add these four years to its life.

Judge Clifford refused to accede to such a construction of the law, but, on the contrary, held: 1. That by the provision of the act of July 8, 1870, Congress never intended to extend the term of the domestic patent beyond the legal term secured to the foreign patentee when the domestic patent was granted. 2. That the prolongation of the English patent for a further term after the expiration of the original, did not save the domestic patent from lapsing under the statute.

He was followed in this construction of the section by Judge Blatchford, of the Second Circuit, in 1879, in the case of *Reissner vs. Sharp*, 16 Blatch. 383. A patent had been granted by the United States on the 20th October, 1874, for seventeen years from that date. It appeared that, under the authority of the patentee, letters patent had been previously obtained in Canada for the same invention, for five years from May 15, 1873. After careful consideration, the learned judge held that the United States patent expired on the 15th of May, 1878, although it appeared that in March, 1878, the Canadian patent had been extended for five years from May 15, 1878, and also for five years from the 15th of May, 1883. There was an attempt made to distinguish the case from *Henry vs. The Providence Tool Co., Supra.* 1. Because the Canadian patent had not expired when the extension was granted; and 2, because the extension, by the terms of the Canadian law, was not a matter of favor, as it was under the English act. But the judge could not perceive that these considerations were of sufficient force to cause any other conclusions as to the plain meaning of the statute than that arrived at by Mr. Justice Clifford.

We are clearly of the opinion that the prayer of the petition should be granted and the injunction be dissolved. Whether the complainant's United States patent is void *ab initio*, because the term was not limited on its face to expire with the same time as the foreign patent, is not properly before the court on this motion. It was a defense to the suit of which the defendants did not choose to avail themselves, and a formal interlocutory decree entered in the case cannot be impeached in and by any such collateral proceeding.

TRADE MARK DECISIONS.

Britton vs. Stratton et al.—U. S. Circuit Court, E. D. Michigan, Fed. Rep. August 1, 1882. The question of the right to the use of trade marks is carefully discussed. The principal question involved was whether the words "Twin Brothers," used as a trade mark in connection with a certain kind of yeast manufactured by the complainant, are a trade mark of such character as entitles the complainant to be protected in his monopoly of them. The point is not free from difficulty. The cases concerning the validity of trade marks are very difficult to reconcile, but the following propositions are stated as settled:

That a court of equity will enjoin unlawful competition in trade by means of simulated label, or of the appropriation of a name; as when the defendant appropriates the name of a hotel conducted by the plaintiff, or imitates his label upon preparations. The ground of interference in this class of cases is fraud, that is the attempt to palm off the goods of the defendant as the goods of the plaintiff. A court of equity will not protect a person in the exclusive use of a word which expresses a falsehood, as if the article bears the word "patented" when in fact it is not patented, or exhibits an untruth as to the place of manufacture or composition of the article. That no one can extend his monopoly of a patented trade mark. By the expiration of the patent the public acquires the right not only to make and sell the article, but to make and sell it under the name used by the patentee. A person cannot by means of a trade mark monopolize the name of the place where the article is manufactured. Nor the ordinary numerals or letters. This proposition, however, has been disputed. Nor can a person monopolize a name expressive of the character or composition of an article. Nor when the words are expressive only of the name and quality of the article, and have acquired that significance in the market.

The complainant claimed that he had bought from the defendant Stratton and his brother the entire right to the use of the trade mark, and asked that the defendants be enjoined from using the name of "Twin Brothers" in connection with the sale of yeast. The defendants insisted that the complainant should not be protected in the use of the trade mark, because in using it he represents that he was the originator of the yeast in question, which was not the fact; and that Twin Brothers is a generic name of a compound made under a discovery of the defendant Stratton. The difficulty is in distinguishing the case where the property has acquired a generic name as indicating the quality of the article rather than its origin or ownership. It is a matter for the court to determine in each case from the testimony as well as from the mark itself, whether the words used as a trade mark have become so well known as to denote to the public the character and quality of the article and not its origin or ownership. Mere words may become valid trade marks when they are merely arbitrary, or are indicative of origin or ownership in the original proprietor. Words which have acquired a significance in the marks as expressive only of the name or quality of an article cannot be appropriated as a trade mark. But if the primary object of the trade mark be to indicate origin or ownership, the mere fact that the article has obtained such a wide sale that the mark has also become indicative of the quality, is not of itself sufficient to debar the owners of protection, or make it the common property of the trade. But if the name be suffered to come into general use without objection from the proprietor, it may become merely generic or indicative of quality.

A trade mark indicative of origin or ownership in the proprietor of a certain business may be sold or assigned by him as an appurtenance of such business, and the assignee may become entitled to the exclusive use of such mark, even as against such proprietor himself. *Held*, That the right to use the words "Twin Brothers" in connection with portraits of the twins had been lawfully assigned to the plaintiff, and that he was entitled to an injunction against one of the twins who had set up a separate establishment and was making use of the trade mark in manufacturing yeast.

The subject of trade marks is also discussed in the case of the *Shaw Stocking Co. vs. Mack et al.*, U. S. Circuit Court, N. D. N. Y., Fed. Rep., August, 1882. The question here was upon infringement by reason of a similitude between the labels used by the defendants and those of the complainant, to which it claimed an exclusive right as a trade mark. The principal question was as to which the complainant had an exclusive right to the number "830" to designate and distinguish those of a particular variety made by it. *Held*, That where numerals constituted one of the most prominent features in complainant's design for a label, and the same numerals were used in a similar design by the defendants, such use upon the same kind of articles is calculated to deceive and is an infringement. It is enough that such a similitude exists as would deceive an ordinary purchaser, not an expert or such as would not be easily detected, if the original and spurious were seen together. The right to a trade mark is a right depending on use. Complainants had used the numerals in question long enough to convey a precise understanding when such numerals were used alone, and its right to their exclusive use should be upheld. Injunction granted.—*New Jersey Law Journal.*

Watering Plants in Pots.

Some people attempt to keep pot-plants without giving them any water at all; the result is familiar to every one. Usually, however, the earth in the pot or box is kept soaked and very much in the condition of an ordinary swamp. It is even said that malaria has resulted from living in rooms containing house plants owing to the damp soil. We have ourselves seen dead evergreens pulled out of boxes full of mud. *Neuste Erfindung* gives utterance to the following timely remarks:

Watering plants is one of the most important things in the culture of house plants, and very special care should be devoted to it. Plants ought not to be wet until they need it. It will be evident that they require wetting, if on taking the earth from the pot it crumbles to pieces like dust, a sure sign is to knock on the side of the pot, near the middle, with the finger knuckle. If it gives forth a hollow ring, the plant needs water; if there is a dull sound, there is still moisture enough to sustain the plant. Plants must not be wet more than once or twice a day; on dry, clear days they require more water than on damp, cloudy days. On the other hand the earth must not be allowed to dry out entirely, for that is also very injurious. In wetting them the water must be poured on in such a way that it will run out again through the hole in the bottom of the pot. If the earth gets too dry, it is best to place the pot in water so that the water will saturate the dirt very gradually. They may be watered at any hour of the day, except when the sun is shining on the pot or has just left it; for the earth gets hot when the sun shines on it, and then if cold water is poured on it, it will cool off too rapidly. The best time for watering flowers in summer is the evening, and in winter noon is best. Well water should *never* be used, but always use either rain water or brook water.

The Railway Mileage of the United States.

The *Railway Age* compiles from "Poor's Manual" the following table, showing the railway mileage of each State on Jan. 1, 1882, with the numerical rank of the several States in railway enterprise.

1. Illinois	8,326	25. South Carolina	1,484
2. Pennsylvania	6,690	26. Mississippi	1,232
3. Ohio	6,664	27. Maryland and D. C.	1,048
4. New York	6,279	28. Arkansas	1,042
5. Iowa	6,113	29. New Hampshire	1,026
6. Texas	5,344	30. Maine	1,022
7. Indiana	4,765	31. Louisiana	999
8. Michigan	4,284	32. New Mexico Ter.	975
9. Missouri	4,211	33. Connecticut	959
10. Kansas	3,718	34. Vermont	916
11. Wisconsin	3,442	35. Utah Ter	908
12. Minnesota	3,391	36. Nevada	890
13. Georgia	2,581	37. Florida	793
14. Nebraska	2,310	38. West Virginia	712
15. Colorado	2,275	39. Oregon	689
16. California	2,261	40. Arizona Ter.	557
17. Virginia	2,194	41. Wyoming Ter.	533
18. Tennessee	1,974	42. Washington Ter.	480
19. Massachusetts	1,935	43. Delaware	278
20. Alabama	1,804	44. Indian Ter.	275
21. New Jersey	1,753	45. Idaho Ter.	265
22. Kentucky	1,715	46. Montana Ter	232
23. Dakota Ter	1,639	47. Rhode Island	211
24. North Carolina	1,619		
Total miles			104,813

Area of Yacht Sails.

No yacht in the New York yacht fleet is more completely fitted in racing and cruising canvas than the Montauk. The following table gives points of interest:

SAIL.	Yards.	Width in Inches	Square Feet.
Jib topsail (large)	360	28	2,343
Flying jib	290	14	846
Jib	445	14	1,292
Lug foresail	665	14	1,675
Mainsail	925	14	2,636
Foretopsail	170	14	442
Maintopsail	180	14	500
Topmast staysail	170	28	884
Balloon topmast staysail	620	28	3,827
Balloon club topsail	135	28	840
Balloon jib	390	28	2,700
Spinnaker	380	28	2,640
CRUISING SAILS.			
Boom foresail	550	14	1,408
Fore staysail	280	14	780
Jib	225	14	650
Awnings, covers, traps, etc	700	22	3,675
Totals	6,580		26,736

Isolation in the Paris Maternite.

M. Tarnier, in a letter recently addressed to the Soc. Médic. des Hôpitaux, recalls the very extraordinary results obtained by isolation, the use of antiseptics, and all means proper to ward off contagion. In the new pavilion he has had constructed, in which each chamber can only be entered by a separate door opening outwardly, without any aperture toward the hospital except a single large pane of glass let into the wall, permitting the surveillance of the patients, he has had but 6 deaths in 1,200 cases of labor. Within the past few years even there have been 600 cases without a single death. No statistics ever published have shown such favorable results as these of M. Tarnier.