

## CHANCERY DIVISION.

MAY 11, 1891.

*Before WILLIAMS, J.*

PIRIE &amp; SONS (LIM.) v. GOODALL &amp; SONS.

*Trade-Mark—Words in Common Use—Disclaimer—Fancy Words—Rectification of Register—Patents Act, 1883, ss. 64, 74.*

This was an action to restrain the infringement of a registered trade-mark (No. 43,549, in the year 1885) for paper and envelopes.

The mark consisted of the words 'Pirie's Parchment Bank.' The registration was accompanied by a disclaimer of 'any right to the exclusive use of either the word "parchment" or the word "bank" appearing in connection with this mark.' The mark was used by the plaintiffs as a water-mark on a particular class of paper, and it was also used on the wrappers in which the paper was contained.

The defendants pleaded (1) that the words 'parchment bank' as applied to paper, whether used singly or in combination, were descriptive of particular qualities of paper; (2) that such words were, at the date when the plaintiffs registered their trade-mark, words common to the trade; and they applied for a removal of the plaintiffs' mark from the register. It was conceded that the words 'parchment' and 'bank' used separately denoted certain qualities of paper. The Patents, &c. Act of 1883 provides (s. 64) that 'for the purpose of this Act a trade-mark must consist of or contain at least one of the following particulars: (c) a distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use.'

*Moulton, Q.C.*, and *Willis Bund*, for the plaintiffs, contended that, although the plaintiffs had disclaimed any right to the exclusive use of each of the two words 'parchment' and 'bank' separately, they were nevertheless entitled to claim the combination; that the words in combination were meaningless, and came under the head of fancy words; and that the mark was capable of being supported as a brand.

*Cozens-Hardy, Q.C.*, and *E. S. Ford*, for the defendants, argued that the words 'parchment' and 'bank,' being words in common

use, the combination could not be claimed as a trade-mark, that they were not fancy words, and that the mark was not a distinctive brand.

*WILLIAMS, J.*, held that the mark ought to be removed from the register. It was not competent for anyone claiming words in common use as a trade-mark to escape the prohibition part of section 64, clause (c), by claiming the words in combination only. But, whether that construction was right or not, in his lordship's opinion, the words, whether used separately or in combination, were not fancy words, and were not distinctive. This trade-mark could not be supported as a brand, because, in order to support a trade-mark as a brand which was not otherwise capable of registration, there must be evidence that the mark was used as a brand exclusively; moreover, even assuming the trade-mark to be a brand, it was not a distinctive brand within the meaning of section 64.

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HARRISON v. THE SOUTHWARK AND VAUXHALL WATER COMPANY.

*Nuisance—Negligence—Noise and Vibration—Water Company—Statutory Power.*

This action was brought in respect of an alleged nuisance arising from the noise and vibration occasioned by certain pumping machinery employed by the defendants. The plaintiff claimed an injunction and damages. The defendants, in pursuance of the powers conferred on them by their special Act of 1886, and the Acts incorporated therewith, commenced to sink a shaft in land adjacent to the plaintiff's house, and in the execution of those powers used certain lift pumps to pump out the land water which ran into the shaft while it was being sunk, and the noise occasioned by these pumps seriously interfered with the comfort of the plaintiff and his family. These pumps were kept in use for about three weeks, until the work had arrived at a stage at which it ceased to be necessary to lower the pumps to any greater