The summons is therefore made absolute to strike out the second count, and to amend the first with costs, and the defendant to have eight days time to plead to the amended declaration.

Order accordingly.

ENGLISH REPORTS.

CHANCERY.

MARSHALL v. ROSS.

Trade mark—Word "patent"—Definition of.

The word "patent" may be used, in certain cases, although the party using it has not, in fact, obtained a patent for the manufacture of the article so said to be patented.

[21 L. T. Rep. 260.]

This was a motion in the terms of the prayer of the plaintiff's bill, to restrain the defendant, James Ross, a shipping agent, from removing or parting with certain packages of thread, in wrappers, bearing labels in imitation of the plaintiff's labels. The thread had been manufactured in Belgium, and had been consigned by the manufacturers, Messrs. Dietz and Company, to the defendant Ross in this country, for the purpose of being shipped by him to Australia. The label which the plaintiff had adopted contained the words "Marshall and Co., Shrewsbury." "Patent Thread."

The labels of the defendants were worded, "Marshal; Schrewsbury." "Patent Thread." It appeared that the thread manufactured by the plaintiff was not, in fact, patented: but it was alleged and proved that the word "patent" was so used to designate a certain class of thread well known in the trade; that that term had for many years past been used by manufacturers to distinguish it from thread of a general class.

E. E. Kay, Q.C., and *A. G. Marten*, in support of the motion, contended that it was an evident infringement of the plaintiff's trade mark, which the word "patent" implied; was deceptive in its character, and caused injury to the plaintiffs.

Davey, contra, urged that the defendant was in the present case only a simple consignee, and could not be presumed to know anything of the label in question as an imitation of the plaintiffs' label. The plaintiffs, in fact, had no right to make use of the word "patent" in reference to the character of their thread, when no patent had ever been granted in respect of it, and they therefore could not have the relief by injunction as prayed.

The VICE-CHANCELLOR said, that the word "patent" might be used in such a way as not to deceive anyone, or cause a belief that the goods so called were protected by a patent He instanced the case of "patent leather boots." In the present case the term "patent thread" had been so long used in this particular trade that it might be said to have become a word of "art." He did not consider that there had been any such misrepresentation by the plaintiffs in using the term to prevent them from having it protected by the injunction prayed for. There must therefore be an order for the injunction as prayed.

Order accordingly.

UNITED STATES REPORTS.

SUPREME COURT, UNITED STATES.

[*From the Pittsburgh Legal Journal.*]

THORINGTON v. SMITH & HARTLEY

The rights and obligations of a belligerent were conceded to the government of the Confederate States in its military character from motives of humanity and expediency by the United States. To the extent of actual supremacy, in all matters of government within its military lines the power of the insurgent government is unquestioned.

Such supremacy made civil obedience to its authority not only a necessity, but a duty.

Confederate notes issued by such authority and used in nearly all business transactions by many millions of people, while as contracts in themselves in the event of unsuccessful revolution they were nullities, must be regarded as a currency imposed on the community by irresistible force.

Contracts stipulating for payment in that currency cannot be regarded as made in aid of the insurrection; they are transactions in the ordinary course of civil society, and are without blame except when proved to have been entered into with actual intent to further the invasion.

Such contracts should be enforced in the courts of the United States after the restoration of peace, to the extent of their first obligation.

The party entitled to be paid in these Confederate dollars can only receive their actual value at the time and place of the contract in lawful money of the United States.

CHASE, C. J—This is a bill in equity for the enforcement of a vendor's lien.

It is not denied that Smith & Hartley purchased Thorington's land, or that they executed to him their promissory note for part of the purchase money, as set forth in his bill; or that, if there was nothing more in the case, he would be entitled to a decree for the amount of the note and interest, and for the sale of the land to satisfy the debt. But it is insisted, by the way of defence, that the negotiation for the purchase of the land took place, and that the note in controversy, payable one day after date, was made at Montgomery, in the state of Alabama, where all the parties resided in November, 1864, at which time the authority of the United States was excluded from that portion of the State, and the only currency in use consisted of Confederate Treasury notes, issued and put in circulation by persons exercising the ruling power of the States in rebellion, known as the Confederate government.

It was also insisted that the land purchased was worth no more than three thousand dollars in lawful money; that the contract price was forty-five thousand dollars; that this price, by the agreement of the parties, was to be paid in Confederate notes; that thirty-five thousand dollars were actually paid in these notes, and that the note given for the remaining ten thousand dollars was to be discharged in the same manner; and it is claimed on this state of facts, that the vendor is entitled to no relief in a court of the United States; and this claim was sustained in the court below, and the bill was dismissed. The questions before us on appeal are these: First, can a contract for the payment of Confederate notes, made during the late rebellion, between parties residing within the so called Confederate States, be enforced at all in the courts of the United States? Second, can evidence be received to prove that a promise expressed to be for the payment of dollars was, in fact, for the payment of any other than lawful money of the United States? Does the evidence in the record