

## U. S. Rep.] PALMER V. HARRIS—DIGEST OF RECENT DECISIONS, QUEBEC.

Abajo, Calle del Agua, Habana." The case having been heard on bill and answer, the bill was dismissed with costs.

The maxim which is generally expressed, "He who comes into equity must come with clean hands," Snell's Principles 33, but sometimes in stronger language, "He that hath committed iniquity shall not have equity," Francis' Maxims 5, has been often applied to bills to restrain by injunction the counterfeiting of trade-marks. The ground on which the jurisdiction of equity in such cases is rested, is the promotion of honesty and fair dealing, because no one has a right to sell his own goods as the goods of another: *Croft v. Day*, 7 Beavan, 232. "It is perfectly manifest," said Lord Langdale, "that to do this is a fraud, and a very gross fraud." It is plain that there is no class of cases to which the maxim referred to can be more properly applied. The party who attempts to deceive the public by the use of a trade-mark, which contains on its face a falsehood as to the place where his goods are manufactured, in order to have the benefit of the reputation which such goods have acquired in the market, is guilty of the same fraud of which he complains in the defendant. He certainly can have no claim to the extraordinary interposition of a tribunal, constituted to administer equity, for the purpose of securing to him the profits arising from his fraudulent act. Thus in *Pidding v. How*, Simons 477, the plaintiff had made a new sort of mixed tea and sold it under the name of "Howqua's Mixture;" but as he had made false statements as to the teas of which his mixture was composed, and as to the mode in which they were procured, the court refused an injunction: Vice-Chancellor Shadwell, remarking, "It is a clear rule laid down by courts of equity not to extend their protection to a person whose case is not founded in truth." In *Flavel v. Harrison*, 10 Hare, 467, an injunction was refused, when an article was sold by the name of Flavel's Patent Kitchener, for which there never had been a patent. In *Leather Cloth Company v. American Leather Cloth Company*, 11 House of Lords Cases 533, though decided on the ground that the mark used by the defendants was substantially different from that of the plaintiffs, yet it may be fairly inferred from all the opinions that, if necessary, the decree of Lord Chancellor Westbury would have been affirmed on the broader ground. Thus, a company which had gained reputation by a particular manufacture, on discontinuing their business, transferred their stamp or trade-mark, which indicated them as the manufacturers, to other parties; and it was the opinion expressed that such assignees would not be protected in equity in the use of that mark on goods manufactured by themselves. "So," said Lord Cranworth, "in the cases of bottles or casks of wine stamped as being the growth of a celebrated vineyard, or of cheese marked as the produce of a famous dairy, or of hops stamped as coming from a well-known hop-garden in Kent or Surrey, no protection would be given to the sellers of such goods, if they were not really the produce of the place from which they purported to come." It is contended, however, that this case is different, because there were marks or words used with these labels inconsistent with the idea that they were held forth as manufactured in Havana. On

the label is printed, "Entered according to Act of Congress, A.D. 1858, by Lorin Palmer, in the Clerk's Office of the Southern District of New York." Apart from the fact that this is in such very small type, and so abbreviated, that it would probably escape the observation of every one whose attention was not specially directed to it, a circumstance which rather strengthens the evidence of an intention to mislead the public, what is there in the fact that the design or engraving had been copyrighted in the United States, inconsistent with the declaration that the cigars, contained in the box, were manufactured in Havana of Cuban tobacco? But, again, it is said that the United States internal revenue stamp would at once undeceive the purchaser, there being a difference between the stamp used for articles imported and for those of domestic manufacture. Few persons would stop to notice this difference; and besides, as it is alleged, the trade-mark is pasted on the inside of the lid, and when the box is open for the purpose of retailing, the trade-mark is brought directly in the view of persons wishing to purchase, and the revenue stamp is not seen unless the lid is turned down, and the box examined on the outside. It is contended, further, that the falsehood is in a foreign language, of which it is to be presumed that the plaintiff's customers are ignorant. Yet there is certainly enough to convey to every one, who can read, that the cigars are from "Havana." It is true, that when a slander is uttered in a foreign tongue it is necessary, in an action for damage, to prove that the hearers understood the language; for it will not be presumed that, being ignorant of the meaning of the words, they afterwards repeated them to those who understood them: 2 Starkie on Slander 52; but there is no such rule in an action for libel in a foreign language, for *littera scripta manet*; that may be read and explained by those who do, to those who do not understand it. The case of a written or printed libel has a much closer analogy to the point before us than that of spoken slander. But above all this, it is not necessary that any one person has been actually deceived or defrauded; it is enough that it is a misrepresentation, calculated to have that effect on the unwary and unsuspecting.

Decree affirmed, and appeal dismissed at the costs of the appellant.—*Am. Law Register*.

#### NOTES OF RECENT DECISIONS IN PROVINCE OF QUEBEC.

##### BANK AGENT—GUARANTEE SOCIETY.

*Held*, that the allowing by a Bank Manager of overdrafts without security, but (in the opinion of the Court) under a discretionary power possessed by him, and without fraudulent intent, is not an irregularity within the meaning of a policy guaranteeing the Bank against such loss as might be occasioned to the Bank by the want of integrity, honesty, fidel-