

Eng. Rep.]

MARSHALL V. ROSS—THORNINGTON V. SMITH & HARTLEY.

[U. S. Rep.]

the acts of their servants. Here I doubt very much whether the pointsman had not the authority of the company for what he did, for he was not only doing the best he could to avoid an accident, but the best probably for the property of his employers, as the result of a collision on the main line with the coming express train then just due, had the engine been permitted to pursue its course on that line, would, in all human probability, have been attended with infinitely more serious results. I have thought it right to mention these points, for peradventure the case may go farther, and I think there is a point upon it in the plaintiff's favour, though it has not been discussed. But the present rule must be made absolute, on the ground that the verdict is against, or rather without, evidence.

CHANNELL, B.—I am of opinion that this rule should be made absolute, on the ground that there was no evidence on which the verdict can be supported. I think the pointsman was justified in turning the points in the way he did, and that the railway company are not bound to warrant that the men employed by them on their engines shall be free from attacks of illness. With regard to the branch siding and its alteration since the accident, it is not because the defendants have become wiser and done something subsequently to the accident that their doing so is to be evidence of any antecedent negligence on their part in that respect.

CLEASBY, B.—I am of the same opinion. In all these cases we are bound to look at the proximate cause of the accident, and, if that is found, we cannot in general go beyond it. No doubt it is a very hard case for the plaintiff, sitting quietly and lawfully as he was in his proper place in the railway carriage, that the points should be deliberately turned so as to send the engine down straight upon him; but so it is. That act was the voluntary act of the pointsman himself, and was, as is admitted on all hands, the best thing that could be done under the circumstances; and I have grave doubts whether the company could be held responsible for an injury proximately caused by such an act of their servant done under such circumstances. As to the other question, namely, that the company have, by subsequently altering the sidings, made some evidence against themselves of previous negligence, I agree with my Lord and my learned brother that that is not so.

Rule absolute.

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 manu-

facturers, 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, "Marchal; Shrewsbury." "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. Key, 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 plaintiff's 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.]

THORNINGTON 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 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.