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PALMER v. HARRIS.

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A naked intention to deceive is not a ground for legal action of any kind—least of all for the infliction of a penalty or forfeiture. Intention by itself, unembodied in an act, does not come within the purview of jurisprudence; it is only when coupled with an act that it becomes an important element in determining its character: 2 Austin's Jurisprudence 147; Lord Mansfield, *R. v. Scofield*, Cald 397; *R. v. Higgins*, 2 East 5; Lindley, Juris. xxx., 2; *Smith v. Bowler*, Disney, Rep. 520-26.

Equity lends its aid to make a legal right more effectual: *Farina v. Silverlock*, 6 DeG. M. & G. 214; s. c. 39 E. L. & E. 514, 1856. If the title is contested, equity suspends its aid until the legal right is established: *Pidding v. How*, 8 Simons 477; *Singleton v. Bolton*, 3 Doug. 293; *Perry v. Truefitt*, 6 Beavan 66. This is the practice; under liberty granted by Vice-Chancellor Wigram, *Rodgers v. Nowill*, was tried in 1848: 5 M. G. & Sc. 109.

A test case at law by the purchaser against the proprietor would require a false representation by the proprietor, his knowledge of its falsity, ignorance on the part of the purchaser that the representation was false, and his acting upon it in the belief that it was true, and injury resulting from such action: *Sykes v. Sykes*, 3 B. & C. 541, 1824; s. c. 5 D. & R. 292; *Singleton v. Bolton*, *supra*; *Crayshaw v. Thompson*, 4 M. & G. 357, 1842; *Rodgers v. Nowill*, *supra*; *Behn v. Kemble*, 7 C. B. N. S. 260; Eden on Injunction, by Waterman, 25, note 1.

There can be no deception until somebody is deceived: 1 Starkie on Evidence 374; Adam's Equity 176 and note; Story's Equity, sec. 191, 202-3; Broom's Maxims 358.

When the legal title is established at law, as in *Stewart v. Smithson*, 1 Hilt. 119, equity enforces the right: *Dale v. Smithson*, *supra*; which is vested, and can be forfeited only on legal ground. It is better fortified than the right to a contract which equity rescinds only when an action of deceit could be maintained at law; Sugden on Property, in H. of L. 597-8-9, 406-8, 64 L. L. 398-9; Sugden on Vendors 180, ch. 5, sec. 111, pl. 41; 204, ch. 5, sec. 5, pl. 3; Fry on Specific Performance, ch. xii., p. 191; xiii., 206, L. L. 100.

The result of the broad proposition that a false statement vitiates the title would be, 1st. To forfeit in this kind of property, though in no other, a man's title, for the slightest taint of fraud.

2nd. To give the benefit of this penalty to a confessed pirate, in spite of the Act March 8th, 1855, Pamph. L. 514, Purd. Dig. 1155.

3rd. To put outside the pale of law property which has at any time been falsely represented in the market, and thus the object of law, to preserve society from internal disorganization, is, to the extent of this excluded property, frustrated.

*Theodore Cuyler*, for appellee.—Protection is asked from a court of equity for a tradesman's label which is confessedly false, and both calculated and intended to deceive and mislead the public.

It is gravely argued that this label, however intended, does not in fact deceive, because of the words obscurely printed below, "Entered according to the Act of Congress."

So, too, it is said the law requires an imported article to have upon the boxes certain marks of inspection, the absence of which from these boxes shows the label is untrue, and prevents it from deceiving the purchaser.

But the motive is still present, and the fact too, even if this be so—that the unwary and ignorant are, in fact, deceived and intended to be deceived.

The authorities upon this question are very clear and well settled.

Mr. Daniels, speaking of trade-marks, says: "With respect to these cases, it may lastly be observed, that the remedy given in equity is discretionary, and will be withheld if there has been any improper conduct on the part of the plaintiff. On this principle the court has refused to grant an injunction, in the first instance, where the plaintiff has made false representations to the public concerning the article which he seeks to protect;" 3 Daniel's Ch. Practice, p. 1755; and again, p. 1754: "He cannot, therefore, be allowed to use names, marks, letters, or other indicia, by which he may induce purchasers to believe that the goods which he is selling are the manufacture of another person."

2 Story's Eq. sec. 951; *Perry v. Truefitt*, 6 Beavan 66; *Millington v. Fox*, 3 M. & K. 338; *Clark v. Freeman*, 11 Beav. 112; *Hogg v. Kirby*, 8 Ves. 226; *Walcott v. Walker*, 7 Id. 1; *Pidding v. How*, 8 Simons 477.

[Mr. Justice READ.—There is a recent case decided upon this point by the House of Lords, which has not been mentioned, *The Leather Cloth Co. v. American Leather Cloth Co.*, 11 H. L. 523.]

In *Fowle v. Spear*, 7 Penna. Law Journal 176, the United States Circuit Court refused to protect by injunction the manufacturers of quack medicines. A court of equity will not protect worthless articles, or countenance fraud or immorality.

*Parsons*, in reply.—*The Leather Cloth Co. v. The American Leather Cloth Co.*, cited by Mr. Justice Read, was decided upon the point of similarity; the resemblance was not sufficiently close to make the defendants' stamp a colorable imitation.

There is no doubt that courts of equity refuse to protect quack medicines and noxious drugs: *Woodruff v. Smith*, 48 Barb. 438; but in such cases no attempt is or could be made to anticipate and counteract the evil effect; the antidote does not accompany the poison. But in this case it is demonstrated that the assertion never in a single instance produced any effect.

The opinion of the court was delivered by

SHARSWOOD, J.—The plaintiff, according to the statements of his bill, is the manufacturer of a cigar, known as the "Golden Crown," and he has devised a trade-mark, which he uses in its sale. He charges that the defendant, who is a printer by trade, has counterfeited this mark, and sells copies of it to persons engaged in the manufacture and sale of cigars, by whom they are used to his damage. The answer of the defendant admits these allegations; but sets up as a ground for the non-interference of the court, that the articles thus sold by the plaintiff were manufactured in the city of New York, and that the trade-mark in question contains upon it the declaration that they are the product of a "factory of cigars from the best plantations de la Vuelta."