

U. S. Rep.

PALMER V. HARRIS.

[U. S. Rep.]

tificate. The solicitor then found that the time for making the application to vary the certificate expired on that day, and leaving the chambers of counsel at about 3 30 p.m. he immediately proceeded to the chambers of Vice-Chancellor Giffard, to whose court the cause was at that time attached, and arrived there a few minutes afterwards, but found the chambers closed.

His Honour received a communication from the chambers of Vice-Chancellor Giffard to the effect that they were never closed before 4 p.m., even though all business was completed.

The following cases were cited:—*Ware v. Watson*, 4 W. R. 36, 7 De G. M. & G. 739; *Howell v. Keightly*, 4 W. R. 477, 8 De G. M. & G. 325; *Ashton v. Wood*, 5 W. R. 271, 8 De G. M. & G. 698.

MALINS, V. C., was satisfied that the solicitor arrived at the chambers of the Vice-Chancellor after 4 p.m., but on the balance of convenience it was right to give the leave asked, for if the plaintiff was right on the merits he ought to succeed; if he were wrong the Court would so decide. To refuse the application would be too severe on the plaintiff. He must, however, pay the costs of the application.

## UNITED STATES REPORTS.

### SUPREME COURT OF PENNSYLVANIA.

#### LORIN PALMER V. GEORGE S. HARRIS.

A trade-mark having upon it a false statement which did not, and could not produce any effect upon the purchasers of the article, is nevertheless so tainted by the falsehood that equity refuses to protect it.

A trade-mark for a brand of segars, manufactured in New York, had upon it in Spanish words, which interpreted into English, mean: "Factory of segars from the best plantations de la Vuelta Abajo, calle del Agua, Habana." Equity refused, on the ground of the falsehood, to enjoin a printer from counterfeiting the device, and supplying the trade with his imitations.

This was an appeal from a decree of the Court of Common Pleas of Philadelphia, which refused to grant an injunction to restrain Harris from counterfeiting Palmer's trade-mark.

The facts were that Palmer, a dealer in segars, designed a label for a particular brand which he manufactured, and which had acquired an extensive popularity in the United States as the "Golden Crown." The label contained a golden crown, surrounded by a green wreath, and underneath this the words,

"FABRICA DE TABACOS DE LAS MEJORES VEGAS,  
DE LA VUELTA ABAJO,  
CALLE DEL AGUA No. 73, HABANA."

Harris, the defendant, printed the imitation of the design, containing the same words, and supplied dealers in the segar trade with the counterfeits, and thus enabled them, by attaching the imitation to their own segars, to avail themselves of the reputation which Palmer had acquired, and deprive him of the exclusive use and benefit of his trade-mark. Palmer's design was copyrighted under the Act of Congress, February 3, 1831, 4 Stats. 436, sec. 1. The imitation was not denied, but the defence was, that the segars being made in New York, the label contained a

false and fraudulent representation, which equity would not protect. The court below dismissed the bill.

*James Parsons* for the appellant.—A trade-mark is a species of property. *Bradley v. Norton*, 33 Conn. 157: and entitled to protection (*Colladay v. Baird*, 4 Phila. 139; *Burnett v. Phalon*, 11 Tiff. (N. Y.) s. c. 3 Tr. App. 167, by injunction against one who imitates the trade-mark so nearly that a purchaser might be misled; a substantial similarity is sufficient; *Bradley v. Norton*, *supra*; *Coats v. Holbrook*, 2 Sand. Ch. 586, and cases cited; *Taylor v. Carpenter*, Id. 603, s. c. in error 611; *Partridge v. Heuck*, Id. 622; *Williams v. Johnson*, 2 Bosw. 1; *Stokes v. Landgraf*, 17 Barb. 608; *Amoskeag Manufacturing Co. v. Spear*, 2 Sand. S. C. 599; *Wolfe v. Gouland*, 18 How. Pr. R.; *Clark v. Clark*, 25 Barb. 76; *Brooklyn White Lead Co. v. Masury*, Id. 416; *Walton v. Crowley*, 3 Blatch. C. C. 440.

The assertions on the label are in a foreign language, and the law presumes, until the contrary is proved, that they were not understood, at least when to assume that the statements were comprehended would charge the person who uttered them with liability: 2 Starkie on Slander, 52; Cook on Defamation, pp. 14, 87.

If the words were understood, positive knowledge of what he was buying was nevertheless brought home to every purchaser, and their effect neutralized by, 1st, Palmer's public declaration that he was a citizen or permanent resident of the United States, and consequently that the segars which he manufactured were a domestic product, involved in taking out a copyright of his design: *Casey v. Collier*, 56 Niles' Reg. 262, Judge Betts, 1839; *Keene v. Wheatley*, 9 Am. L. R. 45, Judge Cadwalader, 1860.

2nd. The internal revenue and customs regulations. The internal revenue stamp on the box of segars states the kind, quantity, date of inspection, collection district they are manufactured in, and the inspector's name: Act of Congress, July 13th, 1866; Boutwell's Manual, p. 51, sec. 91. And the law imposes upon the purchaser, under a penalty, the duty of ascertaining that the inspection has been made: Id. sec. 92.

3rd. The requirement, which excludes the possibility of mistake, that imported segars must be inspected and stamped before removal from public store or bonded warehouse: Act of Congress, July 28th 1866, Stats. at Large, 1866-6, p. 328.

The assertions, therefore, are innocent in the effect which they produce upon the public. In *Edlesten v. Vick*, an article was described as "patented," which signified that it was protected by a patent, though the patent had, in fact, expired. Vice-Chancellor Wood drew the inference that the dealers in the trade knew that the term had expired, and were not injured by the falsehood; he did not enter into and canvass the motives which induced the plaintiff to assert the untruth: 11 Hare 78, 1833. And in *Dale v. Smithson*, the plaintiff put upon his trade-mark a fictitious name as that of the manufacturer of the article. The court decided that, as the public was not in fact deceived, the plaintiff was entitled to their protection: 12 Abbott Pr. R. 237. Until a purchaser has been deceived, no act has been done which gives the law a pretext to interpose