

there should be a decree of rescission, for it may be coupled with equitable terms securing him a just allowance. And this would be right; for, notwithstanding the charge of positive bad faith made by the plaintiff's counsel at the hearing against the defendant, nothing has been shown to deprive him of payment at a fair rate for all materials furnished and work done by him under the contract.

Such an allowance will be made, and to ascertain the amount thereof it will be necessary to send the case to a master.

Let a decree be drawn in accordance with the foregoing views.

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### LECLANCHA BATTERY CO. v. WESTERN ELECTRIC CO.

(Circuit Court, S. D. New York. August 25, 1884.)

#### TRADE-MARK—VALIDITY OF MARK IN DOUBT—PRELIMINARY INJUNCTION.

Where it is very doubtful whether the name claimed as a trade-mark does not describe the articles themselves, and the kind of them, and indicate that they are made according to the patent known by the name claimed, rather than that the patentee made them, a preliminary injunction should not be granted.

In Equity.

*Edward N. Dickerson, Jr.*, for orator.

*George P. Barton*, for defendant.

WHEELER, J. The orator seeks, by motion for a preliminary injunction, to have the defendant restrained from using the words, "Pile Leclancha" and "Disque," and the orator's style of label, upon batteries of the defendant's manufacture. Leclancha was a patentee of an electric battery. One form of his batteries was known as the "disque." The word "pile" has been used to signify a battery. The prominent feature of the label is a cut of medals awarded to Leclancha's batteries. The question, of course, is whether these words and this label improperly indicate that the batteries come from the orator, or are merely descriptive of their style and qualities. The patented batteries, of course, would become known to some extent as Leclancha batteries, and the word "disque" would naturally follow that form. These words would become apt to describe the batteries and that kind of them, and would indicate that they were made according to the patent, rather than that the patentee, or the orator bearing his name, made them. *Singer Manuf'g Co. v. Stanage*, 6 FED. REP. 279; *Burton v. Stratton*, 12 FED. REP. 696; *Hostetter v. Fries*, 17 FED. REP. 620; *Wilcox & Gibbs S. M. Co. v. The Gibbens Frame*, Id. 623. As the medals were awarded to the patented batteries, the representation of them upon the labels would be indicative of the reputation of these batteries rather than of their origin. Under these circumstances and authorities, the question whether these things all together amount to

an unlawful representation of the source of the batteries is so doubtful that the granting of a preliminary injunction does not appear to be warranted.

Motion denied.

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CITY AND COUNTY OF SAN FRANCISCO v. MACKAY.

(Circuit Court, D. California. September 8, 1884.)

1. TAXATION—CONSTITUTION OF CALIFORNIA—DOUBLE TAXATION.

The constitution of California forbids double taxation of property.

2. SAME—PROPERTY OF CORPORATION—ASSESSMENT OF SHARES.

It would be double taxation to tax all the property of a corporation to the corporation, and then assess to each stockholder the shares of stock in it held by him, and such assessment to the stockholder will be void.

3. SAME—PRESUMPTION OF OWNERSHIP.

The constitution and laws of California require all property to be assessed and taxed to the owner; and as it is a legal presumption that all property of a corporation has been assessed to the corporation, in the absence of a showing to the contrary, an assessment of stock to a shareholder will be considered a double assessment, and void.

4. SAME—ASSESSMENT IN GROSS—VALIDITY.

*Seemle*, that an assessment in gross upon the aggregate of a great many thousand shares of stock in numerous corporations organized for a great variety of purposes, having no relation whatever to each other, and no common element of value, such as banking, mining, milling, lumbering, commercial, gas, moneys, solvent credits, etc., is void.

Action under California statute of April 23, 1880, to recover taxes for 1880–81, with penalties and interest.

*David McClure*, for plaintiff.

*B. C. Whitman*, for defendant.

SAWYER, J. This is an action to recover city and county and state taxes for the fiscal year 1880–81, together with 5 per cent. penalties, and interest at 2 per cent. per month, amounting, in the aggregate, to nearly \$500,000, of which aggregate about \$236,000 is the amount of the taxes originally levied.

The action is brought under the statute of April 23, 1880, prescribing a form of complaint, which requires the complaint to "describe the property as assessed." The description of the property in the complaint, and consequently "as assessed," is as follows:

"Seven thousand one hundred and twenty-five shares stock Nevada Bank; 3,200 shares stock Pacific Mill and Mining Company mining stock; 250 shares stock Pacific Wood, Lumber, and Flume Company; 1,000 shares stock San Francisco Gas Company; 47½ shares stock Giant Powder Company; 3,000 shares stock Virginia and Gold Hill Water Company; 937 shares stock Golden City Chemical Works; solvent credits, money; 39,570 shares of California Mining Company stock; 61,410 shares Consolidated Virginia Mining Company; 16,386 shares Ophir Mining Company; 15,718 shares Yellow Jacket Mining Company; Union Consolidated and Sierra Nevada Mining Company stock,—assessed at the valuation of \$10,680,000."