or inscription by the complainants as deprives them of the right to be protected in the use of the same, is, I think, not shown.

The case seems to be a clear one for a preliminary injunction to the extent indicated, and upon the execution by the complainants of a bond in the usual form, in the sum of $2,000, with surety to be approved by the clerk, an injunction, *pendente lite*, will issue, restraining the defendant from placing on the bags used by him in putting his peas on the market, a label or inscription resembling in design, form, and arrangement, or collocation of identical words, the label or inscription of the complainants, as does the label now used by the defendant.

The printing of the letter "A" over the word "Landreths'," by the defendant, on the bags of peas more recently sent out by him, does not, in the form and style in which it is printed, relieve his label of its tendency to mislead.

GOODYEAR RUBBER CO. *v.* DAY and another.[1]

(Circuit Court, E. D. Missouri. October 11, 1884.)

1. TRADE-MARKS—INFRINGEMENT.
   No manufacturer will be permitted to stamp upon or attach to his goods the name of another manufacturer.
2. SAME—NAME OF PATENT.
   Semble, that after the expiration of a patent no manufacturer of the patented article can appropriate the name, or the principal part of the name, of the patent as a trade-mark.

In Equity.

This is a suit to restrain the defendants from advertising or selling rubber goods, not manufactured by the complainant, with the name of "The Goodyear Co." in any manner annexed or attached thereto.

Thos. T. Gantt and *A. & John F. Lee*, for complainant.

McFarland, Reynolds & Harrison, for defendants.

TREAT, J., *(orally.)* The litigation connected with this Goodyear rubber business I am fully conversant with, as the Reports are full of it, and during 20 odd years I have had to look into the matter in causes pending before me. It seems to the court this is an effort to appropriate the name, "Goodyear." The patent has expired. Now, if, after the termination of the patent, a man can adopt the name of the patent, and use it as a trade-mark, he is, in violation of the laws of the United States, getting an exclusive right which does not belong to him. The case before Judge WALLACE, as I heard it read, is

[1] Reported by Benj. F. Rex, Esq., of the St. Louis bar.

substantially between two corporations, in which the Goodyear Rubber Co. charged that the Goodyear Rubber Manufacturing Co., a defendant, had used the name "Goodyear Rubber Co.," which it had no right to do. It dropped the word "Manufacturing;" therefore it was enjoined by Judge WALLACE against using the name of that particular corporation. Now, Judge DONAHUE has gone a step further than I am willing to go, in saying that any man can appropriate "Goodyear," the generic term, and thereby practically extend the patent *ad infinitum* by using that name.

The name of this corporation is "The Goodyear Rubber Co." The quality of its goods is offered as superior to any other. Whether superior or inferior is a matter of no consequence. No man has a right to use the name and palm off his goods marked in that name. Has the defendant done so? It seems some cases were bought of boots and shoes with the mark of "Goodyear" upon them. For the purposes of this case I will say that is all. I will therefore require him to keep an account of all the goods he sells under that name. As at present advised in regard to it, I do not think there is any infringement of the trade-mark, but it will not hurt him to keep an account. If, after a full development of the facts, it turns out otherwise, he must suffer.

Mr. Gantt. You refuse the preliminary injunction?

The Court. I do; but will cause the defendant to keep an account of all the goods he sells, either in your name or of the "Goodyear Co." In determining the question, as at present advised, I think one man has as good a right to use the name of "Goodyear" as another.

Mr. Gantt. No doubt about the word "Goodyear?"

The Court. Well, "Goodyear Rubber Co." That is the point. Your name is the "Goodyear Rubber Co." It will be ordered that the defendant keep an account of all goods by him sold in the name of the Goodyear Rubber Co. or the Goodyear Co.

Mr. Gantt. I will ask that the account include what he has sold or may hereafter sell.

The Court. I can't order him to keep an account of what has been done. He will have to account for it if you maintain your bill. But hereafter he will keep an account of all sales in those names. That is all I can do now. The rest will be a matter of damages, if you maintain your suit.

SHORT *v.* McGRUDER and another.

(Circuit Court, E. D. Virginia. May 29, 1884.)

HOMESTEADS—CANNOT BE RESERVED OUT OF PARTNERSHIP PROPERTY OF INSOLVENT FIRM.

Under the Virginia homestead law, partners in an insolvent firm cannot reserve to themselves homestead exemptions out of partnership property, *as such*, to the detriment of partnership creditors.

In Equity.

C. H. McGruder and H. Condon were partners in the retail shoe trade in the city of Richmond, who, finding themselves insolvent, executed, on the fourth of January, 1884, an assignment of their stock in trade, and all debts due the firm, to Sol. Cutchins, by deed of record, and charged the fund that should arise from sales with various preferences, which it is unnecessary to specify. Of the goods assigned a portion listed on Schedule A had been paid for, and those listed on Schedule B had not been paid for. The two lists, A and B, were attached to the trust deed; but the value of the goods were not specified on these lists, and they do not show the aggregate value of the goods embraced in each list. In the state of Virginia homestead exemptions cannot be claimed out of property which has not been paid for. The deed, among other things, recites that "whereas, the said C. H. McGruder and H. Condon, each being a householder and head of a family, desire to secure each for himself and his family the benefit of their homestead exemptions out of such of their property as has been paid for by them," etc., they "do hereby declare their intention to claim, and do, each for himself, claim such homestead exemptions, with a description of the property so claimed as hereinafter contained;" and "whereas, said McGruder and Condon, after securing each to himself the benefit of their homestead exemptions, as above stated, desire to secure their creditors as fully and as far as their means will permit them; now, therefore," they go on to assign their stock in trade for the purposes which they mention in the deed: first, to pay the necessary expenses of executing the trust, taxes, etc., and next they direct that "out of the proceeds of sale of that portion of the property which has been paid for, or which might in any way be lawfully set apart and claimed as homestead exemptions, the trustee shall set apart four thousand dollars, (two thousand dollars for each partner,) if so much there be, of such proceeds of such property, and pay the same over to each partner when, and not until, all creditors, afterwards mentioned as class first, shall be paid in full; and shall permit the partners, upon the same footing as other purchasers, to become purchasers of such part of the property embraced in Schedule A as they may desire, and charge them with the amount of such purchases in settlement of their homestead exemptions." The deed then proceeds to provide for the payment of creditors by classes.

Legh R. Page, James Lyons, and *H. M. Smith,* for plaintiff.
Coke & Pickrell, for defendants.

HUGHES, J. The charge is that the deed is fraudulent, because it reserves on its face $4,000 as a first charge for the benefit of the grantors. While it is settled law that a debtor in failing circumstances may, by *bona fide* deed, assign his estate in trust for the benefit of creditors, preferring one creditor or class of creditors to another, yet it is equally well-settled law that, in general, an insolvent debtor cannot, in an assignment, make a reservation, at the expense of his creditors, of any part of his property for his own benefit. If he does, the deed is void for fraud. This deed manifestly contains such a reservation, and is as manifestly void, unless there be something in the contention of defendants that the reservation is of a homestead exemption, and that this is allowed by law, and therefore does not invalidate the deed. The proposition would be sound if the grantors in the deed were not partners of a firm, if all the property conveyed in the deed were not social assets, and if the reservation made in the deed was not expressly and entirely made out of the social property. These being all undisputed facts, the question of the validity of the deed resolves itself into this: Whether or not the partners in an insolvent firm, doing business and having social effects in Virginia, can, under the laws of Virginia, reserve homestead exemptions to themselves out of partnership property, *as* partnership property, to the detriment of creditors. The general question has been discussed at bar whether or not partners may have homestead exemptions out of social effects. But I do not comprehend how the question can arise at all as a general proposition. The homestead exemption is a creation of statute law. It had no existence at common law or in the general law of any of the states. It is a creation of statute law, and there are probably as many laws granting homestead exemptions as there are states in the union, each being more or less peculiar in its essential features, in the amount and character of the homestead granted, in the manner of securing and holding it, and in other respects. Therefore, in adjudicating rights of homestead exemption, we cannot safely look beyond the statutes of the particular state in which the particular exemption under consideration is claimed, or safely rely upon the decisions of the courts of other states in their construction of other homestead laws. I do not think we have in the case at bar much to do with the decisions of the courts of other states on the question whether a partner in an insolvent firm may take to himself a homestead exemption out of his firm's property. The current of authority in the courts of other states, and in the courts of the United States, is strongly against such a right. But, I repeat, we have little to do with those precedents. We have to do with the homestead law of Virginia, and with that alone; and I shall confine my view to that law exclusively.

The question for us is whether or not the law of Virginia gives a

partner a homestead exemption out of the partnership property of an insolvent firm. Let me premise that there was no separation of the property of the firm of McGruder & Condon for the purpose of the homestead exemptions before their deed was executed. The two men did not each select from the property enumerated in Schedule A the articles which he intended to appropriate as his exemption, and, by separation, make it his separate property before setting it apart. They did nothing to put an end to its character as firm property. It was out of firm property, *as such*, that they reserved their exemptions. Nay, it was out of the proceeds of the sale of firm property, when it should be sold *as such*, that they made the reservation. There was no separation. The exemption was provided for out of the sales of the property as firm property so described. The property remains to this day in the custody of the trustee as firm property. It is as firm property that the goods have come into the custody of the court. It is as firm property that we are now dealing with it. There has been no separation. This much premised, let us look into the law of Virginia relating to homesteads. The state constitution (section 1, art. 11) gives the homestead exemption to the householder or head of family "out of *his* real or personal property, or either, including money and debts due him." The statute law of the state (Code, *c.* 183, § 1) repeats the language of the constitution, and gives the exemption to the householder, etc., out of "*his* real or personal property, or either, including money and debts due *him*." The statute contains sundry other provisions in regard to real estate which do not apply to the present suit. After these it goes on to provide for cases in which exemptions of real estate have not been claimed, in whole or in part, and provides, in section 11, that in such cases the householder, etc., may select, set apart, and hold, exempt from levy, etc., so much of *his* personal property, including money, etc., as will not exceed in value $2,000, and requires that "he shall, in writing, designate the personal property so selected by him, *and each article thereof*, affixing thereto his cash valuation of each article, and shall return such writing to the clerk of the county court wherein he resides, to be recorded," etc. And section 16 of the same chapter provides that every householder, etc., who shall have failed to select and set apart a homestead and personal property as aforesaid, and who desires to avail himself of the benefit of the exemptions provided for in this act, etc., must file an inventory, under oath, in the court where the judgment, etc., is obtained, of the whole of the real and personal property *owned by him*, etc. And section 17 provides that upon such inventory, etc., being completed, the said householder, etc., may select from such inventory an amount of *such* property (that is to say, property *owned* by him) not exceeding the value of $2,000, etc.

I cite these provisions for the purpose of showing that the homestead law of Virginia gives to the individual householder or head of family an exemption *out of his own individual property*, and out of