

transcript of the proceedings of the United States court in the case of *Blackburn vs. Railroad Co.* was necessary as testimony for defendant on the hearing of this cause, not as a part of defendant's muniment of title, but as evidence to defeat complainants' title. Defendant did not claim title through the proceedings in that case, and was not required to show any title in itself, if it could show a want of title in complainants. I am therefore satisfied that this item is properly taxed as part of the costs of the cause. The statute of the state made the certified list of lands sold by the sheriff for non-payment of taxes filed with the auditor a sufficient instrument to pass the title to the land sold from the delinquent taxpayer to the state, and for that reason it is presumed that the defendant has in its possession a certified copy of these lists, and so much of the item charged for a copy of these lists must be disallowed for the reasons stated. The defendant is not presumed to have in his possession a transcript of the proceedings of the levee boards, which were proper evidence on the hearing of the cause; but the bill of costs, as made out, does not show what amount was paid for these transcripts. Therefore this item must be disallowed, but with leave to retax the costs, so as to show the amount paid for these transcripts. The result is that the matters arising upon complainants' motion will be referred to the clerk of this court to retax the costs, as stated in this opinion.

NEW YORK & R. CEMENT Co. v. COPLAY CEMENT Co.¹

(Circuit Court, E. D. Pennsylvania. February 13, 1891.)

TRADE-MARKS—MANUFACTURES—NAME OF CITY.

While an exclusive right of property in a trade-mark or trade-name need not be confined to a single person, yet a trade-mark cannot exist in the name of the city in which a thing is made by manufacturers in that city, for any one is at liberty to go to the city and manufacture, and falsely designating the article made as coming from that city is a fraud only. Affirming 44 Fed. Rep. 277.

Bill in Equity to Enjoin Infringement of Trade-Mark.

Motion for reargument.

Roland Cox, for complainant.

Preston K. Erdman and *Chas. Howson*, for defendant.

BRADLEY, Justice. While we have no hesitation in denying the motion for a rehearing in this case, being entirely satisfied with the conclusion at which we arrived on the argument of the cause, it may be proper to add a few words in explanation of our former opinion. In holding that it is necessary to the validity of a trade-mark or trade-name that the claimant of it must be entitled to an exclusive right to it, or property in it, we do not mean to say that it may not belong to more than one person,

¹ Reported by Mark Wilks Collett, Esq., of the Philadelphia bar.

to be enjoyed jointly or severally. Copartners, upon a dissolution of partnership, may stipulate that each of them may use the trade-marks of the firm, and there may be many other cases of joint and several ownership; but such co-owners will together be entitled to the exclusive use of the trade-mark, and perhaps each of them will be entitled to such exclusive use as to all other persons except their associates in ownership. But this is very different from a claim by a resident of New York city, in common with all the other residents of that city, to the designation of an article as a New York article,—for example, New York soap, New York flannels, New York whisky, etc. Such a trade-mark cannot be maintained. A cigar manufacturer of Havana cannot maintain a claim of trade-mark in "Havana Cigars." If a dealer in New York sell cigars as Havana cigars which are not such, it may be fraud, but it is no violation of a trade-mark which can be claimed by all the cigar-makers of Havana. It is open to all persons to go to Havana and manufacture cigars there; but it would be absurd to say that they would thereby acquire a trade-mark in the name "Havana Cigars." So all cement manufacturers in Rosendale and its vicinity may rightly call their manufactured article "Rosendale Cement," but any other person may go to Rosendale and manufacture cement there, and have the same right. There is no exclusive property in the name, even in those who now reside there, or carry on the manufacture there. It is open to all the world. In our judgment there is not, there cannot be, any trade-mark in the name of the place.

FLETCHER v. UNITED STATES.

(Circuit Court, E. D. Arkansas, W. D. February 25, 1891.)

1. UNITED STATES MARSHAL—FEES—PURSUIT OF FUGITIVES.

Where a marshal, according to the practice in his district as allowed by the government, pursues into another district fugitives from justice, acts as witness in identifying the fugitives and making *prima facie* proof of their guilt, and arrests them as special deputy of the marshal of the other district, who relinquishes all claim for fees for such arrest, such marshal is entitled to compensation for his services in pursuing, arresting, and bringing back such fugitives, even though the practice of the department in that respect has changed since the services were rendered.

2. SAME—MILEAGE.

Act Cong; Feb. 22, 1875, (18 St. 394.) which provides that no marshal shall be paid for travel not actually and necessarily performed, does not prevent a marshal from recovering mileage on each writ served, even though several writs are served on different persons at the same time and place. Following *Harmon v. U. S.*, 43 Fed. Rep. 560.

3. SAME—PER DIEM—LEGAL HOLIDAY.

The fact that the 5th of July was generally celebrated as Independence day, the 4th falling on Sunday, does not disentitle a marshal to his *per diem* for attending court on that day, where the record shows that the court was open and transacted business.

4. SAME—WRITS ISSUED BEFORE MARSHAL QUALIFIED.

Where writs issued before the marshal who served them qualified for office were turned over to him by his predecessor, under arrangement that he should have the