

they escape the imputation of any purpose to confuse the identity of their business with that of the plaintiffs. Inasmuch as over 30 years, the life of a generation, have elapsed since the plaintiffs acquired the good-will of the New York branch of the business of Goupil & Co., it is hardly possible that they are in danger of losing any of the patronage incident to that good-will. They cannot complain if they lose some of the patronage which may have been attracted by the repute enjoyed in the mean time by the Paris firm, and of which they may have been to some extent the beneficiaries. The defendants have a better right to this patronage than the plaintiffs have. The suit seems to have been brought upon the theory that the plaintiffs acquired the exclusive right to use the name of Goupil & Co. as a trade designation in this country. The plaintiffs have no such right. The case is not one where the vendor of a business has covenanted not to use his name in a similar business in the same locality, nor is it even one where the vendor has authorized a purchaser to use his name at a given place as part of the good-will purchased; but it is one where the vendors authorized the vendee to use their name in conjunction with his by such a term of description as to denote that he had succeeded to their former business at New York city and its good-will. The bill is dismissed.

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GIRON *et al.* v. GARTNER *et al.*

(Circuit Court, S. D. New York. August 20, 1891.)

TRADE-MARKS—INFRINGEMENT.

Complainants, on velvet ribbons manufactured and put up by them, used their trade-mark, "G. F." Defendants on some of their goods used their trade-mark, "G. & F.," with the ampersand as prominent as the initials, as registered, but on their velvet ribbons printed it with the ampersand greatly reduced in size as compared with the initials. *Held*, that such use of the trade-mark was with intent to lead purchasers to believe that defendants' ribbons were those of complainants, and defendants should be restrained from using their trade-mark on ribbons, except with the ampersand of equal prominence with the initials.

In Equity. Bill to enjoin infringement of trade-mark.

*Francis Forbes*, for complainants.

*R. B. McMaster*, for defendants.

LACOMBE, Circuit Judge. Upon some of their goods the defendants used their trade-mark, "G. & F.," in the form in which it was registered, viz., with the ampersand as prominent as the initials, but on all their velvet ribbons print it with the ampersand greatly reduced in size as compared with the initials. In view of this circumstance, I cannot escape the conviction that it was so used with intent to delude the public into the belief that the goods so marked are those of the complainants, whose trade-mark is "G. F." There is so great a similarity in the style of putting up velvet ribbons by manufacturers generally, as shown by

defendants' affidavits, that this change, slight though it be, is well calculated to deceive purchasers. Complainants may take a preliminary injunction, restraining the sale of all velvet ribbons put up in the form shown by the exhibits in this case, in which the ampersand is not given equal prominence with the initials "G." and "F.," which the defendants are authorized to use as a trade-mark only when so connected with an ampersand.

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SHEPPARD *v.* NEWHALL *et al.*

(Circuit Court, N. D. California. August 24, 1891.)

1. SALES—STOPPAGE IN TRANSITU—RIGHTS OF INDORSEE OF BILL OF LADING.

Since Civil Code Cal. § 2127, declares that all the title to the freight which the first holder of a bill of lading had when he received it passes to every subsequent indorsee thereof in good faith and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange, the indorsee or holder of bills of lading received in good faith from the vendee, under an agreement to apply the proceeds of the sale of the goods to the payment of prior advances made by the indorsee to the vendee, can hold the goods against the lien or right of stoppage *in transitu* of the vendor.

2. SAME—TRANSFER OF BILL OF LADING.

Plaintiff, an English merchant, sold goods to G., shipping them by three several consignments and bills of lading in which they were consigned to plaintiff's agent in New York, or his assigns, and to which were attached plaintiff's invoice by which the goods were consigned to G. To these papers the agent attached a notice to G. of shipment to him, and a new bill of lading in which he was the assignee, all of which papers and bills of lading were delivered to G. and by him transferred by indorsement to defendants except the first, which was not indorsed, but it and the goods described in it were put in defendants' possession. *Held*, that defendants were the lawful holders of the bills of lading, with such rights as the possession of them and of the goods might confer.

3. SAME—REPLEVIN—JUDGMENT.

In replevin by the shipper of goods against one to whom the consignee has, before any attempt to stop them in transit, transferred the bill of lading as security for advances, defendant, after his right to possession of the goods has been established, cannot be required to render an account of advances and of the proceeds of the sale of the goods, with a view of paying plaintiff the surplus, but plaintiff must seek his remedy in another action.

At Law.

*Vincent Neale*, for plaintiff.

*Rothchild & Ach*, for defendants.

BEATTY, J. This action is for the replevin of certain goods sold and assigned by the plaintiff, an English merchant, to Gordan Bros., of San Francisco. The bills of lading therefor were transmitted by plaintiff through agents to said Gordan Bros., who prior to October 13, 1890, transferred them to defendants, upon the agreement that the proceeds of the sale of such goods should be applied by defendants towards the payment of their advances made to Gordan Bros. on these and other prior transfers of goods and bills of lading. About said October 13th Gordan Bros. became insolvent, but the fact was not known by the parties hereto until on or after that date, prior to which most of the goods had