

## BASS, RATCLIFF &amp; GRETTON, Limited, v. GUGGENHEIMER et al.

(Circuit Court, D. Maryland. August 2, 1895.)

## COSTS IN EQUITY—INFRINGEMENT OF TRADE-MARKS.

Where a party unwittingly violating a trade-mark by printing labels ordered by a third person, on being notified of the infringement, promised to desist from further printing, and offered to surrender the lithographic stone, but an injunction suit was nevertheless brought, *held*, that complainant should pay his own costs.

This was a suit in equity by Bass, Ratcliff & Gretton, Limited, against Isaac Guggenheimer and Albert Weil, trading as Guggenheimer, Weil & Co., for infringement of a trade-mark.

Price & Steuart, for plaintiff.

M. R. Walter, for defendants.

MORRIS, District Judge. The defendants admit printing the infringing trade-mark labels, but claim that they did so upon the order of the Avon Bottling Company in good faith, without suspicion of any want of authority on the part of that company to have them printed, and supposing that the labels would be used in an honest and legitimate way. About four years after the labels were printed, the defendants were notified by the complainant of the infringement. They at once offered to surrender the lithographic stone from which the labels had been printed, and stated that they would print no more of them, and they have not printed any since the first order. By this prompt acquiescence in the complainant's demands, and the offer at once to surrender the lithographic stone, and the promise to respect the complainant's rights, the complainant obtained all it was entitled to obtain by an injunction. The complainant, for reasons of its own, has preferred, notwithstanding, to file a bill and obtain an injunction, and to have the lithographic stone given up under order of the court. It is a sound rule—for the prevention of unnecessary litigation, and to encourage parties who have ignorantly, and without bad faith, infringed a trade-mark, to promptly desist, without suit, upon being notified—that where a complainant had already obtained, before entering suit, by the prompt acquiescence of the defendant, all that an injunction can give him, he should not recover costs. I think the present is a case proper for the application of this rule. The decree will provide that each party shall pay their own costs.

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 THE SEVEN SONS.

## ANCHUTZ et al. v. THE SEVEN SONS et al.

(District Court, W. D. Pennsylvania. April 23, 1895.)

## ADMIRALTY JURISDICTION—MARINERS' WAGES—VOYAGE NOT PERFORMED.

Where river pilots were employed, at a specified rate, to go on a particular voyage on the next rise in the river, and, though the rise came, the voyage was not performed, *held*, that they could not maintain a libel in rem for wages, it appearing that they never performed any labor under the contract and never went on board, but only reported to the captain's office on shore, where they were told that the trip would not be made.

Albert York Smith, for libelants.  
Geo. C. Wilson, for respondents.

BUFFINGTON, District Judge. This is a libel filed by Lee Anchutz and D. A. McDonald, Jr., against the steamer Seven Sons. The allegation of the libelants is that, about November 28, 1894, they were employed by C. W. Posey, the captain of that vessel, to make a trip from Pittsburgh to Cincinnati and return on the next rise of the river; that Anchutz was to serve as pilot at \$125 for the trip, and was paid \$15 on account in advance; that McDonald was to act as assistant pilot at \$100 for the trip; that such a rise happened early in December, and libelants held themselves in readiness to go, but the vessel did not proceed on the trip. The respondents claim the agreement was conditioned upon the vessel making the trip; that she did not make the run to Cincinnati as contemplated, but instead made a trip to Steubenville; that they offered said trip to Anchutz but he declined to accept it unless he was paid at the Cincinnati rate.

Two questions are raised: First, have the libelants proven an absolute hiring for the trip if the rise came? and, secondly, conceding they have, have they a lien upon the vessel in view of the fact that the trip was not made? Conceding, for present purposes, there was an unconditional contract for a trip to Cincinnati on the rise which occurred, yet the facts remain that the vessel did not make the trip and the libelants did not render any services whatever in pursuance of the contract, nor were they, indeed, on the vessel. They only claim they reported at the shore office of the captain, and were informed the trip would not be made. Under these facts, it is quite clear to us that, whatever rights the libelants had, they cannot be enforced in the present proceeding. In the case of *Vandewater v. Mills*, 19 How. 90, Mr. Justice Grier cites the case of *The City of London*, 1 W. Rob. Adm. 89, and says:

"It was decided that a mariner who had been discharged from a vessel after articles had been signed might proceed in the admiralty in a suit for wages, the voyage for which he was engaged having been prosecuted; but, if the intended voyage be altogether abandoned by the owner, the seaman must seek his remedy at common law by action on the case."

An examination of the cases fails to show any departure from this doctrine. It seems founded on correct principles which, in view of the authoritative character of the foregoing decision, we do not deem it necessary to adduce. Any seeming departures from it will be found on closer examination not to be such, for the cases cited on argument show that where liens were sustained (though the voyage was abandoned) the libelants had gone aboard the vessel and had performed some work in pursuance of their hiring,—an entirely different state of facts from those before us. The law is with the respondents in this case, and the libel will be dismissed, without prejudice. Let a decree be prepared.

## CHATTANOOGA TERMINAL RY. CO. v. FELTON.

(Circuit Court, E. D. Tennessee, S. D. August 20, 1895.)

**1. EQUITY JURISDICTION—INTERVENTIONS.**

A federal court of equity, in an ancillary case, has jurisdiction to control a railroad receiver against whom complaint is made by an intervening petition filed against the receiver in the ancillary receivership litigation.

**2. RAILROAD COMPANIES—RECEIVERS.**

A railroad receiver is an officer of the court, and his officers and employes are agents and employes of the court.

**3. SAME—AUTHORITY—INJUNCTION.**

Such a receiver secretly, in the nighttime, and on Sunday, and without permission of the court or authority of law, sent his chief officials with a construction train loaded with track material and a large force of workmen, and entered, forcibly and against the protest of the owner, upon the tracks and right of way of another railroad, and laid cross-overs and switches to connect a leased line of the receiver with certain private manufacturing establishments already served and supplied with transportation accommodations by such other railroad. *Held:* The facts justified, on mere preliminary motion to show cause, the issuance of an injunction, both prohibitory and mandatory, to restrain entrance upon and use of the tracks and right of way, and to require a removal of the cross-overs and switches already laid, so as to place the property in the condition in which the receiver found it before his unlawful interference.

**4. EMINENT DOMAIN—WHEN RIGHT EXISTS.**

In such a case, the right of eminent domain does not exist. The attempted taking of the property was for a purpose the same as that for which the property was already used; and switch connections with private manufacturing enterprises, for the purpose of handling their freight, do not constitute such a public use as will justify the condemnation of private property.

**5. SAME—PREREQUISITES—COMPENSATION.**

A forcible seizure, against the will of the owner, of private property, even for a public purpose, is unauthorized by law, prior to the payment of compensation for the taking.

**6. SAME—POWERS OF LESSEES OF RAILROADS.**

Whether the lessee of a railroad can exercise the right of eminent domain to build switches and spur tracks to the leased line, when such do not connect to its own line, or whether such right remains in, and must be exercised by, the lessor company,—reserved, without expression of opinion.

**7. EQUITY—ANCILLARY JURISDICTION—REMOVAL OF RECEIVERS.**

While a court of ancillary jurisdiction has the same authority over a receiver as the court of the primary appointment, yet, in deference to that comity which exists between the federal courts, jurisdiction in the ancillary court ought to extend only to matters respecting property and rights of property within the court's territorial limits; and the question of the receiver's removal for misconduct ought to be presented to the court which first appointed him.

**8. INJUNCTION—RAILROAD COMPANIES—RECEIVERS.**

A preliminary injunction may be made to operate upon the receiver, his officers, servants, and agents, and all persons claiming in privity with him, by conveyance, lease, or other contract.

**9. SAME—LIABILITY FOR WRONGFUL ACTS—DEFENSES.**

A receiver of a railroad cannot escape responsibility by a claim that the acts complained of were done, not as receiver, but for another distinct railway. The power, position, and property, with all its appliances, were in his possession as the trusted officer and agent of the court, for the purpose only of carrying into effect the orders of the court in the administration of the trust; and the fact that, instead of using that property and power, and the men under his control, including his chief officers, for the purpose of