

the result of this case, when it is considered that their right to do so was at once challenged by complainant, and some supposed temporary adjustment of their differences made. I can find nothing in the leading case of *Canal Co. v. Clark*, 13 Wall. 311, usually referred to as an authoritative expression of the law on the subject of strict trade-mark, to incline my mind against the complainant in this case. On the contrary, that case, as I understand it, holds that, as a general rule, any word may be the subject of a trade-mark (that is, to point out the origin or ownership of articles to which it is affixed) which, at the time of its adoption as such, had not been employed to designate or describe the same or like articles of production. Applying this rule, the case presents no difficulty. As already seen, the word "Saponifier" was a coinage of and appropriation by complainants as early as 1855. It had not before 1855, or until 1890, been used by any other person in connection with any products,—much less as descriptive of any products. The complainant is entitled to the relief prayed for on both grounds stated in its bill, and a decree may be prepared in conformity with this opinion, and submitted to me for consideration.

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THE ASPASIA.

STEINWENDER et al. v. THE ASPASIA.

(District Court, S. D. New York. January 7, 1897.)

CARRIAGE OF GOODS—SEA PERILS—EXTRAORDINARY WEATHER—DUNNAGE INSUFFICIENT AROUND THE MASTS.

Upon proof of extraordinary sea perils and of damage to the ship, which was accompanied by considerable damage to cargo in the hold on the side of the vessel: *Held*, on proof of usual good dunnage, that the ship was not liable for such damage; but that the ship was liable for certain damage occasioned to bags stowed about the masts and pump-well, where the evidence showed that there was not the usual and customary amount of dunnage to prevent damage from leaks in heavy weather.

Black & Kneeland, for libelants.

Cowen, Wing, Putnam & Burlingham, for claimants.

BROWN, District Judge. The extraordinary weather met by the ship upon her voyage, and the damage she received from it, sufficiently show that most of the damage sustained by the cargo must be attributed to the excepted perils of the seas. It was the duty, however, of the bark to dunnage the cargo in a manner reasonably sufficient to protect it from what was to be naturally expected, and in accordance with the usages of the port of shipment. For failure to use such reasonable and customary dunnage as would have protected the cargo even from the sea perils actually incurred, the ship remains liable. I think the evidence sufficiently shows a failure of the ship to use reasonable and customary dunnage about the masts and pump-well, where there was some damage to the bags of coffee, which such dunnage would have prevented. *The Nith*, 36 Fed. 86; *The Sloga*, 10 Ben. 315, Fed. Cas. No. 12,955. For so much of the damage, the libelants are, I think, entitled to recover. I should fix the amount, if

the evidence was sufficient to enable me to do so, as it must be in any event comparatively small. If the parties do not agree, a reference may be taken upon this item of damage.

The damage to cargo in the other parts of the ship I must find did not arise from any lack of reasonable or customary dunnage, or insufficiency of the ship, but from extraordinary sea perils.

A decree may be entered accordingly.

Affirmed on appeal, March 19, 1897.

THE W. F. BABCOCK.

GRAVES et al. v. THE W. F. BABCOCK.

(District Court, S. D. New York, March 1, 1897.)

SEAMEN'S WAGES—DESERTION—COMMITMENT THROUGH CONSUL—HONOLULU—FAILURE OF PROOF—CONSUL'S CERTIFICATES NOT EVIDENCE—REV. ST. § 4600—CONSULAR EXAMINATION REQUIRED.

On the ship's arrival at Honolulu, four men at different times, not appearing at the hour of commencing work in the morning, were within a few hours afterwards arrested as deserters by the police authorities at Honolulu on request of the consul, and kept in prison from 10 to 20 days, until the ship sailed. On arrival at New York, and on suit for their wages, an offset was presented for (1) rewards for detection, (2) arrest by the police, (3) board while in prison, and (4) the employment of a stevedore in place of each seaman while in prison, at \$2.50 a day. The seamen denied any intent to desert; the master had no personal knowledge, but only that desertion was reported to him; nor was any record produced of any examination before the consul, such as is required by section 4600 of the Revised Statutes. *Held*, (1) that the evidence of desertion was insufficient; that the mere certificates of the consul were not legal evidence; (3) that no such offsets as are claimed could be allowed, except on proper legal proof of their necessity, and of a substantial compliance with the statutory requirements.

Boddine & Lee, for libelants.  
 Jones & Govin, for claimants

BROWN, District Judge. To the claims of the above four seamen for wages, counter claims are set up for the cost of their arrest as deserters and of their confinement at Honolulu until the ship sailed for New York on February 26, 1896. The items charged in the log against Graves are as follows:

For reward paid for detection.....	\$10 00
For arrest by the police.....	6 00
For 21 days' detention in prison.....	21 00
For supply of a man in his place at \$2.50 per day, 18 days.....	45 00
For breaking window.....	20 00
	\$102 00

These charges exceed the wages earned during the following four months.

The charges against the other libelants are similar, except that against two of them \$20 each is charged for detection. All the men deny any intention to desert. Three of them, as appears from the testimony, went ashore at night, by leave, but got into a drunken