

trict of Texas by the judgment of deportation set out in the return to the writ of habeas corpus issued herein. I feel satisfied that the court is not authorized in this proceeding to retry the same questions of fact determined by that judgment, and it follows therefrom that the special referee and examiner was justified in refusing to receive the evidence embraced in the petitioner's offer.

This conclusion is fully sustained by the cases of *In re Leo Hem Bow*, 47 Fed. 302, and *U. S. v. Don On*, 49 Fed. 569, and is also supported by the general principle governing courts in proceedings under the writ of habeas corpus, that such writ cannot be used as a substitute for a writ of error for the purpose of reviewing alleged errors either of fact or of law, and which might, upon an appeal, be found to have entered into the judgment imposing the imprisonment or restraint complained of. In all cases in which the return shows that the petitioner is restrained of his liberty by virtue of the judgment of a court, and such judgment is not assailed by the allegation of some extrinsic fraud, which, if it exist, would render it a nullity, the inquiry under the writ of habeas corpus is limited to the question whether the court rendering such judgment acted within or without its jurisdiction. Section 760, Rev. St. U. S., which gives to a petitioner in a proceeding like this the right to "deny any of the facts set forth in the return," and also to allege other matters which may be material in the case, and which section is relied upon by the learned counsel for the petitioner here, does not change the well-settled rule of law in relation to the conclusive effect of a judgment of a court of competent jurisdiction as to all matters properly before the court, and embraced in its judgment, as against a collateral attack. That the section just referred to does not have the effect claimed for it by the counsel for the petitioner here, and was not intended to enlarge the jurisdiction of a court or judge, issuing the writ of habeas corpus so as to permit in the proceeding under such writ a retrial and discharge of a person imprisoned by virtue of a valid judgment, is clearly shown by the learned and exhaustive opinion of the late Judge Blatchford in the case of *In re Stupp*, 12 Blatchf. 501, Fed. Cas. No. 13,563.

The writ issued herein will be discharged, and the said Tsu Tse Mee remanded to the custody from whence he was taken, to be deported to China, in accordance with the judgment of deportation set out in the return to the writ: and it is so ordered.

SAXLEHNER v. GRAEF et al.

(Circuit Court, S. D. New York. June 17, 1897.)

TRADE-MARK—UNFAIR COMPETITION.

A company which was the exclusive consignee in this country of the Hungarian Hunyadi Janos water, in order to distinguish it from imitations sold here, placed on its bottles a trade-mark of its own, not used by its consignors. Afterwards it ceased to import this water, and began selling another Hungarian water, using the same trade-mark, but with labels so distinctive as to challenge the attention of purchasers. *Held*, that this was no infringement of the rights of the owners of the Hunyadi Janos water.

This was a suit in equity by Emilie Saxlehner against Harry C. Graef and another, agents of the Apollinaris Company, to enjoin the use by the latter of certain alleged infringing labels and trade-marks in the sale of mineral waters. The cause was heard on motion for a preliminary injunction.

Briesen & Knauth, for the motion.
Edmund Wetmore and Henry Melville, opposed.

LACOMBE, Circuit Judge. Most of the questions which have been presented and argued on this motion may be best reserved for final hearing. It will not be necessary to express any opinion as to whether laches or inaction has in any way impaired complainant's right to enjoin imitations of the unattractive, but peculiarly distinctive, label of dark blue and red, with the vignette of John Huniades, which has been the well-recognized livery in this country of the original Hunyadi Janos water for many years. For the purpose of this motion, it will be assumed that complainant's right to prevent the sale of other bitter waters in a dress calculated to deceive the public as to their identity with the Hunyadi Janos is entirely unimpaired. It appears that many years ago the markets of this country were flooded with dark blue and red labels lettered with variations of the name Hunyadi, and calculated to deceive the public. At that time the Apollinaris Company was the sole consignee of complainant's predecessor, Andreas Saxlehner, in the United States. Said company urged Saxlehner to unite with it in suit to stop such infringements, but he peremptorily refused. Thereupon the Apollinaris Company adopted a distinctive badge of its own, to wit, a red diamond on a yellow ground, with the inscription: "The diamond is the trade-mark of the Apollinaris Company, Limited, and is meant only to indicate that mineral waters so marked are sold by the Apollinaris Company, Limited." And, so long as it continued to sell Saxlehner's Hunyadi Janos water, it pasted its individual mark upon each bottle. It no longer sells Saxlehner's Hunyadi Janos water, and it now affixes its individual red diamond label on another natural Hungarian aperient water, which it now sells. Complainant has no right to this red diamond label, and her application for an injunction could be sustained only on the theory of unfair competition. Of course, having handled the original Hunyadi Janos water so long, and become well known as the exclusive importers of it into this country, the Apollinaris Company, when it took up another variety of water, was bound in good faith to the public to offer the new water in a dress so different as to challenge the attention of the purchaser to the fact that it is some other mineral water to which the red diamond label is now affixed. This has been done. The label of the "Apenta" water now sold by the Apollinaris Company is totally unlike the old Hunyadi Janos label. It fully sustains the proposition repeatedly laid down in this court that, when there is an honest effort to accentuate differences in labels and wrappers, there need be no confusion as to the identity of competing goods. Comparison is made with the later form of defendant's label, which no longer contains the words "Bottled

at the Uj Hunyadi Springs." Whether the continued use of the word "Hunyadi," after the sale of complainant's water was discontinued, was or was not proper, may appropriately be left for final hearing. Promptly upon the decision in the Hungarian tribunal that word disappeared from defendant's labels, and, when it is a question whether preliminary injunction shall issue, it is always appropriate to consider what it is which defendant threatens to do if unrestrained. Should defendant hereafter, and before final hearing, resume the use of the word "Hunyadi," the question can then be presented by a renewal of the motion. Meanwhile the motion for preliminary injunction is denied.

ST. LOUIS CAR-COUPLER CO. v. NATIONAL MALLEABLE CASTINGS CO.

(Circuit Court, N. D. Ohio, E. D. May 27, 1897.)

PATENTS—COMBINATIONS—CONSTRUCTION OF CLAIMS—INFRINGEMENT—AUTOMATIC CAR COUPLERS.

The Lorraine and Aubin reissue, No. 10,941 (original No. 369,195), for an automatic car coupler, shows a mere reproduction of similar parts used in other couplers of the same kind (being the Janney, or M. C. B., type) for the same purpose and with the same functions. If there is any patentable novelty in the combination, it is in the exact form shown in the specifications and drawings, and any variation therefrom in any of the parts will prevent infringement. The claims are, therefore, not infringed by a coupler made in accordance with the Tower patent, No. 541,446.

This is a bill in equity, brought by the St. Louis Car-Coupler Company, as complainant, to enjoin the National Malleable Castings Company, defendant, from further alleged infringement of a patent for an automatic car coupler averred to be the property of the complainant and for the damages arising from past infringements.

The patent upon which the suit is based is a reissued patent, issued upon the 26th of June, 1888, to Madison J. Lorraine and Charles T. Aubin, and numbered 10,941. The original patent was issued to the same patentees upon August 30, 1887, and numbered 369,195. The answer admits the issuing of the patents, but does not admit the ownership by the complainant. It avers that the reissued patent is void because the claims thereunder state unlawful extensions of the matters and things claimed in the original letters patent, that the patent is void for want of novelty and patentable invention, and that the patent is anticipated by a number of patents set out. The answer further denies infringement.

The specifications of the reissued patent in suit state the character of the invention to be as follows:

"Our invention relates to that class of car couplings known as 'vertical plane,' and having a pivoted, outwardly opening, coupling-head, or clutch, and an extended arm, or buffer. The object of our invention is to provide a vertical plane coupling free from complicated parts, locking by means of a simple automatic gravity pin, requiring no adjusting and made in one piece; to provide a vertical plane coupling, in which, when the coupling-head is unlocked and released, said coupling-head, by reason of its own weight, will turn outwardly and open, and thus automatically set itself in position to effect a coupling with a similar opposing coupling-head, which may be either open or closed; to provide an improved and simplified means of setting not to couple; to so construct and arrange the coupling-head that it will be unusually strong; and to make a coupling that will perform the work under all circumstances, as well