

the public, but invasion of the right of the appellee to the business which it had established. The attempt to palm off these goods as the goods of the appellee is shown not only in the similarity of the labels, but in the character of the circulars issued, one of which at least is referred to in the opinion of the court below. The attempt at fraud is palpable and bald, and lacks even the redeeming merit of ingenious concealment. Within the decisions of this court in *Meyer v. Medicine Co.*, 18 U. S. App. 372, 7 C. C. A. 558, and 58 Fed. 884, and *Pillsbury v. Mills Co.*, 24 U. S. App. 395, 12 C. C. A. 432, and 64 Fed. 841, there can be no question of the duty of a court of equity to restrain the imposition and to protect the rights of the appellee.

4. The appellant claims that the word "Royal" of itself indicates quality, and cannot be adopted as a trade-mark or used as a trade-name; and, in support of this contention, reliance is placed upon the decision of this court in *Beadleston v. Brewing Co.*, 46 U. S. App. 18, 20 C. C. A. 405, and 74 Fed. 229. That was a case of a trade-mark pure and simple, having no element of fraud or unfair trade. There the word "Imperial" was not in fact a part of the trade-mark, but was used to designate a particular grade or quality of beer. In obedience to the decision of the supreme court in *Mill Co. v. Alcorn*, 150 U. S. 460, 14 Sup. Ct. 151, we held that this could not be done. That the words "Imperial" and "Royal" may import quality, and may be so used, we think, as we there said, must be true; but in the case before us the word is not so used, nor does it, in the connection in which it is used, indicate quality. It is applied to the entire manufacture of the appellant, and not to a particular grade, and has come to be known in connection with the article of baking powder as a word indicating the origin and the proprietorship of the manufacture. It would be inequitable in such case to say that a word which, under certain circumstances, may indicate quality when used for that purpose, may be employed in no other sense; nor do the authorities sustain any such contention, especially when the objection is urged by one who is manifestly seeking to impose his wares upon the public as the manufacture of another. One may not use his own name for such a purpose; still less can he use the word in question. The decisions upon this point are so numerous that it is deemed unnecessary to collate them. The case of *Reddaway v. Banham* [1896] App. Cas. 214, is instructive, and fully disposes of the contention here. The other questions discussed are sufficiently considered in the opinion delivered in the court below. The decree will be affirmed.

THE CITY OF MACON.

THE EVA WALL.

McLEAN v. THE CITY OF MACON et al.

(District Court, E. D. Pennsylvania. January 28, 1898.)

COLLISION—STEAMER WITH TOW.

A steamer ascending the eastern channel of the Delaware river below Greenwich Coal Piers, and meeting a tug with a schooner in tow coming down the eastern side of the channel, held solely in fault for a collision with the tow, where the tug signaled that it would keep to the eastern

side of the channel, to which the steamer first assented, but afterwards attempted to pass to the eastward, when it was too late for the tug and tow to go to the west, and persisted therein in spite of the repeated signals of the tug that she would keep to the eastern side.

These were libels in rem to recover damages resulting from a collision.

Edward F. Pugh and Henry Flanders, for the William Jones.

Horace L. Cheyney and John F. Lewis, for the City of Macon.

Henry R. Edmunds, for the Eva Wall.

BUTLER, District Judge. As the tug "Eva Wall" with the schooner "William Jones" in tow was passing down the easterly side of what is called the eastern channel of the river Delaware a short distance below Greenwich Coal Piers, on August 16, 1895, the steamship "City of Macon" came up the same channel and turning eastward ran into the schooner. Two sloops at the same time were beating their way up the western channel, and a tug and tow were going down. The presence of these vessels in the western channel was doubtless the cause of the "Wall" and the steamship taking the other. The tide was flood, and the shape of the river tended to set it eastward. Two or three vessels were anchored between the channels, but their situation is unimportant.

The schooner, charging the steamship alone, with fault, libeled her for compensation for the damage inflicted on the former vessel. Subsequently the steamship brought the "Wall" in as responsible for the collision; and also libeled her for injury sustained by the steamship. The schooner is admitted to be blameless; and she is therefore entitled to recover of one, if not of both respondents. It seems clear that the steamship was in fault. Admitting that the "Wall" should have gone to the western side of the channel, that the steamship signaled her to do so and had a right to pass eastward, under ordinary circumstances, she should not have persisted in going there, as she did, against the repeated signals of the "Wall" that she would continue down the eastern side. There was sufficient room for the steamship on the western side, where she could have passed conveniently and avoided the collision. It was her persistence in what she may have deemed her right, that produced the disaster. Supposing the tug to have been plainly wrong in running where she did, the steamship was as plainly wrong in continuing her course eastward after receiving timely and repeated notice that she could not pass on that side. It was her duty to avoid the accident if she could (notwithstanding the fault of the tug, if she was in fault) and it seems entirely clear that she could. It is undisputed that she was warned as soon as the vessels came within view and repeatedly thereafter, that she could not pass on the eastern side, that the "Wall" would hold her course there, and yet she persisted in going over, and thus struck the schooner. Aside, therefore, from the question respecting her first signal, yet to be considered, she was in fault; and is responsible to the schooner.

Was the tug "Wall" also in fault? If she was it is because she went to the eastern side and continued her course there. That she had a

right to run down the eastern channel, and the steamship a right to run up it, I have no doubt. As before stated, the water was sufficient for both. Granting that it was the steamship's right under ordinary circumstances to pass on the eastern side, and the "Wall's" duty to go westward (a question that need not be considered in view of the testimony), and that the "Wall's" persistence in keeping eastward should be considered a fault if not explained, and justified by the explanation, we are brought to the question, is her conduct in this respect, so explained and justified? Is it true, as she alleges, that the steamship, at first agreed that she should run there, and did not turn eastward and signal accordingly until the situation had become such that she, the tug, could not safely change her course? If it is true, the "Wall" is blameless in running where she did. It is to this point that nearly all the testimony is directed, and there is much of it. While it is conflicting, its weight, in my judgment, is clearly in favor of the "Wall." It would not serve any useful purpose to cite and discuss this testimony. I am fully convinced, after a patient examination of it, that when the "Wall" who signaled first, thus expressed her purpose to keep her course on the eastern side (as the vessels came into view), the steamship signaled her consent by answering that she would go westward; that she continued her course (which without change would probably have taken her safely past the tug and tow) for a time, while the "Wall" kept her course eastward; and then, when it was too late for the latter vessel to change without danger, the steamship signaled that she would pass eastward, and turned in that direction—the "Wall" replying that she would hold her course on the eastern side. The witnesses who sustain this view are numerous and positive, and many of them disinterested. Why the steamship did not adhere to the purpose expressed by her first signal, cannot be known. By turning eastward when she did she incurred risk. It is said to be incredible therefore that she should have so turned at this time, instead of that at which she first signaled, as her witnesses testify she did. But it seems hardly more incredible than that she should have persisted in running eastward against the warning of the "Wall" that she could not pass on that side, as she certainly did, and thus plainly run into danger. She saw that the "Wall" steadily kept the eastern side, and heard her repeated refusal to change, and yet she kept on. Nor does it seem materially more incredible than that the "Wall" should have insisted on keeping the eastern side, to the serious danger of herself and tow, after seeing that the steamship was determined to run there and was coming at a high rate of speed, if she, the tug, could have safely turned westward, as the steamship says she could.

I find that the tug "Wall" was not in fault, and that the steamship alone was blamable for the collision.

I do not think the question of lookout, raised by the steamship, is material. The "Wall" saw the steamship as early as the latter saw her, and probably as early as she could have been seen in the situation of the vessels. She was the first to signal, and signaled in ample time. I do not see any fault, as charged, in her failure to slow down or stop earlier than she did. Indeed I think her chance of escape was in-

creased by keeping on; a few seconds more would have carried the tow out of danger. Nor do I see any ground for the question raised about crossing courses, under rule 16. The bows of the vessels were gradually changing in consequence of the shape of the river there. The rule does not apply to such a situation. And besides the tug was running where it had been agreed it should.

THE H. C. GRADY.

MANNIE et al. v. THE H. C. GRADY.

(District Court, D. Oregon. February 11, 1898.)

No. 4,223.

MARITIME LIENS—WAGES.

Persons negotiating for the purchase of a steamer, then at her home port, at Portland, Or., selected a master for her, who employed a pilot, engineer, and firemen to go with him to Portland, and bring her to San Francisco. They all understood that the purchase had not been entirely consummated, but proceeded to Portland, and there rendered some services in preparing the vessel for the trip. The sale, however, fell through, and the vessel was libeled by a mortgagee. *Held*, that they had no lien on her for their wages.

This was a libel in rem by Emmett M. Mannie and others against the steamboat H. C. Grady to enforce an alleged lien for wages.

J. W. Whalley, for libelants.

Fred R. Strong, for respondent.

BELLINGER, District Judge. The steamer Grady is a river steamer, and was, during the latter part of May, 1897, and until some time in the fore part of June following, on the ways at Portland, in this state. She was a domestic vessel. Some time during the month of May, and prior to the 23d of that month, the libelant Mannie was engaged by Capt. Denny, at San Francisco, as engineer, to come to Portland, and assist in bringing the steamer to San Francisco, Cal., and thereafter to serve on her in that state, where it was proposed to employ her. The libelant Mannie understood at the time that the purchase of the Grady had not been "thoroughly" consummated, and it was not known certainly what steamer was to be brought to San Francisco. Mannie had authority from Capt. Denny to hire two firemen and an assistant engineer, and in pursuance of this authority engaged libelants Tennent and Keeley as firemen, at \$50 per month each. The libelant Richardson was employed at Oakland, Cal., by Capt. Denny in person, as pilot, at \$100 per month. When Capt. Denny engaged the services of the libelants Mannie and Richardson, he was not the master of the Grady. The employment was in pursuance of the intended or conditional purchase of the steamer, then at Portland, to run between San Francisco and the Sacramento river, in California, and the libelants came to Portland for service on the trip from Oregon to California, and thereafter on the route selected for her in California, and upon arriving here they went on board of the steamer, where they remained for a time, doing some work in the way