

Arcade, Queen street. The Saturday before last I had a miscarriage. That would be on the 11th of December. The operation was performed on the previous Thursday, the 9th December. I was very ill on the 11th December. Dr. Orpen came to see me at Haven street on the following Monday, the 13th December, and has been to see me every day since,—sometimes twice a day. I was admitted here on Wednesday last, the 22d December, at 8 p. m. Dr. Orpen came to see me here yesterday twice. He came at 10 in the morning, and in the afternoon met Dr. Purchas here. Dr. Orpen has been to see me here three times to-day. Dr. Purchas has also been to see me to-day. If anything happens to me, will you communicate with my father, who is the harbor master at Dunedin? I would like my body to be sent home. I am making this statement because I think it probable that I may die soon. I have some money in the Auckland Savings Bank, and Mrs. Metcalfe has my book. My father will settle any expenses.

Her
 "Susan Harriet Campbell X McCallum.
 mark

"Taken and sworn this twenty-fourth day of December, 1897, at midnight, the deponent making her mark, being too weak to sign her name.

"Before me,

[Signed] Albert J. Allom,

"A Justice of the Peace for the Colony of New Zealand."

It is objected that it does not appear from this statement that the deceased was under a sense of impending death at the time she made the statement. The rule, as stated in Tayl. Ev. § 718, is that it is not "necessary that the declarant should have expressly said, in so many words, that he was speaking under a sense of impending death. It will be enough if it satisfactorily appears, in any mode, that the declarations were really made under that sanction; as, for instance, if that fact can be reasonably inferred from the evident danger of the declarant, or from the opinions of the medical or other attendants stated to him, or from his conduct, such as settling his affairs, taking leave of his relations and friends, giving directions respecting his funeral, receiving extreme unction, or the like. In short, all the circumstances of the case may be resorted to, in order to ascertain the state of the declarant's mind." From all the surrounding circumstances, and from the statement itself, I am of the opinion that the statement was made in the knowledge of impending death, and that it should be received as a dying declaration tending to establish the guilt of the accused. It follows that the evidence is sufficient to warrant me in believing that the crime of murder was committed as charged in the complaint, and that the accused is guilty of the offense. The proper certificate will be prepared.

DEERING HARVESTER CO. v. WHITMAN & BARNES MFG. CO.

(Circuit Court, N. D. Ohio, E. D. September 9, 1897.)

No. 5,463.

TRADE-MARK—ACQUISITION.

The stamping of letters and figures upon the pieces of machinery going to make up the machines of which they severally form a part is presumably for the purpose of identifying the several parts; and, if it serves also to denote the manufacturer, that is incidental only, and does not create a trade-mark.

This was a suit in equity by the Deering Harvester Company against the Whitman & Barnes Manufacturing Company for alleged infringement of a trade-mark.

Banning & Banning, for complainant.

Charles Baird and Robert H. Parkinson, for defendant.

SEVERENS, District Judge. In this case I am satisfied that the letters and figures stamped upon the pieces of machinery by the complainant, and upon which it sets up its claim for trade mark or marks, were intended in their primary purpose to designate the several pieces of machinery, one from another, in order to give information to its own employes, and its customers who should use its machines, of the identity of the piece thus designated; and that, if the use of such letters and figures in the manner in which they are employed serves also to denote the manufacturer, this is incidental to the principal purpose. The claim of a multitude of trade-marks for the purpose of designating the several parts which go to make up the various combinations exhibited by the several machines which the party manufactures, is very unusual and extraordinary. As a general thing, a trade-mark is a common one, designating generally the thing upon which it is impressed as of the manufacture of the party seeking to establish a claim to the exclusive right thereto. It may be possible to establish a right to such heterogenous trade-marks, but I think the rational inference from such a course would be that the marking is for the identification of the thing rather than the manufacturer. Upon the evidence in the record, I do not think the defendant can be held to be engaged in the sale of the obnoxious articles under a pretense that such articles were actually manufactured or originally supplied by the complainant. The defendant has done no more than was fairly necessary to enable the public to identify the things wanted from other pieces in the machines of which they severally form a part. In my judgment, the trade-mark cases decided by the supreme court of the United States, especially the more recent ones, are quite decisive of this case against the complainant. *Manufacturing Co. v. Trainer*, 101 U. S. 51; *Lawrence Mfg. Co. v. Tennessee Mfg. Co.*, 138 U. S. 537, 11 Sup. Ct. 396; *Coats v. Thread Co.*, 149 U. S. 563, 13 Sup. Ct. 966; *Mill Co. v. Alcorn*, 150 U. S. 460, 14 Sup. Ct. 151. It does not appear to me that the case of *Singer Mfg. Co. v. June Mfg. Co.*, 163 U. S. 169, 16 Sup. Ct. 1002, is opposed to this conclusion. In view of these decisions, it seems unnecessary to go into a discussion of the cases at large. The result is that the bill must be dismissed.

R. HEINISCH'S SONS CO. v. BOKER et al.

(Circuit Court, S. D. New York. March 18, 1898.)

1. UNFAIR COMPETITION—USE OF PROPER NAME—INJUNCTION.

Defendants, former agents for the firm of R. H.'s Sons, complainant's assignor, which firm enjoyed a high reputation as manufacturers of shears, entered into a contract with one H., a former member of that firm, by which they acquired, among other things, the right to use his name upon all their