

place, as against the defendant subsequently manufacturing at the original place—Glenfield—and claiming on that account the right to use the name in connection with the starch made by him. Lord Westbury stated the point on which the final decision in favor of the complainant was rested, with clearness. He said:

“I take it to be clear from the evidence that long antecedently to the operations of the respondent the word “Glenfield” had acquired a secondary signification or meaning in connection with a particular manufacture; in short, it had become the trade denomination of the starch made by the appellant. It was wholly taken out of its ordinary meaning, and in connection with starch had acquired that peculiar secondary signification to which I have referred. The word ‘Glenfield,’ therefore, as a denomination of starch, had become the property of the appellants. It was their right and title in connection with the starch.”

We do not find in the present case any state of facts corresponding with this. The words “Old Oscar Pepper Distillery” never lost their primary signification, and never acquired any secondary meaning; and, as applied to the whisky made by the complainant, the words “Old Oscar Pepper,” and their abbreviation, “O. O. P.,” never came to mean more than whisky that had been made at that particular distillery. They did not become a denomination of whisky as the manufacture of the complainant or of any person, but characterized it only as entitled to public favor by reason of the reputation of the particular distillery at which it purported to have been made.

For these reasons we are of opinion that the equity of the case, both upon the original and cross-bills, is with the defendants. A decree may be entered accordingly.

BARR, D. J., concurred.

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### MATTHEW v. THE PENNSYLVANIA R. CO.\*

(Circuit Court, E. D. Pennsylvania. June 22, 1881.)

#### 1. PATENT—LICENSE—CONSTRUCTION OF.

A license to use a patented invention upon the locomotives used by a railroad company on its road, or on “any road or roads now owned or that may hereafter be owned or operated by said company,” embraces not only locomotives in use at the date of the license upon roads then owned and operated by the company, but also such other locomotives as it might thereafter use, and other roads which it might thereafter operate.

\*Reported by Frank P. Prichard, Esq., of the Philadelphia bar.

**2. SAME.—RIGHT OF LICENSOR TO RAISE QUESTION OF POWER OF LICENSEE TO OPERATE OTHER ROADS.**

One who grants to a railroad company a license to use a patented invention on roads "that may hereafter be owned or operated by said company," cannot subsequently, upon a bill to restrain the company from the use of the invention, call in question the legal right of the company to operate other roads.

**Hearing on Bill and Plea.**

The bill was filed to restrain the use of the invention embraced in letters patent No. 22,439, issued to complainant for an improvement in locomotive axle bearings. The bill admitted the purchase by defendants, in 1861, of a license to use said invention, but alleged that defendants had used it in locomotives acquired since the date of the license, and under chartered rights and privileges acquired since that date as lessee of several railroads not contemplated or embraced in said license. Defendants filed a plea, setting up the license referred to, the material part of which was as follows:

"The Pennsylvania Railroad Company is \* \* \* hereby authorized and licensed to make and use all of said improvements and inventions so patented as aforesaid, for and during the several terms of the patents, and any extension of either of the same, in, upon, and about the locomotive engines used by the said The Pennsylvania Railroad Company, on the Pennsylvania Railroad, or any road or roads now owned, or that may hereafter be owned or operated by the said company."

Complainant claimed that the license embraced only locomotives in use at its date, and, further, that defendants had no legal right to operate the other roads on which it was using the invention.

*William W. Hubbell*, for complainant,

*Andrew McCallum and David W. Sellers*, for respondents.

BUTLER, D. J. The license pleaded covers the use complained of. The terms: "Upon and about the locomotive engines used by the said The Pennsylvania Railroad Company, on the Pennsylvania Railroad, or any road or roads now owned, or that may hereafter be owned or operated by said company," are of the broadest signification, and very plainly embrace, not only locomotive engines in use at the date of the license, upon roads then owned or operated by the company, but also such other engines as it may thereafter use, and other roads which it may thereafter operate. The contracted interpretation claimed by the plaintiff, is not justified by any rule of construction, or any special circumstances appearing in the case.—Nor can the plaintiff call in question the defendant's right to operate the roads on which the engines are employed. The license was intended to cover all use which the defendant might, at any time, have for the

inventions. Whether the defendant can lawfully obtain the right to operate other roads, is unimportant. The plaintiff supposed it could, and conferred the privilege of using his inventions on such roads. The statement in the bill, that the inventions are used "under chartered privileges acquired since the date of the license," is also unimportant. It does not follow that the use has been extended or increased, by reason of such subsequently-acquired privileges.

The plea is sustained.

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THE ALIDA.\*

(District Court, E. D. Pennsylvania. June 22, 1881.)

1. ADMIRALTY—LIBEL FOR BREACH OF CONTRACT—EVIDENCE FOUND TO SUSTAIN ALLEGATION OF RESPONDENT THAT BREACH WAS CAUSED BY LIBELLANT'S FAILURE TO PERFORM VERBAL AGREEMENT MADE AT THE TIME OF THE CHARTER, AND NOT INCONSISTENT THEREWITH.

Libel against a Tug for Breach of Contract.

Libellant, by a written agreement, chartered the tug for use in certain dredging operations at the price of \$500 per month. He averred that the tug failed to perform the work. Respondents averred that, by a verbal agreement made at the same time as the written charter, libellant agreed to furnish the provisions and pay the current expenses of the tug in part payment of the \$500 per month; and that he failed to do this, whereby the tug was unable to perform the work. Various questions of law, affecting the validity of the lien claimed by libellant, were raised upon the argument.

*Theodore M. Etting* and *Henry R. Edmunds*, for libellant.

*Henry Flanders*, for respondent.

BUTLER, D. J. Accepting the libellant's view, of the several important questions of law discussed, he is still not entitled to recover. I find the facts to be, substantially, as stated by the respondent. The verbal agreement respecting supplies, and the time and manner of paying for the vessel's services, is fully proved by the master and pilot,—is principally admitted, on cross-examination, by the libellant, and is not inconsistent with the written memorandum. The agreement is, furthermore, reasonable, and, therefore, probable. It avoids the necessity of making advances, or subjecting the vessel to the danger of liens and attachments. That it was not complied with is proved by the same witnesses,—the master and pilot,—who

\*Reported by Frank P. Prichard, Esq., of the Philadelphia bar.