

MORGAN, L. & T. S. S. Co. v. DE ARROTEGUL,<sup>1</sup>

(District Court, E. D. New York. May 7, 1885.)

## ADMIRALTY—PLEADING—NAMES OF PARTIES—EXCEPTION.

An averment in an answer in an action for salvage that "other insurance companies" were insurers of property saved is insufficient, in the absence of an averment that their names are unknown.

In Admiralty. Exception to answer.

*Charles H. Tweed* and *R. D. Benedict*, for libellant.

*Evarts, Southmayd & Choate*, (*Treadwell Cleveland*,) for claimant.

BENEDICT, J. The exception taken to the answer is equivalent to a motion to make more definite and certain the averment of the second article of the answer, where it is alleged that "the Thames & Mersey Marine Insurance Company, Limited, and other insurance companies, were insurers" of the property saved. Manifestly this averment is uncertain, in that it does not designate by name the insurance companies referred to by the words "other insurance companies." In the absence of an averment that the names of such other insurance companies are unknown to the defendants, the allegation in the second article of the answer is insufficient.

Exception sustained, with leave to defendants to amend.

<sup>1</sup> Reported by R. D. & Wyllys Benedict, Esqs., of the New York bar.

CARBOLIC SOAP CO. v. THOMPSON and another.<sup>1</sup>*(Circuit Court, E. D. Texas. November, 1885.)*

1. TRADE-MARKS—WORDS DESCRIPTIVE OF NATURE AND QUALITY OF COMPOUND.  
A word that is descriptive of the nature and quality of a compound cannot be claimed and allowed as an exclusive trade-mark.
2. SAME—IMITATIONS OF PACKAGES AND LABELS.  
Parties will be protected from the imitation of their packages so far as they are peculiarly designed and shaped for the purpose of distinguishing their goods; and from the imitation in color, design, style, and lettering combined of the labels used to mark said packages.

## In Equity.

Complainants allege that they are proprietors of an article called "Buchan's Cresylic Ointment," an article designed and used as a remedy for cattle affected by the screw-worm, and for other purposes, and that they put it up for sale in peculiar-shaped bottles and distinctive labels, printed in colors, both of which had been used by them and their predecessors in business for upwards of 16 years; that defendants, who had also been largely engaged in the business of selling complainants' goods, had recently put upon the market, and were selling in opposition thereto, another and different kind of ointment represented to be for similar uses, and prepared and put up in imitation of complainants', so as to resemble the same in respect to name, form, and size of packages, labels, and general external appearance, and sold under the general name of "Cresylic Ointment," to the great detriment and injury of the complainants; and they prayed for an account of all sales made by the defendants of the alleged imitation article, that they be condemned to pay over their profits, and for all loss and damage sustained by complainants, and that they be enjoined from using the word "Cresylic," and from using packages, labels, etc., similar to complainants'.

*McLemore & Campbell*, for complainants.

*Hume & Shepard*, for defendant.

PARDEE, J. When the original bill was before the court for a restraining order, and afterwards, when on bill and affidavits the court directed the restraining order to stand over until hearing on the merits, it was considered, on the showing made, as plain that the complainants and their predecessors had adopted as a trade-mark the word "Cresylic," and the particular set of packages and labels described in the bill to identify and distinguish their goods, and had, by energy and outlay, built up a valuable trade; that the defendants were engaged in introducing and selling goods that had purposely been put up in particular packages identical in size and shape, and with closely imitated labels, with the intention of taking advantage of the reputation complainants' goods had acquired, and with the further

<sup>1</sup> Reported by Joseph P. Horner, Esq., of the New Orleans bar.