

rectly or indirectly involved in or affected by this action, which defendant ever had the unrestricted right to continue or sell.

Additional and stringent restrictions have been imposed by this statute, but the power to impose them is beyond question. No property or personal rights of defendant are invaded, save as he acts in defiance of those restrictions. No property or business is touched, save by judicial proceedings of old and familiar use. How, then, can it be said that his property is taken, or his business destroyed, without due process of law?

Finally, it must be remembered that in questions of doubt as to jurisdiction, the federal courts should remand. They should not be covetous, but miserly, of jurisdiction. The state court had originally unquestioned jurisdiction. The overburdened docket of this court should not be loaded with removed cases, unless its jurisdiction is clear and the mandates of the law imperatively require it. Especially is that true of cases in which the state is attempting, in its own courts, to enforce its statutes, designed for the peace and good order of its citizens.

The motion to remand will be sustained.

HAMMERSCHLAG MANUF'G Co. v. JUDD.

(Circuit Court, D. Massachusetts. January 29, 1886.)

WITNESS—TAKING TESTIMONY OF UNWILLING WITNESS ON MOTION FOR PRELIMINARY INJUNCTION.

In Equity. Motions of defendant for order for subpoena and attachment.

Livermore & Fish, for complainant.

Browne & Browne, for defendant.

COLT, J. When either party, on motion for a preliminary injunction, desires to take the testimony of an unwilling witness, application should be made to the court, and notice given to the other side. The motion should be in writing, and should set forth the name or names of the witnesses, and briefly the purpose for which they are to be called. The court should then, if the application is a proper one, appoint an examiner to take such testimony, due notice to be given to the other side, who should have the right of cross-examination. The defendant's motion for subpoena, in its present form, and also his motion for attachment, must be denied.

ROYAL BAKING POWDER CO. v. DAVIS and others.

(Circuit Court, E. D. Michigan. November 5, 1885.)

1. **TRADE-MARK**—"ROYAL BAKING POWDER"—"CORAL BAKING POWDER."
The words "Coral Baking Powder," in connection with the color of the label on which they appear, and the general appearance of the cans bearing the label, are calculated to deceive the public, although in themselves they are no infringement on the trade-mark "Royal Baking Powder."
2. **SAME—INJUNCTION, THOUGH NO INFRINGEMENT.**
Injunction granted to restrain the use of the words "Coral Baking Powder," the same being calculated, in connection with a similarity in the labels and cans, to mislead the public into mistaking the one for the other.

In Equity.

Isaac Marston, for plaintiff.

John D. Conely, for defendant.

BROWN, J. This is a bill in equity for the infringement of plaintiff's trade-mark, which consists of the words "Royal Baking Powder," used in connection with labels of a particular design and color, applied to the cans containing the article manufactured by plaintiff.

The defendants make use of cans of precisely the same size and shape, to which are affixed labels of the same colors and general design as those of the plaintiff, with the words "Coral Baking Powder" thereon. The answer avers "that the shape and size of the can described in the bill is a common mercantile article in the market, and is made by different manufacturers for holding baking powders;" that "the colors on the labels are also in common use by baking powder manufacturers;" and denies that the colors and devices mentioned in the bill, in combination with each other, or with any other matter or thing, constitute a trade-mark. The labels used by defendants' firm are similar to those used by the plaintiff in their color, and to the extent that one-half of the label has a red ground with white letters and the other half a yellow ground with black letters. The corner ornamentations upon the red half are the same, but the words upon this ornamentation differ. The word "Royal" on plaintiff's red ground is in good-sized letters. The word "Coral" on defendants' is in larger letters. In the center of plaintiff's red ground the ornamentation is a picture of a Royal baking powder can in a circle. In the center of defendants' red ground is a circle containing therein the words "Trade-mark," with a large picture below of a piece of coral.

I do not think the use of the words "Coral Baking Powder" is in itself an infringement of plaintiff's trade-mark,—"The Royal Baking Powder." The difficulty is with the similarity of the labels upon which the words are used. The general arrangement of the words being the same, the devices upon the cans being very much alike, and the labels of the same color and general appearance, I think purchasers might be very easily deceived into buying the one