

and constitute different means by which title is obtained to the same property. Besides, the deed of 1863, which was probably intended to perfect the title, by covering any defects that might be found in the prior proceedings, embraces all the property to which the bill relates, and it affords a common point for litigation.

Let there be a decree dismissing the bill.

GAIL and another v. WACKERBARTH and another.

(Circuit Court, E. D. Louisiana. June 16, 1886.)

TRADE-MARKS—IMITATION OF OTHER GOODS—INJUNCTION.

Parties will be restrained by injunction from putting up goods in packages in imitation of others in the trade, calculated to deceive the buying public, and to defraud the original users of such packages; but such imitation must be sufficiently close to have that effect, or the injunction will be refused.

On Motion for Injunction *Pendente Lite*.

Joseph P. Hornor, for complainant.

J. R. Beckwith, for defendant.

PARDEE, J. There is no one characteristic or mark common to the packages of tobacco of complainants and defendants that either one can have an exclusive right to. There remains, then, but the question whether the defendants' packages, in form, size, color, lettering, and marks, combined, are made in imitation of complainants' packages, and are calculated to deceive the buying public, and thus defraud the complainants of their rights. The form and size or shape of the defendants' packages are identical with complainants', but this shape is the common one, and of long standing for all manufacturers of the article, and seems to be required to meet the stamp act of the government, and for convenient handling by consumers; the shape being oblong, about five and a half inches by two and a half inches, and one and a quarter inches thick,—a package easily placed in the pocket. The common color is blue, but they are of decidedly different shades, and, if color is an object to the purchaser, the defendants' packages could not be easily passed off to a purchaser who desired complainants' goods. The only common lettering is the word "Navy," and in this there is a great similarity. The size of the letters and the circular form are very similar. There are no common or similar marks except that each has a black border or fringe on the face, but similar only in general appearance. Both packages show lead foil at the ends as an outside wrapper. The packages of each have a distinct and prominent trade-mark on the face of the package, but there

¹ Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

is no similarity; the defendants' mark being a naked muscular arm, holding a heavy hammer poised for striking, while the complainants' mark is the letter "G" inclosing a tomahawk in a diamond background, with the words "Trade-mark" under the letter "G." Over the defendants' trade-mark is the word "Union" in plain, prominent letters, while over the complainants' mark are the words "Smoke" and "Chew" in a sort of script. By inspection of the packages in evidence, I can see no improper imitation, unless it is in the color and in the shape given to the word "Navy." The showing made by the answer and exhibits clearly meets the complainants' bill and affidavits as to intended imitation and fraud, and as to effect on trade.

As the case stands at present, I am compelled to refuse the injunction prayed for.

DORIAN, Adm'x, v. CITY OF SHREVEPORT.

(Circuit Court, W. D. Louisiana. August, 1886.)

MUNICIPAL CORPORATIONS—BONDS ISSUED FOR WORK DONE—LIABILITY TO ASSIGNEE IN ABSENCE OF POWER TO ISSUE COMMERCIAL PAPER.

Under a power vested by statute in a municipal corporation, whereby it may contract for the making of public improvements, and issue its bonds in payment for the work performed, a bond so issued for work actually done becomes a voucher or evidence of indebtedness to that extent, and may be recovered upon by an assignee in good faith, even though such corporation had never been specifically empowered to issue negotiable paper.

At Law.

Hicks & Hicks, for plaintiff.

F. G. Thatcher and *E. H. Randolph*, for the City.

BOARMAN, J. Plaintiff sues to recover a debt of \$3,000, with interest, due to Dorian by defendant, a municipal corporation. The debt is alleged to be due because defendant employed Robson & Baer to grade, and otherwise improve, certain streets, which they satisfactorily performed. Plaintiff shows that the contractors agreed to receive, and the city agreed to pay, for the work, one-half in cash, and the other half in 10-year bonds; that three of such bonds, purporting to be commercial paper, for \$1,000 each, were issued and given to contractors; that these bonds came into the hands of Dorian in due course of trade, for value, and before their maturity; and that interest was paid to him for several years by defendant.

The bonds are as follows:

"Know all men by these presents that the mayor and trustees of the city of Shreveport acknowledge to owe ———, or bearer, one thousand dollars, lawful money of the United States; which the said mayor and trustees promise to pay at the comptroller's office, in the city of Shreveport, on the first day of October, A. D. 1869, with interest at the rate of 8 per cent. per