

appear that the election at which the ballot in question was received was an election at which a representative in congress was voted for, but we must take judicial notice that it was also a general state election for the election of numerous state and county officers, so that it by no means follows as a necessary inference from anything stated in the count that the fraudulent ballot was cast for a candidate for a federal office. It would be consistent with all the averments of the count to assume that it was cast for a candidate for a state office only. The sixth count is even more defective, in that it is not averred in express terms that at the election in question a representative in congress was voted for. In my opinion, it would be violative of all rules of correct pleading to hold that the fourth and sixth counts of this indictment show that an offense has been committed against the laws of the United States. They can only be sustained by indulging in inferences favorable to the pleader that would hardly be tolerated in a civil proceeding, even after the rendition of verdict, and this is open to violation of the rule that an indictment should charge an offense with the highest degree of certainty.

In answer to the suggestion made on the argument of the motion that the defect in the indictment is cured by the statute of jeofails, section 1025, Rev. St. U. S., it is sufficient to say that the statute in question will not remedy a defect in an indictment of such a radical nature as a failure to charge an offense; and, even if the statute should be held to have such curative properties, it would be impossible to say, from a consideration of the indictment and the charge to the jury, that the defect in the indictment had not operated to prejudice the defendant. I may further add that section 5514, Rev. St. U. S., does not aid the indictment, as that section prescribes a rule of evidence only, whereas the indictment is faulty in failing to state an offense within federal cognizance. There is no escape from the conclusion that the judgment should be arrested.

EVANS and another v. VON LAER.

(Circuit Court, D. Massachusetts. September 8, 1887.)

1. **TRADE-MARK—"MONTSERRAT LIME-FRUIT JUICE"—IMITATION OF BOTTLES.**
In a suit to restrain the infringement of a trade-mark, the only resemblance between the defendant's and complainants' packages was in the color of the labels, the use of the words "Montserrat Lime-Fruit Juice," and the form of the bottles, but the evidence disclosed that most lime-juice bottles were quite similar in size and design. *Held* no deception.
2. **SAME—GEOGRAPHICAL NAME.**
Montserrat being the name of an island from which both parties import lime juice, the complainants, in the absence of fraud, are not entitled to the exclusive use of the word "Montserrat" as a designation for lime juice, although their article may have acquired a high reputation for purity and strength, while that of defendant may be of an inferior quality.
3. **SAME—USE OF BOTTLES STAMPED WITH COMPLAINANTS' NAME.**
Where both parties are dealers in lime juice, the defendant has no right to sell lime juice in bottles stamped with complainants' name.

In Equity.

Rowland Cox and Warren & Brandeis, for complainants.

Gray & Swift and Austin G. Fox, for defendant.

COURT, J. The complainants by their bill claim, as against the defendant, the exclusive use of the word "Montserrat," as a designation for lime juice. Montserrat is the name of a small island in the West Indies, and the complainants, who reside in Liverpool, are the consignees of the Montserrat Company, Limited, a corporation having large plantations on the island. The defendant lives in Boston, and is a dealer in lemon and lime-fruit juice. Formerly he did business as Von Laer & Co., or as the Von Laer Fruit-Juice Co. It appears that on labels bearing the name Von Laer & Co., the lime juice was designated as imported from Montserrat. It is not shown that this lime juice was not in fact imported from Montserrat. On the contrary, the evidence is that the defendant, or Von Laer & Co., bought lime juice on the island, and had it shipped to this country. The fact that the Montserrat Company may have acquired a high reputation for the purity and strength of their article, and that the importation of Von Laer & Co. may have been inferior in quality, can make no difference, unless the defendant, by improper means and devices, has sought to make the public believe that he was selling the article made by the Montserrat Company. In the absence of fraud the complainants cannot enjoin the defendant from the use of a geographical name. This was settled in the case of *Canal Co. v. Clark*, 13 Wall. 311, where the court refused to enjoin the defendant against calling their coal "Lackawanna Coal," and where it was held that no one can apply the name of a district of country to a well-known article of commerce, and obtain thereby such an exclusive right to the application as to prevent others inhabiting the district, or dealing in similar articles coming from the district, from truthfully using the same designation. The fact that such use by another person may cause the public to make a mistake as to the origin or ownership of the product can make no difference, if it is true in its application to the goods of one as to the other. Purchasers may be mistaken, but they are not deceived by false representation, and equity will not enjoin against telling the truth. It is manifest, then, that to entitle the complainants to any of the relief sought by this bill, some fraud must be proved.

The complainants charge the defendant with fraud in two respects: (1) Imitation of their package as a whole; (2) the use of bottles having their names moulded in them. A comparison of the labels will, I think, show that the public could not be misled into mistaking the defendant's article for the complainants'. Aside from a resemblance in color, and from the use of the words "Montserrat Lime-Fruit Juice," which the defendant had a right to use, there is nothing on defendant's label which resembles that of the Montserrat Company. Stress is laid upon the fact that the bottles are alike, but, bearing in mind that the evidence discloses that most lime-juice bottles are quite similar in size and design, I do not deem this very important. There is one thing, how-

ever, which it seems to me the defendant has no right to do. The evidence is that some bottles used by the defendant have the complainants' name blown into them. I am aware that the name is on the bottom of the bottle, and that it is not very prominent; but while the defendant may buy in the market these bottles, and sell them again filled with anything but lime juice, I do not think he should be permitted to put his own lime juice into a bottle stamped with the complainants' name, and sell it. This may be said to be calculated to lead the public to believe they are buying the complainants' lime juice, when, in point of fact, they are buying some other person's. *Rose v. Loftus*, 38 L. T. R. (N. S.) 49; *Richards v. Williamson*, 30 L. T. R. (N. S.) 746. To this extent I think the complainants are entitled to a decree; and it is so ordered.

Decree for complainants.

McNAB and another v. NATHAN MANUF'G Co.

(*Circuit Court, S. D. New York. August 15, 1887.*)

PATENTS FOR INVENTIONS—NOVELTY—SELF-FEEDING LUBRICATORS.

The claim of letters patent No. 106,150, granted August 9, 1870, for an improvement in self-feeding lubricators, is wanting in patentable novelty by reason of prior inventions of substantially the same form and character.

Arthur v. Briesen and Antonio Knauth, for plaintiff.
Edmund Wetmore, for defendant.

SHIPMAN, J. This is a bill in equity to restrain the defendant from the alleged infringement of letters patent No. 106,150, granted August 9, 1870 to William Gee, as inventor, for an improved self-feeding lubricator. The patentee's description, in his specification, of the nature and character of the invention, is as follows:

"The want of some means of observing the operation of self-feeding lubricators has long been recognized. With a view to provide for this want, and to facilitate the proper adjustment of the feed-regulating device, the reservoirs have been made of glass, or with glass sides, through which the quantity of oil contained therein might be seen; but the facility thus afforded for ascertaining whether the lubricator was feeding properly was very imperfect, as the action could only be determined by watching the gradual diminution of the level of the oil in the reservoir, which was necessarily tedious. The object of this invention is to provide for the better observation of the operation; and, to this end, it consists in the provision below the reservoir and the feed-regulating device, and the contracted orifice through which the oil escapes from the reservoir, of a chamber of such capacity that the oil or other lubricating material drips through the said chamber, instead of trickling down over the surface of the passage leading from the reservoir and feed-regulating device to the bearing or other device to be lubricated; such chamber having openings in its sides, or being partly constructed of glass, and thereby enabling the dripping of the oil within or through it to be distinctly