

prior appropriation they are entitled to the words "Taffy Tolu" in this connection, as a trade-mark indicating the origin of their goods. The complainants have no patent which secures to them a monopoly in the exclusive use of the ingredients which constitute their goods, or in the goods themselves. The words "Taffy Tolu" indicate or describe the character of the labeled goods, rather than their origin. The defendants have an equal right to make and sell Taffy Tolu, provided they make and sell it as their own manufacture, and not as that of the complainants. The words being descriptive of the compound or goods, they are incapable of appropriation. The proper designation of an article cannot be appropriated as a trade-mark; and it is quite immaterial who first gives the proper name to a new article. The defendants are at liberty to make and sell Taffy Tolu the same or similar in ingredients as the complainant's manufacture, provided they label and sell the article as made by themselves, and not by the complainants, which they seem to be doing.

The complainants put up their chewing-gum in small bundles, each consisting of six small oblong cakes bound together with a rubber band, each cake wrapped in a white label bearing two black imprints about the size and shape of the cakes themselves, the imprints being designed and made to rest conspicuously one on each side of the cake, the most conspicuous imprint being the words, "Colgan's Taffy Tolu Chewing-Gum." Complainants insist that this packing and labeling is original with them, and constitutes their trade-mark or trade-name. It is not clear from the evidence that the complainants had established a reputation in the market for their goods by thus packing and labeling them, before the defendants and others became competitors. No relief can be granted to complainants on this branch of the case, unless it clearly appears that they were the first to introduce their goods in this particular way, and that the defendants have attempted to supplant them in the market by disposing of their goods on the strength of the complainants' reputation. The bill is dismissed for want of equity.

BATE REFRIGERATING CO. v. HAMMOND *et al.*

(Circuit Court, D. Massachusetts. September 24, 1887.)

In Equity. Rescript.

COLT, J. The questions raised under the stipulation in this case having recently been decided by Mr. Justice BRADLEY, in favor of the defendants in a suit by this complainant against Gillett and others, (31 Fed. Rep. 809,) in the circuit court for the District of New Jersey, and both parties desiring to appeal the case to the next term of the supreme court, a decree may be entered sustaining defendants' plea, and dismissing the bill.

THE GENERAL RUCKER.

HALL v. SIMS.

(District Court, W. D. Tennessee. March 31, 1888.)

1. EVIDENCE—WEIGHT—NEGRO TESTIMONY.

While race distinctions, affecting the intelligence and moral *stamina* of the witnesses, are to be considered in weighing their testimony, care should be taken not to exaggerate the consideration into a mere aversion for the witness' testimony on account of his race.

2. SEAMEN—ASSAULT BY MATE.

The law does not permit the mate of a steam-boat to enforce obedience to his orders by beating one of the crew engaged in loading the vessel, and the humane statutes which forbid it must be obeyed.

3. SAME—LIABILITY OF SHIP-OWNER—MASTER AND SERVANT.

Whether a court of admiralty proceeds against the owner for personal injuries inflicted by the mate upon one of the crew, upon a distinctive principle of its own, growing out of the relation of the crew, to the owner of the vessel, or only on the common-law principle of master and servant, if the mate strike and injure the libelant while both are engaged in loading the vessel, intending to enforce obedience to his orders, or to drive him to more efficient work, the owner is liable for the injury *in personam* in the admiralty.

4. DAMAGES—PERSONAL INJURIES—ASSAULT—INDIGNITY—MEASURE OF DAMAGES.

Courts of admiralty do not allow extravagant damages for personal injuries that are not permanent or serious, upon any consideration of personal indignity offered to a roustabout who is beaten by the mate while at work. One hundred dollars allowed in this case.

In Admiralty.

Libel *in personam* demanding \$2,500 damages for personal injuries to the libelant, caused by a blow on the head with a monkey-wrench in the hand of the mate while both were engaged in loading machinery from a barge along-side of the steam-boat General Rucker, of which the defendant was the owner. The facts are stated in the opinion of the court.

J. S. Duval and *J. M. Greer*, for libelant.

Poston & Poston, for defendant.

HAMMOND, J. The disputed issue of fact in this case must be decided for the libelant unless it is to be taken as a rule of evidence that the testimony of a white man shall prevail, *per fas et nefas*, over that of a negro, which can never be tolerated in any intelligent and impartial tribunal for the trial of such issues, whether by judge or jury, either avowedly or covertly, by the invention of some pretense to disguise the operation of pure prejudice on that subject. In what was said about this matter at the bar the learned counsel for the defendant justly and somewhat indignantly repudiated any reliance upon such a prejudice, but insisted that the difference between witnesses in intelligence, moral *stamina*, and like elements of substantial character entering into the problem of decision, should turn the scale in any event, whether that difference arises from race distinctions or other causes, and there can be no doubt of the justice of that rule, as he states it. But, like all other considerations of that kind, in the application of the principle, there must be a careful scrutiny