

idence as was properly taken under the original bill would be necessary under the bill if amended as complainants pray. It would certainly be very unreasonable to require the parties at great additional expense to take it over again, after both patents are declared upon. No good reason is shown why the court, if it has the power, should not also allow the record to be supplemented by such additional testimony as may be rendered necessary in consequence of the amendment. An early disposition of the case upon its merits at the least possible expense, and, so far as appears, without doing injustice to either party, would be thus secured. The authorities cited by counsel show that the granting of the relief now asked for is a matter of discretion, and within the power of this court at this stage of the case. The complainants may amend their bill by the insertion of apt words so that the same shall declare on the omitted patent, (No. 348,072,) and also charge infringement of the invention therein set forth. Upon service of the amended bill defendants may amend their answer as they may be advised, or may plead or demur to the amended bill. Upon the raising of an issue as to the omitted patent the case is re-opened, and additional testimony pertinent to that issue may be taken before a master or examiner. This relief is granted only upon the complainants undertaking to pay the expenses of taking all such additional testimony, (whether introduced by complainants or defendants.) Such expense to include witness fees, mileages, master's or examiner's fees, and printing.

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MARTHA WASHINGTON CREAMERY BUTTERED FLOUR CO. v. MARTIEN.

(Circuit Court, E. D. Pennsylvania. February 15, 1889.)

TRADE-MARKS—RIGHT TO USE—PURCHASER OF MACHINE FOR PREPARING THE ARTICLE.

In a suit to restrain the infringement of a trade-mark complainant alleged a license to defendant to use the trade-mark and machine for manufacturing the article bearing it, and a default in paying royalties. Defendant alleged that he had purchased of complainant's predecessor machines for making the article, and suited to no other purpose. It did not appear that such purchase had any connection with the license, or that its use was subject to restriction or revocation. On motion for preliminary injunction, *held*, that defendant may use the machine until worn out, and sell the article made by it, and that as the trade-mark appears to be intended to designate the article manufactured by the invention, and not that made by complainant personally, defendant may use it on the article so made by him.

In Equity.

On motion for preliminary injunction. Suit by the Martha Washington Creamery Buttered Flour Company of the United States, Limited, against Alfred Martien, individually and as trading as the Brunswick Manufacturing Company, to restrain the infringement of a trade-mark for prepared flour. Complainant alleged a license to defendant to use the trade-mark, together with the machines covered by certain letters pat-

ent, in the manufacture and sale of the flour. This license contained covenants by defendant to make returns and pay royalties. Defendant contended that at the request and solicitation of complainant's assignor he had expended a large sum of money in the purchase of mixing-machines for manufacturing such prepared flour, and that such machines were constructed and adapted solely to that purpose.

Walter D. Edmonds, for complainant.

Horace Pettit, for defendant.

BUTLER, J. In disposing of motions for preliminary injunction it is not usual to assign reasons, where the motion is disallowed. To avoid misunderstanding, however, in this case, it is proper to say that the unanswered allegation of the respondent, (found in his deposition,) that he purchased machines of the complainant's predecessor, Thorpe, at large expense, designed for manufacturing the flour referred to in the bill, and suited to no other purpose, stands in the way of allowing the motion, without reference to other important questions raised by the record and presented on the argument. It does not appear that the purchase of these machines had any connection with the contract of license referred to in the bill, nor that their use was subject to restriction or revocation. On the contrary, judging by what is before me, the purchase was entirely independent of this contract, and conferred the same rights on the respondent that he would have taken if no such contract existed. These rights are to use the machines until worn out, in the manufacture of flour which they are designed to make, and to sell the same in the market. This flour the respondent may lawfully represent to be the flour described in the bill, by the use of labels, and otherwise. In so doing he imposes on no one, and transgresses no one's rights. The privilege of using the labels originally adopted by Thorpe, the inventor, extends to every one who acquires his right to manufacture and vend the flour. These labels were not intended to designate the flour manufactured by the inventor personally, or any particular individuals to whom he transfers rights, but the especial kind and quality of flour covered by his invention. To allow the motion would therefore be improper. At final hearing the case may present a different aspect. As presented, the complainant might possibly be entitled to an injunction so limited and confined as to avoid the difficulty above stated. This, however, I have not felt called upon to consider in disposing of the motion before me. I would suggest the propriety of preparing the case, as well as the two others pending, intimately connected with it, speedily, for final hearing, when the court may enter a decree with full knowledge of all facts involved.

## THE CARONDELET.

UNITED STATES *v.* THE CARONDELET *et al.**(District Court, S. D. New York. February 15, 1889.)*

## 1. NEUTRALITY LAWS—CARRIAGE OF ARMS—COMMERCIAL TRANSACTION.

The steamer C., chartered by the consul of the Dominican government to carry a cargo of arms to Samana, in the Dominican republic, deliverable, as per bill of lading, to the representatives of that government, was seized, with the cargo, for an alleged violation of the neutrality act, (section 5283, Rev. St.,) for being fitted out and armed to aid Hippolyte, who headed one of the warring factions in Hayti, against Legitime, the head of the opposing faction. *Held*, upon proof that the C. was designed only to transport the cargo to Samana, and that the arms were there deliverable to the Dominican government, that both vessel and cargo must be discharged, the transaction being a legitimate, commercial one.

## 2. SAME—AIDING WARRING FACTIONS.

It having been declared by the president of this country that Hayti is in a state of anarchy, and that Legitime and Hippolyte, with their followers, were regarded as warring factions, neither of whom constituted any responsible government, *semble*, that neither neutral obligations, nor our statute, apply to such a case.

## In Admiralty. Seizure for breach of neutrality laws.

This libel was filed on the 6th of February, 1889, to obtain a judgment of condemnation and forfeiture of the steamer Carondelet and her cargo, for alleged violation of section 5283, Rev. St. U. S. The libel charged that the steamer was loaded with cannon, arms, and ammunition, and other material of war, "with intent to enter into the service of a certain district and people of Hayti, to-wit, certain rebels in insurrection against the organized and recognized government of the republic of Hayti, and to commit hostilities against the subjects, citizens, and property of that republic;" and that she was "fitted out and armed within this district with that intent." The steamer was seized by the marshal on the same day. Answers were filed on the 8th of February, denying the alleged grounds of forfeiture, the New York & Texas Steam-Ship Company, by Mallory & Co., their agents, claiming the steamer; and Leoncio Julia, as consul of the Dominican republic, claiming the cargo. The vessel was a freight steamer only, unfitted for warlike purposes. Before seizure she had cleared for Samana, a port of the Dominican republic. She had been chartered by Mr. Julia, as consul, to transport her cargo of arms, to be delivered to the Dominican government at Samana; and bills of lading were delivered by the steamer, making the cargo deliverable there to the representatives of the Dominican government. For the libelant it was claimed that the arms were designed to aid the Hippolyte faction in Hayti, as against Legitime; and that they were not intended to go to Samana. By consent the trial was commenced on the 9th, but on that day, counsel for the government not being in readiness, an adjournment was had until the 12th, and the cause was heard on that and the following day.