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UNFAIR COMPETITION—SIMILARITY OF NAME.—ALLEN B. WRISLEY CO. v. IOWA SOAP CO. ET AL, 104 Fed. 548.—Complainant had for many years sold a soap called "Old Country Soap." Defendant made a soap named "Our Country Soap." *Held*, mere similarity of names did not constitute unfair competition.

It would be difficult to find two names that looked and sounded more alike than those in the present case. Were it only a matter of similarity of names, the case would seem to come under *N. K. Fairbank* v. *Central Lard Co.*, 64 Fed. 133, and the claim of the complainant be established. But the question of similarity as to wrappers is considered of greater importance, and there being no similarity in the wrappers the case is brought in line with *Lorillard Co.* v. *Peter*, 57 U. S. App. 565. It will be noted, however, that the cases that have been based on dissimilarity of wrappers were ones where there was also a dissimilarity of name. The present case extends the scope of such cases.

VARIANCE BETWEEN ALLEGATIONS IN THE INDICTMENT AND PROOF—WHAT MATTER OF DESCRIPTION MAY BE REJECTED AS SURPLUSAGE.—BOYD v. COMMONWEALTH, 59 S. W. 518 (Ky.).—Under an indictment charging that a horse stolen was "blemished on left eye," evidence that the stolen horse was blemished on the right eye was *held*, not a fatal variance.

This case is supported by *Cone* v. *Holland*, 7 Ky. Law Rep. 299, but it is hard to bring it within the common-law rule that where any matter of description is alleged, though unnecessarily, it cannot be rejected as surplusage, as such matter of description goes to determine the identity of the offense. Horses blind in a single eye, are not so rare but that a misdescription admits of considerable uncertainty. This view is supported by Story, J., in *United States* v. *Howard Fed. Cases* No. 15,403, where he says no allegation more or less particularly descriptive of the identity of that which is essential to the charge can be rejected as surplusage. In *Allenbrech* v. *People*, 1 Denis 80, a charge of stealing one woolen sheet was not sustained by proof that it was partly of wool and partly of cotton. So in stealing lumber, where the marks alleged are other than those proved. *State* v. *Noble*, 15 Me. 476; *Com.* v. *Wellington*, 7 Allen 299. All these cases hold to the cardinal rule of criminal pleading, that while a general description of the subject matter is sufficient, yet if the pleader descends to particulars the proof must exactly coincide with the allegations.