

the complainants' conduct has been such that the relief granted must be limited to an injunction. Ryder commenced using the brand in 1869, and has used it continuously since. That the complainants knew of this, certainly as early as 1871, is not disputed. That they protested at all is denied. Certainly there was no vigor or courage shown by them until just prior to the commencement of this suit, in 1882. That they did not consent is true, but it is equally true that, for men who believed their rights invaded, their course was inconsistent and misleading. Ryder might well have imagined that they did not intend to call him to an account. The circumstances were such as to justify the belief on his part that he was licensed by silence to use the trade-mark. It would be inequitable to compel him to pay for its use during the long years that the complainants slept upon their rights.

In endeavoring to reach a just result the court should not overlook the fact that the delay in commencing the suit was unreasonable, and that some of the evils of which the complainants complain are attributable to their own laches in this regard. The facts seem to bring the case within the doctrine of *McLean v. Fleming*, 96 U. S. 245.

There should be a decree in favor of the complainants for an injunction, with costs.

DE KUYPER and others v. WITTEMAN and others.

(Circuit Court, S. D. New York. January 12, 1885.)

TRADE-MARK—INFRINGEMENT—PRINTING AND SELLING IMITATION LABELS TO THIRD PARTIES.

Printing and selling labels in imitation of a trade-mark, with the purpose of enabling the parties to whom the labels are sold to palm off their goods upon the public as the goods of the owner of the trade-mark, is a violation of the rights of such owner.

In Equity.

Rowland Cox, for plaintiff.

B. B. Foster, for defendant.

WALLACE, J. The demurrer in this case is without merits. The complainants, upon the facts shown in the bill of complaint, have a good title to their trade-mark, and a case for its protection irrespective of their statutory rights under the registration in the patent-office. As the necessary diversity of citizenship exists between the parties, they are entitled to invoke the jurisdiction of this court.

Upon the allegations of the bill the defendants are actively engaged in assisting third persons to use the complainants' trade-mark in violation of their rights. The mere act of printing and selling labels in imitation of the complainants' might be innocent, and, without evi-

dence of an illicit purpose, would not be a violation of the complainants' rights. It is otherwise, however, when this is done with the obvious purpose of enabling others by the use of the labels to palm off their goods upon the public as the goods of the complainants.

The demurrer is overruled, with costs. Defendants may answer upon payment of costs.

HILL v. CITY OF MEMPHIS.¹

(Circuit Court, E. D. Missouri. April 27, 1885.)

1. MUNICIPAL BONDS—LOANS OF CREDIT BY MISSOURI TOWNS—SPECIAL ELECTIONS—ACT OF MARCH 21, 1868.

Where, in a suit upon bonds issued by the town of Memphis, Missouri, in payment of a stock subscription in the N. M. R. Co., a record of a special election had under the act of March 21, 1868, to authorize the defendant to issue said bonds, was introduced in evidence, and it appeared therefrom that the election was only ordered 12 days before it took place, *held*, that the record showed upon its face that the election was illegal, and the issue of bonds unauthorized.

2. CONSTITUTIONAL LAW—BONDS—ACT OF MARCH 24, 1868, TO ENABLE TOWNS, ETC., TO FUND THEIR DEBTS.

If the act of March 24, 1868, by the general assembly of Missouri, entitled "An act to enable counties, cities, and incorporated towns to fund their respective debts," contemplated a right in towns to subscribe stock thereafter and issue bonds, or to issue bonds for subscriptions under old charters, without any special election authorizing the issuing of such bonds, it is contrary to section 14, art. 11, of the Missouri constitution of 1865, and invalid.

At Law. Motion for a new trial and motion for rehearing.

The record of election offered in evidence in this case shows upon its face that on January 26, 1871, the special election in question was ordered for February 7, 1871, and was held on that day, only 12 days after the order was made.

Section 4 of article 2 of the Missouri constitution of 1865 provides that after the enactment of registration laws "no person shall vote unless his name shall have been registered at least ten days before the day of election." The act of March 21, 1868, concerning the "Registration of Voters" provides (section 18) that "the clerk of the county court shall, 20 days before any special election, * * * cause to be delivered to the board of registration, or any member thereof, the books of registration, who shall immediately proceed to register qualified voters." Section 2 of the same act provides that notice shall be given in each district 10 days before the first session of the board of registration. Section 14, art. 11, of the Missouri constitution of 1865, declares that "the general assembly shall not authorize any

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.