

mitting that he supposed if he got the deed back he would thereby be relieved from liability, he flies to the excuse "that the debt was not paid, and he didn't want to urge him until the money was paid in full."

The \$160 note matured and was unpaid. Monroe left it with a magistrate for collection, to whom Moore paid small sums, from time to time, amounting in all to about \$60, prior to Monroe's death, in 1878, and then paid nothing more until the summer of 1882 or 1883, when the land had been sufficiently developed to make its very great value apparent. His testimony discloses that he and his wife, in June, 1883, conveyed one-half of the interest deeded to her, for the consideration of \$20,000, and that he collected the money, and invested a large portion of it in his own name.

In the summer of that year, or of the year preceding, he met Mrs. Monroe, went with her to Ishpeming, to the magistrate who held the \$160 note for collection, paid her expenses, and took up the note, by payment, with interest at 10 per cent. from its date; although, according to his own testimony, the note was without interest. He admits that at the time he made this settlement, which, by his own testimony, completed the performance of the agreement of rescission on his part, he said not a word to her about the outstanding deed to Monroe; which, according to his testimony, Monroe was to surrender, and, according to his answer, Monroe was to cancel by a quit-claim. Mrs. Monroe was then living in Canada. The title to the land had been by Moore's manipulations conveyed to his wife. He may have thought the situation reasonably safe, and yet that it was politic to pay the balance due on the \$160 note, with something extra in the way of interest, so that Mrs. Monroe would return to Canada, and leave him and Mrs. Moore undisturbed.

The entire series of these transactions has an ugly look, suggesting that Moore had no disposition, in Monroe's life-time, to give up the note, nor pay him what he owed him, and that the story of the agreement of rescission was an after-thought, coined when Monroe was in his grave, and could not deny it.

His testimony is rejected, and the finding is that no agreement of rescission was made.

In the summer of 1876, Mrs. Monroe obtained the \$240 note from Mr. and Mrs. John McKay, to whom she stated that her husband sent her for it. They received it from William McKay, to whom Moore had intrusted it for negotiation. Mr. John McKay at first declined to give it to her for the expressed reason that it belonged to Moore, and was not paid; but finally, yielding to her tears and protestations that the note was without consideration, and that the deed from Moore to Monroe was worthless, he handed it to his wife, who was Mrs. Monroe's sister, and she gave it to Mrs. Monroe, who declared that now she had the note she was square with Moore, and he could keep the land. Mrs. Monroe's version is altogether different; but her

testimony is so manifestly unreliable as to be entitled to but little credence. She took the note home, and gave it to her husband, and he retained it. After his death it passed into her possession, and it is attached to her deposition.

Monroe's receipt and retention of this note is not a bar to relief to complainants. It did not relieve him from liability to pay it, nor did it affect Moore's right to collect it, if he had any, because Mr. and Mrs. McKay had no authority, as he himself testifies, to surrender it. He could not, by ratification, make the surrender his surrender; because they not only had no authority from him, but they did not even profess to act for him. *Saunderson v. Griffiths*, 5 Barn. & C. 909-915; Chit. Cont. (11th Amer. Ed.) 24; Whart. Ag. 662, and cases there cited.

Finally, the defense of laches is not sustained. Monroe had no equity which he could enforce, so long as the title to the land remained in McDonald and McKay; and they did not convey to Mrs. Moore until in December, 1880, more than two years after his death.

As to the change in the value of the land resulting from its development, it is only necessary to refer to the fact that all the outlay and expense were incurred by the Cambria Iron Company, the lessee. It cost the owners of the land nothing. There was no unreasonable delay, after the making of the deed to Mrs. Moore, in bringing this suit.

The decree will be for a conveyance to complainants as prayed for, and for rents and profits from the date of filing the bill in the state court from which this cause was removed, against which the amount due on the \$240 note will be allowed as a credit.

The circuit judge concurs in the reasoning and conclusions of this opinion.

IRWIN and others v. OREGON RY. & NAV. Co. and others.

(Circuit Court, S. D. New York. October 15, 1886.)

CORPORATION—ACTION—PARTIES.

On petition for rehearing by Mr. H. Villard. See 27 Fed. Rep. 625.

Butler, Stillman & Hubbard, for plaintiff.
Holmes & Adams, for defendant.

WALLACE, J. I have carefully examined the brief and authorities submitted by the counsel for Mr. Villard on the petition for a rehearing, but am unable to see how he, as a promoter and abettor of the acts which have worked an equitable wrong to the complainants, can escape responsibility to the same extent with the corporation he rep-