

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-

resented. The petition for a rehearing has been considered on the merits; that is, as though the cause were here upon a rehearing.

An order is directed denying the prayer of the petition.

SYMONDS *v.* GREENE and others.

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

1. TRADE-MARK—INFRINGEMENT—PRELIMINARY INJUNCTION—"EUREKA"—FORMER DECREES.

A preliminary injunction should be granted to protect the use of the word "Eureka," used by plaintiff to designate a kind of steam-packing made by him, upon a showing that the plaintiff had used the name since 1875, although another firm used it to a limited extent for another kind of packing from 1872 to 1874; especially when plaintiff has had two decrees establishing his right to the name as a trade-mark in the locality where the former use thereof occurred.

2. COURTS—UNITED STATES CIRCUIT COURT—JURISDICTION—AMOUNT IN DISPUTE—INFRINGEMENT OF TRADE-MARK—PROFITS.

In a suit to restrain the infringement of a trade-mark, the amount in dispute, as determining the jurisdiction, does not depend on the profits sought to be recovered.

In Equity. Motion for a preliminary injunction to restrain the use of the word "Eureka."

Sanford H. Steele, for plaintiff.

W. H. L. Lee, for defendants.

WHEELER, J. This is a motion for a preliminary injunction to restrain the use of the word "Eureka," in trade, in connection with steam and hydraulic packing. There is no question but that the orator commenced using that name for packing made by him in 1875, and has continued that use since that time, nor but that the defendants use that name in connection with that kind of packing, not of the orator's make in trade; nor but that a firm known as Sellers Bros. gave that name to a kind of steam-packing patented by William Beschke in 1872, at Philadelphia, and used it in connection with that packing until early in 1874; nor but that the profits on the sales of defendants are much less than \$500.

The defendants insist that the motion should be denied for want of jurisdiction of the cause in this court; because of the use of the name by Sellers Bros.; and because the name indicates a class of those goods, instead of representing them to be the orator's.

As jurisdiction is not given to this court in this class of cases, except where the matter in dispute exceeds the sum or value of \$500, there would be difficulty in maintaining the jurisdiction if the profits to be recovered were the measure of the orator's rights involved; but that is not so understood. An injunction may be of much greater value to the orator than any amount he may show himself entitled to,