

Opinion of the Court.

SAXLEHNER *v.* SIEGEL-COOPER COMPANY.SAXLEHNER *v.* GIES.SAXLEHNER *v.* MARQUET.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Nos. 30, 31, 32. Argued March 22, 23, 1900. — Decided October 15, 1900.

These cases were argued with No. 29, *ante*, 40. The answer in them was substantially the same as in that case, and the same record of proofs was used. *Held* that an injunction should issue against all the defendants, but as the Siegel-Cooper Company acted in good faith it should not be required to account for gains and profits.

THE case is stated in the opinion.

Counsel were the same as in No. 29.

MR. JUSTICE BROWN delivered the opinion of the court.

These three cases were brought against retail dealers, and defended by the Eisner and Mendelson Company, who imported and furnished the defendants with the water sold by them. The bills charged the defendants generally with unlawfully selling bitter water under labels simulating Saxlehner's blue and red label, and under the name "Hunyadi." The answer was substantially the same as that in the main case, and the same record of proofs was used.

In the case against the Siegel-Cooper Company there was no charge of an intentional fraud, and the court found there was no evidence of fraudulent conduct on its part, and dismissed the bill as to that company. As to the other two cases the court found that the clerks in charge of their stores, in response to special requests for Janos water, wrapped up and delivered Matyas water purchased of the Eisner and Mendelson Company. In other words that they had palmed off the one for the other.

We think that an injunction should issue against all these defendants, but that, as the Siegel-Cooper Company appears to

Statement of the Case.

have acted in good faith, and the sales of the others were small, they should not be required to account for gains and profits. The fact that the Siegel-Cooper Company acted innocently does not exonerate it from the charge of infringement. *Moet v. Couston*, 33 Beav. 578; *Millington v. Fox*, 3 Myl. & Cr. 338; *Edelsten v. Edelsten*, 1 De Gex, J. & S. 185; Brown on Trade Marks, § 386.

The decree of the Circuit Court of Appeals in these cases are also reversed, and the cases remanded to the Circuit Court for the Southern District of New York for further proceedings, etc.

SAXLEHNER v. NIELSEN.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 33. Argued and submitted March 22, 23, 1900.—Decided October 15, 1900.

Defendant was prosecuted for selling bitter waters under the name of "Hunyadi Lajos." Held, That although the proof of laches on the part of plaintiff was not as complete as in the former case the same result must follow, and that the bill must be dismissed as to the word "Hunyadi" and sustained as to the infringement of the bottles and labels.

THIS was a bill of similar character to those involved in the prior cases, and was brought to enjoin the defendant from selling water under the name of "Hunyadi Lajos," or any other name in which the word "Hunyadi" occurs, as well as selling such water in bottles or under capsules or labels resembling those of the plaintiff upon her bottles of "Hunyadi Janos" water. The answer pleaded abandonment and laches. The Circuit Court made a similar decree to that in the Eisner and Mendelson suit, enjoining the infringement of plaintiff's red and blue label, requiring an accounting for damages, and denying relief against the use of the name "Hunyadi." The Circuit