

216 U. S.

Syllabus.

minerals a mining claim to it will be located, only the owners of which can cut the timber, whereas the statute gives the right to all residents. If that were true, courts still would be bound by the explicit and unmistakable words. It is not unknown, when opinion is divided, that qualifications sometimes are inserted into an act that are hoped to make it ineffective. But the objection is stated too strongly. As pointed out at the argument, in 1878 probably there was a great deal of mineral land still unexplored on which claims had not been located, not to speak of mere exceptional cases in which the act would apply. The regulations of the Secretary of the Interior for a long time, and it would seem always, have been in accord with our opinion and the language of the act.

Judgment reversed.

MR. JUSTICE MCKENNA dissents.

SAXLEHNER *v.* WAGNER.

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

No. 81. Argued January 17, 1910.—Decided February 21, 1910.

The right to individual appropriation once lost is gone forever. Where a geographic or family name becomes the name for a natural water coming from a more or less extensive district, all are free to try to imitate it, and the owners of one of such natural springs cannot prevent the sale of an artificial water as being similar to that of the natural spring, where there is no attempt to deceive the public as to its being artificial.

Hunyadi is now in effect a geographical expression and the owners of the Hunyadi Janos Springs cannot prevent the sale of artificial Hunyadi water where there is no deception of the public as to its being an imitation.

157 Fed. Rep. 745, affirmed.

Argument for Petitioner.

216 U. S.

THE facts, which involve the right of the owners of the Hunyadi Janos Springs to enjoin the sale of artificial Hunyadi water, are stated in the opinion.

Mr. Antonio Knauth and Mr. John G. Johnson for petitioner:

Petitioner has always been solicitous in suppressing the use of the Hunyadi name on any artificial products. See *Hunyadi Case*, 179 U. S. 19; *Flower Mills Co. v. Eagle*, 86 Fed. Rep. 608; *Thackeray v. Saxlehner*, 125 Fed. Rep. 911.

Appellees' manufactured product is not artificial Hunyadi water. See work of Count Maillard de Marafy, cited in *Singer Mfg. Co. v. June Co.*, 163 U. S. 169, 199.

Appellees' labels and advertisements are untruthful and designed to reap the benefits of complainant's reputation; if the word Hunyadi shall be allowed to the defendants, the door will be opened to wholesale fraud.

The name of a spring and the water bottled therefrom is protected, according to principles applied to trade-marks in general. *Congress Spring Co. v. High Rock Congress Spring Co.*, 45 N. Y. 291; *Apollinaris Co. v. Scherer*, 27 Fed. Rep. 18; *Hill v. Lockwood*, 32 Fed. Rep. 389; *Dunbar v. Glenn*, 42 Wisconsin, 118; *Carlsbad v. Thackeray*, 57 Fed. Rep. 18; *Northcutt v. Turney* (Ky.), 41 S. W. Rep. 21; *Hunyadi Cases*, 179 U. S. 19.

Such names, as can be properly called geographical names, can only be legally used by those whose products come from the geographical region in question. *Newman v. Alvord*, 51 N. Y. 189; *A. F. Pike Mfg. Co. v. Cleveland Stone Co.*, 35 Fed. Rep. 896; *Pillsbury v. Eagle*, 86 Fed. Rep. 608; *Anheuser v. Miller*, 87 Fed. Rep. 864; *California Fruit Canners' Assn. v. Myer*, 104 Fed. Rep. 82; *Am. Watch Co. v. U. S. Watch Co.*, 173 Massachusetts, 85; *Morgan Envelope Co. v. Walton*, 82 Fed. Rep. 469; *Key West Cigar Assn. v. Rosenbloom*, 171 Fed. Rep. 296; *Siegert v. Gandolfi* (C. C. A.), 149 Fed. Rep. 100.

A proprietary interest in the terms or symbols used is not

216 U. S.

Argument for Petitioner.

essential to the maintenance of any suit to enjoin the misuse of these terms or symbols. An interest in the good-will of the business or any other property threatened by such misuse is sufficient to entitle the plaintiff to an injunction. *Cohen v. Nagle*, 76 N. E. Rep. 276, 279; *Scriven v. North*, 134 Fed. Rep. 366, 376; *Collinsplatt v. Finlayson*, 88 Fed. Rep. 693; *Draper v. Skerrett*, 116 Fed. Rep. 206; *Shaver v. Heller*, 108 Fed. Rep. 821, 832; *Manitowoc v. Wm. Numsen*, 93 Fed. Rep. 196.

It is no defense that the full name "Hunyadi Janos" was dropped from the defendants' labels before the bringing of the suit. *Saxlehner v. Eisner*, 147 Fed. Rep. 189; *India Rubber Co. v. Rubber Comb Co.*, 45 N. Y. Super. Ct. 258; *Low v. Hart*, 90 N. Y. 457; *Plant Co. v. May Mercantile Co.*, 153 Fed. Rep. 229; *Hutchinson v. Blumberg*, 51 Fed. Rep. 829.

Even if appellees may use the word "Hunyadi" with proper correctives and explanatory, sufficient care has not been taken to distinguish. "Hunyadi" is emphasized. "Wagner" and "Artificial" are inconspicuous on the label and in advertising. Both are omitted in the price list. The distinctions are insufficient. *Fuller v. Huff*, 104 Fed. Rep. 141; *Hansen v. Siegel Cooper Co.*, 106 Fed. Rep. 691, 692; *Menendez v. Holt*, 128 U. S. 514, 521; *Shaver v. Heller*, 108 Fed. Rep. 821, 833; *Carlsbad v. Schultz*, 78 Fed. Rep. 469; *Baker v. Slack*, 130 Fed. Rep. 514.

That others have infringed is no defense. *Singer Mfg. Co. v. June Mfg. Co.*, 163 U. S. 169; *Taylor v. Carpenter*, 3 Story, 458; and see 2 Wood & M. 21.

The fact, even if proven, that the artificial product of appellees is better than the genuine natural water is no justification for calling it spurious "Hunyadi." The public is entitled to the very thing it expects and cannot be deceived even for its own benefit. *Singer Co. v. Loog*, 8 App. Cas. 29; *Coats v. Holbrook*, 2 Sand. Chan. 586; *Pillsbury v. Pillsbury Co.*, 64 Fed. Rep. 841; *McLean v. Fleming*, 96 U. S. 245, 252; *Cleveland Stone Co. v. Wallace*, 52 Fed. Rep. 431.

Where a manifest liability to deception exists in defend-

Argument for Respondents.

216 U. S.

ant's use of plaintiff's trade name, even though there be no strict trade-mark right involved therein, it is not necessary to bring proof of an actual deception. *Manufacturing Co. v. Trainer*, 101 U. S. 51; *Taendsticksfabriks v. Myers*, 139 N. Y. 364; *Fuller v. Huff*, 104 Fed. Rep. 141; *City of Carlsbad v. Kutnow*, 71 Fed. Rep. 167; *Biscuit Co. v. Baker*, 95 Fed. Rep. 135; *Lee v. Haley*, 5 Chan. App. 155; *North Cheshire &c. Brewing Co. v. Manchester Brewery Co.* (1889), App. Cas. 83; *Am. Waltham Watch Co. v. U. S. Watch Co.*, 173 Massachusetts, 85; *Lawrence Mfg. Co. v. Tennessee Mfg. Co.*, 138 U. S. 537; *Coats v. Merrick Thread Co.*, 149 U. S. 562, and *Elgin Nat. Watch Co. v. Illinois Watch Co.*, 179 U. S. 665, do not militate against this rule, nor is the law established in this country different from that applied in England on this point.

Mr. Walter F. Murray for respondents:

This court in the case of *Saxlehner v. Eisner & Mendelson Co.*, 179 U. S. 19, 38, decided that the complainant has lost her title to the word "Hunyadi" as a trade-mark. *Menendez v. Holt*, 128 U. S. 514; *Saxlehner v. Nielsen*, 179 U. S. 45; *La Republic Francaise v. Saratoga Vichy Springs*, 191 U. S. 426; *Moore v. Auwell*, 172 Fed. Rep. 508, 513.

Where the alleged infringers of a trade-mark have been using it under a show of right, or in the absence of fraud, neglect of the owner of the right to pursue the infringers, if continued for a long period of time will cause the mark to become public property. This will be the case, especially where the infringers are numerous. *Virginia Hot Springs v. Hageman & Co.*, 138 Fed. Rep. 855; *S. C.*, aff'd 144 Fed. Rep. 1023; *La Republique Francaise v. Schultz*, 102 Fed. Rep. 154; *Ford v. Foster*, L. R. 7 Ch. 628; *Rowland v. Michell*, 13 R. P. C. 457; *S. C.*, 14 R. P. C. 37; *Ripley v. Baudey*, 14 R. P. C. 591; *Hyde & Co.'s Trade-mark*, 7 C. D. 724; *Sebastian on Trade-Marks*, 4th ed., 202; *Manufacturing Co. v. Williams*, 68 Fed. Rep. 489; *N. Y. Grape Sugar Co. v. Buffalo Grape Sugar Co.*, 18 Fed. Rep. 638; *Wyeth v. Stone*, Fed. Cas. No. 18,107;

216 U. S.

Opinion of the Court.

Coats v. Thread Co., 149 U. S. 562. Analogous cases are found in reports referring to patent rights. *Woodmansee & Hewitt Co. v. Williams*, 68 Fed. Rep. 489; *Leggett v. The Standard Oil Co.*, 149 U. S. 285.

A trade-mark in "Hunyadi" could not be held in common by various owners of Hungarian springs, the waters of which were sold competitively in the United States. *Del. & H. Canal Co. v. Clark*, 13 Wall. 311, 328; *Columbia Mill Co. v. Alcorn*, 150 U. S. 460, 463; *Lawrence Mfg. Co. v. Tennessee Mfg. Co.*, 138 U. S. 537, 549.

It is incumbent upon complainant to show that defendants have sold their products as that of the complainant. Cases *supra* and *Canal Co. v. Clark*, 13 Wall. 311; *Lawrence Mfg. Co. v. Tennessee Mfg. Co.*, 138 U. S. 537; *Coats v. Am. Thread Co.*, 149 U. S. 562; *Nat. Elgin Watch Co. v. Ill. Watch Co.*, 179 U. S. 665; *French Republic v. Saratoga Vichy*, 191 U. S. 427; *Howe Scale Co. v. Wyckoff, Seamans & Co.*, 198 U. S. 118; *La Republique Francaise v. Schultz*, 94 Fed. Rep. 500.

Deception of the public, as to the ingredients of an article of merchandise, is not unfair competition in trade, and is not actionable at the suit of a private individual or group of such individuals, in the absence of legislation. *American Wash-board Co. v. Saginaw Mfg. Co.*, 103 Fed. Rep. 281; *New York & R. Cement Co. v. Coplay Cement Co.*, 44 Fed. Rep. 277; *Worden & Co. v. California Fig Syrup Co.*, 187 U. S. 517, 527.

Defendants have not deceived the public about the ingredients of their artificial "Hunyadi."

Defendants have insisted, before the public in all their literature and advertisements, that artificial mineral waters are better than the natural mineral waters.

MR. JUSTICE HOLMES delivered the opinion of the court.

The petitioner is the owner of wells in Budapest from which comes the water known throughout the world by the arbitrary name Hunyadi Janos given to it by her husband. The

respondents make a bitter water in Cincinnati and label it "W. T. Wagner's Sons Carbonated Artificial Hunyadi Con-forming to Fresenius Analysis of Hunyadi Janos Springs." Formerly they for a time labeled it "W. T. Wagner's Sons Artificial Hunyadi Janos. Ofen Bitter Water. Highly Aerated," but this label had been given up before the bill was brought. The petitioner seeks an injunction against the use of either 'Hunyadi Janos' or 'Hunyadi' on any water not coming from her wells. The Circuit Court of Appeals for the Seventh Circuit in a more or less similar case granted an injunction against the use of the word Hunyadi. *Thackeray v. Saxlehner*, 125 Fed. Rep. 911; *S. C.*, 60 C. C. A. 562. In the present suit the Circuit Court and the Circuit Court of Appeals, treating the right of the petitioners to 'Hunyadi Janos' as admitted, refused an injunction against the use of 'Hunyadi,' and finding that no unfair competition was shown dismissed the bill. 157 Fed. Rep. 745; *S. C.*, 85 C. C. A. 321. A writ of certiorari was allowed by this court.

We see no reason for disturbing the finding of the courts below that there was no unfair competition and no fraud. The real intent of the plaintiff's bill, it seems to us, is to extend the monopoly of such trade-mark or trade name as she may have to a monopoly of her type of bitter water, by preventing manufacturers from telling the public in a way that will be understood what they are copying and trying to sell. But the plaintiff has no patent for the water, and the defendants have a right to reproduce it as nearly as they can. They have a right to tell the public what they are doing and to get whatever share they can in the popularity of the water by advertising that they are trying to make the same article and think that they succeed. If they do not convey, but, on the contrary, exclude the notion that they are selling the plaintiff's goods, it is a strong proposition that when the article has a well-known name they have not the right to explain by that name what they imitate. By doing so they are not trying to get the good will of the name, but the good

will of the goods. See *Flagg Manufacturing Co. v. Holway*, 178 Massachusetts, 83, 91; *Chadwick v. Covell*, 151 Massachusetts, 190, 191. Although the application is different, the principle seems to be similar to the rule that when a patent has expired descriptive words or even an arbitrary or personal name by which it has become known may be used if sufficient precautions are taken to prevent the public from being deceived. See *Singer Manufacturing Co. v. June Manufacturing Co.*, 163 U. S. 169.

The plaintiff says that no one can succeed in imitating a natural water. But all are free to try. In the absence of some fraud injurious to the plaintiff, it would be going far under any circumstances to allow her to prevent advertising "Artificial Hunyadi." But it is enough to say that under the decision in *Saxlehner v. Eisner & Mendelson Co.*, 179 U. S. 19, 36, the defendants may do so in this case. In that decision it was said that 'Hunyadi,' as applied to similar water, had been public property in Hungary, and therefore had become so here, and that a later change there would not work a corresponding change in the United States. 'The right to individual appropriation once lost is gone forever.' See also *French Republic v. Saratoga Vichy Co.*, 191 U. S. 427, 437. At the very least the family name has become the name for any natural water of a certain type coming from a more or less extensive district, if not from anywhere in Hungary. It does not belong to the plaintiff alone in this country, even if she is the only one now sending the water here. But if there is any well-founded doubt as to the right to use a personal trade name with proper guards against deception to signify what one is imitating where one has the right to imitate, there can be none that one is at liberty to refer to a geographical expression to signify the source of one's model. 'Hunyadi' at best is now only a geographical expression in effect.

Decree affirmed.