

ental claim, we do not decide. The case is not argued and presented to us upon that state of facts. It does not appear that, from the point where the apex of the south vein going east may cross the south side line of the Silver King claim, the appellant has entered the Oriental No. 2 premises on the dip of the same. We have nothing presented, then, upon which to base a decision. The decree of the court below is therefore affirmed.

INVESTOR PUB. CO. OF MASSACHUSETTS v. DOBINSON et al.

(Circuit Court, S. D. California. July 9, 1897.)

No. 632.

TRADE-NAMES—USE OF SIMILAR NAME—RIGHT TO INJUNCTION.

A corporation is not entitled to an injunction restraining another corporation from using the same corporate name, or from publishing a periodical having a name similar to one published by complainant, where defendant is incorporated, and its paper published in a state distant from complainant, and the names are used with distinguishing characteristics which render injury to complainant therefrom improbable, in the absence of proof that such injury has actually resulted.

Suit by the Investor Publishing Company of Massachusetts against G. A. Dobinson and the Investor Publishing Company for an injunction and accounting. Heard on bill and answer and agreed statement of facts.

Wells & Lee and Works & Lee, for complainant.
Sheldon Borden, for defendant.

WELLBORN, District Judge. This is a suit for an injunction and an accounting. The bill alleges: That the plaintiff is a corporation formed and existing under the laws of the state of Massachusetts, and the defendant company a corporation formed and existing under the laws of the state of California; that for more than five years last past plaintiff has published, and still publishes, in the city of Boston, state of Massachusetts, in the city of New York, state of New York, and in the city of Philadelphia, state of Pennsylvania, a weekly trade and financial journal, named "United States Investor"; that said paper, under said name, has become widely and favorably known throughout the United States, Canada, the republic of Mexico, England, the continent of Europe, and Australia, and that plaintiff has also become widely and favorably known throughout said territory; "that defendant the Investor Publishing Company of California, on or about the 14th day of March, 1894, at the city of Los Angeles, state of California, began the publication of a trade and financial journal under the name of 'The Investor,' and the defendant G. A. Dobinson is the editor in chief of said trade and financial journal. And your orator charges that defendants, by adopting the name of 'The Investor' for such paper, and by printing at the head of its editorial column the words 'Published by the Investor Publishing Company, Incorporated,' the same as your orator's corporate name, has thereby diverted the trade belonging to your orator; that this similarity in the names has produced great

confusion in plaintiff's business, and is depriving your orator of the benefit of the reputation acquired by the high character and popularity obtained by your orator among investors and advertisers throughout the United States and elsewhere, whereby your orator has been and is greatly damaged. And your orator further says that he fears, and has reason to fear, that said defendant will continue to use the name and style of 'The Investor Publishing Company,' and will continue to publish the said trade and financial journal under the name of 'The Investor,' and thereby cause irreparable injury to your orator's exclusive right to the corporate name 'The Investor Publishing Company,' and to its exclusive right to the name of 'United States Investor.'" The bill prays that defendant may be decreed to account for and pay over the income and profits unlawfully derived from the violation of plaintiff's rights, and also for an injunction from the further use of the names 'The Investor' and 'The Investor Publishing Company,' or any imitation thereof.

The answer denies, for lack of information and belief, the allegations of the bill as to the corporate existence of plaintiff, and as to the publication circulation, and reputation of the journal mentioned in said bill; admits that defendant is a corporation existing under the laws of the state of California, and that on the 14th day of March, 1894, it began the publication of a trade and financial journal, under the name of "The Investor," and that defendant Dobinson is the editor in chief of said journal, and has been ever since said date; denies that there has been, through any act of the defendants, any diversion of or confusion in plaintiff's trade or business, or that the plaintiff has been thereby greatly or at all damaged; denies that plaintiff fears, or has any reason to fear, that defendants will continue to use the name and style of the "Investor Publishing Company" in connection with the publication of its journal. The answer then avers as follows:

"And these defendants further say that the allegations of complainant's bill relating to the use by the defendants of the corporate name of the 'Investor Publishing Company' and of the name of 'The Investor' for the defendants' said journal, and to the publication by defendants at the head of the editorial column in the said last-mentioned paper of the words 'Published by the Investor Publishing Company, Incorporated,' are, and each of them is, untrue, except as hereinafter expressly set forth and admitted. These defendants further say that at the time of the incorporation of the Investor Publishing Company as aforesaid these defendants were not aware of the existence of the complainant as a corporation, and had no knowledge or notice of the complainant's existence, or of its said newspaper, to wit, 'The United States Investor.' And these defendants say that the name adopted for their said newspaper, to wit, 'The Investor,' is, and ever since its first publication has been, published at the head of the first page of said last-mentioned journal in the following form, to wit:

"THE INVESTOR.

"A Financial Guide to Southern California,

"AND WEEKLY JOURNAL OF FINANCE, INSURANCE, AND TRADE.

"LOS ANGELES, CAL., —, 189-.

"And these defendants further say that the said name so published and circulated by it at the head of its said journal in no way resembles the name adopted by complainant, to wit, 'United States Investor,' and that the said title page of defendant's journal in no way resembles the title page of com-