

Case No. 607. ATKINSON v. BOARDMAN.

Circuit Court, S. D. New York.

1851.

SUIT TO INVALIDATE PATENT GRANTED AFTER
INTERFERENCE—HEARING—EVIDENCE.

1. Upon a bill filed to declare a patent granted by the commissioner, after an interference, invalid or inoperative, under section 16 of the act of [July 4,] 1836, [5 Stat. 123,] amended by section 10 of the act of [March 3,] 1839, [5 Stat. 354,] the hearing is altogether independent of that before the commissioner, and takes place upon such testimony as the parties may see fit to produce, agreeably to the rules and practice of a court of equity.
2. The evidence before the commissioner is not evidence in such a suit, except by consent of parties; nor are the parties to the suit restricted to the testimony used before the commissioner. Either party is at liberty to introduce additional evidence.

[Cited in *Re Squire*, Case No. 13,269, and in *Union Paper-Bag Mach. Co. v. Crane*, Case No. 14,388.]

[NOTE. Nowhere reported. Opinion by NELSON, Circuit Justice, not now accessible. Statement of points determined taken from Law Pat. Dig. 265,666.]