

adapted to a tubular cover of the projecting end pieces arranged substantially as and for the purposes described; (2) a paper box constructed substantially as described, with overlapping corner pieces, and with overlapping end pieces partially covering the end of the box. Infringement is alleged of the first claim only. The defendants use a blank cut and creased like complainants' blank, except without any corner pieces, which they fold into box form with sides and ends and projecting end pieces, and thus make a receptacle to hold cigarettes which is not pasted at the corners, but in which the whole end can be opened without removing the receptacle from the tubular cover. It is a loose receptacle adapted to expose the whole end while the body remains within the tubular cover. The complainants' patent is for a different thing. It is for a box in which the parts are united at the ends and sides. If made without the corner pieces it is "joined together at the corners to form the sides and ends of the box," as the pre-existing boxes are described in the specification to have been made, but has the projecting end pieces to prevent escape of the contents by accidental exposure. If made with the corner pieces it has the additional strength and rigidity which they confer upon it. No wider scope can be given to the claims in view of their terms, the descriptive position of the specifications, and the specific improvements over the existing boxes which were contemplated by the inventors.

The bill is dismissed.

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### MATTHEWS v. IRON CLAD MANUF'G CO.

(Circuit Court, S. D. New York. February 8, 1884.)

#### PATENTS FOR INVENTIONS—EVIDENCE—JUDGMENT—STRANGERS TO THE SUIT.

A decree obtained by the plaintiff in an action to recover for the infringement of his patent cannot be introduced in an action against a stranger to the former suit for the purpose of proving acquiescence in the plaintiff's use of the patent.

In Equity.

*Briesen & Steele*, for complainant.

*Betts, Atterbury & Betts*, for defendant.

WALLACE, J. The defendant moves to expunge from the proofs certain decrees introduced by the complainant, obtained in actions in which he was complainant, adjudicating the validity of the patent upon which the present suit is brought. These decrees were obtained in suits against infringers to which the present defendant was not a party, or privy. The evidence was introduced against the defendant's objection, and is now insisted on as tending to show acquiescence in the rights of the plaintiff under his patent. If it were necessary for the complainant to show that he had asserted his rights

under the patent, before the present suit, doubtless the records would be evidence that he had brought suits and prosecuted them to final judgment. They are not competent, however, as admissions of third persons, because the defendant cannot be prejudiced by such admissions. The effect of such decrees is considered by Mr. Justice NELSON in *Buck v. Hermance*, 1 Blatchf. 322, where he held that, although admissible upon motions for a provisional injunction in which the ordinary rules of evidence do not obtain, they are proceedings *inter alios*, and therefore not competent on a trial upon the merits.

The motion is granted.

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TIME TELEGRAPH Co. v. HIMMER and others.

(Circuit Court, S. D. New York. January 30, 1884.)

PATENTS—ESTOPPEL.

The inventor of a certain mechanism assigned the improvement to his employers, by whom it was patented. While in the same employ he ordered a mechanism to be made which he represented as a modification of the patented invention. After leaving the service of his employers he manufactured machinery identical with what he had previously ordered to be made. *Held*, that he, and those in privity with him, were estopped to deny that the mechanism in question was covered by the patent.

In Equity.

B. S. Clark, for complainant.

Roscoe Conkling and E. N. Dickerson, Jr., of counsel.

Turner, Lee & McClure, for Himmer and Carey.

B. F. Lee, of counsel.

WALLACE, J. The peculiar facts of this case authorize the granting of a preliminary injunction as to some of the defendants, although the complainant's patent is of recent date, and has never been adjudicated. The defendant Himmer was the inventor and assignor to the complainant of the improvement in electric clocks, described and claimed in the letters patent of the complainant. While he was in the employ of the complainant as its superintendent he ordered certain clock mechanism to be made, which was identical in parts and arrangements with that now sought to be enjoined, representing it to be one of the modifications of the invention secured by the patent. Special tools and dies were obtained to construct this mechanism, and the complainant's officers, assuming that the complainant was protected by the patent, have embodied this mechanism in their clocks, and introduced them to the public. After Himmer left the complainant's employ he induced the manufacturers who were then making this clock mechanism for the complainant, to supply him with the various parts sufficient to make a number of complete