

Parties in that connection include all who are directly interested in the subject-matter; and who had a right to make defense, control the proceedings, examine and cross-examine witnesses, and appeal from the judgment. And this same rule is restated and followed in numerous cases, among which are *Beloit v. Morgan*, 7 Wall. 619; *Miller v. Liggett, etc., Co.*, 7 Fed. Rep. 91; *Clafin v. Fletcher*, Id. 851; *American Bell Tel. Co. v. National Imp. Tel. Co.*, 27 Fed. Rep. 666; *Morss v. Knapp*, 37 Fed. Rep. 352; *Lea v. Deakin*, 11 Biss. 23, 13 Fed. Rep. 514; *Wilson's Ex'r v. Deen*, 121 U. S. 525, 7 Sup. Ct. Rep. 1004.

The proof in this case shows beyond doubt that the defendant in this case, with the consent of the defendants in the Iowa case, made itself the *dominus litis* in that case; it controlled the defense; appeared by its own attorneys; it was the manufacturer of the plows in which the alleged infringement was found; and may, I think, with entire propriety, be held to be bound, not only upon all the questions which were raised and determined in the former case, but upon all which might have been raised and determined in that case. The Hague patent itself was considered by the Iowa court, and not held to be an anticipation or protection as against the complainant's patent. The defendant, may, I think, be considered as bound, not only by all the evidence which was considered in the Iowa case, but all which it could have appropriately put into the record in that case, including the testimony, which it is claimed would carry the Hague invention back of the Wright invention.

I am therefore of opinion that all the defenses which are urged here have been anticipated and are cut off by the decree in the Iowa case. A decree will therefore be entered, finding that the defendant infringed as charged, and for an injunction and accounting.

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EAGLE MANUF'G CO. v. MOLINE PLOW CO.

(Circuit Court, N. D. Illinois. July 13, 1891.)

In Equity. Bill by the Eagle Manufacturing Company against the Moline Plow Company to restrain the infringement of a patent.

*Nathaniel French* and *W. T. Underwood*, for complainant.

*Bond, Adams & Jones*, for defendant.

BLODGETT, District Judge. The bill in this case charges the defendant with the infringement of the same patent involved in the preceding case, against the David Bradley Manufacturing Company, (50 Fed. Rep. 193,) and the defense interposed is the same as in that case. The bill in this case also charges that in December, 1887, complainant brought suit in the southern district of Iowa, by bill in chancery, against the Moline, Milburn & Stoddard Company, for an alleged infringement of the same letters patent; that the defendant in that case was a branch house of the Moline Plow Company, the defendant in this case, and was engaged in selling the identical cultivators manufactured by the defendant herein, and which in this case complainant charges in-

fringed complainant's patent; that such proceedings were had in that case as that a decree was entered, finding the defendant in that case guilty of the infringement charged, and an injunction against such further infringement duly entered, (35 Fed. Rep. 299;) that the defendant in this case took the control and charge of the defense in that case, and by its own attorneys, and at its own expense, conducted such defense, and that, therefore, this defendant is estopped by the decree in that case.

The proofs fully sustain this allegation in the bill, and bring the case wholly within the rule laid down in the prior case of this complainant against the David Bradley Manufacturing Company. A decree will therefore be entered, finding that the defendant infringed, and for an injunction and accounting.

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KENNEDY *v.* CHICAGO CITY RY. Co. *et al.* SAME *v.* BOUTON FOUNDRY Co. *et al.* SAME *v.* TOBIN *et al.* SAME *v.* EXCELSIOR IRON WORKS *et al.* SAME *v.* BEE. SAME *v.* HAFFNER *et al.*

(Circuit Court, N. D. Illinois. May 2, 1892.)

**1. PATENTS FOR INVENTIONS—BOILERS—INFRINGEMENT.**

The third claim of letters patent No. 224,685, issued February 17, 1880, to Hazelton and Kennedy, for a new and improved sectional boiler, consisting of the combination of horizontal hot-water pipes and steam pipes set inside of a fire chamber, with vertical drums and mud drum set outside of the fire chamber, is not infringed by a device consisting of a "porcupine" boiler having a central standpipe in which numerous hollow tubes are inserted so as to radiate horizontally, and having three larger tubes riveted to the standpipe, and extending horizontally through the brick-work surrounding the fire chamber, since the said claim covers merely the particular combination described therein.

**2. SAME—BOILER DEFLECTORS—NOVELTY—PATENTABLE INVENTION.**

Letters patent No. 349,720, issued September 28, 1886, to Edward S. T. Kennedy for an improvement in boiler deflectors, consisting in the combination with a porcupine boiler and its jacket of horizontal flame deflectors of segmental form, placed within the combustion chamber in position for protecting the exposed ends of the tubes and deflecting the heated products of combustion towards the boiler cylinder, are void for want of patentable invention and novelty.

In Equity.

Bills by Edward S. T. Kennedy to restrain the alleged infringement of certain patents.

*Banning, Banning & Payson*, for complainant.

*Bond, Adams & Pickard*, for defendants.

GRESHAM, Circuit Judge. These suits for infringement of patents, No. 224,685, issued February 17, 1880, No. 247,910, issued October 4, 1881, and No. 349,720, issued September 28, 1886, were heard together. The complainant purchased a half interest in the two first inventions, the patents issued to him and the inventor jointly, and the latter assigned his interest in both patents to the complainant. The third patent issued to the complainant. All the defendants are charged with infringing the third claim of No. 224,685; and the Chicago City Railway Company, the Bouton Foundry Company, and Joseph Bee with infringing the 1st, 2d, 5th, and 6th claims of No. 349,720. It is not shown that any of