

"It is thus seen that, by our practice, a decree pro confesso is not a decree as of course according to the prayer of the bill, nor merely such as the complainant chooses to take it; but that it is made (or should be made) by the court, according to what is proper to be decreed upon the statements of the bill, assumed to be true. This gives it the greater solemnity, and accords with the English practice, as well as that of New York. Chancellor Kent, quoting Lord Eldon, says: 'Where the bill is thus taken pro confesso, and the cause is set down for hearing, the course (says Lord Eldon, in *Geary v. Sheridan*, 8 Ves. 192) is for the court to hear the pleadings, and itself to pronounce the decree, and not to permit the plaintiff to take, at his own discretion, such a decree as he could abide by, as in the case of default by the defendant at the hearing.' *Rose v. Woodruff*, 4 Johns. Ch. 547, 548. Our rules do not require the cause to be set down for hearing at a regular term, but, after the entry of the order to take the bill pro confesso, the eighteenth rule declares that thereupon the cause shall be proceeded in ex parte, and the matter of the bill may be decreed by the court at any time after the expiration of thirty days from the entry of such order, if it can be done without answer, and is proper to be decreed. This language shows that the matter of the bill ought at least to be opened and explained to the court when the decree is applied for, so that the court may see that the decree is a proper one. The binding character of the decree, as declared in rule 19, renders it proper that this degree of precaution should be taken."

This being so, it results, I think, that the defendant who has appeared by his solicitor to the bill is entitled to notice of the application for a decree pro confesso. In *Thomson v. Wooster*, supra, such notice was given; and in *Bennett v. Hoefner*, 17 Blatchf. 341, it was held that a party who has appeared by a solicitor is of right entitled to notice of application for a decree after an order pro confesso, and has the right to be heard as to the form of the decree, and upon such other questions as can be presented upon the complainant's pleadings and proof; this, obviously, to the end that the decree be not allowed to go beyond the case made by the bill, and such proofs as the complainant may make.

It results that the decree must be vacated. I am further of opinion, in view of the affidavits, that the ends of justice will be best attained by setting aside the default, and permitting an answer to be filed, so that the cause may be determined on its merits. An order to that effect will be entered.

OCONTO WATER CO. v. NATIONAL FOUNDRY & PIPE WORKS,
Limited.

(Circuit Court of Appeals, Seventh Circuit. November 7, 1893.)

No. 91.

1. MECHANIC'S LIEN—PROPERTY SUBJECT TO—WATER COMPANIES.

Rev. St. Wis. § 3314, which provides that, in case any person shall purchase machinery to be placed on premises in which the purchaser has not an interest sufficient for a lien, the person furnishing the machinery shall have a lien on it, and a right to remove it, does not apply to the pipes of a water company, laid through the streets of a town, and connected with the pumping works of the company. The plant of the company is an integer, and cannot be separated under a lien.

2. SAME.

The public policy of Wisconsin is independent of that of other states, and under it the property of quasi public corporations is subject to the

general lien laws. In this respect a water company does not differ from a railroad company. *Hill v. Railroad Co.*, 11 Wis. 215, followed.

3. SAME.

The entire plant of a water company, including piping laid in the streets of a city, and the interest of the company in the premises, are by Rev. St. Wis. § 3314, subject to the lien of the material man furnishing the piping.

4. SAME—QUASI PUBLIC CORPORATION — ENFORCEMENT OF LIEN — FRANCHISE AND PLANT

Where the law gives the material man a specific lien upon a certain plant, and the plant and franchise, being that of a water company, cannot be separated by judicial sale because of their peculiar public use, a court of equity has power to decree the sale of both plant and franchise in satisfaction of the lien. 52 Fed. 43, affirmed.

Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin.

In Equity. Bill by the National Foundry & Pipe Works, Limited, against the Oconto Water Company, to foreclose a mechanic's lien. Complainant obtained a decree. 52 Fed. 43. Defendant appeals. Affirmed.

W. H. Webster, for appellant.

George H. Noyes, for appellee.

Before WOODS, Circuit Judge, and BUNN and BAKER, District Judges.

PER CURIAM. We concur in the opinion and conclusion of the circuit court as reported in 52 Fed. 43. The decree below is therefore affirmed.

JOHNSON RAILROAD SIGNAL CO. v. UNION SWITCH & SIGNAL CO.

(Circuit Court, W. D. Pennsylvania. October 2, 1893.)

No. 13.

1. PRINCIPAL AND AGENT—POWERS OF AGENT—PATENT RIGHTS.

A power of attorney which, in consideration of a prescribed royalty, appoints the donee sole agent in the United States "for the purpose of working and developing the business of said patents," with power to "negotiate the sale of the said patents upon terms to be agreed upon," creates a mere agency, not coupled with an interest, and gives the agent no right to convey or assign the patents without the assent of his principal.

2. PATENTS—ASSIGNMENT.

A contract which purports to convey, for a prescribed royalty, the sole and exclusive right and license to make, use, and sell in the United States the improvements covered by a patent for the full term thereof, is in substance an absolute assignment, and nothing remains in the assignor.

3. SAME—POWER OF ATTORNEY.

An assignment of a patent by an attorney in fact does not bind the principal unless executed in his name and under his seal, and is ineffective if it runs in the attorney's name and seal. *Machesney v. Brown*, 29 Fed. 145, followed.

In Equity. Bill by the Johnson Railroad Signal Company against the Union Switch & Signal Company, for infringement of letters patent No. 241,246, issued to Frederick Cheeswright. Cheeswright, by a power of attorney, the provisions of which are set out in the