

and property; and this is so whether the way is laid out and opened before or after the construction of the railroad. *Railway Co. v. Smith*, 91 Ind. 119; *National Waterworks Co. v. City of Kansas*, 28 Fed. 921. It is not necessary in this case to determine whether this continuing duty, in the absence of the adjudication of the state court, would require the railroad company to alter and restore its bridge so as to accommodate the construction of the ditch in question or not. In my judgment, the court cannot examine the question of damage to the complainant arising from the construction of the ditch or drain, or the manner in which it is authorized to be constructed by the state court, for the reason that these questions have been passed upon by the state court; and that court, or some other court of the state, alone, has the power to review the question of damages.

From these considerations, it results that the temporary restraining order must be dissolved; and it is so ordered.

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AMERICAN BOX MACH. CO. v. CROSMAN et al.

(Circuit Court of Appeals, First Circuit. May 14, 1894.)

No. 76.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

This was a suit for the specific performance of a contract by the American Box Machine Company against George A. Crosman and others, in which there was a decree (57 Fed. 1021) dismissing the bill as against Crosman and the Lynn Box Machine Company, but granting an injunction against the remaining respondents. Complainant now appeals from this decree.

William A. Jenner and Edmund Wetmore, for complainant.  
Thomas W. Clarke and Niles & Carr, for defendants.

Before COLT, Circuit Judge, and NELSON and WEBB, District Judges.

PER CURIAM. In this case the plaintiff below, who is the appellant, appeals from certain parts of the decree of the circuit court. The errors assigned are as follows:

"(1) The court erred in holding that the bill of complaint be dismissed as against the defendants Crosman and the Lynn Box Machine Company, with costs. (2) The court erred in refusing an accounting of damages and profits."

As to the first assignment of error, we think it should be overruled, for the reasons stated in the opinion of the circuit judge. With respect to the second assignment of error, the court below having decreed that the remaining defendants either manufactured or sold one or more two-strip machines, or machines which may be operated as such, in violation of the agreement of January 23, 1888, and having directed a perpetual injunction to issue against

them, we think that the complainant is entitled, according to the usual course of equity, to a reference to a master. The invasion of the complainant's right having been established, and an injunction ordered, it may be presumed that there are some profits or damages to be recovered. The decree of the circuit court is modified so as to order a reference to a master to take an account of profits, and damages, if any, in addition thereto, against the defendants, except Crosman and the Lynn Box Machine Company, and in all other respects said decree is affirmed.

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STONE et al. v. CLAY.

(Circuit Court of Appeals, Seventh Circuit. May 1, 1894.)

No. 117.

CONTRACTS—INTERPRETATION—RACING RULES.

Racing rules defined a "sweepstakes" as a race "for which the prize is the sum of the stakes which the subscribers agree to pay for each horse nominated," and provided that the entry, making one a subscriber, "shall be made by writing, signed by the owner of the horse," and that "a person entering a horse thereby becomes liable for the entrance money, stake, or forfeit." *Held*, that a "free handicap sweepstakes," by an entry for which, under the rules, liability was not incurred absolutely, but only on condition that the horse should not be declared out, was not a "stake race," within the meaning of a proposal for a subsequent race with extra weight for winners of stake races.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

This was a bill of interpleader by the Washington Park Club making defendants Kinzea Stone and Thomas J. Clay, in which Dudley Allen, claiming a joint interest with Stone, was allowed to intervene. The fund was awarded to Clay. Defendants Stone and Allen appealed.

This dispute is over the outcome of a horse race. In the fall of 1889 the Washington Park Club, of Chicago, a corporation organized under the laws of Illinois, advertised among the events of the ensuing summer meeting the following proposal for a race to be run July 17, 1890, "entries to close by October 15, 1889:" "The Hyde Park Stakes. A sweepstakes for two year olds (foals of 1888); \$150 each, \$50 l., or only \$10 if declared out on or before February 1st, or \$25 by April 1st, 1890. All declarations void unless accompanied by the money. With \$5,000 added. The second to receive \$1,000, and the third \$500, out of the stakes. A winner of any stake race of the value of \$1,500 to carry 3 lbs., of two or more stake races of any value, 5 lbs. extra; maidens allowed 5 lbs. Three-quarters of a mile."

One hundred and thirty-five horses were named or entered for the race, of which 16 only ran, and of these Balgowan, owned by the appellee, Clay, was declared the winner of the first money, and Kingman, owned by the appellant Stone, was declared winner of second money. Some days later, Stone demanded first money, on the ground that Balgowan had theretofore won two stake races, and, instead of carrying in this race, as he did, only 118 pounds, should have carried 5 pounds more. His demand having been denied by the board of racing stewards, composed of officers of the club, Stone brought a suit at law against the club for the amount of the first money, less the amount of second money, which had already been paid him. Thereupon the club brought a bill of interpleader, and, the appellant Allen,