

is that the Edison Electric Light Company of Philadelphia will be protected by the bond given to the complainants in the suit against the Columbia Company in Missouri. To this it may be answered that the Philadelphia Company is not a party to the suit in the Missouri district, and could not sue on the bond of the complainants therein, should the latter succeed in obtaining a decree for damages. The Philadelphia Company is a licensee, and the damages which it may suffer from the loss of profits by the use of the infringing lamps can be recovered only from the defendants and other infringers in the city of Philadelphia. Another objection is that the Edison Electric Light Company, by bringing its suit against the Columbia Incandescent Lamp Company, thereby practically made that company its licensee. But since *Birdsell v. Shaliol*, 112 U. S. 485, 5 Sup. Ct. 244, the law has been settled that the recovery of damages from a defendant, for manufacturing and selling, will not prevent the recovery of other substantial damages from the defendants' vendees, for their profits upon reselling the patented articles. *Kelley v. Manufacturing Co.*, 44 Fed. 19; *Tuttle v. Matthews*, 28 Fed. 98. It has been often repeated that a patentee has three distinctive rights,—the right to make, the right to sell, and the right to use his patented articles,—and that whoever invades any one of these rights is an infringer, and liable for damages. We have seen that the rule which was adopted by the circuit court for the Eastern district of Missouri is applicable only in those cases where the patent has not been sustained by prior adjudication, and that in cases of the character of the one before us, the uniform practice has been to require the defendant to place himself within the exception requiring him to prove his defense beyond a reasonable doubt; and we are clearly of the opinion that the court below, in refusing to modify its order, and exempt from the writ of injunction the lamps made by the Columbia Incandescent Lamp Company, acted in accordance with the established practice, and in the observance of that rule of comity which has always prevailed in the courts of the United States in like cases. *Sessions v. Gould*, 49 Fed. 855; *Electrical Accumulation Co. v. Julien Electric Co.*, 47 Fed. 892; *Cary v. Spring-Bed Co.*, 27 Fed. 299; *Coburn v. Clark*, 15 Fed. 804; *Siebert Cylinder Oil Cup Co. v. Michigan Co.*, 34 Fed. 33; *Ladd v. Cameron*, 25 Fed. 37. The decree of the circuit court is affirmed.

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#### COLBY v. VILLAGE OF LA GRANGE.

(Circuit Court, N. D. Illinois. January 14, 1895.)

##### 1. EMINENT DOMAIN—EXTENT OF POWER.

Complainant owned land adjacent to the village of L. The village began a proceeding in the nature of eminent domain in a state court, to obtain an easement over plaintiff's land for the flow of its sewage, not seeking, in such proceeding, to obtain any particular portion of land for a culvert, drain, or cesspool, but simply proposing to throw its sewage upon complainant's land, leaving him to dispose of it as he could. The village had no power of eminent domain, except as accessory to its power to make public improvements, including the power to construct a system of sewage

disposal. *Held*, that neither the power to make public improvements nor the power of eminent domain extended to such an invasion of private property as was proposed by the village, and that the prosecution of the proceedings for that purpose would be enjoined.

2. EQUITY—HE WHO SEEKS EQUITY MUST DO EQUITY.

It seems that, if it should appear that the best method of sewage disposal for the village involved the use of complainant's land, and he refused to accede to a reasonable plan, equity would decline to interfere by injunction with the proceedings of the village.

This was a suit by Charles L. Colby against the village of La Grange to enjoin the prosecution of proceedings in a state court. Defendant demurs to the bill.

J. L. High and Page & Booth, for complainant.

Richard Prendergast and W. R. Burleigh, for defendant.

GROSSCUP, District Judge. The complainant is the owner of a tract of land lying within the village of Grossdale, and adjacent to the village of La Grange. The bill charges that the village of La Grange, in effectuation of its scheme of an outlet for its sewage into the Des Plaines river, proposes to bring the sewage by means of sewer drains to the land of the complainant, and there discharge the same, thereby creating a nuisance upon said land, and doing irreparable injury to the rights of the complainant. The supplemental bill shows that since the filing of the original bill the village has begun a proceeding in the nature of eminent domain in the courts of the state to obtain an easement over the complainant's land for the flow of its sewage after leaving the sewers of the defendant, and, in effect, asks for an injunction against the further prosecution of this eminent domain suit. To the supplemental bill the defendant now demurs, and likewise moves the court to postpone action upon either the original or supplemental bills until the eminent domain proceedings have been concluded. Both the demurrer and motion of defendant turn upon the question whether the village can lawfully, by proceedings of eminent domain, obtain an easement upon and over the lands of the complainant for the flow of its sewage. It is not proposed by this proceeding to take any particular strip of land, and pay the complainant its value and the incidental damages, according to the constitutional provisions, but simply to obtain the privilege or easement of discharging its sewage upon and across this tract of land.

My attention has been called to no case where such an exercise of the right of eminent domain has ever been considered, and counsel on the argument have stated that no such cases are in existence. The village has no right of eminent domain whatever, except such as is bestowed upon it by statute. The original power in bulk, whatever it may comprehend, lies in the state, and is only delegated to other bodies corporate by express legislation. Such legislation must necessarily be ineffectual to carry the power claimed, unless it clearly evinces a legislative intention to that end.

Now, the only power of eminent domain expressly conferred upon cities and villages is that accessory to their power to make public

improvements. In such respect as they have no right to make public improvements, there exists no power of eminent domain. The latter, therefore, is limited by the field of the former. Now, what power respecting the disposition of sewage is conferred upon villages? I know of none which permits them to empty their sewage upon a private owner's land. Unquestionably they can dispose of it by constructing culverts, drains, sewers, and cesspools, as expressly provided in the statute, and perhaps by conveying it to outlying fields owned by such municipality for destruction and treatment, or by conveying it through intermediate tracts to natural drains and water courses. But clearly there is no power to dump it untreated, and with its distasteful and unhealthful consequences, upon the property of a private owner, leaving it to him to take care of as best he can. The village does not seek in its proceeding to obtain land from the complainant for any culvert, sewer, drain, or cesspool, or for a locus for the treatment and disposal of the sewage. It proposes, simply, to throw upon the complainant's land its sewage, and thus compel him to provide the necessary drains, culverts, sewers, or other methods of disposing of it. Such an interpretation of its right would, in my judgment, go beyond the express authority conferred.

This conclusion, of course, does not affect whatever rights the defendant may have growing out of the existence of a natural drain or water course across defendant's lands. If such a drain or water course is naturally in existence, the defendant may be entitled to its use as an outlet for its sewage. And whatever right in this respect it has is not dependent upon, or enlarged or in any way affected by, the right of eminent domain. Indeed, the right to condemn for the purposes sought presupposes the nonexistence of a natural right of outlet to the village. Both the demurrer and the motion of the defendant will, therefore, be overruled.

I deem it proper to repeat what I stated on the oral argument. The complainant is in a court of equity, asking for an injunction against the defendant's proposed disposal of its sewage. The defendant is a growing village, and every consideration of public health and justice requires that it should have some outlet for its sewage, or some reasonable means of disposing of it. If the situation is such that the clearly better course, both by reason of topography and expense, is across the complainant's lands, and the complainant refuses to accede to a system that is reasonable and just, I am very much inclined to think a court of equity would not entertain his bill for relief. I therefore suggest that, instead of going into a long trial upon the parties' legal and technical rights in this controversy, the defendant village offer to the complainant a practical and reasonable scheme of sewage disposal.

**RALSTON v. WASHINGTON & C. R. RY. CO. (LADD et al., Interveners).**

(Circuit Court, D. Washington, S. D. January 14, 1895.)

**RECEIVERS—APPOINTMENT OF OFFICER OF INSOLVENT CORPORATION.**

Although, when a court assumes control of the affairs of an insolvent corporation, it is preferable to take it entirely out of the hands of its managing officers, yet there is no inflexible rule rendering such officers ineligible as receivers; and in a case where the trustee prosecuting the foreclosure under which the receiver is appointed is authorized by the mortgage to nominate a receiver, and nominates an officer of the corporation, who is known to the judge making the appointment to be a capable, honest, and fair-minded man, who has managed the property well, under adverse circumstances, it is proper to appoint such officer receiver.

This was a suit by Robert Ralston, as trustee, against the Washington & Columbia River Railway Company, for the foreclosure of a mortgage. W. D. Tyler, president of the corporation, was appointed receiver. W. M. Ladd and others, composing the firm of Ladd & Tilton, holders of bonds, intervened, and moved for the removal of the receiver.

L. L. McArthur, for complainant and C. B. Wright.

B. L. Sharpstein and John L. Sharpstein, for defendant.

Williams, Wood & Linthicum and J. C. Flanders, for interveners.

John B. Allen, for receiver.

HANFORD, District Judge. The complainant, as trustee for the holders of bonds of the Washington & Columbia River Railway Company, filed his bill of complaint, setting forth a mortgage upon all the property of said corporation, given to secure payment of the principal and interest of said bonds, and alleging, in substance, that installments of interest on said bonds had become due and were unpaid; that said corporation is insolvent; that the complainant had been duly selected and constituted as trustee in place of the trustee named in said mortgage, and had been requested by C. B. Wright, the holder of more than three-fourths of said bonds, to bring this suit to foreclose said mortgage,—and praying for a decree of foreclosure of the mortgage, and sale of the property, and for the appointment of W. D. Tyler, president of said corporation, as receiver, to take immediate charge of the railway, and manage the same during the pendency of this suit. The mortgage contains provisions authorizing the trustee, in case of default in the payment of any installment of interest, to declare the whole debt due, and proceed at once to foreclose and to have a receiver appointed, and to choose a receiver. Upon application of the complainant, after notice to the defendant corporation, one of the judges of this court, in chambers, appointed said Tyler receiver of said corporation, with power to manage the business and operate the railway; and he has accepted the appointment, and is now acting as such receiver. William M. Ladd and others, composing the firm of Ladd & Tilton, obtained leave to intervene in the suit, and thereupon filed a petition alleging that said firm holds certain bonds secured by said mortgage; that the selec-