

order. The respondent is not charged with attempting in any way to pass off his publication for that of the complainants. Indeed, not only the title-page and the short name given the respondent's book, but also its size and style of binding, prevent any probability of one being mistaken for the other. There is, therefore, no threatened injury to come from a counterfeiting of that character; so that we can apply the fact, which is matter of common knowledge, that publications of this peculiar character rely for their acceptance on the reputation of the compilers and publishers, and the circulation of them must ordinarily be the same whether protected by copyright or not. The court must therefore presume that, while the respondent's publication might obtain some circulation for which he may be liable to account to the complainants in the way of profits, yet such circulation would probably be in addition to any which the complainants would secure, even if they maintained a monopoly, and, consequently, not of such character as to cause them a substantial loss of trade. Therefore, in view of the lack of positive evidence of any pending irreparable injury, and, further, in view that, with reference to any claim of threatened injury, the complainants rely on the presumptions ordinarily arising in cases of this character, which presumptions are quite overcome by the peculiar circumstances of the case, we think a conditional order will accomplish all the ends of justice and sufficiently protect the complainants.

Ordered, there will be an interlocutory decree for an injunction as prayed for, unless respondent on or before the 23d day of April, 1896, files a bond to the complainants, with sureties approved by the clerk, in the penal sum of \$2,000, conditioned for the payment of any sum, except costs, which may be finally decreed against the respondent in this court or on appeal.

---

McALEER et al. v. LEWIS et al.

(Circuit Court, D. Washington, N. D. June 17, 1896.)

1. EQUITY PLEADING—PLEA IN BAR—REPLICATION.

By filing a replication to a plea of *res judicata*, the complainants admit the sufficiency of the plea, and it is contrary to equity practice to permit that question to be raised at the final hearing.

2. RES JUDICATA.

Where the parties are identical, the property in controversy the same, and the complainants claim it in the same right as in the prior suit, the prior adjudication is conclusive, not only as to all matters actually brought to the attention of the court, and considered, but also as to all matters which might have been presented and considered.

This was a suit in equity by Patrick McAleer, Susan McIntyre, Ellen McSorley, H. J. McSorley, Mary E. Golay, and Cathrine J. Harn against William H. Lewis, administrator with the will annexed of the estate of W. C. Hill, deceased, and Alice S. Hill, widow of said W. C. Hill.

P. P. Carroll, for complainants.  
Roger S. Greene, for defendants.

HANFORD, District Judge. By this suit the complainants seek to litigate again the very same questions and claim to property which were fully tried upon the merits, and adjudicated, in the cases of *McSorley v. Hill* (Wash.) 27 Pac. 552, and *McAleer v. Hill*, Id. 557. The defendant Lewis, as administrator with the will annexed of the estate of W. C. Hill, deceased, is the successor in interest of the W. C. Hill who was originally a party to the several cases above mentioned; so that the parties are identical. The property in controversy is the same, and the complainants in this suit are claiming said property in the same right. The superior court of the state which tried the cases had complete jurisdiction of the subject-matter and of the parties; and, after a full hearing, it rendered a final judgment on the merits, adverse to the complainants; and the supreme court of the state has affirmed the judgments, and appeals to the supreme court of the United States have been dismissed, and the litigation in the courts of the state and the supreme court of the United States has ended, and a complete final record has been made. The defendants, by a plea in bar, have set forth the former adjudication and the record. Said plea and other defenses interposed have been met by a general replication, and the case has been submitted upon the pleadings and proofs. By the evidence, it is fully established that the plea is true in every particular, and the only way in which counsel for the complainants, upon the hearing, have sought to avoid the plea, is by questioning its sufficiency, and by claiming that in their bill of complaint, filed in this court, and the evidence submitted, the right and interest of the complainants is shown with greater fullness and accuracy than in the pleadings and evidence presented to the state court. The only questions which the court is asked to consider are whether the plea is sufficient, and whether the complainants, after being defeated, may, in a new suit, reform the issues, and strengthen their position by marshaling the evidence anew, and adding thereto a few additional items.

By their replication, the complainants have admitted the sufficiency of the plea; and it is contrary to equity practice to permit the first question to be raised at the final hearing. I have, however, notwithstanding the rule, examined the plea with care; and I find it to be so nearly perfect that I entertain no doubt whatever but what I should have held it to be sufficient if the plea had been regularly set down for argument.

As to the second question, it is sufficient to say that the former adjudication is conclusive, not only as to all matters which were actually brought to the attention of the court, and considered, but also as to all matters which might have been so presented and considered if the complainants had been diligent in making a full presentation of their case, as they should have been. 1 Herm. Estop. §§ 237B, 239. Upon elementary principles, the court must find that the complainants are estopped by the judgments against them, now of record in the courts of this state; and it is unnecessary to consider the other defenses relied upon.

Let there be a decree dismissing the suit.

**AVERILL v. SOUTHERN RY. CO. et al.**

(Circuit Court, D. South Carolina. August 28, 1896.)

**1. RATE CUTTING BY RAILROADS—INJUNCTION—PARTIES.**

In order that a court may take jurisdiction of a suit to restrain demoralizing and ruinous rate-cutting by rival railroad systems, corporations which have leased the railroads of one of such systems, and control the rates thereon, are necessary parties.

**2. FEDERAL COURTS—JURISDICTION OF FOREIGN CORPORATIONS.**

25 Stat. 433, provides that no civil suit shall be brought in a federal court against any person by any original process or proceedings in any other district than that whereof he is an inhabitant. *Held*, that a corporation of one state cannot be affected by an order or writ or injunction issued by a federal court in another state.

Smythe, Lee & Frost, for complainant.

L. R. Watts, King & Spaulding, W. A. Henderson, J. S. Cothran, Mitchell & Smith, and G. Hatton, for respondents.

**SIMONTON**, Circuit Judge. This is a bill filed by the receiver of the Port Royal & Augusta Railway Company, asking the aid of the court in protecting the property placed in his charge. This is his right as well as his duty. *White v. Ewing*, 159 U. S. 39, 15 Sup. Ct. 1018. The bill alleges that a rate war had been inaugurated between the Seaboard Air Line and the Southern Railway Company, two great systems of railroads, which practically control the commerce between the several states lying on the Atlantic coast and the Gulf of Mexico; that one of these systems had begun a cut of 35 per cent. on its rates, with notice that, if this was met by its adversary, a still further cut would be made; that this was met on the part of the other system with a cut of 80 per cent., to go into operation 1st August, 1896; that the immediate and necessary result of this war would be a demoralization of rates, the disturbance and injury of all business within the territory in which it prevailed, as well as all territory directly or remotely connected therewith, and the certain destruction of the railroad property in the hands of the receiver, compelling it to discontinue operations, and to cease to be a going concern. The facts sworn to in this bill show that this rate war was not in competition for business, nor was it intended to promote business by fixing just and reasonable rates, but that it was waged for the purpose of destroying and annihilating all competition, for the demoralization and destruction of all rates, and for the bankruptcy and ruin of one or other of the belligerents; that the reduction was confined to three or four favored points of contact, but that the result worked injury to all other places in the near and remote vicinity of them in which business was conducted, and to all railroads and other carriers within the sphere of these favored places, and especially to the road in his charge; that this action on the part of these two great systems, controlling commerce between so many states, was in dereliction of duty on their part to the public, for whose benefit they were created, and for whose advantage they had been clothed with extraordinary and valuable franchises and great powers; that it violated several sections of the interstate com-