

ton had before been sewed on with thread at the upper end of the seam, at the edge of the pocket opening, to prevent the thread of the seam from being worn away, and the seam had been stayed by sewing in leather or other fabric, and there was no invention in passing from these arrangements to Davis'. It is sufficient to say that there is no force in any of these suggestions as against the validity of the patent. Nor is it shown that the invention, as before defined, was known or in any use before it was made by Davis. The defendants, to defeat the patent on the ground of want of novelty, must make out the defence by satisfactory and preponderating proof. This they have not done. In coming to this conclusion I have considered the Magee coat, the Nightingale coat, the evidence grouped in the defendant's brief under the heads "Nevada (C)" and "Nevada, (D)," the evidence of Stanton, Ford, Richville and Hogbin, the Orr overalls, the patent to Bowker, and the patent to Bellford. There must be the usual decree for the plaintiffs.

GOLDSMITH and another v. THE AMERICAN PAPER COLLAR
COMPANY.

(Circuit Court, S. D. New York. April 27, 1880.)

PATENT—ACTION FOR INFRINGEMENT—PARTY COMPLAINANT.—An action for the infringement of a patent must be brought in the name of the real and beneficial party in interest.

John D. Shedlock, for plaintiffs.

William A. Jenner, for defendant.

BLATCHFORD, C. J. This is a suit in equity, brought for the infringement of letters patent granted to Charles Spofford and James H. Hoffman. The bill sets forth that Spofford and Hoffman are the sole legal owners of the patent; that Spofford, after the grant of the patent, entered into an agreement in writing with the plaintiff Goldsmith, whereby, among other things, he appointed Goldsmith his attorney, "and in his

place and stead to commence, prosecute, compromise, settle, release, conclude and enforce, by suit at law or in equity, any infringements of the rights secured to him, said Spofford," by said patent, by the defendant—all such suits to be brought in the name and at the cost of said Goldsmith; that Spofford thereby expressly covenanted and agreed that he would not do, in respect to the defendant, any of the acts which he thereby authorized Goldsmith to do; that Goldsmith is the sole lawful person to bring the bill, as to the interest in the patent vested in Spofford; that Hoffman and Spofford will receive large profits from the patent if infringement by the defendant be prevented. It prays for a discovery of profits and of damages. The bill is demurred to because Spofford is not made a party, and because Goldsmith is made a party.

It is provided by section 4919 of the Revised Statutes that "damages for the infringement of any patent may be recovered by action on the case in the name of the party interested, either as patentee, assignee, or grantee." Jurisdiction is given to the circuit courts, by section 629, of all suits in law or in equity arising under the patent laws. It is provided by section 4921 that, upon a decree being rendered in any case for an infringement, the complainant shall be entitled to recover, "in addition to the profits to be accounted for by the defendant, the damages the complainant has sustained thereby."

The clear purport of these provisions is that the party in interest must bring the suit, whether at law or in equity, in his own name, and cannot delegate the right to another person to bring the suit in the name of such other person, when the suit is not for the benefit in any way of such other person. It is a question of public policy. The defendant has a right to require that the real owner or party in interest shall be in court, so that the court may exercise a control over him, in the course of the suit, if necessary, to require him to do something which the rights of the defendant may require to be done. Goldsmith has no control as to the patent, or anything to be done under it, except to bring suits in respect of Spofford's interest.

There is another respect in which it is against public policy to permit a suit like this to be brought. Goldsmith appears to be clothed with the entire discretion as to when and under what circumstances to bring suit, and when to compromise or settle for infringements. Spofford has stripped himself of all control in this respect, although he has the beneficial interest, and Goldsmith is not averred to have any. As was said by Judge Shipman, in *Gregerson v. Imlay*, 4 Blatchf. C. C. R. 503-6, this is "detrimental to the peace of society and the safety of individuals, and against public policy."

The demurrer is allowed, with costs, but the plaintiffs may move, on notice, for leave to amend the bill.

GERRITY v. THE BARK KATE CANN, etc.

(District Court, E. D. New York. April 27, 1880.)

ADMIRALTY—DAMAGES FOR PERSONAL INJURIES—STOWAGE—DUTY OF OWNER.—Where a ship's crew stowed dunnage in the between-decks, held up by braces overhead, and one pile broke away and fell, causing personal injury to a man who was assisting in trimming the cargo of grain then going into the ship, and an action was brought by the man for damages, *held*, that the ship was liable for the personal injuries caused by the insufficient and careless manner of stowing the dunnage.

John J. Allen and Patrick Keady, for claimant.

Henry T. Wing, for respondent.

BENEDICT, D. J. This action is brought to recover damages for personal injuries caused by the falling of a mass of dunnage and plank upon the libellant while he was engaged in trimming the cargo of the bark *Kate Cann*, in the harbor of New York, on the twenty-first day of November, 1878.

The facts are as follows: The bark *Kate Cann* was an English vessel, under a charter to receive and transport a cargo of grain. The grain was being put into the vessel from an elevator in the Atlantic dock. The libellant was one of several persons who had agreed to trim the grain as it came into the hold from the elevator spout for so much a bushel,