

*Wooster v. Sidenberg*, 2 Ban. & A. 91; *Black v. Hubbard*, 3 Ban. & A. 39; *Bloomer v. Millinger*, 1 Wall. 340; *Magoun v. New England Glass Co.*, 3 Ban. & A. 114.

Decree for complainants.

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FRANKFORT WHISKY PROCESS Co. v. PEPPER and others.

(*Circuit Court, S. D. New York.* ———, 1885.)

PATENTS FOR INVENTIONS—SUIT FOR UNAUTHORIZED USE—PARTIES.

Where the former owner of a patent has disposed of all interest in the same, reserving the right to specified uses of the invention, he has no interest in the patent, and is not a necessary party plaintiff in an action against third parties for an unauthorized use of such invention.

WALLACE, J. The ground of demurrer assigned is that Allen, the former owner of the patent upon which the suit is founded, has not been joined as a party complainant. In the instrument conveying the patent to the complainant, Allen, the then owner, reserved the right to himself to use and to license others to use the process patented "to mash an aggregate of 4,000 bushels of grain in each and every 24 hours, and convert the same into distilled spirits," and also to license the proprietors of certain specified distilleries to use the patented process. The conveyance was a grant of the patent, with a reservation of a license to the grantor; and is in legal effect as though the grantor had made an unqualified transfer of the patent to the complainant, and had at the same time received from the complainant a license back. Allen is not a necessary party to a suit by the complainant against third persons to restrain infringement.

The demurrer is overruled, with costs.

## SHARON v. HILL.

(Circuit Court, D. California. December 26, 1885.)

1. EQUITY PLEADING—CITIZENSHIP—PLEA IN ABATEMENT.

Where defendant, in a suit in the circuit court, pleaded in abatement that plaintiff was not a citizen of Nevada, as claimed, but of California, and the plea, being set down for hearing, was overruled, without any evidence being taken, or defendant allowed a day to answer on the merits, this is a proper disposition of the case, and the same defense cannot be again set up.

2. EVIDENCE—PRESUMPTION—FAILURE TO PRODUCE WRITING.

Where a party willfully refuses to produce a writing which it is sought to annul as a forgery, it will be presumed that its production and examination would show its falsity.

3. WITNESS—CONTRADICTION—IMPEACHMENT.

Mere variance between the statements of two witnesses will not necessarily impeach or affect the credibility of either of them, as the contradiction may arise from mistake, or other cause consistent with their integrity.

4. CITIZENSHIP—RESIDENCE—FOURTEENTH AMENDMENT.

The fourteenth amendment does not make a resident in a state a citizen of such state, unless he intends, by residence therein, to become a citizen.

5. ESTOPPEL—RES ADJUDICATA, WHAT IS.

The parties to a suit in which a question has been determined cannot litigate the same question in another suit, whether instituted before or after the suit in which the matter was determined, or in the same or another court.

6. SAME—JUDGMENT IN CALIFORNIA, WHEN FINAL.

In California a judgment is not final, and an estoppel against the parties, pending an appeal to the supreme court.

7. SAME—CONSENT TO REMAND OR ASSIGN CASE.

A consent to remand a case, or assign it for trial before a certain judge, will not prevent the party so consenting from litigating any of the questions involved in another suit.

8. SAME—SUBSEQUENT SUIT IN STATE COURT.

A suit in a circuit court of the United States will not be stayed until another suit, subsequently brought between the parties, involving some of the same questions, shall have been determined.

9. HUSBAND AND WIFE—MARRIAGE—EVIDENCE—FRAUD—FORGED DECLARATION AND LETTERS—CONDUCT OF WOMAN.

Evidence examined, and held to show letters and alleged secret declaration of marriage to have been forged, and decree of annulment granted.

In Equity.

*W. H. L. Barnes, William M. Stewart, Oliver P. Evans, and H. I. Kowalsky*, for plaintiff.

*George W. Tyler, W. B. Tyler, and David S. Terry*, for defendant.

Before SAWYER and DEADY, JJ.

DEADY, J. This suit was commenced on October 3, 1883, to have a certain alleged declaration of marriage between the plaintiff and defendant declared to be false and fraudulent, and delivered up to be canceled and annulled, and to enjoin the defendant from the use thereof. It is alleged in the bill that the plaintiff is a citizen of Nevada, and the defendant a citizen of California; that the plaintiff has never been the husband of any woman but one, who died in 1875,