

205) that the agent had not the clear and express authority necessary to confer the power of entering into a contract for sale binding upon his principal.

Held, affirming the judgment appealed from (15 Man. Rep. ing off the mortgage at any time." This contract was in the not be enforced against the defendant. Appeal dismissed with costs.

Nesbitt, K.C., and Coullee, K.C., for appellant. Aylesworth, K.C., and Affleck, for respondent.

EXCHEQUER COURT.

Burbidge, J.]

[Oct. 23, 1905.]

INDIANA MANUFACTURING CO. v. SMITH.

Patent for invention—Pneumatic straw stackers—Combination—Assignment—Right of assignor to impeach validity of patent—Right to limit construction—Estoppel.

Held, that the assignor of a patent, sued as an infringer by his assignees is estopped from saying that the patent is not good; but he is not estopped from shewing what it is good for, i.e., he can shew the state of the art or manufacture at the time of the invention with a view to limiting the construction of the patent.

In an action for infringement against the assignor of a patent for improvements in pneumatic straw stackers, it appeared that an earlier patent assigned by the defendant to the plaintiff excluded everything but the narrowest possible construction of the claims of the second patent. In the latter speaking generally, the combination was old, each element was old, and on new result was produced; but in respect of one of the elements of the combination there was a change of form that was said to possess some merit. Beyond that there was no substantial difference between the earlier and later patents.

Held, that while as between the plaintiff and anyone at liberty to dispute the validity of the later patent, it might be impossible on these facts to sustain the patent, as against the assignor who was estopped from impeaching it, it must be taken to