

**Case No. 17,319.** WEBB ET AL. V. BOWERS ET AL.  
[Brunner, Col. Cas. 554;<sup>3</sup> 11 Law Rep. 84.]

Circuit Court, D. Massachusetts.

Oct., 1847.

**COSTS ON INJUNCTION FOR INFRINGEMENT OF COPYRIGHT.**

Where an injunction is refused, but the plaintiff still has a right to proceed at law, if the plaintiff stipulate not to proceed at law, costs will not be awarded to either party.

Rule in relation to costs. The complainants had brought a bill in equity against the respondents for an alleged infringement of copyright. The case having been referred to the master at a former term was argued on his report, and the court refused to grant an injunction, but ordered the case to be continued to enable the complainants to bring a suit at law if they saw fit. The respondents moved that the bills be dismissed with costs, but WOODBURY, Circuit Justice, held, that the case seemed to come within one of the exceptions to the general rule, that costs must go with the prevailing party. The exception was that where the remedy in equity was refused, and yet the party plaintiff might proceed at law, costs would not be allowed. But the complainants must stipulate that they will not proceed at law or costs will be allowed. It was ordered that costs should be refused to both parties if the complainants should, within ten days, enter a stipulation not to proceed at law.

<sup>3</sup> [Reported by Albert Brunner, Esq., and here reprinted by permission.]