

The allegations of the petition in reference to this question of the identity of the mill dogs are general, and, so far as they refer specially to the Illinois and Michigan suits, are on information and belief. Upon the issue raised on that subject by the petition and answer, the case is one that requires proofs.

Reference was made in the argument to a case decided by Judge BLODGETT, in the northern district of Illinois, wherein he is said to have restrained suits by the patentee against the vendees of an infringing manufacturer. The case is unreported, and for certainty of information I have consulted Judge BLODGETT with reference to it, and am advised that the patented article in question was an article of food which was held for sale by dealers who had purchased from the manufacturer. There was no doubt at all that the article thus purchased and held by dealers was the very same, and only the same, as that involved in the controversy between the patentee and the manufacturer. The court could, therefore, see that the right to restrain the suits brought or threatened against the dealers was plain and undoubted. While the court will, if desired, refer this proceeding to a master to take proofs upon the issues raised by the petition and answer, it seems to the court more suitable that the question, whether the prosecution of the suits in Illinois and Michigan should be stayed to await the result of the cases here, should be remitted to the courts where those suits are pending, and for the reason that those courts can more directly take cognizance and be advised of what is involved in the cases before them than can this court, and, in the state of the litigation here between Allis and Stowell, can be easily advised of the claims of the owner of the patent in the two suits pending in this court.

The injunction prayed for must be denied, and the restraining order heretofore granted will be dissolved.

PROCTOR v. BRILL and others.*

(Circuit Court, E. D. Pennsylvania. March 6, 1883.)

1. COSTS IN PATENT CASES—DISCLAIMER—SECTION 973, REV. ST.

Costs cannot be recovered upon a judgment for an infringement of a patent containing several claims, some of which had been abandoned at the trial, unless a disclaimer has been filed before suit brought, in accordance with section 973, Rev. St.

*Reported by Albert B. Guilbert, Esq., of the Philadelphia bar.

2. SAME—AMENDMENT OF JUDGMENT—PATENT No. 21,026.

In an action at law for an infringement of letters patent No. 21,026, (reported in 4 FED. REP. 415,) containing two claims, after the evidence was in, plaintiff abandoned the first claim and a verdict was rendered for the plaintiff for six cents damages and costs, and judgment entered thereon. It appearing that no disclaimer of the first claim of the patent had been filed, the court, upon motion, amended the judgment by striking therefrom the words "with costs."

This was a motion to amend a judgment, entered upon a verdict, by striking therefrom the words "with costs."

In an action at law for infringement of letters patent No. 21,026, (reported in 4 FED. REP. 415,) containing two claims, upon the trial, after the evidence was in, plaintiff abandoned the first claim, and a verdict was rendered for the plaintiff for six cents damages and costs. On February 20, 1883, judgment was entered upon the verdict, and costs assessed at \$322. On March 1, 1883, the court entered this rule to show cause why the judgment should not be amended by striking therefrom the words "with costs;" it having appeared that the plaintiff had not filed a disclaimer of his first claim before suit brought, in accordance with section 973 Rev. St., which provides as follows:

"When judgment or decree is rendered for the plaintiff, in any suit at law or in equity, for the infringement of a part of a patent, in which it appears that the patentee, in his specification, claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the original and first inventor, no costs shall be recovered unless the proper disclaimer, as provided by the patent laws, has been entered at the patent-office before the suit was brought."

Walter George Smith and Francis Rawle, for the rule.

N. H. Sharpless, contra.

THE COURT (McKENNAN and BUTLER, JJ.) made the rule absolute, and ordered that the judgment should be amended by striking therefrom the words "with costs."

THE VENUS, etc.

(District Court, S. D. New York. June 5, 1883.)

1. COLLISION—ERIE CANAL—STOPPING

In a collision on the Erie canal between the steam-boat V. and the canal-boat M., which was the third boat in a tow on a hawser from a steam-cable tug-boat, where the V. claimed to have rubbed along the port quarter of the boat ahead of the M. through want of room to avoid her, and the V.'s bows