

STEWART ET AL. V. THE SUN.
SAME V. THE TRIBUNE.

Circuit Court, S. D. New York.

August 31, 1888.

COSTS—SECURITY FOR COSTS—TIME OF MOTION.

The federal courts may require security for costs from solvent non-resident plaintiffs at any time when no prejudice to plaintiffs' rights is shown to have resulted from defendant's delay in moving.

On Motion for Security for Costs.

R. D. Benedict, for complainants.

Sackett & Bennett, for Tribune Association.

Franklin & Clifford and *A. H. Bartlett*, for the Sun.

LACOMBE, J. The state courts which refuse to require security for costs from a non-resident plaintiff, where defendant has delayed moving until after answer is served, also hold that impecunious non-residents may not sue *in forma pauperis*. In this court such plaintiffs are allowed this privilege; and an equitable application of the doctrine of *Heckman v. Mackey*, 32 Fed. Rep. 574, would seem to warrant the court in requiring security from solvent non-resident plaintiffs at any time,—at least when no special prejudice to plaintiffs' rights is shown to have resulted from defendant's delay in moving. Defendant in each case may take an order requiring plaintiffs to file security in the amount of \$500.