

action shall be non prossed or discontinued, unless the court for cause shall allow further time."

No. 50: "In all actions at law or suits in equity the plaintiff shall give security for fees before issuing the writ, and in default of such security the attorney or solicitor shall be held answerable for the fees payable by such plaintiff; and in cases where security has not been given pursuant to this rule the attorney or solicitor shall be answerable for all costs and fees which may accrue in such action or suit."

These rules are not restricted to the costs to be paid by the plaintiff to the defendant if he prevails, but embrace all costs and fees, whether due to the prevailing party or chargeable to the plaintiff in favor of any of the officers or attorneys of the court. It is to be held, therefore, that the stipulation for costs signed by the sureties in which they bound themselves as security for the costs and fees in each case covers all the costs and fees in the case for which the plaintiffs could be required to give security; and under the rules it is apparent that the plaintiffs were required to give security, not only for the defendants' costs, if they should be adjudged to pay the defendants their costs, but also for the costs chargeable to the plaintiffs themselves, if not paid. *Henning v. Telegraph Co.*, 40 Fed. 658.

It has been urged that the plaintiffs intended by rules 49 and 50 are only plaintiffs who, by original writs, institute cases in this court, and not those who are brought in by the removal of a case from the state court. I do not think this contention can be sustained. The act of 1875 (18 Stat. 470), under which these cases were removed, provides "the case shall then proceed in the same manner as if it had been commenced in the said circuit court"; so that it would seem clear that rules 49 and 50 were as applicable to these cases as if they had been originally commenced in this court; and that in giving security for all the costs and fees the plaintiffs were only doing what the rules required them to do. My ruling, therefore, is that sureties are liable for the defendants' costs in both the state court and in this court, and for all the taxable fees due by the complainants in both courts which they have not already paid.

NATIONAL BUTTON WORKS v. WADE.

(Circuit Court, S. D. New York. February 1, 1896.)

COURTS—JURISDICTION IN PATENT CASES—WHERE SUIT MAY BE BROUGHT.

A resident of the Eastern district of New York, who is doing business in the Southern district, and is "found" and served therein, may be sued therein for infringement of a patent by a corporation of another state. In *re Hohorst*, 14 Sup. Ct. 221, 150 U. S. 659, followed.

Motion to Dismiss Bill for Want of Jurisdiction.

The complainant is a Pennsylvania corporation; defendant a citizen of New York, doing business in the Southern district, but a resident of the Eastern district, of that state. He was "found" in the Southern district, and there served with process. The suit is for infringement of a patent.

W. P. Preble, Jr., for the motion.
Jerome Carty, opposed.

LACOMBE, Circuit Judge. Subsequent to the passage of the act of 1887, and prior to the decision of the supreme court in *Re Hohorst*, 150 U. S. 659, 14 Sup. Ct. 221, applications such as this, when made upon like facts, were uniformly granted in patent causes in this circuit, and the decided preponderance of authority in other circuits approved such a disposition of them; the act of 1887 being construed as operating in restriction of jurisdiction. The opinion in the *Hohorst* Case has been held to apply to all patent causes by Judge Wheeler in *Smith v. Manufacturing Co.*, 67 Fed. 801, and by Judge Townsend to apply only to such suits when brought against aliens. *Union Switch & Signal Co. v. Hall Signal Co.*, 65 Fed. 625. See, also, opinion of Judge Colt in *Donnelly v. Cordage Co.*, 66 Fed. 613. The latter construction commended itself to the judge now sitting, and has been followed in at least two cases, not reported. It is doubtful, however, whether the *Hohorst* Case can be thus distinguished in view of the later opinion of the supreme court in *Re Keasbey & Mattison Co.* (Dec. 16, 1895) 16 Sup. Ct. 273, where that court says that the *Hohorst* Case was "a suit for infringement of a patent right, exclusive jurisdiction of which had been granted to the circuit courts of the United States by sections [of the Revised Statutes] re-enacting earlier acts of congress; and was, therefore, not affected by general provisions regulating the jurisdiction of the courts of the United States concurrent with that of the several states." The motion to dismiss is therefore denied.

GOWEN v. BUSH. DAVISON v. GIBSON. ST. LOUIS & S. F. RY. CO. v. BARKER.

(Circuit Court of Appeals, Eighth Circuit. February 3, 1896.)

Nos. 535, 605, 615.

CIRCUIT COURTS OF APPEALS—JURISDICTION—EFFECT OF CHANGE ON PENDING APPEALS.

Act March 1, 1895 (28 Stat. 693, c. 145), creating a court of appeals for the Indian Territory, containing no clause saving the jurisdiction of the circuit court of appeals for the Eighth circuit over pending appeals and writs of error, the latter court has no power to hear and determine any cases coming from the United States court in the Indian Territory which were pending and undetermined on its docket on March 1, 1895.

In Error to the United States Court in the Indian Territory.

J. W. McCloud, for plaintiff in error Gowen.

William H. H. Clayton (James Brizzolara, James B. Forrester, and James Parks were with him on brief), for defendant in error Bush.

S. B. Dawes (S. S. Fears was with him on brief), for plaintiff in error Davison.

William T. Hutchings (Nathan A. Gibson was with him on brief), for defendant in error Gibson.