

## LEGGETT and others v. COLE.

(Circuit Court, D. Minnesota. ———, 1880.)

1. GEN. ST. OF MINNESOTA, (1878,) c. 75, § 2—EQUITY DOCKET.—A suit brought under the statutes of Minnesota (Gen. St. 1878, c. 75, § 2), by a party in possession of real property, to settle an adverse claim, belongs on the equity docket.  
*Meighen v. Strong*, 16 Minn. 177, followed.

Motion to transfer suit to equity docket.

*Henry J. Horn*, for plaintiffs.

*Albert L. Levi*, for defendant.

NELSON, D. J. This case belongs on the equity docket. The statute permitting a party in possession of real property to bring a suit to settle an adverse claim reads as follows: "An action may be brought by any person in possession, by himself or his tenant, of real property, against any person who claims an estate or interest therein, or lien upon the same, adverse to him, for the purpose of determining such adverse claim, estate, lien, or interest; and any person having or claiming title to vacant or unoccupied real estate may bring an action against any person claiming an estate or interest therein adverse to him, for the purpose of determining such adverse claim, and the rights of the parties respectively." Gen. St. of Minn. (1878) c. 75, § 2. This statute enlarges the class of cases in which equity affords relief in quieting title and possession of real estate.

It was necessary, previous to the enactment of this statute, that the right of the party in possession should be established by repeated judgments in his favor, in actions at law against him, before he could maintain a suit. This statute confers upon the possessor of real property a new right which enables him, without delay, to draw to himself outstanding inferior titles; and the facts are not to be tried by a jury unless the court orders an issue, or the parties consent to such trial. Such was the opinion of the supreme court of the state. *Meighen v. Strong*, 6 Minn. 177-182.

The suit will be transferred to the equity calendar.

## PLIMPTON v. WINSLOW.

(Circuit Court, D. Massachusetts. July 31, 1880.)

1. PATENT No. 55,901 — IMPROVEMENTS IN PARLOR SKATES — PRIOR PATENT. — Patent No. 55,901, granted James L. Plimpton for improvements in parlor skates, is not rendered void by a prior patent for parlor skates containing the same underlying principle, where the differences in construction appeared on inspection, and on evidence as to the state of the art, to be patentable improvements.
2. SAME—SAME—INFRINGEMENT—INJUNCTION.—A preliminary injunction will be issued to restrain the infringement of such patent, although the original patent has expired and such subsequent patent has never been sustained on final hearing, where it clearly appears that that patent has been intentionally infringed under a patent procured for the purpose, where the remedy is important to the plaintiff, and no reason is shown, arising out of the situation of the defendant, why the injunction should not be granted.

In Equity. Motion for injunction, *pendente lite*.

Thomas W. Clarke, for complainant.

John L. S. Roberts, for defendant.

LOWELL, C. J. The complainant, James L. Plimpton, obtained, in 1863, a patent for parlor skates, or skates on rollers, which is admitted to be the first in time, and to have embodied a principle which is necessary to the successful operation of all such skates. That patent has expired. The same inventor obtained, in 1866, the patent No. 55,901, now in suit, which, while it has the underlying principle of the patent of 1863, is maintained by the complainant to be a very great improvement upon the original structure—so great as to have been necessary to the successful practical use of the invention. This patent has been once sustained in this country, though not on a final hearing.

The complainant caused a patent to be taken out in England, which described his skate of 1866 as the best form of embodying his invention, and which made a broad claim to the invention of skates with rollers which cramped or turned so as to enable the skater to make curved lines without raising the rollers from the floor. This patent was repeatedly sustained in England, by verdict and decree, against various