

or doubt. It is quite clear to me that the defendants have been using the Cary process. It may, indeed, be true that they have been using a higher degree of heat than that specially mentioned in the patent; but so did the defendants in the case of *Cary v. Wolff*. So long as the springs are kept below a red heat, the substance of the invention (as Judge WHEELER says) is taken. *Tilghman v. Proctor*, 102 U. S. 707. Nor, in my judgment, is it at all material that the defendants cool their springs by plunging them into cold water. This also was the practice of the defendants in the *Wolff Case*. The beneficial results are secured by subjecting the springs to the prescribed heat, and the patent is altogether silent as to the manner of cooling. And if the springs are not raised to a red heat, it is immaterial whether air-cooling or water-cooling is practiced.

Let a preliminary injunction issue.

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JENSEN *v.* KEASBEY and others.

(Circuit Court, E. D. Pennsylvania. April 28, 1885.)

PATENTS FOR INVENTIONS—EVIDENCE—ANTICIPATION—PEPTONE-PEPSIN.

Anticipation will not be established by evidence of publications that were nothing more than suggestions and speculations of scientific writers who had never tested the practicability of their suggestions or demonstrated the truth or value of their speculations.

In Equity.

*Joshua Pusey*, for complainant.

*Jerome Carty*, for respondent.

BUTLER, J. That the plaintiff's patented product, "peptone-pepsin," is of great utility and patentable (if not anticipated) is undoubted. The alleged infringement is conclusively proved. The defenses—*First*, that for more than two years prior to the patentee's application this article had been exposed to sale; and, *second*, that it had been described in certain publications,—are not sustained by the proofs. No such article is shown to have been so on sale, and no such process as employed by the plaintiff, or article manufactured by him, is shown to have been thus described. Pepsin had been manufactured and sold for many years, but no "peptone-pepsin," such as this patent describes. The publications relied upon show nothing more than suggestions and speculations of scientific writers, who had never tested the practicability of their suggestions or demonstrated the truth or value of their speculations.

A decree will be entered accordingly.

HOSPES, Surveyor General. etc., v. O'BRIEN and others.<sup>1</sup>

(Circuit Court, D. Minnesota. June, 1885.)

## 1. FEDERAL COURTS—PENDENCY OF SUIT IN STATE COURT.

An action pending in a foreign jurisdiction cannot be pleaded in abatement of an action in a domestic forum, even if there be identity of parties, of subject matter, and of relief sought; and where one suit is pending in the state court and another is commenced in a federal court having jurisdiction within the same territorial limits, the second suit will not as a matter of course be abated.

## 2. LOGS AND LUMBER—CONSTITUTIONALITY OF GEN. ST. MINN. 1878, CH. 32, TIT. 3, § 25—SCALING LOGS.

Section 25, tit. 3, c. 32, Gen. St. Minn. 1878, is not unconstitutional.

## 3. SAME—REPEAL OF LAW.

Gen. St. Minn. 1878, c. 32, tit. 3, § 25, has not been repealed and is still in force.

This suit was commenced in the district court of Washington county, Minnesota, and is removed to this court. The complainant is the surveyor general of logs and lumber, appointed by the governor of the state of Minnesota for the First lumber district, and charges that the defendants have conspired and confederated together to prevent him and his lawfully appointed deputies from discharging the duties enjoined by law. The complaint sets up in detail the character of the rivers and waters in the district and the amount of logs cut, and other matters about the intermixing and intermingling of logs run down the rivers, and facts tending to show an effort to embarrass the complainant in faithfully performing his duties. A preliminary injunction was issued, an answer is filed by the defendants, and the record in this court contains the complaint, answer, and a writ of injunction issued. A motion is made by plaintiff to remand, and a motion is also made by defendants to dissolve the injunction and dismiss the suit.

*Searles, Ewing & Gail* and *J. N. & I. W. Castle*, for complainant.

*Fayette Marsh* and *Clapp & Macartney*, for defendants.

NELSON, J. The motion made by complainant to remand the cause to the state court is denied. The reasons assigned by defendants for granting the motion to dissolve the injunction and dismiss the suit are—*First*. Want of jurisdiction in the state court of Minnesota to maintain the action. *Second*. Complainant had no capacity to sue. *Third*. The law of Minnesota upon which he bases his right of action is unconstitutional and void: (1) that it is an unjust discrimination against a part of a certain class of people engaged in business which is general throughout the state; (2) that it is a violation of the commercial clause of the constitution of the United States so far, at least,

<sup>1</sup> Reported by Robertson Howard, Esq., of the St. Paul bar.