This term "modified" had not then been applied to starch. Duryea says that he was the first to use it, and no trace of its earlier use has been found. While the term is convenient and scientific, it cannot be said to have any real meaning as applied to starch before this patent.

"Modify," according to Murray, may mean "to make partial changes in, to change (an object) in respect of some of its qualities, to alter or vary without radical transformation"—and, no doubt, this is the sense in which the term is used.

There has been much discussion as to the exact meaning of the expressions "modified starch" and "thin boiling starch," the plaintiff contending that starch that is in any degree changed has become "modified," and that, if the change has resulted in reducing the viscosity to any extent below the viscosity of the crude green starch, this has made the starch a "thin boiling" starch. The defendants, on the other hand, contend that these terms are synonymous, and both indicate a starch of such fluidity as to be known to the laundry trade as "thin boiling," *i.e.*, having what has been called a degree of viscosity of 40 or less.

The true view can, I think, best be determined after a consideration of the patents in question.

The plaintiff originally claimed an injunction restraining the infringement of this patent by the defendants, and the defendants in answer set up a license or agreement to license, and, in the alternative, that the patent was invalid. The plaintiff denied that the agreement to license was binding, and alleged that any right to manufacture had been lost by the defendants' defaults. An order was made by the Master in Chambers permitting the plaintiff to amend by withdrawing his claim to an injunction based on the allegation of infringement, without imposing any terms as to admission of the invalidity of the patent; and the plaintiff then contented himself with a claim for a declaration that there is no license subsisting entitling the defendants to use the patented process. I think this order was improvidently made, and that the Master ought not to have permitted this claim, once made, to be withdrawn, save upon terms amounting to its abandonment—but, as it is, this claim can now be raised in a substantive action. On motion made at the trial, I was compelled to strike out the defendants' counterclaim asking a declaration of the invalidity of the patent, as this Court has no jurisdiction to declare a patent invalid save as an incident to a defence in an action for infringement. . . .

Leaving out of consideration for the present any complication arising from Kaufman's position, the situation is this.