

FORD *v.* KURTZ AND OTHERS.

Circuit Court, N. D. Illinois.

July 7, 1882.

1. PATENTS FOR
INVENTIONS—INFRINGEMENT—DAMAGES.

Where the infringement was neither wilful nor malicious, only the net profits realized from the manufacture and sale of the patented articles will be allowed.

2. COSTS.

Where the defendants were willing, at the outset, and offered to pay the amount of net profits realized by them, and costs have been unnecessarily accumulated, the parties should pay their own costs, and each party pay half the master's fee.

Mr. Bellows, for complainant.

Mr. Sherburne, for defendants.

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HARLAN, Justice, (*orally*.) The findings of the master in this case are correct. The infringement by defendants of complainant's patent was neither wilful nor malicious. The case does not justify a decree against them beyond the net profits realized from the manufacture and sale of the patented articles. That sum is found to be \$28.06. For that sum the complainant may have a decree.

In reference to the costs the conclusion is justified by the record that the defendants were willing at the outset, and through their attorney offered, to pay to the complainant the amount of the net profits realized by them, but the complainant was desirous of mulcting them in damages, under circumstances not calling for such a course. Costs have been unnecessarily accumulated, and I think it just that the parties be required to pay their own costs, and each party must pay one-half of the master's fee, as it may hereafter be fixed by the circuit judge.

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