PROCTOR *v.* BRILL AND OTHERS.*

Circuit Court, E. D. Pennsylvania. March 6, 1883.

1. COSTS IN PATENT CASES—DISCLAIMER—SECTION 973, REV. ST.

Costs cannot be recovered upon a judgment for an infringement of a patent, containing several claims, some of which had been abandoned at the trial unless, a disclaimer has been filed before suit brought, in accordance with section 973, Rev. St.

2. SAME—AMENDMENT OF JUDGMENT—PATENT NO. 21,026.

In an action at law for an infringement of letters patent No. 21,026, (reported in 4 Fed. Rep. 415,) containing two claims, after the evidence was in, plaintiff abandoned the first claim and a verdict was rendered for the plaintiff for six cents damages and costs, and judgment entered thereon. It appearing that no disclaimer of the first claim of the patent had been filed, the court, upon motion, amended the judgment by striking therefrom the words "with costs."

This was a motion to amend a judgment, entered upon a verdict, by striking therefrom the words "with costs."

In an action at law for infringement of letters patent No. 21,026, (reported in 4 Fed. Rep. 415,) containing two claims, upon the trial, after the evidence was in, plaintiff abandoned the first claim, and a verdict was rendered for the plaintiff for six cents damages and costs. On February 20, 1883, judgment was entered upon the verdict, and costs assessed at $322. On March 1, 1883, the court entered this rule to show cause why the judgment should not be amended by striking therefrom the words "with costs;" it having appeared that the plaintiff had not filed a disclaimer of his first claim before suit brought, in accordance with section 973 Rev. St., which provides as follows:

"When judgment or decree is rendered for the plaintiff, in any suit at law or in equity, for the infringement of a part of a patent, in which it appears that the patentee, in his specification, claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the original and first inventor, no costs shall be recovered unless the proper disclaimer, as provided by the patent laws, has been entered at the patent-office before the suit was brought."

Walter George Smith and *Francis Rawle,* for the rule.

N. H. Sharpless, contra.

The Court (MCKennan and Butler, JJ.) made the rule absolute, and ordered that the judgment should be amended by striking therefrom the words "with costs."

* Reported by Albert B. Guilbert, Esq., of the Philadelphts bar.