

URNER *v.* KAYTON AND OTHERS.

Circuit Court, S. D. New York. August 2, 1883.

PATENTS—INFRINGEMENT—MASTER'S
FEES—ACCOUNTING.

Where defendants have been adjudged to be infringers, and decreed to account for the gains and profits and damages of their infringement, they must go forward in the accounting and bear the necessary expenses of so doing, including the master's fee.

In Equity.

John A. Shields, master, *pro se*.

Andrew Comstock, for orator.

Wet more & Jenner, for defendants.

WHEELER, J. This cause has now been heard on motion of the master for payment of his fees on the accounting. It is agreed that his fees amount to \$150. Each party insists that the other should pay them. The question now is, not how the costs shall finally be allowed and taxed in favor of either party against the other, which can be determined properly only at the making of the final decree, but is, which party shall pay these fees in the first instance? As the defendants 540 have been adjudged to be infringers, and decreed to account for the gains, profits, and damages of their infringement, they are to go forward in the accounting and bear the necessary expenses of doing so, among which are the master's fees. This was so held in *Bridges v. Sheldon*, Dist. Vt. Oct. Term, 1879.

Let an order be entered that the defendants pay these fees within 15 days from the entry of the order.