

URNER *v.* KAYTON.

Circuit Court, S. D. New York. August 16, 1883.

PATENTS FOR
INVENTIONS—INFRINGEMENT—COSTS.

Where, in an accounting for profits and damages for infringement of a patent, the orator has recovered on the merits, and the defendant has not prevailed upon any issue upon any distinct item in the case, the costs will not be apportioned, but defendant held liable for the whole amount.

In Equity.

Mr. Comstock, for orator.

Mr. O'Callaghan, for defendant.

WHEELER, J. The defendant, on accounting for profits and damages for infringement of patent, has, under order of court, paid the master's fees, and moves for an apportionment of costs on the final decree for the orator for \$100 profits. The orator has a substantial recovery on the merits for the wrongful invasion of his rights by the defendant. The defendant has not prevailed upon any issue upon any distinct item made in the case, so far as is made to appear. The costs are all the consequence of his wrongful acts for which the orator has recovered, and should be borne by him.

Motion for apportionment denied.