

CLARK *v.* WILSON.

*Circuit Court, S. D. New York.*

January 3, 1888.

CONTEMPT—WHAT CONSTITUTES—ANSWER BEFORE REFEREE.

On a reference, after decree, to a master to ascertain how many infringing articles defendant had made, in answer to such a question, he stated, "None." *Held*, that he was not guilty of contempt in making the answer.

In Equity. Accounting before a master.

Alexander Clark sued James G. Wilson, defendant, for infringement of patent. Decree for plaintiff, and reference to a master.

*A. J. Todd*, for complainant.

*Francis Forbes*, for defendant.

LACOMBE, J. The decree refers the case to a master to ascertain, take, and report the number of (infringing) shutters made, used, or sold by the defendant prior to May 2, 1886; and defendant is thereby directed and required to attend before the master from time to time, as required, and to produce before him such books, papers, exhibits, statements, vouchers, and documents as he may be directed by said master to produce, and to submit to such oral or other examination as the master may direct. The parties being before the master, the latter directed defendant to produce a statement of the number of the infringing articles manufactured or sold by him during the period covered by this accounting as set forth in the decree; the statement to give also the prices at which such infringing articles were sold. The defendant presented a statement as follows: "Number of infringing articles manufactured and sold by me prior to May 2, 1886: None. [Signed] JAMES E. WILSON." The master submits to the court the question whether the defendant is to be adjudged guilty of contempt in making this statement, apparently on the theory that such a statement is inconsistent with defendant's former testimony, and with the defense he interposed to the suit. *Non constat*, however, that his present statement is untrue, and it would be a strange proceeding for the court to compel a party by a process of contempt to make a false return. The defendant's statement binds nobody. He is before the master, with all his books and papers, and it is the master, not the defendant, who is to take and state the account. When books or papers are withheld, or answers to pertinent questions refused, or the falsity of his statements is demonstrated, it will be time enough for the master to invoke the aid of the court.