

determined according to the facts as they shall thus be made to appear. But however that may be, upon the application as made below the leave was properly refused, and the decree to that effect is consequently

*Affirmed.*

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ELASTIC FABRICS COMPANY v. SMITH.

1. Where letters-patent expired before the final determination of the suit brought by the patentee complaining of the infringement of them, and praying for an injunction and an account, and the court below, by its decree, sustained their validity and awarded him costs, but neither damages nor profits, and the defendant appealed, this court, as the only question now involved is that of costs, affirms the decree without examining the merits.
2. Where such letters had been reissued in separate divisions, and the patentee filed in the Patent Office a disclaimer in regard to one of them, after bringing a suit for the infringement of the others, the validity of which was sustained, and the fact of infringement found by the court below, — *Held*, that sect. 4922, Rev. Stat., has no application to the case, and that he is entitled to costs.

APPEAL from the Circuit Court of the United States for the District of Massachusetts.

This is a bill in equity, filed Nov. 19, 1868, by William Smith against the Glendale Elastic Fabrics Company, wherein he alleges that he is the original and first inventor of certain new and useful improvements in corded and elastic fabrics, for which letters-patent of the United States No. 9653, dated April 5, 1853, were, in due form, issued to him; that the letters, after they were extended, March 28, 1867, for seven years, were finally reissued in three parts, — reissue No. 2848, Jan. 14, 1868, division A, for improvements in weaving; reissue 3014, June 30, 1868, division B, for improvements in woven fabrics; and reissue No. 2844, Jan. 14, 1868, division C, for improvements in looms for weaving; that the company has infringed the rights secured to him by divisions A and C. He therefore prays for an injunction and an account.

The company denies the allegations of the bill as to novelty and infringement, and claims that the reissues were illegal.

Smith, Jan. 22, 1870, filed in the Patent Office a disclaimer alleging that the specifications and claims of division B are too broad, and include that whereof he is not the inventor.

The court below, on the cause being set down for hearing, adjudged that the letters as reissued in division A and division C were valid; that Smith was the original and first inventor of the improvements therein described; that he recover of the company the profits received or made by it from the use, manufacture, or sale of the patented improvement; that a master take and report an account of such profits; and that an injunction be awarded.

The master reported that the company had made no profits, and the court, Jan. 27, 1876, passed a decree against the company for costs of suit. The company thereupon appealed.

*Mr. Benjamin Dean* for the appellant.

*Mr. R. P. Lowe* for the appellee.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

For all practical purposes, except costs, the appellant was successful in the court below. While the validity of the appellee's patent was sustained, it was a fruitless victory to him, because the patent expired before the determination of the suit, and the court found that he was not entitled to recover from the appellant either profits or damages. As the decree stands, it sustains an expired patent, and does no more. When it was rendered against him, the appellant was left at liberty to use the patented machine in any way he chose, and he has not been required to pay any thing for the use he made of it while the patent was in force. The appeal, therefore, presents only a moot case except as to costs.

We think the disclaimer as to the reissued patent, division B, had no effect on the costs in this case, because the question presented for decision was whether, notwithstanding that disclaimer, the other divisions of the reissue should be sustained. The statute as to costs after a disclaimer (Rev. Stat., sect. 4922), therefore, has no application to this suit, and the appeal is practically reduced to the single question whether, if the decree below should be reversed, the appellee ought to have

his costs in that court, and, if so, how much. No appeal lies from a mere decree respecting costs and expenses. *Canter v. The American and Ocean Insurance Companies*, 3 Pet. 307. As this case comes within the reason of that rule, we affirm the decree below without examining the merits.

*Decree affirmed*

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RAILROAD COMPANY v. TROOK.

Where a judgment for the recovery of money, affirmed in the Supreme Court of the District of Columbia, is brought here for re-examination, the amount thereof, without adding interest or costs, determines the value of "the matter in dispute," under the act of Feb. 25, 1879 (20 Stat. 320), and, if it does not exceed \$2,500, this court has no jurisdiction.

MOTION to dismiss a writ of error to the Supreme Court of the District of Columbia.

Trook, in an action in the court below against the Baltimore and Potomac Railroad Company, recovered judgment, Feb. 19, 1877, for \$4,000 and costs of suit. A motion for a new trial was then made on exceptions taken during the progress of the cause, and on account of excessive damages. Trook entered a *remititur* of \$1,500, and the judgment was ultimately affirmed at a hearing in general term. The company then removed the case here by writ of error, which Trook moves to dismiss, on the ground that this court, under the act of Feb. 25, 1879 (20 Stat. 320), has no jurisdiction, as the "matter in dispute exclusive of costs" does not exceed "the value of \$2,500."

*Mr. James G. Payne* in support of the motion.

*Mr. Enoch Totten*, contra.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

In cases brought here by writ of error for the re-examination of judgments of affirmance in the Supreme Court of the District of Columbia, the value of the matter in dispute is determined by the judgment affirmed without adding interest