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Hong Kong, in China, on the 1st of June, 1854, two hundred and sixty-three passengers. That this was a greater number than in proportion to the space occupied by them, viz: "on the lower deck or platform" one passenger for every fourteen clear superficial feet, with intent to bring said passengers to the United States. That he afterwards, viz: on the 26th day of August, did bring them on said vessel to the port of San Francisco. That the passengers so taken on board and brought into the United States did exceed the number which could be lawfully taken, to the number of twenty in the whole, &c.

The act does not require an averment that the passengers "were carried or imported on the lower deck or the orlop deck."

The libel sets forth every averment of time, place, numbers, intention, and act, in the very words of the statute. It was not necessary to specify the precise measurement of the deck, or to show by a mathematical calculation its incapacity; nor to state the sex, age, color, or nation, of the passengers; nor how many more than twenty their number exceeded the required area on deck. All these particulars were matters of evidence, which required no special averment of them to constitute a complete and technical description of the offence.

The decree of the District Court is therefore reversed, and record remitted for further proceedings.

WILLIAM H. SEYMOUR AND LAYTON S. MORGAN, PLAINTIFFS IN
ERROR, v. CYRUS H. MCCORMICK.

The act of Congress passed on the 3d of March, 1837, (5 Stat. at L., 194,) provides that a patentee may enter a disclaimer, if he has included in his patent what he was not the inventor of; but if he recovers judgment against an infringer of his patent, he shall not be entitled to costs, unless he has entered a disclaimer for the part not invented.

It also provides that if a patentee unreasonably neglects or delays to enter a disclaimer, he shall not be entitled to the benefit of the section at all.

In 1845, McCormick obtained a patent for improvements in a reaping machine, in which, after filing his specification, he claimed, amongst other things, as follows, viz:

"2d. I claim the reversed angle of the teeth of the blade, in manner described.

"3d. I claim the arrangement and construction of the fingers, (or teeth for supporting the grain,) so as to form the angular spaces in front of the blade, as and for the purpose described."

These two clauses are not to be read in connection with each other, but separately.

The first claim, viz: for "the reversed angle of the teeth of the blade," not being new, and not being disclaimed, he was not entitled to costs, although he recovered a judgment for a violation of other parts of his patent.

Under the circumstances of the case, the patentee was not guilty of unreasonable neglect or delay in making the disclaimer, which is a question of law for the court to decide.

The facts that a similar machine was in successful operation in the years 1829 and 1853, do not furnish a sufficient ground for the jury to presume that it had been in continuous operation during the intermediate time.

The fifteenth section of the patent act of 1836, which allows the defendant to give in evidence that the improvement had been described in some public work anterior to the supposed discovery of the patentee, does not make the work evidence of any other fact, except that of the description of the said improvement.

THIS case came up, by writ of error, from the Circuit Court of the United States for the northern district of New York.

It was a suit brought by McCormick against Seymour and Morgan, for a violation of his patent right for reaping machines, which suit was previously before this court, and is reported in 16 Howard, 480.

It will be seen by reference to that case that McCormick obtained three patents, viz: in 1834, 1845, and 1847. The suit, as originally brought, included violations of the patent of 1845, as well as that of 1847; but the plaintiff, to avoid delay, proceeded then only in his claim for a violation of the patent of 1847, which consisted chiefly in giving to the raker of the grain a convenient seat upon the machine. When the case went back under the mandate of this court, the claim was for the violation of the patent of 1845, that of 1847 being mentioned only in the declaration, and not brought before the court upon the trial, the main question being the violation of the patent of 1845.

McCormick's claim in the patent of 1845 was as follows, viz:

I claim, 1st, the curved (or angled downward, for the purpose described) bearer, for supporting the blade in the manner described.

2d. I claim the reversed angle of the teeth of the blade, in manner described.

3d. I claim the arrangement and construction of the fingers, (or teeth for supporting the grain,) so as to form the angular spaces in front of the blade, as and for the purpose described.

4th. I claim the combination of the bow, L, and dividing iron, M, for separating the wheat in the way described.

5th. I claim setting the lower end of the reel-post, R, behind the blade, curving it at R 2, and leaning it forward at top, thereby favoring the cutting, and enabling me to brace it at top by the front brace (S) as described, which I claim in combination with the post.

The fourth and fifth claims were those which were alleged to have been infringed.

The defendants pleaded the general issue, and gave notice of various prior inventions and publications in public works, which they designed to give in evidence in their defence. The last trial was had in October, 1854, when the plaintiff obtained

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a verdict for \$7,750, and judgment was entered in June, 1855, for \$10,348.30.

There were twenty exceptions taken in the progress of the trial, twelve of which were as to rulings upon points of evidence, which it is not material to notice. The remaining eight were to portions of the charge of the court to the jury.

The defendants, in addition to other matters of defence, alleged that the second claim was not new, and that as there had been unreasonable delay in the disclaimer of it, the plaintiff was not entitled to recover at all; and, at all events, was not entitled to recover costs.

Only such portions of the charge of the court to the jury will be here inserted, as were the subjects of the opinion of this court.

One part of the charge was as follows, viz:

"The claim in question is founded upon two parts of the patent. As the construction of that claim is a question of law, we shall construe it for your guidance. In the fore part of the patent, we have a description of the blade, and of the blade-case, and of the cutter, and of the mode of fastening the blade and the blade-case and the cutter, and of the machinery by which the arrangement is made for the cutter to work. We have also the description of the spear-shaped fingers, and of the mode by which the cutter acts in connection with those fingers. Then, among the claims are these: '2. I claim the reversed angle of the teeth of the blade in manner described. 3. I claim the arrangement of the construction of the fingers, (or teeth for supporting the grain,) so as to form the angular spaces in front of the blade, as and for the purpose described.' Now, it is insisted, on the part of the learned counsel for the defendants, that this second claim is one simply for the reversed angles of the sickle-teeth of the blade. These teeth are common sickle-teeth, with their angles alternately reversed in spaces of an inch and a quarter, more or less. The defendants insist that the second claim is merely for the reversed teeth on the edge of the cutter, and that the reversing of the teeth of the common sickle as a cutter in a reaping machine was not new with the plaintiff; and that if it was new with him, he had discovered it and used it long before his patent of 1845. The defendants claim that Moore had discovered it as early as 1837 or 1838; and it would also seem that the plaintiff had devised and used it at a very early day after his patent of 1834—that is, the mere reversing of the teeth. But, on looking into the plaintiff's patent more critically, we are inclined to think that when the plaintiff says, in his second claim, 'I claim the reversed angle of the teeth of the blade, *in manner described*,' he

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means to claim the reversing of the angles of the teeth *in the manner previously described in his patent*. You will recollect that it has been shown, in the course of the trial, that in the operation of the machine, the straw comes into the acute-angled spaces on each side of the spear-shaped fingers, and that the angles of the fingers operate to hold the straws, while the sickle-teeth, being reversed, cut in both directions as the blade vibrates. The reversed teeth thus enable the patentee to avail himself of the angles on both sides of the spear-shaped fingers; whereas, if the sickle-teeth were not reversed in sections, but all ran in one direction like the teeth of the common sickle, he could use the acute angles upon only one side of the fingers, because the cutter could cut only in one direction. We are therefore inclined to think that the patentee intended to claim, by his second claim, the cutter having the angles of its teeth reversed, in connection with the angles thus formed by the peculiar shape of the fingers. And, as it is not pretended that any person invented that improvement prior to the plaintiff, the point relied on in this respect by the learned counsel for the defendant fails."

The other parts of the charge which were excepted to by the counsel for the defendants were thus specifically mentioned.

To so much of the charge of the court as instructed the jury, in substance, that the plaintiff, in his patent of January 31st, 1845, did not claim the reversed angle of the teeth of the blade as a distinct invention, but only claimed it in combination with the peculiar form of the fingers described in the same patent, the defendant's counsel excepted.

The defendant's counsel requested the court to instruct the jury, that if they should be satisfied that Hiram Moore was the first inventor of the reversed angle of the teeth of the blade, and that the plaintiff was notified of that fact by the testimony of Moore on the trial of this cause in June, 1851, and had not yet disclaimed that invention, then, in judgment of law, he has unreasonably delayed filing his disclaimer, and the verdict should be for the defendants.

The court declined so to instruct the jury, and the defendant's counsel excepted to the refusal.

The defendant's counsel further requested the court to instruct the jury, that if they should be satisfied that Hiram Moore was the first inventor of the reversed angle of the teeth of the blade, and that the plaintiff was notified of that fact by the testimony of Hiram Moore on the trial of this cause in June, 1851, and had not yet disclaimed that invention, then it was a question of fact for them to decide, whether the plaintiff had or had not unreasonably delayed the filing of a disclaimer;

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and, if they should come to the conclusion that there had been such unreasonable delay, their verdict should be for the defendants.

The court refused so to instruct the jury, and the defendant's counsel excepted to the refusal.

The defendant's counsel requested the court to submit to the jury the question under the evidence in the case, whether the plaintiff did or did not claim, in his patent of January 31st, 1845, the reversed angle of the teeth of the blade, independent of any combination.

The court refused to submit that question to the jury, and the defendant's counsel excepted to the refusal.

The defendant's counsel also asked the court to instruct the jury, that, from the facts that Bell's machine operated successfully in 1829, and that it operated well also in 1853, they were at liberty to infer that it had operated successfully in the intermediate period, or some part of it.

But the court held and charged, that there being no evidence respecting it, except at the trial of it in 1829, and the trial of it in 1853, the jury could not infer anything on the subject, and refused to charge as requested. The defendant's counsel excepted to the refusal, and also excepted to the charge in this respect.

Upon these exceptions, the case came up to this court, and was argued by *Mr. Harding* and *Mr. Stanton* for the plaintiffs in error, and by *Mr. Dickerson* and *Mr. Johnson* for the defendant. There was also a brief filed by *Mr. Selden* for the plaintiffs in error.

It is almost impossible to convey to the reader a clear idea of the argument, because models and drawings were produced in court by the counsel on both sides. The points made, however, were the following, viz:

For the plaintiff in error.

VI. The construction given in the court below, to the second claim of the patent of 1845, was erroneous.

1. The words "in manner described," used in the second claim, refer exclusively to the description of the construction of the sickle, given in folio 155, without reference to the peculiar shape of the fingers, or to any combination whatever. They refer to the straight blade alone, with the specified positions of its teeth.

To test this construction, suppose a prosecution under this claim, of one who used such *blade* as is here described, with fingers having parallel sides, forming right angles with the

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line of the blade—could it be said that this claim was not infringed? If it could not, there must be error in the charge on this point.

The construction given to this claim by the court would permit the free use by the public of the reversed angle of the sickle, *when not combined with the spear-headed finger*. Can that be reconciled with the language of the patentee, either in the description of his invention, or of the claim based upon it?

If it can, a similar construction must be given to the third claim, which is thus rendered *identical with the second*, as each will then cover *exactly the same combination*, and the spear-head finger will be given to the public, except when combined with the straight blade and reversed angle of the teeth.

We suppose the correct rule for the interpretation of patents is laid down by Mr. Curtis, in his Treatise on Patents, sec. 126. "The nature and extent of the invention claimed by the patentee, is the thing to be ascertained; and this is to be arrived at through the fair sense of the words which he has employed to describe his invention." But that rule, even as limited or aided by the principle referred to in section 132, viz: "that a specification should be so construed as, consistently with the fair import of language, will make the claim co-extensive with the actual discovery," does not relieve the plaintiff here from the distinct claim of the reversed teeth of the blade *as an independent invention*.

This principle was well applied in the case of *Haworth v. Harcastle*, (Webster's Pat. Cases, 484, 485,) from which it was taken by Mr. Curtis. In that case it is shown, by the opinion of Chief Justice Tindal, that a forced construction of the language of the patent was required to make the claim embrace what it was alleged to embrace; but in the present case a forced construction not only of the language of the claim, but of the description of the invention, must be adopted to exclude the claim of the reversed teeth of the blade as an independent invention. Such latitude of interpretation cannot be safely allowed of a patent, or any other instrument. Neither is it necessary for the protection of the rights of the patentee. If he made "a mistake, the patent law affords means of correcting it; but until corrected, the claim must be taken as it stands, whatever error may have led to it." (*Byam v. Farr*, 1 Curtis, 263; Act of 1836, sec. 13.)

A patent for an invention is a grant from the Government, and should be construed, as we suppose, *like all other grants, fairly and liberally for the accomplishment of the objects designed by it*, and not otherwise. (Curtis, sec. 386.) Rights, the result of intellectual labor, are no doubt sacred; but we believe them no

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more sacred than those which are the result of more humble toil, and that *the same liberality of interpretation* should be extended to the title-deeds of both. That those rules of construction which are applied to patents for lands should be applied to patents for inventions. That the latter should no more be stretched beyond the fair import of their terms when the interest of the patentees would be promoted by their extension, or contracted in like degree when their interest would be promoted by their restriction, than should any other deeds or contracts. (Godson on Patents, 204, 205; Leroy v. Tatham, 14 How., p. 176.)

Any more loose construction would render nugatory the statute requiring "a written description of the invention," &c., in "full, clear, and exact terms," and in case of any machine, that the patentee "*shall particularly specify, and point out the part, improvement, or combination, which he claims as his own invention or discovery.*" (Act of 1836, sec. 6.)

And it would render entirely useless the provision in section 13 of the same act, providing for the amendment of defective specifications.

The reason usually given for requiring a more liberal construction of patents, than of other instruments, is, that there is a great difficulty in giving exact descriptions of inventions. Conceding the fact to be so, it may be a sufficient answer to say, that the statute *requires an exact description* as a condition of the grant. But, aside from the statute, it should be borne in mind, that every mechanic in the land is bound, *at his peril, to decide correctly; from the specification, what every patent, touching his business, covers*; and the question is, if the subject be difficult, where should the responsibility of its solution rest—upon him who makes the description of *his own work*, for his *own interest*, and with all the aids to be derived from the Patent Office, and, if he chooses, from patent agents, and men of science skilled in such matters, or from the mechanic pretending to no particular knowledge on the subject, having no interest, and often deprived of all extraordinary aids? We think that both reason and the statute demand of him, who claims the exclusive right, to define clearly the limits of his invention. It can in no case be difficult for an inventor to say, distinctly, whether he claims two or more elements singly, or merely in combination. (Evans v. Hettick, 3 Wash., p. 408; S. C., 1 Robb, 166.)

2. The point was material.

Hiram Moore used such a sickle as early as 1836, if not in 1834, and this was proved on the first trial of this case, as long ago as June, 1851. Notice of this invention by Moore was

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given to the plaintiff as early as September, 1850. The sickle, as used by Moore in 1836, was also described by witnesses examined in October, 1851, and cross-examined by plaintiff's counsel in this cause.

The plaintiff in his history of his invention, sworn to January 1, 1848, presented to the Commissioner of Patents, for the purpose of obtaining an extension of his first patent, shows, as we think, that he did not use the blade with reversed teeth until the harvest of 1841.

Under these circumstances, we insist that the plaintiff was called upon, during the three years that intervened between the trial in June, 1851, and that in October, 1854, to disclaim the invention of the reversed angle of the teeth of the blade.

It was therefore a question for the jury, under section 9 of the act of March 3d, 1837, (Curtis pp. 489, 490,) whether the plaintiff had not unreasonably neglected or delayed to enter at the Patent Office his disclaimer.

To allow a patentee, under such circumstances, to designedly delay a disclaimer, would defeat the manifest object of the last proviso to section 9 above referred to, which was to compel a patentee who had inadvertently covered by his patent something to which he was not entitled, and thus wrongfully obstructed its free use, to remove the obstruction as soon as possible after the discovery of his mistake.

XI. The request of instructions to the jury, "that from the facts that Bell's machine operated successfully in 1829, and that it operated well also in 1853, they were at liberty to infer that it had operated successfully in the intermediate period, or some part of it," should have been given; and the actual charge, "that there being no evidence respecting it, except the trial of it in 1829, and the trial of it in 1853, *the jury could not infer anything on the subject,*" was erroneous.

What the evidence was, of the use of Bell's machine, will be found in Loudon's Encyclopædia of Agriculture, pp. 442 to 427, and from the testimony of Obed Hussey.

We think that on this evidence, (that the machine used in England was that described by Loudon,) it was proper to submit to the jury the question as to its operation, and not to place it under the ban as an entire failure, which seems to be the effect of the charge, as it was given.

If it operated well in 1829 and in 1853, which is clearly proved, and is assumed by the judge, it must certainly have been *capable* of operating well at any intermediate time. Whether actually used or not, is wholly immaterial.

And if the machine as a whole operated well, then the divider, reel, and reel-bearer, each, operated well, and the reel

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was supported by a practically successful contrivance, which formed no impediment in the way of the divider, or of the division and separation of the grain, and on which no straws could clog, as the entire space beneath the reel-shaft is, in this machine, left unobstructed by the reel-bearer, which is horizontal some feet above the platform, and completely out of the reach of the grain. There is no difference between the reel-bearer in the machine of the plaintiffs in error and that in Bell's machine. Waters, (McCormick's witness,) on being shown the drawing of Bell's machine, in Loudon's Encyclopædia of Agriculture, says: "As a mere manner of supporting the reel, I see no difference between the method of supporting the reel in this and the defendant's machine."

This prior invention of Bell's, if the court had not substantially excluded it from the consideration of the jury, would have furnished a complete answer to the charge of infringement of the fifth claim of McCormick's patent of 1845. (*Evans v. Hettick*, 3 Wash., p. 408; S. C., 1 Robb, p. 166.)

XII. It was erroneous to grant *costs* to the plaintiff, inasmuch as it appeared that he was not the first inventor of the reversed angle of the sickle, and had not filed a disclaimer prior to the commencement of the suit. (Act of 1837, sec. 9.)

The testimony showed conclusively that Moore was the first inventor of the reversed angle of the teeth.

Points for the defendant in error:

Thirteenth Exception.—The description annexed to the letters patent of plaintiff describes a sickle with reversed-cut teeth, and then describes the manner in which this reversed-cut sickle operates in connection with the spear-headed fingers, "forming an acute angle between the edge of the blade and the shoulder of the spear, by which the grain is prevented from yielding to the touch of the blade." The specification then claims "the reversed angle of the teeth of the blade in manner described."

1. It also appeared, that ever since the date of the first reaping patent in 1834, the plaintiff had experimented with this reversed sickle edge without producing any successful result, until he combined it in the manner described in the patent of 1845.

2. The sickle, separate and apart from the machine, is no invention, in whatever way the teeth are cut, but when combined in the machine in the manner described, the reversed cut becomes a very valuable invention, enabling the sickle to cut itself clear each stroke; whereas, if the sickle were cut only one way, and the fingers were straight, it would only operate on the grain half the time.

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3. This part of the invention was not infringed.

Fourteenth Exception.—Unreasonable neglect to file a disclaimer under the ninth section of the act of 1837, is a question of fact for the jury.

Fifteenth Exception.—There was no evidence that Moore had ever constructed a reversed-cut sickle in the manner described in the patent of plaintiff, nor that he had ever made one in any manner which was successful—the only claim being, that in 1836-'37 he had made a reversed-cut sickle, and had never seen one before, while the plaintiff had done the same thing in 1834. There was therefore no fact for the jury to find, and it would have been erroneous if the court had submitted an hypothesis unsupported by evidence for their decision.

The construction of the claim also settled this point, because there was a pretence that such a manner of applying the reversed-cut sickle was old.

Twentieth Exception.—The facts stated in this exception, that Bell's machine operated successfully in 1829 and in 1853, are not evidence from which the jury could legally infer that it had operated successfully in the intermediate period, or any part, for there is no rule which raises a presumption of successful operation out of the facts assumed in the prayer, but rather the contrary, since, if it ever did succeed at all, it most probably never would have been abandoned, and then its continued use to a more recent date would have been quite as easily proved as its use at any prior date.

Mr. Justice NELSON delivered the opinion of the court.

This is a writ of error to the Circuit Court of the United States for the northern district of New York.

The suit was brought by McCormick against Seymour and Morgan, for the infringement of a patent for improvements in a reaping machine granted to the plaintiff on the 31st June, 1845. The improvements claimed to be infringed were—1st, a contrivance or combination of certain parts of the machinery described, for dividing the cut from the uncut grain; and 2d, the arrangement of the reel-post in the manner described, so as to support the reel without interfering with the cutting instrument.

In the course of the trial, a question arose upon the true construction of the second claim in the patent, which is as follows: "I claim the reversed angle of the teeth of the blade in manner described." This claim was not one of the issues in controversy, as no allegation of infringement was set forth in the declaration. But it was insisted, on the part of the defendants, that the claim or improvement was not new, but had

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before been discovered and in public use; and that, under the ninth section of the act of Congress passed March 3, 1837, the plaintiff was not entitled to recover cost, for want of a disclaimer of the claim before suit brought; and that, if he had unreasonably neglected or delayed making the disclaimer, he was not entitled to recover at all in the case.

The ground upon which the defendants insisted this claim was not new, was, that it claimed simply the reversed angle of the teeth of the blade or cutters. The court below were of opinion, that, reading the claim with reference to the specification in which the instrument was described, it was intended to claim the reversed angle of the teeth in connection with the spear-shaped fingers arranged for the purpose of securing the grain in the operation of the cutting—the novelty of which was not denied.

The majority of the court are of opinion, that this construction of the claim cannot be maintained, and that it is simply for the reversed angle of the cutters; and that there is error, therefore, in the judgment, in allowing the plaintiff costs.

In respect to the question of unreasonable delay in making the disclaimer, as going to the whole cause of action, the court are of opinion that the granting of the patent for this improvement, together with the opinion of the court below maintaining its validity, repel any inference of unreasonable delay in correcting the claim; and that, under the circumstances, the question is one of law. This was decided in the case of the *Telegraph*, (15 How., 121.) The chief justice, in delivering the opinion of the court, observed that “the delay in entering it (the disclaimer) is not unreasonable, for the objectionable claim was sanctioned by the head of the office; it has been held to be valid by a circuit court, and differences of opinion in relation to it are found to exist among the justices of this court. Under such circumstances, the patentee had a right to insist upon it, and not disclaim it until the highest court to which it could be carried had pronounced its judgment.”

Several other questions were raised in the case, which have been attentively considered by the court, and have been overruled, but which it cannot be important to notice at large, with one exception, which bears upon the fifteenth section of the patent act of 1836.

Bell's reaping machine was given in evidence, in pursuance of a notice under this section, with a view to disprove the novelty of one of the plaintiff's improvements; a description of it was read from “*Loudon's Encyclopædia of Agriculture*,” published in London, England, in 1831. In addition to the description of the machine, it appeared in the work that the

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reaper had been partially successful in September, 1828, and 1829.

It also appeared, from the evidence of Mr. Hussey, that he saw it in successful operation in the harvest of 1853.

The court was requested, on the trial, to instruct the jury, that from the facts that Bell's machine operated successfully in 1829 and in 1853, they were at liberty to infer that it had operated successfully in the intermediate period, which was refused. Without stating other grounds to justify the ruling, it is sufficient to say, that the only authority for admitting the book in evidence, is the fifteenth section of the act above mentioned. That section provides, that the defendant may plead the general issue, and give notice in writing, among other things, to defeat the patent, "that it (the improvement) had been described in some public work anterior to the supposed discovery thereof by the patentee." The work is no evidence of the facts relied on for the purpose of laying a foundation for the inference of the jury, sought be obtained.

The judgment of the court below is affirmed, with the qualification, that on the case being remitted to the court below, the taxation of costs be stricken from the record.

Mr. Justice GRIER dissented.

Order.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the northern district of New York, and was argued by counsel; on consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Circuit Court in this cause, excepting that part embracing the taxation of costs in the Circuit Court, be and the same is hereby affirmed with costs. And it is further ordered and adjudged by this court, that this cause be and the same is hereby remanded to the said Circuit Court, with directions to strike from the record the taxation of costs in this cause.