

have been so inadequately protected by the trustee. It is not necessary, however, to decree at present any further relief than such an accounting as will afford the proper basis of a final decree appropriating any sum found due according to the rights of the holders of coupons and certificates.

A decree is ordered directing an accounting by the railway company before a master respecting its earnings and income for six months from the date of the mortgage, and its expenses during the same period for operating and keeping in repair its railway and property, as well as of the sums paid, or which it is liable to pay, for the interest upon the incumbrances prior to the income mortgage specified in the instrument, and for taxes and assessments. Upon such accounting the railway company is to be disallowed any sums paid or charged on account of debts which it had contracted prior to the creation of the income mortgage; is to be disallowed any charge against income arising from the sale of its income bonds at a price less than their face amount; and is to be disallowed any interest upon the first mortgage bonds which it has not actually paid, or become liable to pay, and all which has been funded and is now represented by the income bonds accepted by holders of the first mortgage bonds in lieu of interest. The master will ascertain how much net or surplus earnings have been made by the company during each six-months period, to the time of the filing of the bill. The master will also ascertain the amount of coupons converted into scrip certificates, and the interest periods represented by the certificates, respectively, to the end that it may be finally decreed that the net income of each interest period shall be paid ratably to the holders of coupons or certificates representing interest for the same six months.

CELLULOID MANUF'G CO. v. CHANDLER.¹

(Circuit Court, D. Massachusetts. April 2, 1886.)

1. COSTS—DOCKET FEE.

The taxable costs, as such, provided by sections 823, 824, Rev. St., do not belong primarily to the attorney by force of any law.

2. SAME—SECTIONS 823, 824, REV. ST.

Before the passage of the act of February 26, 1853, of which sections 823 and 824 are a revision, costs were distinctly taxed and allowed "in favor of parties obtaining judgment." Act 1793, c. 20, § 4. The purpose of the act of February 26, 1853, was to secure a uniform rule of taxation in the federal courts, and there was no purpose to change the party in whose favor the allowance was made so as to take the costs from the party to the suit and give them to the attorney.

3. SAME—USAGE.

A usage was claimed by defendant that docket fees and fees allowed for travel and attendance should be taken and treated by the solicitor or attorney

¹Reported by Charles C. Linthicum, Esq., of the Chicago bar.

as his own. This usage was not shown to prevail generally, but appeared from the evidence to be confined to a few states. It was not shown to exist in the community where the complainant resided, nor was it shown that complainant had any knowledge of such usage in the communities where the services were to be rendered. *Held* that, under this state of facts, the complainant could not be held bound by any such usage.

4. SAME—ATTORNEY'S REASONABLE COMPENSATION.

Thirty-six dollars and sixty-four cents for each of 164 cases of like character, *held* to be reasonable compensation for the service of a local solicitor.

In Equity.

Warren & Brandeeds, for plaintiff.

Wm. G. Russell, R. M. Morse, and A. D. Chandler, for defendant.

WEBB, J. The Goodyear Vulcanite Company was the proprietor of a patent for the use of "vulcanite" in setting artificial teeth. The Celluloid Manufacturing Company made and sold to dentists an article called "celluloid," extensively employed for the same purpose. This use of celluloid was by the Goodyear Company claimed to be an infringement of its patent. To protect its alleged rights, it commenced proceedings in equity against a large number of dentists in Maine, New Hampshire, and Massachusetts, as well as in other states, and threatened more. The Celluloid Company issued a circular to dentists everywhere, saying:

"We do not undertake the defense of vulcanite; but if any dentist using celluloid is sued, or if any motion is made to punish a dentist or hold him liable in any way for using celluloid, or if any dentist is summoned before a master for using it, let him notify us at once, sending us any papers served on him, and not agree to admit any evidence in his case, or any record in any other case, on any pretense whatever, nor take any steps in it whatever, until after giving us such notice, and hearing from us or our counsel, * * *; and if we can have control of the case from the outset, we will assume the defense, confident of defeating," etc.

Thereupon the dentists intrusted the defense of the suits against them to the Celluloid Company. The principal counsel relied on to conduct and control the defense being residents of states other than those in which these suits were commenced, Mr. Chandler, the defendant in this case, was retained as local counsel in Massachusetts, and directed to enter his appearance for the defendants in the suits there. Mr. Chandler thereafter acted as local counsel in the Massachusetts cases, attending to the various matters required of him, keeping careful watch of the various steps taken by the complainants, and constantly advising the leading and principal counsel of every movement. The dentists, who were the defendants of record, were frequently applying to him for information and direction, and he was obliged to correspond extensively with them. The answers in the several suits were prepared without Mr. Chandler's assistance, but he kept watch that they should be seasonably filed, and was vigilant to protect all parties against any advantage that might be taken of neglect, delay, or omission in any respect. Only one of all these cases was argued, resulting in a decree that the use of celluloid was not an