

AMERICAN DIAMOND ROCK BORING Co. v. SHELDON and others.

SAME v. GILSON and others.

SAME v. SUTHERLAND FALLS MARBLE Co.

(Circuit Court, D. Vermont. July 16, 1886.)

1. COSTS—IN EQUITY—REHEARING ON MERITS—DOCKET FEE.

Where a cause in equity is heard and reheard on the merits, two docket fees are taxable in favor of the prevailing party

2. DEPOSITIONS—COSTS—SOLICITOR'S FEE.

Where depositions are taken in one equity cause, and are afterwards, by stipulation, used in the same and also in other causes, but one solicitor's fee can be taxed therefor, and that in the suit where such depositions were originally taken.

In Equity. Motion for settlement of costs after hearing and rehearing in each case.

E. G. Thompson, for plaintiffs.

A. F. Walker and *E. T. Rice*, for defendants.

WHEELER, J. These cases have been heard on questions arising on taxation of costs. After a decree for an accounting on final hearing (2 Fed. Rep. 353) a motion for rehearing was granted, (24 Fed. Rep. 374,) and a rehearing was had, (25 Fed. Rep. 768,) which resulted in decrees for the defendants dismissing the respective bills of complaint. That the bills should be dismissed, with costs, is shown by *Wooster v. Handy*, 23 Fed. Rep. 49. The defendants claim two docket fees in each case,—one on the hearing, and another on the rehearing. The plaintiff insists that there can be but one final hearing, and therefore but one docket fee, in a cause. These cases are situated the same as suits Nos. 1, 9, and 10 in that case in this respect, and, after an exhaustive examination of the whole subject there, Mr. Justice BLATCHFORD allowed docket fees on the hearings and rehearings as final hearings in all the cases. That decision covers this question, and is controlling.

Testimony was taken in one of the cases under a stipulation that it should be allowed and used in the other cases, to have the like effect in each cause as if taken therein. The defendants claim a solicitor's fee of \$2.50 for each deposition in each cause. These depositions were not taken in each cause, and used therein, but written down only once; but were taken in one only, and used by stipulation in the others. They fall, therefore, within the decision of Judge WALLACE in *Simon v. Neumann*, not reported, but cited by Mr. Justice BLATCHFORD in *Wooster v. Handy*, and followed, whereby such solicitor's fees were allowed only in the case in which the depositions were taken. That decision is, of course, controlling, and is followed here.

Docket fees to be taxed on each hearing and rehearing in chief, and solicitor's fees to be taxed for each deposition in the case in which it was taken, only.

WITTERS, Receiver, etc., v. SOWLES, Ex'r, etc., and others.

(Circuit Court, D. Vermont. August 7, 1886.)

EVIDENCE—MATERIALITY.

Order filed compelling the witness, wife of the executor, trustee, etc., to make a disclosure as to the assets of the estate, the evidence contemplated being material, within the scope of the bill.

In Equity.

Chester W. Witters, for orator.

H. C. Adams, for defendant.

WHEELER, J. The orator has called the defendant Margaret B. Sowles as a witness, who is made fully competent by statute, notwithstanding that her husband is a party. Rev. St. § 858; Rev. Laws Vt. § 1005; *Witters v. Sowles*, ante, 121. As such witness she has been called upon to testify as to the assets of the estate which have come from her husband, as executor of the will of Hiram Bellows, to her hands, either as residuary legatee, or as trustee for her daughter Susan Bellows Sowles, or as general or specific legatee in her own right. She has declined upon the ground that such disclosure of the assets is not material to any issue in the case, for the purposes of a decree. The scope of the bill is, however, broad enough to reach any of the assets of the estate, wherever they are. Thirty shares of the stock of the bank stand in the name of the executor on the books of the bank. The assets of the estate, wherever they may be, are apparently liable for the assessment on these shares, amounting to \$3,000. The bill is drawn in the aspect that the other 400 shares belonging to the testator in his life-time really belong to the executor, yet so that he is the shareholder in fact. Whether this is so or not, is yet an open question. If it turns out to be so, then the assets may be followed for the assessment on those shares, which amounts to \$40,000 more. The orator is entitled to take testimony as to the situation of the assets, in view of the contingency that they may be wanted for that. Therefore this testimony which ~~he~~ seeks is material, and she has no right to refuse to answer on the ground that it is immaterial. He has a right to full disclosure as to the assets, and to have them produced, in case they are within reach, for identification, and for the purpose of showing how and by whom they are held.

It is ordered, therefore, that the witness make full answer as to the assets, and produce them, as far as practicable, for identification.