

HILL v. SMITH.¹

(Circuit Court, E. D. Pennsylvania. November 11, 1887.)

COSTS—REFERENCE—MASTER'S FEES—KNOWLEDGE OF PARTY.

The costs of a reference to a master, to ascertain the damages resulting from an infringement of a patent, will be put upon the complainant when damages are refused, if the complainant knew, or could have known, all that was brought out by the reference, and the respondent has done nothing that would deceive the complainant, nor concealed facts.

In Equity. *Sur* exceptions to master's report.

This reference grew out of a decree which had been entered in a suit brought by the complainant against the respondent for infringement of the second claim of letters patent No. 130,853 for improvement in hog-rings, (see 27 Fed. Rep. 560.) Complainant then had the case referred to a master, to assess the damages, who made a report in which he refused damages to the complainant, and put the costs of the reference upon the respondent. To this finding of the master respondent excepted.

Morgan & Lewis and *W. C. Johns*, for complainant.

R. O. Moon and *E. P. Bliss*, for respondent.

BUTLER, J. The complainant should have costs to date of the decree, entered April 30, 1886. To that point of time he was successful. The costs subsequently created, arose from the prosecution of his claim to damages. In making this claim he was unsuccessful. In view of the circumstances, he should bear the costs created by pressing it. The result shows that they were unnecessarily incurred. If he had been deceived or misled, or by other means induced by the respondent to set up and prosecute the claim, a different view might, and no doubt would, be entertained. The complainant knew, however, or might have known, before entering upon the subject, all he knows now. He took the chances, and he must bear the consequences.

The second exception (to the proposed decree) is for these reasons sustained. The others are dismissed.

¹Reported by C. Berkeley Taylor, Esq., of the Philadelphia bar.

RYAN v. GOULD and another.

(Circuit Court, S. D. New York. November 19, 1887.)

1. COSTS—IN FEDERAL COURTS—DOCKET FEE.

Rev. St. U. S. § 824, provides that on a trial before a jury in civil or criminal cases, or on final hearing in equity, a docket fee of \$20 shall be allowed. After the usual pleadings were filed, and issue joined, the case noticed for final hearing, and called on the calendar, on complainant's motion, his bill was dismissed "with the usual costs to defendant." The clerk allowed \$20 docket fee on taxation of costs. *Held*, that the docket fee must be disallowed.

2. SAME—MOTION TO DISMISS BY PLAINTIFF—"USUAL COSTS."

The clerk in taxing costs where complainant on his own motion dismissed his bill when called for hearing "with usual costs to defendant," allowed for certified copy of file wrapper, contents of patent in suit, and certified copies of six other patents procured by defendant to properly present his defense. *Held*, that they must be disallowed. *Woodruff v. Barney*, 2 Fish. Pat. Cas. 250; *Worster v. Handy*, 23 Blatchf. 129, 23 Fed. Rep. 49, followed.

J. E. M. Bowen, for complainant.
Briesen & Steele, for defendants.

LACOMBE, J. In this case issue was joined by the filing of the usual replication, the pleadings consisting of bill, answer, and replication. After the cause was noticed by the defendant for final hearing, and in fact after it was called on the calendar, an order was made on the motion of the complainant dismissing the bill "without prejudice to the complainant's, or his assignee's rights, and with the usual costs to the defendants."

The clerk, upon taxation of defendants' bill of costs, allowed a docket fee of \$20. The question raised upon this appeal, is whether, under section 824 of the Revised Statutes, such docket fee is properly taxable. The decisions upon this point are numerous and conflicting. In the views expressed by Judge HAMMOND in *Partee v. Thomas*, 27 Fed. Rep. 429, I entirely concur; but the prior decisions in this circuit are controlling of the question here, and the docket fee must be disallowed. *Manufacturing Co. v. Colvin*, 21 Blatchf. 168, 14 Fed. Rep. 269; *Andrews v. Cole*, 20 Fed. Rep. 410; *Worster v. Handy*, 23 Blatchf. 112, 23 Fed. Rep. 49.

The allowances made by the clerk for certified copy of file wrapper, and contents of the patent in suit, and for certified copies of six other patents procured by the defendant to enable him to properly present his defense, are also covered by the decisions in *Woodruff v. Barney*, 2 Fish. Pat. Cas. 250, and *Worster v. Handy*, 23 Blatchf. 129, 23 Fed. Rep. 49, and are disallowed.