

last case an appeal had been prayed and allowed within 60 days, and an appeal-bond duly filed, and yet, after the perfection of the appeal, the court made an order changing the terms upon which the appeal could be taken to the supreme court. It merely decides that, after an appeal has been completed and perfected within the time to make it a *superse-deas*, any proceedings by the court below are null and void.

The allowance and perfection of the appeal in this case only had the effect to take the record before the supreme court. It did not act upon the parties, or prevent the court from taking any steps in the execution of the decree; and, if an officer of the court declines to do an act within his duty in the execution of the decree, the complainant has the right to apply to the court for an order directing such officer to proceed in the performance of such duty. Any other rule than this would give rise to and encourage sharp practices entirely inconsistent with the rights of the parties and the duty of the court in protecting such rights. Suppose a judgment is rendered in this court, and the defendant takes a writ of error to the supreme court, but does not obtain a *supersedeas*, no one will doubt that the plaintiff has a right to take out execution, and place it in the hands of the marshal, and direct him to proceed to levy and collect the amount called for by the writ. But suppose the marshal is told by the defendant that the case has been taken to the supreme court, and that he has no right to levy, and that the marshal upon this suggestion refuses to proceed with the execution, can there be any possible room for doubt that the court has the power to direct the marshal to proceed? And yet that seems to me precisely this case. Or suppose the marshal did proceed with the execution, did make the levy, sell the property, and collect the money, yet, upon notice that the case had been taken up by writ of error, refused to pay it over to the complainant, would it not be the plain duty of the court to compel its officer to pay the money to the complainant, to whom it belonged? An order will be entered directing the master to execute the deed.

GORSE *et al.* v. PARKER.

(Circuit Court, N. D. Illinois. November 5, 1888.)

COSTS—ATTORNEYS' FEES—PARTY ACTING AS ATTORNEY.

The docket fee and fees for depositions "allowed to attorneys, solicitors, and proctors" by Rev. St. U. S. §§ 823, 824, cannot be taxed in favor of a party not an attorney, who conducts his own cause.

In Equity. On motion for retaxation of costs in the suit by William Gorse and others against Andrew H. Parker.

D. Blackman, for plaintiffs.

A. H. Parker, *in pro. per.*

BLODGETT, J. A motion is made for retaxing the costs in this case. The case was a suit in equity, and the defendant appeared in his own behalf, filed his own answer, examined his own witnesses, and argued his own cause. The suit terminated in favor of the defendant, and the clerk in taxing the costs allowed the defendant a docket fee of \$20, and a fee of \$2.50 for each deposition taken, and the motion now is to retax the costs on the ground that these fees cannot be allowed to the defendant, he not being an attorney at law. I think the motion is well taken. The statute of the United States, (section 823, Rev. St.,) under which these fees are taxed, reads as follows: "The following, and no other, compensation shall be allowed to attorneys, solicitors, and proctors in the courts of the United States;" and then proceeds under section 824, as follows: "On a trial before a jury in civil or criminal causes, or before referees, or on a final hearing in equity or admiralty, a docket fee of twenty dollars; and for each deposition taken and admitted in evidence in the cause, two dollars and fifty cents." In the case of *Vulcanite Co. v. Osgood*, 13 O. G. 325, Judge SHEPLY had substantially the same question under consideration, and there held that the docket fee allowed by these two sections can only be allowed to an attorney or solicitor of the court; that these costs are not recoverable to the defendant himself, but to his attorneys. And the reason in support of this conclusion is that, where a party is obliged by reason of his unfamiliarity with proceedings in courts to employ an attorney or solicitor, the law gives him this fee to aid in compensating his attorney; but if a party is not obliged to resort to a lawyer for assistance, then the allowance is not recoverable. The motion to retax is therefore sustained, and the clerk is directed to strike out from the fee-bill, as taxed, the allowance of \$20 for a docket fee, and the allowance of \$2.50 for each deposition.

NEWBERRY *et al.* v. ROBINSON *et al.*

(Circuit Court, S. D. New York. December 20, 1888.)

1. EXECUTORS AND ADMINISTRATORS—FOREIGN ADMINISTRATOR—ACTIONS BY.
An administratrix who recovers judgment makes the debt hers individually, and she may sue thereon out of the state where she was appointed; allegations showing representative capacity being treated as surplusage.¹
2. STATUTES—PLEADING—UNITED STATES COURTS—JUDICIAL NOTICE.
The United States courts take judicial notice of the statutes of the states, and an objection that they are not well pleaded cannot be sustained.

In Equity. On demurrer to bill.

This action is brought by Helen S. Newberry, as administratrix of John S. Newberry, deceased, and James McMillan, citizens of Michigan,

¹Respecting the authority of a personal representative outside the jurisdiction in which he was appointed, see *Gove v. Gove*, (N. H.) 15 Atl. Rep. 121, and note; *Allen v. Fairbanks*, 36 Fed. Rep. 402; *In re Cape May, etc., Co.*, (N. J.) 16 Atl. Rep. 191.