

ROGERS v. MARSHALL.

Circuit Court, D. Colorado.

June 14, 1882.

INTERLOCUTORY

DECREE—REHEARING—PRACTICE.

On a petition for a rehearing upon an interlocutory decree in chancery, the court will, as a matter of course, continue the temporary execution of the decree till the hearing can be had, where to proceed under it might involve large expense, and but little time must elapse before such hearing can be had.

L. S. Dixon, for Plaintiff.

Wells, Smith & Macon, for defendants.

MCCRARY, C. J., (*orally.*) Some time ago the court entered an interlocutory decree in this case, which settled, if it shall stand, some of the rights of the parties. It is a very important case, involving a large sum, and questions that are not entirely free from difficulty and doubt.

A petition for rehearing upon that interlocutory decree has been filed, and the court has ordered it to be heard, and fixed a time for hearing. The question now is whether the court shall suspend the execution of the interlocutory decree in the interim. It provides for an accounting, and to proceed under it might involve large expense, which in the end might be useless, and besides might cause an exposure of the private affairs of defendants, which, if the court should set aside the interlocutory decree, would not be a thing we ought to do.

The time is short, (the day for hearing is the twentieth of July,) and I apprehend no serious injury will result from a suspension of the accounting in the mean time. I think it is the rule almost without exception, that where a court entertains an application to set aside an interlocutory decree in a case in chancery, it will, as a matter of course, pending the hearing upon that application, suspend the execution

of the decree. The order which has already been made 615 suspending temporarily the execution of this decree will be continued until the hearing can be had. I say this without expressing any opinion at all upon the merits of the application to set aside the interlocutory decree. I have not looked into the case sufficiently to form or express an opinion one way or the other upon the merits of the application.

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