

court must hear and determine the issue made by the bill and answer of the Des Moines & Minnesota Railroad Company, to-wit, was there a contract made by the latter company regarding the line of the railroad, and, if so, has there been a breach thereof? To this issue made by the pleadings, and which is essential to the final decision of the cause, the Des Moines & Minnesota Railroad Company is an active and material party, and cannot be held to be a nominal party.

Petition for rehearing overruled.

MALLORY MANUF'G Co. v. Fox and others.

(Circuit Court, S. D. New York. May 30, 1884.)

1. EQUITY RULE No. 82—NOT TO BE INVOKED TO COLLECT DISBURSEMENTS TAXABLE AS COSTS.

The eighty-second equity rule cannot be invoked by a party to enable him to collect of the opposite party disbursements which can be taxed as part of the costs in a final decree.

2. CONTEMPT—PUNISHMENT—IMPRISONMENT FOR NON-PAYMENT OF MONEY JUDGMENT—POWERS OF UNITED STATES COURTS—CONTROLLED BY STATE COURTS.

The power of United States courts to punish for contempt and imprison for non-payment of money judgments is circumscribed and controlled by state laws.

3. SAME—NON-PAYMENT OF MONEY—EXECUTION—ORDER OF COURT IN NATURE OF JUDGMENT—WHEN NOT ENFORCED ON THEORY THAT DISOBEDIENCE IS A CONTEMPT.

In a state where proceedings for contempt for the non-payment of money ordered by the court to be paid cannot be had when the payment can be enforced by execution, and imprisonment for non-payment of costs is abolished, when an order of the court is in the nature of a judgment or decree for the payment of money, it cannot be enforced on the theory that disobedience is a contempt.

In Equity.

Eugene Treadwell, for complainant.

Wyllis Hodges, for defendants.

WALLACE, J. The complainant moves for an order fixing the master's compensation for his services upon an accounting under an interlocutory decree, and directing the same to be paid by the defendants. The bill of the master, as certified by him, is not deemed unreasonable by either party, but the contention is as to what portion of it should be borne by each. The eighty-second equity rule contemplates that the court shall charge the master's compensation upon such of the parties as the circumstances of the case render proper, but that rule is for the benefit of the master, and is to be enforced upon his application and for his protection. It cannot be invoked by a party to enable him to collect of the opposite party disbursements which he may have incurred, and which can be taxed as part of the costs in the final decree. By the laws of this state proceedings can-

not be had as for a contempt for the non-payment of money ordered by the court to be paid when the payment can be enforced by execution, and imprisonment for non-payment of costs is abolished. The power of the courts of the United States to punish for contempt and imprison for non-payment of money judgments is circumscribed and controlled by the laws of the state; and where an order made in the progress of the cause is of the character in substance of a judgment or decree for the payment of money, it cannot be enforced upon the theory that disobedience is a contempt. Rev. St. §§ 725, 990; *In re Atlantic Mutual Ins. Co.* 17 N. B. R. 368; *The Blanche Page*, 16 Blatchf. 1; *Catherwood v. Gapete*, 2 Curt. 94; *U. S. v. Tetlow*, 2 Low. 159; *Low v. Durfee* 5 FED. REP. 256.

The motion is denied.

ANDREWS v. COLE.

(Circuit Court, N. D. New York. May 30, 1884.)

1. ORDER PRO CONFESSO—DOES NOT ENTITLE COMPLAINANT TO FINAL DECREE AS OF COURSE.

A complainant is not entitled as of course to a final decree when he has obtained an order *pro confesso*, he not being permitted to take at his discretion such a decree as he may be willing to abide by.

2. FINAL HEARING—RIGHT TO DOCKET FEE—REV. ST. § 824

The consideration of a bill is a hearing, and is final when it results in the final disposition of a cause, and entitles a party to a docket fee under Rev. St. § 824.

In Equity.

Thos. D. Richardson, for complainant.

R. A. Stanton, for defendant.

WALLACE, J. The defendant objects to the taxation by the clerk of a docket fee of \$20 as part of the costs of the complainant upon a final decree herein. The defendant did not answer or demur to the bill, and complainant took an order for a decree *pro confesso*, and subsequently obtained a final decree. As the cause has been finally determined, and as its determination involved a hearing by the court, there has been a final hearing within the meaning of section 824, Rev. St., which authorizes a docket fee of \$20 to be taxed. There has been much discussion of the meaning of the term "final hearing," as used in this section, and a diversity of opinion is found in the decisions. Several cases decide that any order or determination which results in a final disposition of the cause, including a dismissal of the bill on the motion of the complainant, or the dismissal of an appeal by the appellee for irregularity on the part of the appellant in bringing it to a hearing, is a final hearing. *Hayford v. Griffiths*, 3 Blatchf. 79; *The Alert*, 15 FED. REP. 620; *Goodyear v. Sawyer*, 17 FED. REP. 2. Other