

*IN RE STRAUSS V. MEYER AND OTHERS.*¹*Circuit Court, S. D. Missouri.* December 3, 1884.

EQUITY PRACTICE—COSTS—ATTORNEY'S FEE.

No attorney's fees for the examination of witnesses, called before a master or special examiner, are taxable as costs.

In Equity.

Suit for the infringement of a patent. Motion to retax costs because of the allowance of an attorney's fee of \$2.50 for each witness examined before the examiner appointed herein to take testimony prior to the granting of a preliminary injunction, and for each witness examined before the master appointed to ascertain the damages sustained by the complainant, and the profits made by the defendant from the infringement complained of.

S. Obermeyer and Taylor A Pollard, for plaintiff.

Lee & Chandler, for defendants.

TREAT, J. The party is not entitled to counsel fees for witnesses called before the master, and I doubt whether he is entitled to fees for witnesses called before the special examiner. Testimony taken before a special examiner is not in the nature of depositions taken at different places where a party may be compelled to go, and I will allow nothing of the kind. I think it is outside of the fee-bill, and outside of the reason of it. The party has to appear and conduct the case before the special examiner who is appointed therefor, and 468 to charge fees for the witnesses called before the special examiner is outside of the rule of taking depositions. If such depositions were taken elsewhere than before the special examiner, then you are entitled to \$2.50 for each witness.

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.

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