

PRICE, RECEIVER, V. COLEMAN AND OTHERS.

Circuit Court, D. Massachusetts. January 6, 1885.

EQUITY PRACTICE—DOCKET FEE—HEARING ON
DEMURRER.

A hearing on demurrer is a final hearing, and a docket fee of \$20 may be taxed. Rev. St. § 824.

In Equity. Appeal from the clerk's taxation of costs in favor of George N. March, one of the defendants.

A. A. Ranney, for Price, receiver.

Jesse M. Wheeler, for defendants.

COLT, J. We approve of the clerk's taxation of costs. The taxation is not contrary to equity rule 62, because the defendant filed his separate demurrer, and appeared by separate counsel. We also think the hearing on demurrer a final hearing within the meaning of section 824, Rev. St., and that therefore a docket fee of \$20 was properly taxable. A demurrer raises an issue which, when tried, will finally dispose of the case, unless leave to amend or plead over is granted. There can be no other trial, except at the discretion of the court, and if final judgment is entered on the demurrer it will be a final determination of the rights of the parties, which can be pleaded in bar to any other suit for the same cause of action. This is the view expressed by the supreme court in *Alley v. Nott*, 111 U. S. 472, 475; S. C. 4 Sup. Ct. Rep. 495.

Appeal dismissed.

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