

AMERICAN DIAMOND ROCK BORING CO. V.
 SHELDONS AND ANOTHER.
 SAME V. SUTHERLAND FALLS MARBLE CO.
 AND OTHERS.
 SAME V. GILSON AND OTHERS.

Circuit Court, D. Vermont.

July 13, 1885.

PATENTS FOR INVENTIONS—REHEARING ON
 CONDITION TESTIMONY TAKEN BE USED.

Motion for rehearing granted, on condition that in case there should be a decree in the cause for an accounting, the testimony already taken before the master shall stand for use in the case as if taken by the parties respectively upon such new accounting.

In Equity. S. C. 2 FED REP. 353.

E. G. Thompson, for plaintiff.

E. T. Rice and *Aldace F. Walker*, for defendants.

WHEELER, J. These causes are pending for the purposes of an accounting before a master, pursuant to an interlocutory decree made upon hearing in chief. 17 Blatchf. 208, 303. They have now been heard upon motion for a rehearing on the merits. The decision was made largely upon the authority of, and following, *American Diamond Rock Bar. Co. v. Sullivan Machine Co.* 14 Blatchf. 119, upon the same patent. The change in what were understood to be the principles of law governing reissuing patents since these decisions has been found to be sufficient to change that made in the former case. *American Diamond Drill Co. v. Sullivan Machine Co.* 21 FED. REP. 74. That affords sufficient ground for granting a rehearing to ³⁷⁵ review the decision made in this case, upon which the decree for an accounting rests. *Coon v. Wilson*, 113 U. S. 268; S. C. 5 Sup. Ct. REP. 537. Still, the expenses of taking testimony before the master should not be lost, in case it can, in any event, be of use in the case. The same decree may

be made again upon rehearing or an appeal. What the result may be cannot be foretold with certainty; therefore it seems proper that the rehearing should be granted without prejudice, so far as may be, to the proceedings before the master. Therefore the motion is to be granted, upon the express condition and order that in case there shall be a decree in the cause for an accounting, the testimony already taken before the master shall stand for use before the same or any other master in the cause, as if taken by the parties, respectively, upon such new accounting.

Motion granted, but without prejudice to the right to use the testimony already taken before the master on any accounting in the cause.

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