

CONSOLIDATED BUNGING APPARATUS Co.
v. AMERICAN PROCESS FERMENTATION Co.

Circuit Court, E. D. Wisconsin. August, 1885.

EQUITY PRACTICE—DOCKET FEE—REV. ST. §
824—CASE DISCONTINUED.

No docket fee is taxable in a suit in equity voluntarily discontinued by the complainant before any hearing, either interlocutory or final.

In Equity.

Banning & Banning, for complainant.

Cotzhausen, Sylvester, Scheiber & Sloan, for defendant.

DYER, J. This is a suit in equity; and after issue joined by bill, answer, and replication, but before the taking of any proofs, and without the determination of any question in the case by the court, the complainant voluntarily dismissed its bill. In the taxation of costs, the defendant contends that it is entitled to an allowance of a docket fee of \$20 under the first clause of section 824 of the Revised Statutes. I have examined all the decisions that bear upon the question, and fully agree with the conclusions announced in *Coy v. Perkins*, 13 FED. REP. 111, by Mr. Justice Gray and Judge Lowell, and concurred in by Judge Nelson, and with the ruling in *Yale Lock Manuf'g Co. v. Colvin*, 14 FED. REP. 269, made by Judge Wheeler. The docket fee of \$20 is only taxable in a suit in equity "on final hearing." What constitutes a final hearing within the meaning of section 824 is clearly and most satisfactorily shown by Mr. Justice BLATCHFORD in *Wooster v. Handy*, 23 FED. REP. 52, and by the cases cited in his opinion. There was no such hearing, nor, indeed, any hearing, in this case. The taxation of a docket fee of \$20 must therefore be disallowed. No docket fee whatever is given by the statute in a suit in equity

voluntarily discontinued by the complainant, as this suit was, before any hearing, either interlocutory or final.

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