

RYAN *v.* GOULD AND ANOTHER.

*Circuit Court, S. D. New York.*

November 19, 1887.

1. COSTS—IN FEDERAL COURTS—DOCKET FEE.

Rev. St. U. S. § 824, provides that on a trial before a jury in civil or criminal cases, or on final hearing in equity, a docket fee of \$20 shall be allowed. After the usual pleadings were filed, and issue joined, the case noticed for final hearing, and called on the calendar, of complainant's motion, his bill was dismissed "with the usual costs to defendant." The clerk allowed \$20 docket fee on taxation of costs. *Held*, that the docket fee must be disallowed.

2. SAME—MOTION TO DISMISS BY PLAINTIFF—"USUAL COSTS."

The clerk in taxing costs where complainant on his own motion dismissed his bill when called for hearing "with usual costs to defendant," allowed for certified copy of file wrapper, contents of patent in suit, and certified copies of six other patents procured by defendant to properly present his defense. *Held*, that they must be disallowed. *Woodruffs v. Barney*, 2 Fish. Pat. Cas, 250; *Worster v. Handy*, 23 Blatchf. 129, 23 Fed. Rep. 49, followed.

*J. E. M. Bowen*, for complainant.

*Briesen & Steele*, for defendants.

LACOMBE, J. In this case issue was joined by the filing of the usual replication, the pleadings consisting of bill, answer, and replication. After the cause was noticed by the defendant for final hearing, and in fact after it was called on the calendar, an order was made on the motion of the complainant dismissing the bill "without prejudice to the complainant's, or his assignee's rights, and with the usual costs to the defendants."

The clerk, upon taxation of defendants' bill of costs, allowed a docket fee of \$20. The question raised upon this appeal, is whether, under Section 824 of the Revised Statutes, such docket fee is properly taxable. The decisions upon this point are numerous and conflicting. In the views expressed by Judge HAMMOND in *Partee v. Thomas*, 27 Fed. Rep. 429, I entirely concur; but the prior decisions in this circuit are controlling of the question here, and the docket fee must be disallowed. *Manufacturing Co. v. Colvin*, 21 Blatchf. 168, 14 Fed. Rep. 269; *Andrews v. Cole*, 20 Fed. Rep. 410; *Worster v. Handy*, 23 Blatchf. 112, 23 Fed. Rep. 49.

The allowances made by the clerk for certified copy of file wrapper, and contents of the patent in suit, and for certified copies of six other patents procured by the defendant to enable him to properly present his defense, are also covered by the decisions in *Woodruff v. Barney*, 2 Fish. Pat. Cas. 250, and *Worster v. Handy*, 23 Blatchf. 129, 23 Fed. Rep. 49, and are disallowed.