

HAKE *V.* BROWN *ET AL.*

Circuit Court, S. D. New York.

January 9, 1891.

1. TAXATION OF COSTS—DEPOSITION FEES—TRAVELING EXPENSES.

In the second circuit, the rule is settled in favor of taxing the fees for taking depositions before the examiner, pursuant to equity rule 67 of the supreme court of the United States.

2. SAME—PRINTING RECORDS AND BRIEFS.

In the second circuit, the charge for printing records and briefs in compliance with the circuit court rules will be taxed.

3. SAME—WITNESS' EXPENSES.

Where, in taking depositions, an adjournment for so long a time as to warrant witnesses in returning home between appearances is had by the fault of the unsuccessful party, the additional traveling expenses will be taxed to him.

For opinion on the merits, see 37 Fed. Rep. 783, and *ante*, 283.

Briesen & Knauth, for complainant.

Walter D. Edmonds, for defendants.

LACOMBE, Circuit Judge. This is an appeal by the complainant from the taxation of defendants' costs.

1. His first exception is to the item of "deposition fees, \$60." This includes the taking of the testimony of 24 different witnesses before the examiner, pursuant to rule 67 of the equity rules of the supreme court. The depositions of these witnesses were admitted or used in evidence on the trial. The complainant cites the cases of *Strauss v. Meyer*, 22 Fed. Rep. 467, and of *Tuck v. Olds*, 29 Fed. Rep. 883, in support of his contention. In this circuit, however, the question has been settled the other way, and no sufficient ground for reconsidering the views expressed in the earlier decisions is shown. The clerk's taxation in this particular is therefore affirmed. *Stimpson v. Brooks*, 3 Blatchf. 456; *Wooster v. Handy*, 23 Fed. Rep. 49; *Spill v. Manufacturing Co.*, 28 Fed. Rep. 870; *Factory v. Corning*, 7 Blatchf. 17. See also the opinion of Judge Jackson in *Ingham v. Pierce*, 37 Fed. Rep. 647.

2. Complainant next objects to the charge for printing the record and brief, in compliance with the rules of this court. Whatever may be the decisions in other circuits, it is settled in this circuit that this is a proper item of disbursements. Cir. Ct. Rule May 18, 1878; *Dennis v. Eddy*, 12 Blatchf. 195.

3. The defendants also have appealed from the clerk's refusal to allow more than one traveling fee to the same witness, when the taking of his testimony required his attendance on several different occasions, and intervals between the witness' successive appearances were so long as to warrant his return to his home, and therefore require, additional traveling expenses to secure his attendance on the adjourned day. In only one of these cases, however, does it appear from the record that such adjournment was caused by the sole fault of the complainant. For that attendance, the additional traveling fees may be allowed. In all the other cases the clerk's taxation is affirmed.