

SACKETT v. SMITH.

(Circuit Court, S. D. New York. April 20, 1891.)

TAXATION OF COSTS—PRINTING BRIEFS.

Disbursements for printing a necessary and proper brief in an equity cause should be taxed in the costs, though it may not have been printed before commencement of the argument.

In Equity.

James A. Whitney, for complainant.

W. S. Logan, for defendant.

COXE, J. It seems to me that the item objected to was a proper disbursement and should be taxed. It frequently happens that equity causes go to argument before the briefs are printed, and, where the argument proceeds in this manner without objection, there can be no reason for holding that the right to tax such disbursements is lost because the printing took place after the commencement of the argument. In the present case it is not denied that the brief in question was a necessary and proper one. The only objection to the allowance of the item is that the brief was printed after the commencement of the argument. The objection is insufficient.

ADEE v. J. L. MOTT IRON-WORKS.

(Circuit Court, S. D. New York. April 21, 1891.)

EQUITY—PRACTICE—EVIDENCE—RECORD—APPEAL.

In an equity suit testimony that is ruled out on objection will not be excluded from the record on appeal.

In Equity.

Arthur v. Briesen, for complainant.

Francis Forbes, for defendant.

SHIPMAN, J. The motion to exclude the testimony of Mr. Briesen from the printed record, the object of the motion being to exclude the testimony from the record upon appeal in case an appeal is taken, is denied. Testimony in an equity suit, which has been objected to and ruled out, should properly be sent with the record to the supreme court. *Blease v. Garlington*, 92 U. S. 1. The motion to rule out the testimony of John Uprichard, which was given in *Adee v. Peck*, 42 Fed. Rep. 497, is granted, except as to question 4 and the answer thereto. This portion of the record of testimony in the Connecticut case was not offered by the plaintiff to contradict Uprichard, but simply to show that he also fully testified to the same exhibits in the Peck suit, and that the effect of the

evidence of those exhibits upon the validity of the Foley patent must have been considered by Judge WALLACE. The motion to strike from the record cross-question 20 in the testimony of John Uprichard in this case, and the statements which follow down to cross-question 21, and to strike out from the same testimony all that intervenes between cross-question 47 and the entry, "New York, December 3, 1890," and all that intervenes between cross-question 61 and cross-question 64, and all in the record of the same testimony after the words, "cross-examination closed," and before the signature of the witness, is denied. The motion to strike from the record of Mr. Serrell's testimony, under date of March 23, 1891, all after the words, "Present, Francis Forbes," etc., down to the tenth question, is granted. This colloquy between counsel became entirely immaterial in view of the stipulation made by counsel for complainant at the close of the discussion.

CAHN *v.* WESTERN UNION TEL. Co.

(Circuit Court, E. D. Mississippi. April 21, 1891.)

1. FAILURE TO DELIVER TELEGRAM—MEASURE OF DAMAGES.

Remote, contingent, or speculative damages will not be allowed, but only such as naturally flow from the breach of the contract.

2. SAME.

Where a telegraph message directed the sale of 200 shares of Tennessee Coal & Iron Company stock, and the defendant company failed to deliver the same to the sendees for several days after it should have been delivered, and the plaintiff did not in fact own any stock in said company, and no transaction was made, he is not entitled to recover the difference between the market value of said stock on the day when the telegram should have been delivered and the day when it was actually delivered.

3. SAME.

There being no evidence in the record tending to show that it was the intention of the plaintiff to repurchase a similar amount of stock on the 28th of February, or at any subsequent date, the defendant company cannot be held liable for a breach of contract which was neither made nor within the reasonable contemplation of the parties upon the day of sending the telegram.

At Law.

The plaintiff by his office boy sent to the defendant's agent at Columbus the following telegraphic message, written upon one of the blanks of the company used in sending night messages, to-wit:

"COLUMBUS, MISS., Feb. 20, 1890.

"*To Messrs. Latham, Alexander & Co., New York City:* Sell two hundred Tenn. Coal & Iron.

[Signed]

"E. CAHN."

The message was promptly sent from the defendant's office at Columbus, but, owing to some irregularity at Memphis, Tenn., (a relay station,) it was negligently sent to Conway, Ark., and failed to reach the sendees until the 28th February, 1890, whereupon the sendees declined to receive the same, and immediately notified the plaintiff of the fact.