

Chew v. Brumagen, 13 Wall. 497; *Kerrison v. Stewart*, 93 U. S. 155; *Vetterlein v. Barnes*, 124 U. S. 169, 8 Sup. Ct. 441; 2 Enc. Pl. & Prac. § 904. The pleas of the defendants in this case set up a judgment of this character affirmed by the highest court in the state, and the plaintiff, being a beneficiary under the assignment, was bound by it.

It is unnecessary to inquire into the regularity of the attachment proceedings in that case, since that question is disposed of by the judgment.

The appellant claims further that the judgment of the state court only operated to set aside the assignment as to the bank "and other creditors not assenting thereto," and that, claiming under the assignment, he has an interest in the surplus remaining after the satisfaction of the bank's claim, and that such interest entitles him to maintain this suit. The appellant's bill of complaint does not, however, proceed upon that theory. It does not seek to enforce appellant's claim against the surplus. It charges that certain acts of the defendants were in violation of his rights under the assignment. These acts were the proceedings taken in the state court which resulted in the judgment set up in the plea. The complainant joined issue upon this plea, and the facts were found in favor of the defendants. The plea having met and satisfied all the claims of the bill, the defendants were entitled to the benefit of the finding in a decree dismissing the bill. *Horn v. Dock Co.*, 150 U. S. 610, 14 Sup. Ct. 214. The decree of the circuit court dismissing the bill of complaint is therefore affirmed.

PECK, STOW & WILCOX CO. v. FRAY et al.

(Circuit Court, D. Connecticut. February 27, 1899.)

COSTS—EQUITY—DOCKET FEE.

Only one attorney's docket fee is taxable in an equity case, and that only on the final disposition of the case, unless upon motion for rehearing allowed, when an attorney's docket fee is taxable in favor of the prevailing party upon each hearing.

On Motion to Retax Costs.

This was a patent suit, brought for infringement of United States letters patent to Robert O. Ellrich, February 19, 1884, for improvement in pawls and ratchets, in which a motion for injunction pendente lite was argued July 19, 1898, before the circuit court, which on July 22d filed an opinion (88 Fed. 784) granting the motion as to claims 2 and 3 of the patent. From the decree authorized by this opinion an appeal was taken to the circuit court of appeals for the second circuit, which on the 15th of November, 1898, rendered a decision reversing the decree of the circuit court, with costs of the appeal. 92 Fed. 1021. Upon the entry of the decree for costs in pursuance of the mandate of the court of appeals, the clerk of the circuit court taxed costs in favor of the appellants as follows, viz.: (1) Defendants' costs of appeal transcript to court of appeals; (2) appellants' costs in court of appeals, as indorsed on the mandate; (3) clerk's costs in the circuit court for filing and recording mandate of the court of appeals, and the decree thereon; (4) attorney's docket fee in the circuit court for the district of Connecticut, on the ground that a judgment for costs had been arrived at, which might be final. From this taxation complainant's solicitor appealed as to the last item, and the parties were heard on briefs.

Wm. E. Simonds, for plaintiff.
A. M. Wooster, for defendants.

PER CURIAM. An attorney's docket fee, under section 824, Rev. St. U. S., is only taxable upon final hearing, or upon a rehearing allowed upon the merits of the case, on demurrer to pleadings, and then only when such hearing disposes of the case. The decree in this case, although for costs, and authorizing execution, is final only as to an interlocutory motion.

DE ROUX et al. v. GIRARD et al.

(Circuit Court, E. D. Pennsylvania. April 5, 1899.)

No. 55.

COSTS—FINAL HEARING IN EQUITY—DOCKET FEE.

Where defendant demurred to a bill in equity on the ground that it did not connect her with the cause of action, and plaintiff filed a replication, and, before the issue of law was argued, plaintiff discontinued the suit pursuant to a stipulation whereby defendant agreed to such a course, there was no "final hearing," within Rev. St. § 824, entitling defendant to a docket fee of \$20.

Appeal from Taxation of Costs.

Carrie B. Kilgore, for complainants.

H. A. Ingram, for respondents.

McPHERSON, District Judge. Among other defendants, this bill in equity was brought against Caroline G. Hunsworth, who demurred upon the ground that the bill did not connect her with the plaintiffs' cause of action. The plaintiffs filed a replication, but the issue of law thus formed was neither argued nor decided; for within a few weeks the plaintiffs discontinued the bill against Mrs. Hunsworth. Her counsel regards this disposition of the case as a "final hearing," within the meaning of section 824 of the Revised Statutes, and asks to be allowed the docket fee of \$20. The decisions are not in complete harmony upon the question what constitutes a final hearing; but we need not examine them now, for it further appears that Mrs. Hunsworth signed the following stipulation: "I hereby agree to the above discontinuance;" and this, as it seems to us, relieves the pending controversy of all difficulty. We think that the case was disposed of by consent of parties, and not by any action that could be construed as "a hearing," either final or otherwise. So far as the docket fee of \$20 is concerned, the appeal is sustained.