

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.

EASTERN OREGON LAND CO. v. COLE et al.

(Circuit Court of Appeals, Ninth Circuit. February 6, 1899.)

No. 453.

1. EJECTMENT—DEFENSES—ADVERSE POSSESSION—NOTORIOUS OWNERSHIP—EVIDENCE.

Where, in ejectment, defendant's possession of the land in controversy was admitted, evidence that his grantor had been uniformly considered the owner, in the community where the land was situated, for a period sufficient to establish defendant's claim of title by adverse possession, was admissible to show the character of plaintiff's possession.

2. SAME—INSTRUCTIONS—ADVERSE POSSESSION—DEFINITION—COLOR OF TITLE.

A charge that if plaintiff and his predecessors in interest had held "adverse, actual, open, and continuous possession of the premises in controversy for a period of 10 years, a complete title was thereby acquired," correctly defines "adverse possession," since the word "adverse," is a general term, and includes a claim under color of title.

3. REVIEW—OMISSION TO CHARGE—FAILURE TO REQUEST INSTRUCTIONS—EFFECT.

Where no requests to charge are made, an omission to charge on a particular point, or an objection that a particular instruction was not sufficiently definite, cannot be assigned as error on appeal.

In Error to the Circuit Court of the United States for the District of Oregon.

This was an action of ejectment commenced by the plaintiff in error in the circuit court of the United States for the district of Oregon on the 26th day of September, 1896, against T. J. Cole, J. L. Cole, and Emory Cole, to recover the possession of certain lands in Malheur county, Or., within what is known as the "Dalles Military Road Land Grant," and for damages in the sum of \$3,600 for withholding the same. The plaintiff alleged ownership of the land in fee simple, derived under an act of congress entitled "An act granting lands to the state of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia river, to Fort Boise, on the Snake river," approved February 25, 1867. 14 Stat. 409. It was further alleged: That the act of congress granted to the state of Oregon certain lands to aid in the construction of a military wagon road from Dalles City, on the Columbia river, by way of Watson, Canyon City, and Mormon or Humboldt Basin, to a point on Snake river opposite Ft. Boise, in Idaho territory. That these lands consisted of alternate sections of public lands, designated by odd numbers, to the extent of three sections in width on each side of said road. That the lands thereby granted to the state should be disposed of only in the following manner: "That is to say, that the governor of said state shall certify to the secretary of the interior that ten consecutive miles of said road are completed, then a quantity of land hereby granted, not to exceed thirty sections, shall be sold, and so on from time to time until the road shall be completed." That on the 20th day of October, 1868, the legislative assembly of the state of Oregon passed, and the governor of the state approved, an act entitled "An act dedicating certain lands to the Dalles Military Road Company." That this act set forth the act of congress, and granted to the Dalles Military Road Company all lands, right of way, rights, privileges, and immunities granted or pledged to the state of Oregon by said act of congress, and also granted and pledged to said the Dalles Military Road Company all moneys, lands, rights, privileges, and immunities which might thereafter be granted to the state of Oregon to aid in the construction of said road. That prior to the 23d day of June, 1869, the Dalles Military Road Company surveyed and definitely located the line of its said wagon road between the points and upon the route designated in said act of congress and in the said act of the legislative assembly of the state of Oregon, and had fully constructed and completed said road, and filed in the executive office of the governor of the state of Oregon a plat or map of the said Dalles Military Road, upon which was traced and