

## Opinion of the Court.

case, not already paid by the appellant. A copy of this order may be certified to the court below so that it may be carried into effect by an appropriate order of that court upon the receiver.

The motion papers now on file do not show that the matters involved in the appeal in No. 1201 are of a character to make it proper to direct that the clerk's costs and the expense of printing the record in that case be paid by the receiver. Except as to the payment of clerk's fees and printer's charges in No. 165 as above, the motions are overruled.

*Motion granted in part and denied in part as to first suit; and denied as to second.*

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WINCHESTER *v.* HEISKELL.

## ERROR TO THE SUPREME COURT OF TENNESSEE.

Submitted January 25, 1887.—Decided January 31, 1887.

The court restates what was decided in *Winchester v. Heiskell*, 119 U. S. 450, and, on petition for rehearing, adheres to it.

THIS was a petition for a rehearing in the case decided in 119 U. S. 450—453.

*Mr. B. M. Estes* for the petitioner.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This petition is denied, but inasmuch as the petitioners think that the points on which they relied for a reversal of the judgment were not clearly understood, we will restate what was decided.

1. We held that, as the suit of *Townsend v. Jones* was pending when Townsend filed his petition in bankruptcy, and when he made his assignment to Winchester, the assignee, Winches-

## Syllabus.

ter, as such assignee, had the right to appear in that suit and have the amount due Heiskell, Scott, & Heiskell determined. It may be that, according to the practice in Tennessee, if he had not appeared, Heiskell, Scott, & Heiskell would have been compelled to bring a new suit to have the amount of their lien ascertained; but as he did appear and did ask to have the matter adjudicated in that suit, he was bound by what was done. As the court had declared the lien, it was within its jurisdiction to ascertain, with the consent of all the parties, the amount that was due under the lien and make the necessary order for its enforcement as against those who were parties to that suit. About this we have no doubt.

2. We said: "The question here is, not whether that decree thus rendered binds these appellants, (plaintiffs in error,) but whether the state court had jurisdiction so as to bind those who were parties to the suit, and those whom the parties in law represented." The assignee having voluntarily made himself a party to the suit, and the court having at his request settled the amount of the lien, he was bound by what was done, and so were all whom he in law represented in the litigation. That certainly includes the general creditors of the bankrupt; but whether it does those claiming under the trust deed from Townsend, before his bankruptcy, to George W. Winchester, trustee, we did not then and do not now decide.

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IN RE SNOW.

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, UTAH.

Argued January 21, 1887.—Decided February 7, 1887.

Where a District Court in the Territory of Utah refuses to issue a writ of *habeas corpus* involving the question of personal freedom, an appeal lies to this court from its order and judgment of refusal.

The offence of cohabiting with more than one woman, created by § 3 of the act of Congress of March 22, 1882, c. 47, 22 Stat. 31, is a continuous offence, and not one consisting of an isolated act.