

Syllabus.

January 24, 1889.

Mr. Edgington :

I send petition and agreement written by Dave Poston, who left last night for New York. He will be in Washington in three days, and said you would sign and I must forward to him.

Respectfully,

C. W. FRAZER.

January 24, 1889.

Col. C. W. Frazer :

DEAR SIR — On considering of this matter, I don't believe I could sign this waiver of notice. The matter has now been delayed so long that we could not get ready to try the case at this term after printing the record. I would like to accommodate both you and Poston, but I am satisfied that I could not secure the approval of my clients at this late day in the course suggested.

Yours truly,

T. B. EDGINGTON.

Mr. A. B. Browne and Mr. D. H. Poston for the motion.

No one opposing.

PER CURIAM: On consideration of the motion for leave to furnish fifteen copies of the record as already printed, and for a remission of the clerk's fee for supervising the printing, it is now here ordered by the court that, upon the appellants' filing fifteen copies of the record as already printed, and making payment of \$100 as for cost of additional printing required, that the balance of the estimated costs be remitted.

NICHOLS, SHEPARD AND COMPANY v. MARSH.

ORIGINAL MOTION IN A CASE BROUGHT UP BY APPEAL.

No. 95. Submitted March 18, 1889. — Decided April 1, 1889.

M. filed a bill in equity against S. for the infringement of letters patent. S. answered and filed a cross-bill. The decree dismissed the original bill

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from which M. appealed. Thereupon S. took an appeal in the cross suit from rulings excluding evidence. In this court the clerk required S. to pay one half the cost of printing the record. This court, after argument, affirmed the decree dismissing the original bill, and dismissed the cross-appeal. 128 U. S. 605. Held, that S. was entitled to recover of M. the amount so paid.

AFTER the entry of the decrees in *Marsh v. Nichols* and *Nichols v. Marsh*, 128 U. S. 605, the following motion was made, entitled in the two causes.

And now comes the said defendant, Nichols, Shepard & Co., by Charles F. Burton, their solicitor, and moves the court now here, that they, the said Nichols, Shepard & Co., do recover against the said Elon A. Marsh, Minard Lefever and James Scott, as costs to be taxed in their favor, one half of the amount required for printing the record and supervising the printing of the record in said causes, in addition to the amount, taxable and to be taxed in their favor, in the first above entitled cause.

This motion is based on the records in said causes and on the affidavit of Charles F. Burton, hereto attached, and will be brought on for hearing on Monday, the 25th day of February, at the opening of said court.

To R. A. PARKER, Esq.,

Solicitor for Marsh Lefever and Scott.

CHARLES F. BURTON,

Solicitor for Nichols, Shepard & Co.

STATE AND EASTERN DISTRICT OF MICHIGAN, } ss.
County of Wayne,

Charles F. Burton, duly sworn, deposes and says, that he is the solicitor for Nichols, Shepard & Co., in the above entitled appeal and cross appeal, and that in response to a request from the clerk of this court, he sent to said clerk, on the 16th day of November, 1887, the sum of two hundred and seventy-five dollars, which the said clerk notified him was the amount of money required to defray the portion of the expense properly

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to be borne in the first instance, by said Nichols, Shepard & Co., as one half the cost of printing the record in said cases.

CHARLES F. BURTON.

Subscribed and sworn to before me, this 21st day of January, 1889.

CHARLES H. FISK,
Notary Public.

Wayne County, Michigan.

Mr. Charles F. Burton for the motion.

Mr. R. A. Parker opposing.

PER CURIAM: On consideration of the motion for a retaxation of costs in this cause, and of the argument of counsel thereupon, had as well in support of as against the same:

It is now here ordered by the court that the amount advanced by the appellants in this cause towards printing the record be recoverable by them from the appellees herein.

[This order is entitled only in the cross-suit of *Nichols v. Marsh.*]

HUNT v. BLACKBURN.

ORIGINAL MOTION IN A CAUSE APPEALED FROM THE CIRCUIT COURT
OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

No. 16. Submitted January 22, 1889.—Decided April 8, 1889.

The counsel for appellees having undertaken to appear for the heirs and representatives of the original appellee, deceased, and having filed in the office of the clerk of this court a waiver of publication, and having failed to appear, and the cause having been heard and having proceeded to final hearing, (128 U. S. 464;) *Held*, that the decree be made absolute against the heirs and representatives of the deceased appellee.

THE previous proceedings in this case are reported in 127 U. S. 774; and 128 U. S. 464. On the 22d January, 1889, the following motion was made in the cause: