

Statement of the Case.

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:

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The appellant, by his counsel, moves the court to enter the decree in this cause, reversing the decree below ; on the ground that the waiver of publication is equivalent to the publication ; and that the undertaking of counsel to appear, is an appearance, or will justify the clerk in entering the appearance ; and in this case, an order will follow for publication, to show cause why the appellant should not have the decree certified — or otherwise why execution should not issue. It is submitted, however, that if this latter is the proper course, the *sci. fa.* should issue from the court below after remand.

If this be held by the court inadmissible, he then moves in the alternative, that an order be entered for publication, in such form as the court may order, and submits the following for the consideration of the court, as a proper order :

U. S. Supreme Court, Oct. Term, 1888.

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| Hunt | } | No. 16. |
| v. | | |
| Blackburn, et al. | | |

This case having been heard on the undertaking of counsel for appellees to appear for the heirs and representatives of the original appellee, and upon a waiver of publication by the said counsel, filed in this court ; and the said counsel having failed to appear, though requested by appellant's counsel. It is on motion of appellant's counsel ordered that publication be made in the Eastern District of Arkansas, weekly, in some newspaper published in said district, for four successive weeks ; the first publication not to be later than the first day of February next, requiring Belle Buck, as administratrix of S. S. Buck, appellee, and in her own right, Willie Buck and Eddie Blackburn, children and heirs at law of Sallie S. Buck, appellee, and all other heirs or representatives of said Sallie S. Buck, to appear before this court, on or before the first Monday in April, 1889, and show cause, if any they have, why a decree shall not be entered in this cause, reversing the decree in the court below, and remanding the said cause, with directions to enter such decree as this court may order.

Syllabus.

Mr. J. B. Heiskell, for the motion, cited *Lorymer v. Hollister*, Strange, 693; 1 Tidd's Practice, 241, 1163; *Green v. Watkins*, 6 Wheat. 260; *Wicket v. Cremer*, 1 Ld. Raym. 439; *State v. McLean*, 8 Heiskell, 289.

PER CURIAM: It is ordered that

The decree of this court of November 26, 1888, be made absolute against the heirs and representatives of Sallie S. Blackburn, deceased.

MENKEN v. ATLANTA.

ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

No. 674. Decided April 18, 1889.

The death of the accused in a criminal case brought here by writ of error abates the suit.

THE case is stated in the opinion.

Mr. Hoke Smith for plaintiff in error.

Mr. S. W. Packard for defendant in error.

PER CURIAM: The death of Fritz Menken, the plaintiff in error in the cause having been suggested by *Mr. Pope Barrow*, in behalf of *Mr. Hoke Smith* of counsel for the said plaintiff in error, and it appearing to the court that this is a criminal case, it is considered by the court that this cause has abated. Therefore, it is ordered and adjudged by the court that the writ of error in this cause be, and the same is hereby,

Dismissed.

FREELAND v. WILLIAMS.

ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA.

No. 267. Argued April 17, 18, 1889. — Decided May 13, 1889.

The provision in the constitution of West Virginia of 1872 that the property of a citizen of the State should not "be seized or sold under final process