
 Patten v. Moore.

and *Bouts v. Ellis*, 21 E. L. & E. 337, where it is held that the check of the donor is effectual as a *donatio causa mortis* only where the money is paid before his decease.

The case of *Copp v. Sawyer*, 6 N. H. 386, is an express decision of the Superior Court upon the point, which has long been regarded and acted upon as the settled law of the State. It cannot now be departed from. There must, therefore, be

Judgment for the defendant.

 PATTEN v. MOORE & a.

A witness who demurs to answer interrogatories in a case in chancery will be charged with the costs arising from the delay of the cause, and of the attempt to take his testimony.

BELL, J.* In this case, which is reported in 9 Foster 163, it was decided, that the witness was bound to answer the interrogatories proposed to him, and that the question was brought before the court substantially in the proper mode, called a demurrer to interrogatories. The only question now before us arises upon a motion that the witness should be ordered to pay the costs of the demurrer.

The rule is laid down in the books of practice, that if the demurrer to interrogatories is overruled, the costs are to be paid by the witness. Dan. Ch. P. 1130-1; and *Strathmore v. Strathmore*, 11 L. J., N. S., ch. 215; *Davis v. Reid*, 5 Sim. 448; *Parkhurst v. Lowten*, 2 Swans. 194; *Wardel v. Dent*, 1 Dick. 334; *Vailliant v. Dodamede*, 2 Atk. 592, are cited as authorities. In the last case, which was decided in 1743, the question was treated by Ld. Ch. *Hardwick* as a new question; and he says, "I am of opinion that the party is entitled to have

* SAWYER, J., having been of counsel, did not sit.

 Robie and Wife v. Flanders.

costs upon the application to the court; and if I was to lay it down as a rule, that no costs should be given in any case where a witness demurs, it would be of very bad consequence, and tend greatly to the delay of the proceedings in this court, and in some cases it would be worth the parties' while to put in such a demurrer for the sake of delay. As to the merits, I think it a proper case to give costs in, for it appeared, upon the arguing of the demurrer, that Mr. Bristow, (the witness,) came to the knowledge of the facts before he was concerned in the cause;" and he was ordered to pay five pounds costs.

That case, in its leading features, somewhat resembled the present.

It was ordered, that the witness pay the costs of the terms during which the cause was delayed, and the costs of the proceedings in taking his testimony.

33	524
68	531

ROBIE & WIFE v. FLANDERS.

The statute of limitations begins to run against a widow's claim of dower from the time when her right accrues to a writ of dower, after demand, and not from the time when she became entitled to dower upon the death of her husband.

If a widow sell her right of dower before assignment, the purchaser, having a power of attorney from her for that purpose, may maintain a writ of dower in her name.

WRIT OF DOWER, dated March 31, 1854. The defendant was summoned to answer to Henry Robie and Sallie Robie his wife, who was the wife of Benjamin Baker, deceased, in a plea of dower, wherein they demand the third part of a messuage in Manchester, as the dower of Sally Robie of the endowment of the said Baker. The writ sets out the seizin of Baker during the coverture, the death of Baker, and demand, after his death,