

The allegation that the libellant requested to be taken out, after being run in, and be left below, in the river, is improbable on its face, and is not sustained by the evidence.

The respondent cannot complain of the smallness of the crew. It would have been sufficient for the barge's management if she had been placed in the canal. That it was not sufficient to extricate her from the position in which she was improperly left, is not important. The circumstance that it was so small, of itself tends, forcibly, to prove that the libellant did not contract to be left out in the river, where his crew would be inadequate to the management of his boat. I do not find anything in the case which should relieve the respondent from liability for the loss. That the libellant should have made an effort to get into the canal, under the circumstances existing, after he was left, seems clear. He certainly is not blamable for doing so.

It is proper to say that the alleged declarations of the master of the barge, made after quitting the command and the libellant's service, have not been considered. I have regarded them as inadmissible as evidence.

THE BAY CITY.

(*District Court, E. D. Michigan.* June 23, 1830.)

1. ADMIRALTY—DOCKET FEES.—The docket fee of \$20 is taxable whenever a trial at common law is begun by the swearing of a jury, or by the introduction of testimony at the opening of argument upon a final hearing in equity or admiralty, on appeal from the clerk's taxation of costs.

In Admiralty.

This was a suit brought by the owners of the barge *Bosco* against the owners of the tug *Bay City*, to recover for the loss of the barge through the alleged negligence of the tug. On the day assigned for trial the case was called and the master of the barge put upon the stand. Upon the conclusion of

his testimony the court intimated the opinion that he had made no case against the tug, but leave was granted to the libellants to put in further testimony if they saw fit. After the evidence upon both sides had been concluded libellant discontinued his suit. Claimants now insist that they are entitled to a docket fee of \$20, as upon a final hearing in admiralty.

James J. Atkinson, for libellants.

Wm. A. Moore, for claimants.

Brown, D. J. By Revised Statutes, § 824, there is taxable in favor of the prevailing party, "on a trial before a jury, or on a final hearing in equity or admiralty," a docket fee of \$20. A practice has heretofore prevailed in this district of taxing this fee only upon the termination of the suit by a judgment or decree. The precise question does not seem to have arisen in any reported case. Upon reflection, however, I think the fee is taxable whenever the trial is entered upon by the swearing of a jury in a common-law case, or by the introduction of testimony or the final opening of the argument upon a final hearing in equity or admiralty. The fee is not made by the statute to depend upon a judgment or decree, but is taxable on a trial or final hearing. As the labor for which the docket fee is supposed to be a compensation is performed on or before the trial, equitably the party ought not to lose the benefit of it by a discontinuance entered after the trial or hearing has begun. In New York the practice seems to be to allow it upon a final disposition of the cause, even without a trial or hearing. *Hayford v. Griffith*, 3 Blatch. 79.

The appeal is sustained.

IRWIN v. THE TOWN OF ONTARIO.

(Circuit Court, N. D. New York. July 2, 1880.)

1. TOWN BONDS—AFFIDAVIT OF TOWN ASSESSORS.—In an action by a *bona fide* holder of bonds issued under the act of May 11, 1868, (Laws of New York, 1868, c. 811,) as amended by the act of April 19, 1869, (Laws of New York, 1869, c. 241,) to aid in the construction of the Lake Ontario Shore Railroad Company, the defendant cannot contradict any of the statutory facts sworn to in the affidavit of the town assessors.
Phelps v. The Town of Lewiston, 15 Blatchf. C. C. R. 131, followed.
Smith v. The Town of Ontario, 15 Blatchf. C. C. R. 267, distinguished.
2. PAPERS SEPARATELY FILED AT SAME TIME.—When such affidavit of the assessors, and other papers prescribed by the statute, were filed separately at the same time, and were attached together when produced on the trial, and were filed as a whole at one and the same time, they will be regarded as having been physically attached together as one whole when they were filed.
3. RATIFICATION.—Facts in this case *held* to constitute a ratification of the acts of the officers who issued the town bonds.

Motion for New Trial.

Albertus Perry, for plaintiff.

William F. Cogswell, for defendant.

BLATCHFORD, C. J. This is a suit against the town of Ontario, to recover the amount of 16 coupons of \$35 each, cut off from four bonds of \$1,000 each, issued by that town. Four of the coupons fell due April 1, 1877; four October 1, 1877; four April 1, 1878; and four October 1, 1878. Two of the bonds were dated April 1, 1871, and two July 1, 1871. The action was tried before the court and a jury, and the plaintiff had a verdict for the amount of the coupons, \$560, and \$86.32 interest. A motion is now made for a new trial on a bill of exceptions. The plaintiff proved that he became the purchaser in good faith of the said bonds and coupons before the same became due, for a valuable consideration, by him paid therefor at the time of the purchase thereof. He then offered in evidence a roll of papers from the office of the clerk of the county of Wayne, in which county the town of Ontario is situated, usually called a bonding roll, which consisted of

v.3,no.2—4