

Holmand or the vessel until after the repairs were made, though they were made at Charlevoix, where libelant resided, and employed his tug in towing vessels in and out the harbor, and not until half the vessel had been conveyed to Toulouse in fulfillment of the contract made with him. All the facts go to defeat all claim of justice and equity on the part of libelant. Any other view than that I have expressed would give to one so disposed, who contracts to relieve a vessel in distress for a definite price or specific payment, power to do great wrong to her owner. The owner, Capt. Holmand, and his original co-owner, are not liable *in personam*, under the facts presented by the evidence; whereas Toulouse manifestly is liable, and there would be barefaced injustice to allow libelant, upon the plea of a claim for salvage, to take funds belonging to the claimant, Holmand, by decreeing a lien against the ship for a debt owing by Toulouse, and by him only.

The usual decree will be entered, in accordance with this opinion, dismissing the libel of Hiram S. Stevens, and for costs in favor of claimant against libelant and the stipulators.

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### THE CLOUD.<sup>1</sup>

#### BERGANTZ and others v. THE CLOUD.

(*District Court, E. D. Pennsylvania.* December 8, 1886.)

#### SALVAGE—TUG AT WHARF ON FIRE.

A tug took fire while tied to a wharf. While the fire was burning, and the firemen on shore were trying to put it out, the tug got loose, and was in danger of escaping beyond the reach of the firemen. Libelants secured the tug, made her fast, and aided in extinguishing the fire. *Held*, that they had rendered a salvage service, and were entitled to compensation.

In Admiralty.

*Theodore Etting*, for libelants.

*Flanders & Pugh*, for respondent.

BUTLER, J. In view of the proofs, it must be held that the libelants rendered a salvage service. It is clear that they tied up the tug, which had become unfastened, with no one on board, and was so near the outer end of the dock as to be in some danger of escaping, or passing beyond reach of the firemen on shore; they also did something towards extinguishing the fire, and preventing her destruction. The services were not hazardous, nor of great value, and occupied but little time. They must be compensated accordingly. I believe the sum of \$75 will be a sufficient and fair compensation, and this sum is allowed. A decree may be so entered.

<sup>1</sup>Reported by C. Berkeley Taylor, Esq., of the Philadelphia bar.

## YOUNG v. MERCHANTS' INS. Co. OF NEWARK, N. J.

(Circuit Court, D. South Carolina. December 10, 1886.)

**1. REMOVAL OF CAUSES—COSTS—WITNESSES SUBPŒNAED AFTER PETITION FILED.**

Where a cause is removed from a state court to a federal court, on the ground that it is a controversy between a citizen of the state where the action is brought and a corporation created under the laws of another state, the state court loses jurisdiction immediately upon the filing of the petition for removal; and costs for witness fees in the state court for witnesses subpœnaed thereafter will not be allowed.

**2. SAME—WITNESSES ATTENDING TO GIVE DEPOSITIONS—DEPOSITIONS ISSUED FROM STATE COURTS NOT USED—COMMISSIONERS' FEES—NUMBER OF COMMISSIONERS.**

Where a cause is removed from a state court to a federal court, costs of witnesses attending at the taking of depositions issued out of the state court will be allowed if the depositions were issued before the removal of the cause, even if they were not used, because of the presence of the witnesses, or because the facts testified to were admitted at the trial. The fees of three commissioners for taking the depositions will be allowed, if the defendant against whom the costs are taxed assented to that number being employed; if not, the costs of but one will be allowed.

**3. WITNESS—MILEAGE AND PER DIEM.**

All parts of the state of South Carolina are within the jurisdiction of the United States circuit court for the Eastern district of South Carolina; and *per diem* and mileage will be allowed witnesses attending at a trial in that court who come from the Western district of that state, no matter what the distance.

**4. SAME—ATTENDANCE ON COURT IN ANOTHER ACTION—DOUBLE FEES.**

Witnesses will not be deprived of their *per diem* and mileage by the fact that they were in attendance on the court in another cause between different parties, and received *per diem* and mileage therefor.

**5. SAME—NUMBER OF WITNESSES ON EACH ISSUE—GEN. ST. S. C. § 2192.**

Under Gen. St. S. C. § 2192, mileage and *per diem* will be allowed for but three witnesses to each issue raised in the action in which they are subpœnaed.

**6. SAME—FEES, HOW CALCULATED—POINT ADMITTED, ON WHICH WITNESSES ARE CALLED—NEW TRIAL.**

Witnesses subpœnaed to testify to a particular point will be allowed mileage and *per diem* up to the admission of their testimony, although the other party admits at the trial the point to be proved by such witnesses, and a second trial being had, and no stipulation or entry made on record that the point would be admitted at such second trial, such witnesses will be allowed *per diem* and mileage for attendance at that trial also.

**7. SAME—WITNESSES NOT DEMANDING PREPAYMENT—OBLIGATION OF PARTY SUMMONING—TAXATION.**

Witnesses do not lose their right to mileage and *per diem* by not insisting upon prepayment; and the party summoning them, being bound to pay such mileage and *per diem*, may tax them in his costs.

**8. SAME—WITNESSES SUBPŒNAED AND PRESENT—NO TRIAL—NO NOTICE TO WITNESSES.**

Where a cause was on the docket, and could be tried at a term of court at which it was not tried, and before learning that the trial would not take place, a party summoned witnesses whom he was not able to notify that the trial would not be had, such witnesses, attending court, are entitled to their mileage and *per diem*.

On Motion to Tax Costs.

De Bruhl and Mitchell &amp; Smith, for plaintiff.

v. 29F. no. 7—18