

audit. The bill should be paid directly by the government to the clerk. It is not properly chargeable to the attorney, and therefore should be here disallowed. Upon the foregoing bill, as allowed, \$255 have been paid since suit was brought, and the attorney agrees that \$45 should be deducted for absences in August, 1885, and August, 1886. Let judgment be entered in favor of the petitioner for the sum of \$1,611.82, and the taxable costs under the statute of March 3, 1887.

UNITED STATES v. GUION.

(District Court, E. D. Missouri, E. D. January 14, 1889.)

ELECTIONS AND VOTERS—INTIMIDATION OF VOTER.

Where the evidence tends to show that defendant was at the polls for the purpose of scrutinizing the vote cast, and it does not appear that he acted with evil motive or intent in challenging a vote, a conviction cannot be had, under Rev. St. U. S. § 5511, for "inducing a voter by threat or intimidation to refuse to vote."

Indictment for Intimidation of Voter. On demurrer to evidence.

The indictment in this case was framed under section 5511, Rev. St. U. S., and charged that defendant unlawfully, by threats and intimidation, induced one Samuel Butler, a duly-qualified voter, to refuse to vote at an election, held for a representative in congress of the United States, in the city of St. Louis, on November 6, 1888. At the conclusion of the government's case a demurrer was interposed to the testimony.

Thomas P. Bashaw, U. S. Atty.

Thomas B. Harvey, for defendant.

THAYER, J., (*orally*.) To make out the offense defined by section 5511, Rev. St. U. S., "of inducing a voter by threat or intimidation to refuse to vote," it must appear, either directly or by fair inference from the proof, that the accused acted with evil motive or intent. That is to say, it should appear that he threatened or intimidated a person whom he knew or had reason to suppose was a duly-qualified voter. If a citizen at the polls challenges the right of another citizen to vote, and does so in good faith, believing that the party challenged is not a qualified voter, no offense is committed under the statute, although the challenge is accompanied with a threat to have the party arrested and prosecuted if he persists in voting. In the present instance, all the evidence on behalf of the government, in my opinion, tends to show that the accused acted in good faith, without evil intent. It tends to show that the accused was at the polls for the purpose of scrutinizing the vote cast, and that he believed that Butler was not a qualified voter, and that he challenged his vote solely in consequence of such belief. If any fact has been proven tending to show that the accused acted *mala fide*, that is to

say, with intent to deprive a citizen of his vote, whom he supposed or had reason to believe was a legal voter, I have failed to note it. The jury must be instructed to acquit. A construction must not be placed on the statute that will deprive a citizen of his right of challenge, as that right in many cases is quite as important as the right to vote. Furthermore, the law was not intended to restrict the right of challenge, when exercised in good faith. The jury will return a verdict of not guilty.

ROSENTHAL *et al.* v. THE LOUISIANA.

(*Obvuit Court, E. D. Louisiana, January 11, 1889.*)

1. SHIPPING—CARRIAGE OF GOODS—PLEADING—AMENDMENT.

To a libel for the value of goods shipped on claimants' vessel under a contract of affreightment, claimants answered, admitting the contract and delivery of the goods to the master of the wharf at the place of shipment, but alleged that the goods were accidentally destroyed by fire while on the pier, and before they were actually laden on board, and that the bill of lading exempted them from loss by fire at sea or in port. Libelant filed an amended libel, alleging that claimants agreed to insure the goods for the amount claimed, from the time they came into their possession until laden on board; and, having failed to make the insurance, they were liable. *Held*, that the amendment was not inconsistent with the original libel.

2. ADMIRALTY—JURISDICTION—CONTRACTS.

The contract of affreightment, the basis of the ship's liability, being a maritime contract, the additional stipulation for insurance while the goods were on the wharf cannot oust the jurisdiction of the admiralty.

In Admiralty. On appeal from district court.

Libel by Rosenthal Bros. against the steam-ship Louisiana for breach of contract of affreightment. Decree for libelants, and claimants appeal.

Bagne & Denegre, for appellants.

Hornor & Lee, for appellees.

PARDEE, J. The commercial firm of Rosenthal Bros., of the city of New Orleans, brought a libel in the district court for non-delivery of certain 12 cases of shirts, valued in New York at \$1,106.42, shipped on board the Louisiana, to be delivered to libelants at New Orleans, they paying freight. The claimants answer, admitting the affreightment contract, the delivery of the goods to the master on the wharf at the port of New York, the issuance of the bill of lading; but then allege that, after the goods were delivered to the master, and while on the pier, a fire accidentally broke out on the said pier, and that therefrom said goods were destroyed by fire before they were ever actually shipped or laden on board; and they further allege that the bill of lading granted and issued in the case, and made the basis of the libelants' suit, con-