

Case No. 3,730.

{3 Blatchf. 77.}¹

DEDEKAM V. VOSE ET AL.

Circuit Court, S. D. New York.

Oct 12, 1833.

ADMIRALTY APPEALS—TAXABLE COSTS—DOCKET FEES—READING DEPOSITIONS.

1. On an appeal in admiralty to this court from the district court, where the cause is heard on proofs and decided, one docket fee of \$20 to the proctor, and only one, is taxable under the act of February 26, 1853 (10 Stat. 101, § 1), although the cause may have been upon the calendar of this court at more than one term.

[Cited in *Troy Iron & Nail Factory v. Corning*, Case No. 14,197; *Terman v. Stewart, Gwynne & Co.*, 12 Fed. 278; *Goodyear v. Sawyer*, 17 Fed. 13; *Mead v. Piatt*, Id. 830; *Wooster v. Handy*, 23 Fed. 54; *Williams v. Morrison*, 32 Fed. 683; *Cleaver v. Traders' Ins. Co.*, 40 Fed. 864.]

2. Where, in such a case, a deposition was taken and used in the district court, and then read in this court from the apostles, a fee of \$2.50, for reading the deposition in this court, is not taxable under the 1st section of that act. Such fee is taxable only on a new deposition taken in this court

[Cited in *Terman v. Stewart, Gwynne & Co.*, 12 Fed. 278; *Wooster v. Handy*, 23 Fed. 57; *Ferguson v. Dent*, 40 Fed. 91.]

3. Where the appeal was taken, and the cause removed into this court, prior to the passage of that act, the item of \$5 on the removal of the cause to this court is not taxable under the 1st section of that act.

After the affirmance by this court—*Dedekam v. Vose* [Case No. 3,729]—of the decree of the district court in this case [Case No. 3,732], dismissing the libel, the respondents [Francis Vose and others] had their costs on the appeal taxed by the clerk of this court. Among the items allowed and taxed by the clerk were these: (1) "Proctor's docket fee, April term, 1853, \$20.00." "Proctor's docket fee, September term, 1853, \$20.00." (2) "Seventeen depositions read, \$42.50." (3) "Costs on removal to circuit court \$5." From the taxation of these items the libellant [Andres Dedekam] appealed to this court. As to item 1, it was contended that under the act of February 26, 1833 (10 Stat 161, § 1), only \$5 was taxable, and that no docket fee at all could be taxed; but that, at all events, only one docket fee of \$20 was allowable, instead of one for every term at which the cause was upon the calendar. As to item 2, it appeared that the depositions had been taken and used in the district court and that on the hearing of the appeal, they were read from the apostles. As to item 3, it appeared, that the appeal was taken in May, 1852, and that the cause was removed into this court in September, 1852.

Charles Donohue, for libellant

William M. Evarts and Erastus C. Benedict, for respondents.

THE COURT held: (1) That one docket fee of \$20 to the proctor was allowable, and only one; (2) that the item of \$42.50 for the depositions read on appeal was not allowable, because, in cases appealed to this court from the district court, the act of February 20,

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1853 (10 Stat. 161, § 1), applied only to new-depositions taken in this court; (3) that the item of \$5 on the removal of the cause to this court was not allowable, as the removal took place prior to the passage of the act of 1833.

[NOTE. This case was again heard in the circuit court on a question as to taxation of costs. Case No. 3,731.]

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