

9FED.CAS.—49

Case No. 5,091.

THE FREE TRADER.

{1 Brown, Adm. 72;}<sup>1</sup>

District Court, N. D. Ohio.

July, 1857.

PRACTICE—CUSTODIAN'S FEES.

The marshal is entitled only to his actual necessary expenses for ship-keeping, which must be established by vouchers or otherwise to the satisfaction of the court.

Motion to retax the marshal's charges for ship-keeper's fees. The Free Trader was seized upon attachment, remained in the custody of the marshal for 53 days, and was then sold by him. By the return of the marshal it appeared he had charged \$106 custodian fees, being at the rate of \$2 per day. No vouchers were filed showing payment of the amount, and no agreement by which the marshal was obligated to pay the same.

WILLSON, District Judge. The act of congress of 1853 [10 Stat 161], in relation to the fees of the marshal for keeping vessels and other property, is perfectly clear. The marshal is, by this law, entitled to receive from the fund in court the actual necessary expenses he has paid, or obligated himself to pay, and no more. His claim is like any other claim or lien on the fund in court; it must be established by vouchers or otherwise to the satisfaction of the court, and cannot be paid except by order of the same. Let the claim for ship-keeper's fees be referred to the clerk to compute the amount paid by the marshal for keeping the schooner.

NOTE. See, also, *The Phoebe* [Case No. 11,065]; *The Hibernia* [Id. 6,455].

<sup>1</sup> [Reported by Hon. Henry B. Brown, District Judge, and here reprinted by permission.]