

a question as the present libel and cross-libel; but both, I have no doubt, were designed to be embraced in the rule.

In the case of *Roberts v. Ralli*, in the eastern district, (not reported,) a case essentially like this, security was required. I am satisfied that this is the correct construction of the rule, and the motion is, therefore, granted.

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### THE FOX.\*

(Circuit Court, E. D. Louisiana. January, 1883.)

#### TOW-BOATS—TOLLS.

The relation of a tow-boat to the vessels it has in tow is not such as to make it liable for the tolls due by said vessels for passing through a channel excavated by private enterprise, and for which passage tolls are allowed by statute to be charged.

#### In Admiralty.

*Thomas L. Bayne* and *George Denegre*, for libellant.

*E. M. Hudson* and *J. Walker Fearn*, for claimants.

PARDEE, J. The legislature of Alabama enacted—

“That John Grant be, and he is hereby, authorized to enter upon and take possession of so much of the shoal or shell reef, situated between Dauphin island and Cedar Point, in the county of Mobile, as may be necessary to cut or excavate a channel or channels of sufficient depth and width to afford a good, safe inland passage for steam-boats and other vessels in the trade between the waters of Mobile bay and other places on the Gulf of Mexico, etc.; that, so soon as said Grant shall have deepened or excavated a channel of sufficient depth and width to admit the passage of steam-boats or other vessels drawing five feet of water, he shall be authorized to charge and receive, from all such boats or vessels as may go in or out of said channel, a toll or tonnage duty at a rate not to exceed 15 cents for each ton of the registered measurement of such boat or vessel, and any boat or other vessel that shall become liable for toll as aforesaid, whose captain, owner, or other person who may be in charge, neglecting or refusing to pay the same for five days after the same shall have been demanded, shall be liable to be sued for the amount of the toll due, together with 50 per cent. damages, and said boat or other vessel and their owners shall be liable for the same, together with costs of suit, to be collected before any court of competent jurisdiction,” etc.

The libel in this case is prosecuted to compel the steamer Fox, which is a tug-boat of about 25 tons measurement, to pay tolls for 11 passages through the pass or canal built by John Grant under the

\* Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

authority of said act of the legislature, and also to recover from the Fox tolls on 11 boats and barges by it towed through said pass. The claimant admits liability for the tolls claimed on the Fox, and alleges a tender of the same, but denies liability for the boats and barges admitted to have been towed through the pass.

Taking it for granted in this case, because not disputed by claimant, that the tolls authorized by the act aforesaid constitute a maritime lien on all such boats or vessels as may go in or out of said channel, the only question for decision in the case is whether the relation of a tug-boat to the boat or vessel it has in tow is such as to make it liable for the tolls which the act puts on the boat or vessel. No such liability arises from the legislative grant aforesaid. By that authority each boat or vessel going in or out of the channel is made liable, and the amount of toll may be recovered from the "boat or other vessel, and their owners." The owner of the pass may follow the boat or other vessel going in or out of the channel, or the owner of such boat or other vessel, but he is given no remedy against any other party.

The ordinary contract of towage is one merely covering the furnishing of propelling power to move a boat or vessel from one place to another. See *Desty, Shipp. & Adm.* §§ 332, 333. In such contracts tug-boats or tow-boats are not common carriers even. *The Webb*, 14 Wall. 406.

I am unable to see how a tow-boat, towing a vessel through Grant's pass, can be held liable for toll except on its own measurement, unless the liability is implied from the contract of towage, or is incurred by special contract. I think it clear that no such liability is implied from the contract of towage, and there is no suggestion of any special contract.

The libelant should have a decree for the amount of tolls due on the Fox, and his claim to recover tolls on the boats and barges in this action should be rejected. The claimant having confessed in his answer liability for all libelant is entitled to recover, should pay the costs up to the first decree rendered in the case. All the other costs in the district court and the costs in this court should be paid by the libelant. And it is so ordered.

*In re* CONRAD, United States Commissioner, etc.*(Circuit Court, D. Delaware. February 16, 1883.)***1. UNITED STATES COMMISSIONERS AND SUPERVISORS—FEES OF—HOW AUDITED AND ALLOWED.**

The act of February 22, 1875, regulating fees, requires that before any bill of costs shall be taxed by any judge or other officer, or any account payable out of the moneys of the United States shall be allowed by any officers of the treasury in favor of clerks, marshals, or district attorneys, the party claiming such account shall render the same, with the vouchers and items thereof, to a United States circuit or district court, and in presence of the district attorney or his sworn assistant, whose presence shall be noted on the record, prove in open court, to the satisfaction of the court, by his own oath or that of other persons having knowledge of the facts, to be attached to said account, that the services therein charged have been actually and necessarily performed as therein stated \* \* \* and by section 2031, Rev. St., the above provision is extended to accounts of fees of chief supervisors.

**2. SAME—PUBLIC OFFICERS IN DUAL CAPACITY.**

Where an act is required to be performed or services to be rendered, and the officer required to perform it necessarily holds two positions intimately and indispensably connected, and provision is made by law for the payment of services rendered in each capacity, it is more consonant with the principles of justice and equity that compensation for that service should be made according to the provisions of the statute that applies to it, rather than to deny such remuneration on mere technical grounds.

**3. SAME—SUPERVISORS OF ELECTION, FEES OF.**

Section 2031, Rev. St., provides that there shall be allowed to each supervisor of elections who is appointed and performs his duty under the preceding provisions, compensation at the rate of five dollars per day, for each day he is actually on duty not exceeding 10 days. The chief supervisor is included under the provisions of this section.

**4. SAME.**

Fees for drafting and furnishing certain papers, and the rate per folio or otherwise at which public officers are allowed to charge therefor, are provided for under section 828, Rev. St.

*Henry C. Conrad*, for himself.

*John C. Patterson*, Dist. Atty., *contra*.

BRADFORD, J. The following charges of said commissioners and supervisors having been previously disallowed by the first comptroller's office, treasury department, under date of December 28, 1882, as unauthorized by law, are now reclaimed and again objected to, viz. :

(1) For drafting recommendations to the court for appointment of supervisors of election, at 15 cents a folio; (2) for drafting oaths of office and furnishing same to supervisors of election for qualification, at 15 cents a folio; (3) for drafting oaths of office and furnishing same to special deputy marshals