found, without success; and, not finding him, the steamer departed on her voyage, somewhat after 3 o'clock.

There are various circumstances, which I need not detail, which satisfy me that the libelant did not intend to desert the ship,—that is, depart with the intention not to return,—but his absence was most unreasonably prolonged. The captain made all reasonable efforts to find him, and he was not required, in my judgment, to wait for him longer. The captain's entries in his memorandum book, a month afterwards, from previous pencil *memoranda*, are not entitled to the weight of evidence of a log-book with proper contemporaneous entries. As the master was justified in his departure, the respondent is not liable for the board or expenses of return incurred by the libelant. Under section 4596 of the Revised Statutes, subd. 2, which it has been held supersedes the provisions of the act of 1790, § 5, (*Scott* v. *Rose*, 2 Low. 381, 382,) it is in the discretion of the court to determine what punishment should be imposed upon seamen for any absence from duty without leave and without sufficient excuse. Absence prolonged after a reasonable time comes within this provision. I have no doubt that the intemperate habits of the libelant were at the bottom of the difficulty. It does not appear that the vessel incurred any increased expense, and I think a sufficient punishment will be inflicted on the libelant by charging him with his own expenses of board and return, and allowing him wages to and including November 11th, amounting to $20. To this should be added $7 for his valise and contents, and $6.50 deducted for advance pay.

A decree may be entered for $20.50, with one year's interest, making, in all, $21.95, without costs. *Johnson* v. *Blanchard*, 7 FED. REP. 597.

In re TRUNDY and another.

(*District Court, S. D. New York.* November 24, 1883.)

ADMIRALTY—COSTS—DOCKET FEE—PETITION.

Where a petition is filed by persons claiming a lien on the proceeds of a vessel in the registry, and it is referred to a commissioner to take proof of the facts, and exceptions are taken to his report, *held*, that only one docket fee can be charged.

Taxation of Costs.

Henry D. Hotchkiss, for petitioner.

Henry N. Tifft, for respondent.

BROWN, J. A libel having been filed in this case for the sale and partition of the tug John E. Mulford, and a monition having been issued for all persons interested, as well as the owners, to appear, various claimants having liens on the tug appeared upon the return-

day and filed petitions, stating their claims, and praying to be paid from the proceeds of the vessel to be derived from her sale when paid into the registry of the court. A decree for the sale of the vessel was at the same time taken by consent; and, no objection being made, an order was taken referring it to a commissioner to take proof of the facts stated in the various petitions and to report to the court. Subsequently, the commissioner reported the testimony taken, and his finding that the claims should be allowed for the respective amounts stated. Exceptions to his report were filed and argued before the court and overruled. In the mean time, the vessel having been sold and the proceeds paid into the registry, a final decree in the principal case, together with orders for the payment to the petitioners of their various claims, are presented to the court for allowance, together with the question of the costs to which they are severally entitled.

Each of the petitioners, as well as the respondent, is entitled to a docket fee, inasmuch as their claims have been required to be proved, and the proof has been heard and their claims allowed. There has been, however, but one hearing, and consequently but one docket fee can be claimed. *The Troy, etc.*, v. *Corning*, 7 Blatchf. 16. There was no "final hearing" prior to the reference, for the reference was to take proof of the facts, and the commissioner, in taking the testimony, acted only as the court would have done in taking the same proof. The hearing before the court upon the commissioner's report, though nominally upon exceptions, was in reality the first and only "final hearing" of the cause, as the reference was only to take proof of the facts. But if it had been otherwise, and the referee had been ordered to hear and determine, then the hearing before the referee, while sufficient to support a docket fee, would have left nothing further for the court than a hearing of the specific exceptions to the commissioner's report; and upon the hearing of such exceptions no docket fee is taxable. *Beckwith* v. *Easton*, 4 Ben. 357.

Without determining whether a second docket fee may not be charged where the court, as in collision cases, has determined upon a hearing before it the principal questions of liability, and then orders a reference to determine the damages, it is clear that in the present case there has been but a single hearing on each petition, and but one docket fee on each can be allowed.

MILLER v. TOBIN.

(Circuit Court, D. Oregon. December 10, 1883.)

1. RECORD—WHAT CONSTITUTES, UNDER THE ACT OF 1875.
   The term "record," as used in sections 3 and 7 of the act of 1875, (18 St. 470,) *held* to include the testimony taken and on file in a cause at the time of filing a petition and bond for its removal from a state court.
2. JURISDICTION OF STATE COURT—WHEN IT CEASES.
   Upon the filing of a petition and bond in due form and effect for the removal of a cause from a state court, whether in vacation or term-time, in a case removable under the act of 1875, the jurisdiction of the state court ceases at once, and depositions taken thereafter before a referee theretofore appointed to take the testimony in the case are no part of the record or proceedings therein.
3. RIGHT OF REMOVAL BY DEFENDANT—NOT LOST BY INSUFFICIENT DENIALS IN ANSWER.
   When it appears from the case made by the complaint that it arises under an act of congress, the right of removal by the defendant is not lost by reason of insufficient denials in the answer.
4. TIME FOR FILING PETITION FOR REMOVAL.
   A hearing on a demurrer to a complaint, and an order overruling the same and allowing the defendant to answer to the merits of the case, is not a "trial" within the meaning of that term as used in section 3 of the act of 1875, *supra;* but such "trial," whether it be an issue of fact or law, is one upon which a final disposition of the case is made.
5. "TRIAL" AND "HEARING."
   "Trial" is a common-law term, to denote that step in the case by which the facts are ascertained, and is always final unless the matter is set aside for cause. "Hearing" is an equity term, and may denote the argument and consideration of a case at more than one stage of its progress, but when it results in an absolute disposition of the case it is called "final;" but the term "trial," as used in the act of 1875, *supra*, comprehends that step or proceeding in a cause at law or in equity which results in a final judgment or decree, whether the "trial" be of an issue or question of law or fact.

Suit to Compel a Patentee of Land to Convey the Same.

N. B. Knight, for plaintiff.

James F. Watson, for defendant.

DEADY, J. This is a motion to remand this cause to the state court. A brief statement of the pleadings and proceedings therein is necessary to a correct understanding of the points made by and on the argument of it.

On April 6, 1883, the plaintiff commenced suit in equity in the circuit court of the state for the county of Klamath, to compel the defendant to convey the legal title and deliver the possession to him of a certain tract of land containing 160.66 acres, and situate in said county,—the same being parts of sections 17, 18, and 19 of township 39 S., and of range 9 E. of the Wallamet meridian,—upon substantially the following allegations of fact: That said land is swamp and overflowed, and on January 15, 1872, the agents of the state, in pursuance of the act of October 26, 1870, to provide for the selection