

THE COLORADO.

District Court, N. D. New York.

1884.

ADMIRALTY PRACTICE—MARSHAL'S
FEES—COMMISSIONS.

Where a marshal has been paid his fees and commissions on the sale of a vessel under decree of the district court, and a claimant files a petition, on which monition is issued, asking that the balance of the proceeds of the sale in the registry of the court be paid to him, and it so ordered, the marshal is not entitled, in addition to his fees for serving the process, to a commission on the amount paid to the claimant.

Appeal from Taxation of Marshal's Costs.

James A. Murray, for marshal.

William B. Hoyt, for respondent.

COXE, J. In May, 1884, the propeller Colorado was sold by the marshal, under a decree, and the proceeds were paid into court. His fees and commissions for this service, estimated on the entire amount realized were paid him in full. After discharging the debt of the libelants there still remained a large sum in the registry of the court.

On the seventh of June, 1884, the present proceeding was instituted by Frederick L. Danforth, as receiver, to reach the amount so remaining. A petition was filed and a monition issued which was placed in the hands of the marshal for service.

In addition to his fees for serving mesne process, mileage, etc., he charged \$49.58 "per cent, on amount recovered." This item was disallowed by the clerk. The marshal now appeals. The clerk was clearly correct. The marshal had already received his commissions. The money was in the registry of the court and under its control. No action on the part of the marshal was necessary to restore it to its rightful owner. When its owner was found the clerk was directed to pay it over.

That was all. No process was required and none was issued, there was no sale and no settlement. There is no section of the fee-bill which directly or indirectly makes such a charge permissible, and it is not a case where the discretionary power of the court on the subject of costs can be invoked.

Taxation affirmed.

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