

to hold the carrier irrevocably bound by every statement signed by him in the bustle and excitement of commerce. He should always be permitted to show the truth. Whether the mistake or loss occurred at New Baltimore or Buffalo is not material so long as no fault can be imputed to the libellant.

There should be a decree for the libellant, with costs.

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 libellants 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.

MAYOR, etc., v. INDEPENDENT STEAM-BOAT Co. and others.

(Circuit Court, S. D. New York. October 1, 1884.)

1. REMOVAL OF CAUSE—SEPARABLE CONTROVERSY—CITIZENSHIP

The mayor and city council of New York filed a bill in the state court against the Independent Steam-boat Company, a New Jersey corporation, another New Jersey corporation, a New York corporation, and a citizen of New York, alleging a combination to establish and operate a ferry in violation of the rights of the city, and that defendants were operating such ferry, and asked for an injunction and accounting. The Independent Steam-boat Company removed the case from the state court. *Held*, that the second subdivision of section 639 of the United States Revised Statutes, having been repealed by the act of March 3, 1875, the only authority for a removal by one of several parties defendant is that provision of the act of March 3, 1875, which permits it when the controversy is wholly between citizens of different states, and can be fully determined as to them; that this was not such a case, and was not removable.

2. SAME—FEDERAL QUESTION—PETITION BY ONE CO-DEFENDANT.

Where there is no separable controversy, as between the plaintiff and removing defendant, and the petition alleges, among other things, that the controversy arises under the constitution and laws of the United States, the suit can only be removed on the petition of all of the defendants, under the first clause of the second section of the act of March 3, 1875.

Motion to Remand.

E. Henry Lacombe, for the motion.

Work & McNamee and *Roscoe Conkling*, opposed.

WALLACE, J. This suit was removed from the state court upon the petition of one of the defendants, the Independent Steam-boat Company, a New Jersey corporation. The bill of complaint alleges a combination between that corporation, another New Jersey corporation, a New York corporation, and one Starin, a citizen of New York, to establish and operate a ferry in violation of the rights of the plaintiff, and that defendants are now operating such ferry. The prayer for relief is for an injunction and an accounting.

Under the second subdivision of section 639 of the United States Revised Statutes such a suit might have been removed upon the petition of a single defendant, between whom and the plaintiff the requisite diversity of citizenship existed. But, as is held in *Hyde v. Ruble*, 104 U. S. 407, and *King v. Cornell*, 106 U. S. 395, S. C. 1 Sup. Ct. Rep. 312, that subdivision of the section was repealed by the act of March 3, 1875. The only authority, therefore, for a removal by one of several parties defendant is that provision of the act of March 3, 1875, which permits it when the controversy is wholly between citizens of different states, and can be fully determined as between them. The controversy here is not of such a character. It is not a separable controversy within the decisions of this court. *Boyd v. Gill*, 19 FED. REP. 145.

The petition alleges, among other things, that the controversy arises under the constitution and laws of the United States. If this is so, the suit can only be removed on the petition of all of the defendants,