

FREEMAN *v.* THE UNDAUNTED.

*Circuit Court, N. D. California.*

February 15, 1889.

CONSTITUTIONAL LAW—INTERSTATE COMMERCE—PILOTS—HALF PILOTAGE.

Pol. Code Cal. § 2466, imposes half pilotage on vessels when a pilot is declined, but section 2468 exempts “from all charges for pilotage, unless a pilot be actually employed, all vessels coasting between San Francisco and any port in Oregon, or in Washington or Alaska territories, and all vessels coasting between the ports of this state.” Rev. St. U. S. § 4287, provides that “no regulations or provisions shall be adopted by any state which shall make any discrimination in the rate of pilotage or half pilotage, between vessels sailing between the ports of one state, and vessels sailing between the ports of different states.” *Held*, that the California statute is void for unlawful discrimination, and half pilotage cannot be collected under it.

In Admiralty. Appeal from district court.

Libel by E. M. Freeman against the ship *Undaunted*, for half pilotage. The district court dismissed the libel and libelant appeals.

*P. G. Wigginton*, for appellant.

*Milton Andres*, for appellee.

Before SAWYER, Circuit Judge.

SAWYER, J. This is a suit for half pilotage, the captain of the *Undaunted*, a registered American vessel, having refused to employ a pilot when leaving the port of San Francisco, for the port of New York.

The only question is, whether the statute of California allowing half pilotage, is not in conflict with the statute of the United States upon the subject, and therefore, void. Under section 2466 of the Political Code of California, vessels of her class are required to pay “five dollars per foot draft, and four cents per ton for each and every ton registered measurement,” and half pilotage when a pilot is declined. But section 2468 “exempts from all charges for pilotage, unless a pilot be actually employed, all vessels coasting between San Francisco and any port in Oregon, or in Washington, or Alaska territories, and all vessels coasting between the ports of this state,” thereby excepting them from the operation of the general provision of section 2466. Thus by the express provisions of the state statute, a discrimination is made between “vessels coasting between San Francisco and any port of Oregon, or in Washington, or Alaska territories, and all vessels coasting between the ports of this state,” and “vessels sailing between the ports” of California and any of the other states of the Union—the discrimination being against all the last-named vessels, the latter being required to pay half pilotage when they decline the services of a pilot, while the former are wholly exempt from half pilotage under the same circumstances and conditions. But section 4237 of the Revised Statutes of the United States provides that “no regulations or provisions shall be adopted by any state which shall make any discrimination in the rate of pilotage or half pilotage, between vessels sailing between the ports of

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one state, and vessels sailing between the ports of different states \* \* \* and all existing regulations, or

provisions making any such discrimination are annuled and abrogated." Thus this express provision of the statute, renders void the statute of California cited, It is claimed, however, that as this vessel sails around Cape Horn to New York, and may touch at some foreign port on the way, it is not "coasting" between the two ports of San Francisco and New York. But, if this be so, the provision of the Revised Statutes cited, does not say "coasting," but "vessels sailing" between the ports of the states. This vessel is, clearly, within the terms of the provision. The provision is constitutional and valid under the clause of the national constitution authorizing congress to regulate commerce between the states. The case of *Sprague v. Thompson*, 118 U. S. 90, 6 Sup. Ct. Rep. 988, is in point, and covers this case. The ship *Undaunted*, therefore, is not liable for half pilotage, and the decree of the district court must be affirmed and the libel dismissed, and it is so ordered.