

THE LILLIE.¹
CROSBY *v.* THE LILLIE *ET AL.*

Circuit Court, S. D. Alabama.

April 21, 1890.

ADMIRALTY"APPEAL—COSTS—PROCTOR'S DOCKET FEE.

As an appeal in admiralty suspends the original decree, and there is no final hearing until that in the appellate court, the proctor's docket fee of \$20, allowed (Rev. St § 824) on final hearing in admiralty, accrues in case of appeal only in the circuit court, and should be charged but once.

In Admiralty. On motion to retax costs.

W. E. Richardson, for the motion.

W. D. McKinstry, *contra*.

TOULMIN, J. The libelant obtained a decree in the district court, which was appealed from by the claimants. On appeal the circuit court also rendered a decree in favor of libelant, and the appellants were taxed with all costs. The clerk taxed against appellants three proctor's fees, aggregating \$45. Among them were two docket fees of \$20 each, one of which was taxed as part of the costs in each of said courts, and the fee of \$5 was taxed under section 824, Rev. St., for services rendered in the case in removing the same by appeal from the district court to this court. Appellants now move the court to retax the costs to the extent of the docket fee of \$20, taxed as part of the costs in the district court, on the ground that it is illegal and unauthorized. Section 824, Rev. St., provides that there shall be taxed and allowed to proctors, on a final hearing in admiralty, a docket fee of \$20, and the question now presented for decision is, were there two final hearings in this case, or what is the final hearing? An appeal in admiralty suspends and vacates the decree appealed from, and the decree is not final until the case is heard and decided in the appellate court, and there is no final hearing until there is a final decree. Ben. Adm. § 590; 2 Conk. Adm. 385, 394; Hen. Adm, § 138; *U. S. v. Preston*, 3 Pet. 57; *The Lucille*, 19 Wall. 73. The statute provides that the proctor shall be allowed a docket fee "on final hearing," and it is held that final hearing is the last hearing, in admiralty cases, when the case is finally heard as to costs. *Goodyear v. Sawyer*, 17 Fed. Rep. 7, 8. The court says that the docket fee is general, and it is taxable on the final hearing in favor of the proctor of the prevailing party as a lump sum for all the services in a case. There has been but one "final hearing" in this case. There is but one final decree, and that is the decree rendered on appeal in this court, the decree in the district court being superseded and vacated by the appeal. My opinion, therefore, is that there can be but one docket fee of \$20 allowed,—the docket fee taxed as part of the costs in this court. The motion to retax the costs is granted.

¹ Reported by Peter J. Hamilton, of the Mobile, Ala, bar