

## THE FRANCE.

## NICOLAY v. THE FRANCE.

(District Court, S. D. New York. March 26, 1892.)

## 1. PILOTAGE FEES—ADDITIONAL COMPENSATION—VESSEL DETAINED—COMPUTATION BY THE HALF FOOT.

Section 17, c. 467, Laws N. Y. 1853, in regard to pilotage fees, is not superseded by the provisions of chapter 90, Laws 1884, and a pilot of an outward bound vessel, detained in the harbor beyond the usual time of taking the vessel from her wharf to sea, is entitled to three dollars per day additional compensation. Where the statute specifies a computation by the draft per foot, the amount may be reckoned by the nearest half foot, *pro rata*.

## 2. LIBEL TO RECOVER PILOTAGE FEES—WINTER PILOTAGE.

After the steam-ship France had sailed for London, her cargo shifted, and she returned to New York. Not being able to get into her dock, she discharged a portion of her cargo at an anchorage in the bay. After the rest of her cargo had been restowed, and she had taken on board her pilot, the libellant, she returned to the anchorage to take on the cargo discharged there. This detained her one day. The amount of the pilotage fee was calculated on the draft of the vessel according to the nearest half foot. *Held*, that that mode of computation is allowable after long acquiescence therein; also that libellant was entitled to an additional four dollars allowed in the winter season, (Act 1853, § 16,) and to an additional three dollars for one day's detention in the harbor.

In Admiralty.

*Carpenter & Mosher*, for libellant.

*John Chetwood and Adam Goss*, for claimant.

BROWN, District Judge. In my judgment the provisions of chapter 90 of the Laws of 1884 of this state, in regard to the fees of pilots for piloting inward and outward bound vessels, were not designed to supersede, and do not supersede, sections 16, 17, and 21, c. 467, Act 1853. Sections 13 and 14 of the act last named provide the "fees for piloting inward and outward bound vessels" respectively. Sections 1 and 2 of the act of 1884 cover precisely the same ground as sections 13 and 14 of the former act, and no more, and section 3 repeals only what is inconsistent therewith. But sections 16, 17, and 21 of the act of 1853 relate to other matters evidently not designed to be included in sections 13 and 14. Section 17 provides a compensation of three dollars "to be added to the pilotage for *detention* at the wharf, or in the harbor," etc.; and section 21 provides certain compensation for "services" rendered by pilots "for removing or transporting vessels *in the harbor* of New York." The act of 1884 does not touch the subject of those special provisions. Its scope is co-extensive with sections 13 and 14 of the former act, and no further. Sections 17 and 21 of the act of 1853 are not repealed by the act of 1884, because they are not inconsistent with the act of 1884, any more than with sections 13 and 14 of the act of 1853.

Section 16 of the act of 1853 provides that between the 1st day of November and the 1st day of April inclusive, four dollars "shall be added to the full pilotage of every vessel coming into, or going out of, the port of New York." The previous sections 13 and 14 had determined what that "full pilotage" was; and as I regard the provisions of

sections 1 and 2 of the act of 1884 as a mere substitute for sections 13 and 14 of the former act, it follows that the provisions of section 16 of the act of 1853 remain in force.

The amount of pilotage allowed under both acts is to be computed according to the draft at certain rates "per foot." The practice under both acts has always been to recognize in the computation fractions of a foot, and to reckon to a half foot or to the even foot, to whichever the actual draft in inches might be nearest. In later years upon the demand of the Wilson line the proportions of a foot have been computed and allowed for according to the exact draft in feet and inches.

In the present case the bill was rendered to the master and approved, as for 26½ feet, the actual draft being 26 feet 5 inches. The usual practice is evidently one that carries out equitably the general intention of the law. I know of nothing that forbids computation for fractions of a foot; and the usual practice to make a rest at the half foot, and to compute the rates according to the even foot or the half foot, whichever is nearest the actual draft, is recommended by its practical convenience. The rule works in no way unjustly to the ship, or to the advantage of the pilots; and the difference between the results afforded by that rule and an exact proportionate measurement, is so small as to fall within the maxim *de minimis non curat lex*.

Decree for the libellant for the bill as rendered, with three dollars additional under sections 17 and 21 of the act of 1853, with interest and costs.

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THE ERASTINA.

THE ELM PARK.

HARRIS v. THE ELM PARK AND THE ERASTINA.

(District Court, S. D. New York. April 2, 1892.)

1. MARITIME LIENS—TOWAGE.

Towage services are presumptively a lien on the vessel. It is for the claimant to prove a personal credit only, or to show circumstances that negative a credit to the vessel.

2. SAME.

On the evidence in this case, held, that the towage services were rendered on the credit of the vessel.

In Admiralty. Libel for towage.

*Hyland & Zabriskie*, for libellant.

*Carpenter & Mosher* and *A. A. Wray*, for claimant.

BROWN, District Judge. The only point litigated is whether the towage service was a lien upon the boats. The service sued for was rendered upon several trips during the month of July, 1891. Similar services had been rendered prior to July under a contract with one