

ness being proved, and being known to all steamboat hands and employe's, it follows that the risk attendant upon such method of landing steamboats is incidental to the employment, and assumed by the employe'. Therefore, if the proximate cause of James Brooks' death was the landing of the steamboat Valley Queen, under the circumstances detailed in the libel, the owner cannot be chargeable therewith, nor liable therefor.

The evidence shows that the negligence of the fall tender was very likely the proximate cause of Brooks' death. The preponderance of evidence is that the master of the vessel ordered the fall tender, when the bank caved, and at the time that Brooks was on the stage returning to the steamboat, to hold onto the fall, but that instead of holding onto the fall, which sustained the stage, and kept it from tilting, he let go the fall; thereby letting the stage tilt and fall into the river, throwing James Brooks off into the river. The fall tender was selected by the master from among the crew, and, so far as the record shows, was of the average intelligence and capability. His own evidence with regard to the matter in hand is that he slacked up the fall because the captain ordered him to slack it up, and it is likely that he so understood the order; but he further testifies (evidently in answer to a question as to whether he heard anybody call out from the shore) that:

"Everybody was hollering. It looked like everybody was a-hollering. Everybody around the stage was a-hollering. I can't tell you who it was, but there was commotion and excitement just like when there is an alarm,—when there is a man drowned."

Our conclusion on the whole case is that, so far as James Brooks came to his death through the landing of the steamboat at the time and under the circumstances referred to, it was through one of the risks incident to his employment, and that, so far as the act of the fall tender was a proximate cause of, or contributed to, his death, the act was attributable to the negligence of a fellow servant, and that for neither is the owner liable.

The decree of the district court should be reversed, and the cause remanded, with instructions to dismiss the libel, with costs in the district court; but the costs of appeal, and of this court, should be adjudged against the appellants. And it is so ordered.

KANSAS CITY, FT. S. & M. R. CO. v. McDONALD.

SAME v. STONER.

(Circuit Court of Appeals, Eighth Circuit. March 2, 1894.)

Nos. 85 and 86.

COSTS ON APPEAL—ATTORNEY'S FEES.

Upon the affirmance of a judgment, with costs, by the circuit court of appeals, an attorney's fee of \$20 is taxable against plaintiff in error, as this is the uniform practice of the supreme court under a rule identical with that of the circuit court of appeals (Sup. Ct. Rule 24, subd. 2, 3 Sup. Ct. xiii.; Cir. Ct. App. Rule 31, subd. 2, 47 Fed. xiii.), and as the

act creating the latter court declares that "the costs and fees in the supreme court now provided for by law shall be costs and fees in the circuit courts of appeals" (26 Stat. 826, § 2).

In Error to the Circuit Court of the United States for the Eastern District of Arkansas.

These were actions to recover damages for personal injuries. The opinions of this court affirming the judgments on the merits are reported in 2 C. C. A. 153, 51 Fed. 178, and 2 C. C. A. 437, 51 Fed. 649, respectively. A motion is now made by defendants in error to retax the costs.

I. P. Dana, for plaintiff in error.

George H. Sanders and Joseph W. W. Martin, for defendant in error.

Before CALDWELL and SANBORN, Circuit Judges, and THAYER, District Judge.

PER CURIAM. A motion is made in each of these cases to retax the costs in this court, and to strike from the costs taxed by the clerk against the plaintiff in error the \$20 attorney's fee he allowed. The order of this court was that the judgment of the court below be affirmed, with costs. It has been the uniform practice of the supreme court, in cases where a judgment is affirmed, to tax an attorney's fee of \$20 against the plaintiff in error. The rule of this court upon this subject is a literal copy of that of the supreme court. It is: "In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court." Rule 24, subd. 2, of supreme court rules; rule 31, subd. 2, rules of this court. The act of congress by which this court was established provides that "the costs and fees in the supreme court now provided for by law shall be costs and fees in the circuit courts of appeals." 26 Stat. 826, § 2.

We are of the opinion that the fact that the highest judicial tribunal in the land has uniformly allowed this attorney's fee under a rule identical, as far as it relates to this subject, with that in this court, was sufficient evidence that this item was a part of "the costs and fees in the supreme court provided for by law" to warrant our clerk in allowing it, and the motions are accordingly denied.

INTERNATIONAL BOW & STERN DOCK CO. v. UNITED STATES.

(Circuit Court, D. New Jersey. March 16, 1894.)

1. CONTRACTS—INTERPRETATION—TECHNICAL TERMS—ADJUSTABLE.

A contract to construct an "adjustable stern dock" does not require a dock which is automatically adjustable, but one which is adjustable by cutting away and filling in its gates so that they will conform to the contour of the hull of the vessel; especially where the term is treated as a technical one, and the experts agree upon that definition of it.