

The effect of this clause is, therefore, to require the three different policies in the present case to be called on pro rata for the proportionate amount of the loss. The libellant has acted upon this principle in obtaining payment from the East River Mutual Insurance Company of one-half of the loss, as that Company's policy covered half the total insurance. The defendants' association, having insured for one thousand dollars, i. e., the one-quarter part of the whole insurance, can only be called on to pay under the rider clause one-quarter part of the aggregate loss, viz., \$253.88.

As regards the manner, however, in which the libellant may collect this \$253.88 from the 30 subscribers to this policy, there is nothing in the policy, or in the rider that modifies the common law right of the insured to prosecute all or any of the several individual obligors, and recover against each up to the limit of his stipulated legal liability, so far as necessary to make good the loss apportioned to this policy as a whole. The right of the assured to recover in this manner arises from the very nature of the engagement, by which each individual under this policy has expressly stipulated that he is "liable for one-thirtieth of \$1,000"; and as each one has thus made himself legally liable for that amount, all or any of them are liable to be called on to pay that amount until the claim under the policy is satisfied. As between the subscribers themselves, it is for those who pay more than others to resort to them for proportionate indemnity, which they are entitled to do both under the express clause of subrogation which the body of this policy contains, as well as by the equitable right which the law would recognize even without that clause. Such a course is also more compatible with justice; for in an action for contribution brought by those who have paid, all the others may be joined as defendants in one action; and in the case of the insolvency of some, the deficiency would be equitably distributed among the solvent defendants so long as the limit of their liability was not exceeded; whereas, if the contrary rule were applied, the insured could have no such equitable relief, and must wholly lose whatever he should be unable to collect of any one of the subscribers. Plainly the common law rule, as established by Lord Mansfield, is eminently equitable in both directions.

Decree for the libellant against each defendant for \$33.33, with interest and costs.

THE O. C. HANCHETT.

ROGERS et al. v. THE O. C. HANCHETT et al.

(Circuit Court of Appeals, Second Circuit. November 18, 1896.)

SALVAGE IN HARBORS—COMPENSATION.

In cases of salvage in harbors where tugs are abundant and on the ground or near by, large awards should not be made.

Appeal from the District Court of the United States for the Southern District of New York.

This was a libel for salvage, filed by Robert Rogers and others against the canal boat O. C. Hanchett and cargo, Nicholas Wiedener and others being claimants of the boat, and C. H. Abbott claimant of the cargo. The district court entered a decree for complainants for \$500, and the complainants have appealed therefrom, on the ground that the sum awarded was not sufficient in amount.

At the time the salvage services were rendered, the canal boat was lying at a pier at the foot of Amity street, Brooklyn, in the immediate neighborhood of several other vessels. A fire broke out on the pier, and spread rapidly; and, while it was burning, the mate of the canal boat, who was in charge at the time, signaled to complainant's tug, James W. Husted, which was passing near. A line was thrown from the tug to the canal boat, and made fast to the stern of the latter, and the Husted backed away under full speed, taking her out into the river. The canal boat had not yet caught fire, though her paint was scorched, and the tug played on her with a hose for a short time. The tug then towed the canal boat to pier 6, East river. The length of time occupied in this service was about 25 minutes, and in the meantime a number of tugs had gathered in the vicinity. The canal boat was valued at \$1,600, and her cargo at \$3,800. In the district court the following memorandum of opinion by BROWN, District Judge, was indorsed on the libel: "In harbor cases, where tugs are abundant and on the ground or near by, in time to give needed aid, large awards are not only unnecessary, but contrary to the principle laid down by Mr. Justice Bradley in *The Suliste*, 5 Fed. 99. This boat was not on fire. Other tugs were near by. The libelants' service was very brief, and without the least difficulty or danger. \$500 is as much as the analogies of this court will admit on a valuation of \$5,400. Decree for that amount, and costs to defendants since the tender."

Peter S. Carter, for appellants.

James J. Macklin, for appellees.

Before LACOMBE and SHIPMAN, Circuit Judges.

Decree affirmed, with costs, on opinion of district judge.

MEMORANDUM DECISIONS.

SOUTHERN RY. CO. v. WARNER et al.

(Circuit Court of Appeals, Fourth Circuit. November 10, 1896.)

No. 159.

RAILROADS—RECEIVERS—PRIORITY—SUPPLIES.

Appeal from the Circuit Court of the United States for the Eastern District of Virginia.

This was a bill for foreclosure of mortgage by the Central Trust Company against the Richmond & Danville Railroad Company. Warner Moore & Co., supply creditors of the railroad company, by intervening petition sought to have their claim paid out of the proceeds of sale of the mortgaged property in preference to mortgage debts. This appeal was taken from a decree in favor of the interveners.

This case comes up on appeal from the circuit court of the United States for the Eastern district of Virginia. It is similar to that of *Railway Co. v. Adams*, (decided at this term) 76 Fed. 504. The special masters say as to it: The claim of Warner Moore & Co. is for meal furnished October 12, 1891, amounting to \$252.75. It is a part of an order, all of which has been paid by the company

with the exception of this balance, which was overlooked and not paid by mistake. The masters allowed the claim, and gave it priority to the mortgage debt. On exception to the law as laid down by the masters, the court sustained the report. This is assigned as error.

Willis B. Smith and Henry Crawford, for appellant.

Wyndham R. Meredith, for appellees.

Before SIMONTON, Circuit Judge, and HUGHES and MORRIS, District Judges.

SIMONTON, Circuit Judge. There can be no question in this case. The decree of the circuit court is affirmed, with costs.

MORRIS, District Judge. I dissent on the question of the allowance of interest on the claim in this case.

WASHBURN v. PULLMAN'S PALACE-CAR CO.

(Circuit Court of Appeals, First Circuit. September 16, 1896.)

No. 138.

PULLMAN'S PALACE-CAR CO. v. WASHBURN, 66 FED. 790, AFFIRMED.

Error to the Circuit Court of the United States for the District of Massachusetts.

This was a writ of scire facias sued out by the Pullman's Palace-Car Company against Frank L. Washburn to enforce against him a liability for costs as indorser of the writ in an action brought against the Pullman's Palace-Car Company by one Maggie M. Harrison, in which judgment had been rendered against the plaintiff for \$813.94 costs. The circuit court gave judgment. See 66 Fed. 790, where the opinion there rendered will be found in full. The defendant brought error.

Freedom Hutchison, for plaintiff in error.

Benj. N. Johnson, for defendant in error.

Before COLT, Circuit Judge, and NELSON and WEBB, District Judges.

PER CURIAM. In this case we agree with the reasoning in the opinion, and with the conclusion reached by the circuit court. The judgment of the circuit court is affirmed.

HENDERSON v. UNION TRUST CO. OF PHILADELPHIA. AMERICAN LOAN & TRUST CO. v. SAME. THOMSON-HOUSTON ELECTRIC CO. v. SAME. (Circuit Court of Appeals, Sixth Circuit. May 12, 1896.) Nos. 363-365. Appeal from the Circuit Court of the United States for the Eastern District of Tennessee. Morse & Lane and Tully R. Cornick, for appellants. Wheeler & McDermott and Webb & McClung, for appellee. No opinion. Dismissed under rule 23, for failure to print the records.

DIETZ et al. v. SCHAAF. (Circuit Court of Appeals, Sixth Circuit. April 12, 1896.) No. 412. Appeal from the Circuit Court of the United States for the Southern District of Ohio. James N. Ramsey, for appellants. Edward C. Remeelin, for appellee. No opinion. Decree affirmed.

FLINT & P. M. R. CO. v. MARINE INS. CO., Limited, of LONDON, ENG. (Circuit Court of Appeals, Sixth Circuit. January 8, 1896.) No. 383. Error from the Circuit Court of the United States for the Eastern District of Michigan. Brennan, Donnelly & Van De Mark, for plaintiff in error. F. H. & G. L. Canfield, for defendant in error. No opinion. Dismissed upon the motion and at the cost of plaintiff in error.