and her course being such as she admits it was, it was plainly within her power, as it was within her obligation, to have got clearly out of the course that was being pursued by the Hebe."

The appellants made the following assignment of error, with others: "That the court erred in taxing more than one hundred miles travel for witnesses from without its jurisdiction." This is intended to raise an objection to an allowance of costs, according to the rule of the circuit court for the district of Massachusetts, as established by Mr. Justice Gray and Judge Colt in U. S. v. Sanborn, 28 Fed. 299. This question was raised in the district court, and insisted upon, in such way that it is fairly before us, notwithstanding the many expressions that costs are not matters of appeal. Among the latest are those found in Du Bois v. Kirk, 158 U. S. 58, 67, 15 Sup. Ct. 729, 732, and Bank v. Cannon, 164 U. S. 319, 323, 17 Sup. Ct. 89. In Du Bois v. Kirk, the court said:

"This court has held in several cases that an appeal does not lie from a decree for costs; and if an appeal be taken from a decree upon the merits, and such decree be affirmed with respect to the merits, it will not be reversed upon the question of costs."

Another late expression is in Bank v. Hunter, 152 U. S. 512, 515, 14 Sup. Ct. 675, 676, as follows:

"If the sum in dispute on this appeal were sufficient to give us jurisdiction, we could consider the question of costs referred to in the second assignment of error. But, as the appeal in respect to interest must be dismissed for want of jurisdiction, the appeal, in respect to costs, must also be dismissed. No appeal lies from a mere decree for costs."

That case was in equity. The record does not show the amount of costs involved, and the only question appears to have been which party should pay costs,—a question which, under the circumstances, did not necessarily involve a strictly legal right. So far as concerns causes in equity and admiralty, the rule of the supreme court, as generally stated, seems traceable to Canter v. Insurance Co., 3 Pet. 307, 319. That case was in equity, and the matter appealed against was apparently one of counsel fees. At that time there was no statutory regulation about costs; and it had been decided in The Apollon, 9 Wheat. 362, 379, that counsel fees might be allowed as costs in admiralty. Consequently, in Canter v. Insurance Co., the only questions were those of a sound discretion, questions not "positively limited by law." It will be seen, therefore, that this case involved no question of fixed law, either as to the right to any costs at all, or as to the right to particular items where the allowance of any costs whatever is in the discretion of the court. This was the condition of the case covered by our opinion in Gamewell Fire-Alarm Tel. Co. v. Municipal Signal Co., 23 C. C. A. 250, 77 Fed. 490. But since the act of February 26, 1853 (10 Stat. 161, c. 80), regulating fees and costs (now section 823 of the Revised Statutes and sequence), the law has taken on a different phase. At present the power to allow costs at all is in many cases fixed by positive law; and in other cases, where there still remains a judicial discretion to allow costs and to determine for or against whom they shall be allowed, as in equity and admiralty, some of the items are, nevertheless, positively fixed or limited. Canter v. Insurance Co. has been largely cited in the cases wherein it is said

generally that there is no appeal on a mere question of costs, to and including Bank v. Hunter, ubi supra. They were all, however, equity or admiralty appeals, except that in Wood v. Weimar, 104 U. S. 786, 792, there is a dictum that no writ of error lies from a judgment as to costs alone. But in O'Reilly v. Morse, 15 How. 62, 124, 137, where the patentee had not disclaimed certain void portions of one of his claims, and the circuit court allowed him costs, the supreme court affirmed the decree as to its merits, but reversed it as to the costs. And in Burns v. Rosenstein, 135 U. S. 449, 456, 10 Sup. Ct. 817, the court affirmed that it has entire control of the costs, as well as of the merits, where it has possession of a case on an appeal from a final decree. Bank v. Cannon, ubi supra, is apparently to the same effect.

That no appeal lies from a mere matter of costs has been said to be the rule of the house of lords, though a late statement of it very much qualifies it. Asylum Dist. v. Hill, 5 App. Cas. 582, 584. And an appeal clearly lies to the court of appeal on a mere matter of costs where a question of principle is involved. Annual Practice (1895), 1115. But, whatever may be the rule of the supreme court, the right of appeal to this court, given by the sixth section of the act establishing it, is of the broadest character. The statute is remedial, and we have always held that there is no necessity for limiting it in any respect when neither its language nor the clear rules of construction require it. Davis Electrical Works v. Edison Electric Light Co., 8 C. C. A. 615, 60 Fed. 276, 277; Marden v. Manufacturing Co., 15 C. C. A. 26, 67 Fed. 809, 814. Cases may be conceived where a party may not be greatly inconvenienced by the decision of the merits of a cause against him, and yet be ruined by a false principle of allowance of costs. We therefore hold that while, perhaps, there may be no appeal from the ordinary questions within the common jurisdiction of taxing masters, there may be when the force of a statute or some positive rule of law is involved, although it concerns only costs, and that, therefore, the question raised by the assignment of error which we have quoted is before us for determination.

The practice in this circuit has been for many years as stated in U. S. v. Sanborn, ubi supra. Nevertheless, the question involved is not one of usage, but of statutory construction, and has never been passed on by this court. Wherever the question has been before other circuit courts of appeals, it has been decided as claimed by the appellants; but this has not been to such an extent as to make such a body of concurring decisions as to compel our acquiescence. We therefore must abide by the long-continued construction of the law given by the federal judges within this circuit, and by the great weight of judicial authority involved therein. The decree of the district court is affirmed, and the costs of appeal are adjudged to the appellee.