

circumstances in this case required a very high degree of care. Inasmuch as she had repeatedly grounded at low tide, they were chargeable with knowledge of the condition of the bottom, and, if they chose to leave her in that particular place without a watchman were bound to secure her so that the list she might be expected to take, should there be an unusual fall of the tide, would successfully be overcome. It would seem from the evidence that the lines were strong enough to hold her even on this day, had none of them rendered. To that extent they fulfilled their obligations. The lines were examined every morning by some one of defendant's servants, and there is evidence that on two prior occasions it was found that the fastenings had been tampered with, and the lines slackened. The employé of defendant who was there on the morning of the accident testified that he found the bowline slackened too much, that he took in the slack, and fastened it to the cleat with a jamb-hitch. He described with great exactness the precise way in which he made this hitch, and the evidence is conclusive—libelant's witness concurring with defendant's—that, if thus fastened, the line could not render. On the other side, there is the testimony of a boy of 15 on one of the canal boats that he noticed the fastening the day before the accident, and again after defendant's employé had left, and that it was not a jamb-hitch but simply three or four turns on the cleat. We have not had the opportunity of hearing these conflicting witnesses, and do not feel inclined to disturb the conclusion of the district court. The decree is affirmed, with interest and costs.

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In re THE ALLEGHENY.

(District Court, D. New Jersey. December 30, 1897.)

**MARSHAL'S FEES—CUSTODY OF VESSEL—PAYMENT.**

Under Rev. St. § 857, providing that the fees of officers, except those to be paid out of the treasury, shall be recovered in like manner as the fees of state officers for like services, a marshal who has incurred large expenses in caring for and preserving a vessel in his custody is entitled to reimbursement thereof out of the proceeds of her sale in the registry, without awaiting the final decree in the cause.

This was a libel in rem against the steamship Allegheny. The case was heard on an application to set aside an order for payment, out of the proceeds in the registry, of the marshal's costs and expenses.

Curtis Tilton, for libelant John L. Mills.

J. Kearny Rice, for George Pfeiffer, Jr.

Horace L. Cheyney, for petitioners Hardy P. Holt and others.

James J. Moebliu, for Hibbard Youngs and others.

A. S. Jackson, for Carroll T. Hobart and others.

**KIRKPATRICK**, District Judge. The steamship Allegheny was libeled in this court, and such proceedings had that she was sold by the marshal under decree on the 22d day of December, 1896. The steamer had been badly damaged by collision, in consequence of

which she had sunk, and in sinking been capsized. She had been raised from the bottom of Delaware Bay, and towed to Camden, in this district, where she had with great difficulty been righted and floated. At the time she came into the custody of the marshal she was in such a damaged condition that she was with difficulty kept afloat. To prevent her from sinking and capsizing, the marshal was obliged to incur, and did incur, an expense which, because of the long time the vessel was in his care, amounted to a large sum of money. The bill of the marshal's costs and expenses was, after the sale, presented to the court for allowance, and it was agreed in open court by all the parties that the same should be paid at once, if, upon investigation, it was found that the services charged for had been actually rendered, and the prices for the same were fair and reasonable. The matter was referred to the clerk of the court to take testimony and report thereon. The clerk, by his report, finds that the services were rendered, and that the prices charged were fair and reasonable, and recommends their payment. These findings of fact seem to me to be warranted by the evidence. The report was confirmed, and the costs as taxed ordered paid to the marshal. The application now is to set the order aside as improvidently entered, upon the ground that no decree can be made for the payment of marshal's costs prior to the entering of final decree in the cause. By section 857 of the Revised Statutes of the United States it is provided "that the fees of officers, except those which are directed to be paid out of the treasury, shall be recovered in like manner as the fees of officers of states respectively for like services are recovered." For like services in the courts of the state of New Jersey, the sheriff would be entitled to his costs and disbursements when his service had been completed by a delivery of the property to the party who, as purchaser at the sale, was legally entitled to it. The sheriff retains his costs out of the proceeds of sale, and holds the balance awaiting the decree of the court directing distribution. The marshal is obliged to pay the whole proceeds of sale into the registry of the court, but the law requiring him to do so was not intended to delay him in the recovery of his costs. The marshal was the bailee of the property, and responsible for its safe delivery to the parties interested, and bound to answer in damages for loss sustained through his fault or neglect. Whatever he has necessarily or properly expended for its preservation, he is entitled to recover. His claim is a preferred one. Its priority is not disputed by any one. The money deposited in the registry does not bear interest, and there does not appear to be any reason why the marshal should be compelled to submit to this loss and await a final decree in the cause which may be indefinitely postponed, at the whim or pleasure of the litigants, before receiving the costs which he has lawfully incurred in preserving the property. The decree heretofore made will be modified by striking out the word "forthwith" which precedes the word "pay" in the direction to the clerk. In other respects it is affirmed, with directions that it be re-entered as of this date.

## MOORE v. UNITED STATES.

(Circuit Court of Appeals, Eighth Circuit. February 14, 1898.)

No. 895.

1. JURISDICTION OF FEDERAL COURTS—ADMISSION OF TERRITORY AS STATE—  
STATUTE.

In 1895 the plaintiff in error was indicted, with others, in a district court of the territory of Utah, under section 3 of the act of July 2, 1890 (26 Stat. 209), which declares illegal "every \* \* \* combination \* \* \* in restraint of trade or commerce in any territory." In January, 1896, Utah was admitted as a state, and thereafter the case was transferred to the federal court for the district of Utah, where, after hearing on demurrer to the indictment, the plaintiff in error was tried and convicted. *Held*, on writ of error, that neither under the act of congress authorizing Utah to form a state government (28 Stat. 111, 112), nor the constitution of Utah (article 24, § 7), nor by other legislation, was jurisdiction conferred upon the federal court to proceed with the case.

## 2. SAME.

*Held*, further, that the case did not come within the provisions of Rev. St. § 13, regulating the effect of the repeal of statutes, for the admission of Utah as a state did not operate to repeal the act of July 2, 1890, which still applies to the territories of the United States.

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

R. Harkness, George Sutherland, and Waldemar Van Cott, for plaintiff in error.

J. W. Judd, U. S. Atty., and W. L. Maginnis, Asst. U. S. Atty.

Before BREWER, Circuit Justice, SANBORN, Circuit Judge, and RINER, District Judge.

RINER, District Judge. November 4, 1895, the plaintiff in error, with others, was indicted in the district court within and for the Third judicial district of the territory of Utah, Salt Lake county, for unlawfully engaging in a combination in restraint of trade and commerce in that territory. The indictment charged that the defendants therein named, "on the 22d day of October in the year of our Lord 1895, in the district and territory aforesaid, and within the jurisdiction of this court, did willfully and unlawfully engage in a combination in restraint of trade and commerce in said territory in this: That the said defendant E. L. Carpenter, being then and there the agent in Salt Lake City, Salt Lake county, territory of Utah, of the Pleasant Valley Coal Company, a corporation engaged in mining coal, and selling the same at wholesale to dealers in coal in said Salt Lake City, and the said defendant F. H. Moore, being then and there the agent of the Union Pacific Coal Company, a corporation engaged in mining coal and selling the same at wholesale to dealers in coal in said Salt Lake City, and each and all of the said defendants other than said Carpenter and said Moore being then and there engaged in the business of buying coal and selling the same at retail in said Salt Lake City, and each and all of said defendants except said Carpenter and said Moore being then and there members of an association designated and known as the Salt Lake