

THE MOUNT EDEN.

BARRON et al. v. THE MOUNT EDEN.

(District Court, N. D. California. March 15, 1898.)

No. 11,418.

1. COSTS IN ADMIRALTY—DOCKET FEES.

A proctor representing more than one libelant on final hearing, though under independent libels, is entitled to but one docket fee of \$20.

2. SAME.

A "final hearing," within Rev. St. § 824, upon which the libelant's proctor becomes entitled to a docket fee, is a submission of the case for determination on the merits, or the submission of some question the disposition of which finally ends the case. A proceeding before a commissioner on a reference is not such a final hearing.

This was a libel in rem by James G. Barron and others against the steamer Mount Eden. The cause was heard on a motion to retax costs.

H. W. Hutton, for the motion.

DE HAVEN, District Judge. Section 824 of the United States Revised Statutes provides that upon a final hearing in admiralty, where the libelant recovers \$50 or more, a docket fee of \$20 may be allowed to his proctor; and, if less than \$50 is recovered, then the docket fee of the proctor shall be only \$10. The docket fee thus allowed is the individual property of the proctor, not that of the libelant (*Aiken v. Smith*, 6 C. C. A. 414, 57 Fed. 423); and where a proctor, upon such final hearing, represents more than one libelant, although such libelants may have filed independent libels in the proceeding, he is entitled to have allowed and taxed but one docket fee. A proceeding before a commissioner upon a reference is not a final hearing, and no docket fee can be allowed a proctor for attendance upon such a proceeding. A final hearing, within the meaning of the statute, is a submission of a case for determination upon its merits, or the submission of some question, the disposition of which finally ends the case. *Coy v. Perkins*, 13 Fed. 111. Motion to retax costs denied.

THE H. C. GRADY.

BLACK DIAMOND COAL-MIN. CO. v. THE H. C. GRADY (HENDRY et al., Intervenors).

(District Court, N. D. California. May 5, 1898.)

No. 11,369.

INTERVENTION—DECREE BY STIPULATION—PROCTOR'S FEES.

Where, in a libel of intervention in an admiralty case, the parties stipulated for a decree in favor of the intervener, and a decree was entered accordingly, there was such a final hearing as would entitle the proctors for intervener to the allowance of a docket fee, under Rev. St. U. S. § 824, which provides that "on a final hearing in equity or admiralty cases a docket fee" should be allowed.

This was an intervention by G. W. Hendry and F. R. Strong in the proceedings by the Black Diamond Coal-Mining Company against the steamer H. C. Grady and others. Hearing on exceptions to the allowance of docket fees to the proctor of intervener G. W. Hendry.

Bert Schlesinger and Samuel Knight, for intervener Hendry.
Andros & Frank, for intervener Strong.

DE HAVEN, District Judge. G. W. Hendry filed his libel of intervention in this proceeding on November 26, 1897. No formal answer to this libel was ever made, but the court, with the consent of the parties interested, made an order of reference to a commissioner to take evidence and report the facts in relation to the matters alleged in said libel. The matter never came on for hearing before the commissioner, and it was subsequently agreed between the interveners Hendry and Strong, the only parties having any interest in the question, that the intervener Hendry was entitled to a decree in his favor for the sum of \$511.01 and costs, to be paid out of the proceeds arising from the sale of the steamer H. C. Grady; and thereafter, on motion, a decree was duly entered by the court in accordance with such consent and agreement. The question for determination at this time is whether the proctors for intervener Hendry are entitled to a docket fee taxable as on a final hearing in admiralty under section 824, Rev. St. It is argued in opposition to the allowance of such docket fee that there never has been a final hearing upon the matters alleged in the libel of intervention; that the court was never called upon to determine any disputed question of law or of fact; and that, in the absence of the submission or determination of such a question, there is no final hearing within the meaning of that section. In my opinion, this contention must be overruled on the authority of the cases of *Wooster v. Handy*, 23 Fed. 49; *The Anchoria*, Id. 669; *Mercartney v. Crittenden*, 24 Fed. 401; *Coy v. Perkins*, 13 Fed. 111; and the recent case of *Barron v. The Mount Eden* (decided in this court, March 15, 1898), 87 Fed. 483. In this latter case it was said:

"A final hearing, within the meaning of the statute, is a submission of a case for determination upon its merits, or the submission of some question, the disposition of which finally ends the case."

And in the case of *Mercartney v. Crittenden*, 24 Fed. 401, the circuit court of this district, in approving the rule laid down in *Wooster v. Handy*, 23 Fed. 50, held:

"That to constitute a 'final hearing in equity or admiralty,' within the meaning of section 824, there must be a hearing of the cause on its merits; that is, a submission of it to the court in such shape as the parties choose to give it, with a view to a determination whether the plaintiff or libellant has made out the case stated by him in bill or libel as the ground for the permanent relief which his pleading seeks, on such proofs as the parties place before the court, be the case one of pro confesso on bill, or libel and answer, or pleadings alone, or pleadings and proofs."

It is apparent that in this case there has been a final hearing of this case upon the merits, and none the less so because the parties interested stipulated in open court as to the facts, and consented to

the decree. The facts agreed to took the place of formal testimony, and the decree, which was properly based thereon, finally determined the relief to which the intervener was entitled by reason of such facts and the matters alleged in his petition of intervention. The exception to the taxation of costs will be overruled.

THE OCCIDENTAL.

DIOCHET v. THE OCCIDENTAL.

(District Court, D. Washington, N. D. May 2, 1898.)

1. SEAMEN—WAGES—FORFEITURE.

The mere failure of the master to punish a seaman for neglect of duty, and unauthorized absences in port for purposes of dissipation, implies no consent to a subsequent termination of the contract by the act of the seaman in leaving the vessel without permission, and filing a libel for wages.

2. SAME—SHIPPING ARTICLES—INDEFINITE VOYAGE.

Shipping articles described the voyage as follows: "From the port of San Francisco, Cal., to any port or ports on Puget Sound or British Columbia for orders. At Puget Sound or British Columbia, vessel may be ordered to load cargo for any port or ports in Alaska, as the master may direct. If the vessel is ordered to Alaska, the trips between Puget Sound or British Columbia and Alaska to be repeated one or more times; thence to San Francisco for final discharge, either direct, or via one or more ports on the Pacific coast,—for a term of time not exceeding six months." *Held*, that the articles set forth the nature, duration, and termination of the voyage with sufficient certainty to satisfy Rev. St. § 4511.

This was a libel in rem by Charles Diochet against the steamship Occidental to recover seaman's wages.

P. P. Carroll, for libelant.

J. B. Metcalfe, for claimant.

HANFORD, District Judge. On February 1, 1898, at the port of San Francisco, the libelant signed shipping articles whereby he engaged himself to go as an able seaman on the American ship Occidental for a term and voyage described as follows:

"From the port of San Francisco, Cal., to any port or ports on Puget Sound or British Columbia for orders. At Puget Sound or British Columbia, vessel may be ordered to load cargo for any port or ports in Alaska, as the master may direct. If the vessel is ordered to Alaska, the trips between Puget Sound or British Columbia and Alaska to be repeated one or more times; thence to San Francisco for final discharge, either direct, or via one or more ports on the Pacific coast,—for a term of time not exceeding six months."

The vessel having proceeded to Seattle, and being there detained a number of weeks, the libelant was assigned to duty as watchman; but he became negligent of his duties, devoting his time principally to the occupation of getting drunk. On a number of occasions he demanded payment of his wages, and was insolent to the captain. The only response made to his demand for wages by the captain was an emphatic refusal, coupled with a command to the libelant to go to his place in the ship, and attend to his duties. Having left the ship without permission of the captain, the libelant commenced this suit in rem to recover wages; and, in presenting his case, his counsel