

## Counsel for Parties.

ment to be considered." A sufficient answer to this objection is furnished in the findings of the court below that the account of the commissioner for the fees charged for the services in question was verified by oath and presented to the United States court of which he was the commissioner, in open court, in the presence of the district attorney, approved by the court, and an order, approving the same as being in accordance with law and just, was entered upon the records of the court. The approval of a commissioner's account by a Circuit Court of the United States, under the act of February 22, 1875, 18 Stat. 333, is *prima facie* evidence of the correctness of the items of that account; and in the absence of clear and unequivocal proof of mistake on the part of the court it should be conclusive.

We think the authorities cited by the attorney for the appellee in support of the claim in question are directly in point.

The judgment of the Court of Claims is

*Affirmed.*

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IN RE THE LOUISVILLE UNDERWRITERS,  
Petitioners.

## ORIGINAL.

No. 8. Original. Argued March 10, 1890. — Decided March 31, 1890.

The provision of the Act of March 3, 1887, c. 373, § 1, 24 Stat. 552, that "no civil suit" shall be brought before a Circuit or District Court against any person in any other district than that of which he is an inhabitant, does not apply to cases in admiralty.

A libel in admiralty *in personam* may be maintained against a corporation in any district by service there upon an attorney appointed by the corporation, as required by the statutes of the State, to be served with legal process.

THIS was a petition for a writ of prohibition. The case is stated in the opinion.

*Mr. J. R. Beckwith* for the petitioners.

*Mr. O. B. Sansum* opposing.

## Opinion of the Court.

MR. JUSTICE GRAY delivered the opinion of the court.

This is a petition by a corporation of the State of Kentucky for a writ of prohibition to the judge of the District Court of the United States for the Eastern District of Louisiana, to prohibit him from entertaining jurisdiction of a libel in admiralty *in personam*, filed April 23, 1889, by the Natchez and New Orleans Packet and Transportation Company, also a corporation of Kentucky, against the petitioner, "in a cause of contract civil and maritime," upon a policy of insurance by which the petitioner insured against perils of the seas and rivers and other perils a steamboat of the libellant employed in the navigation of the Mississippi River.

By the public statute of Louisiana of February 26, 1877, c. 21, no insurance company organized under the laws of any other State shall take risks or transact any business through an agent in Louisiana, without having filed in the office of the secretary of State a certified copy of a vote of its directors, appointing such an agent there to transact business and to take risks, accompanied by a warrant of appointment from the company, containing an express consent that service of legal process on him shall be as valid as if served on the company.

By a copy of the record of the proceedings in the District Court, annexed to the return to the rule to show cause why a writ of prohibition should not issue, it appears that the libellee had filed with the secretary of State of Louisiana a copy of a vote of its directors, as well as a warrant of appointment, appointing William M. Railey its attorney at New Orleans, as required by the statute of Louisiana; that the policy sued on was signed by the libellee's president and secretary at Louisville in the State of Kentucky, was not to be binding until countersigned by its authorized agent at New Orleans, and was countersigned by Railey; that a citation to the libellee was issued by the District Court, and served by the marshal upon Railey in person; that a motion to quash the libel, and an exception to it, upon the ground, among others, that neither party was an inhabitant of the Eastern District of



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Louisiana and that the libellee had no property or credits within the district, were overruled by the District Court, and the libellee ordered to answer; and that the libellee thereupon answered, and took depositions under commission.

Before the cause had been brought to a hearing, the petition for a writ of prohibition was presented to this court.

It is admitted that the District Courts of the United States, sitting in admiralty, have jurisdiction of the matter of the libel. *Insurance Co. v. Dunham*, 11 Wall. 1. But it is argued, in support of the prohibition, that no libel *in personam* can be sustained against a corporation in a district not within the State in which it is incorporated; and this argument is rested on the latter part of the following provision in the act of March 3, 1887, c. 373, § 1:

"But no person shall be arrested in one district for trial in another in any civil action before a Circuit or District Court; and no civil suit shall be brought before either of said courts against any person by any original process of proceeding in any other district than that whereof he is an inhabitant." 24 Stat. 552.

A brief reference to previous acts of Congress and decisions of this court makes it clear that this provision has no application to causes of admiralty and maritime jurisdiction.

By the ancient and settled practice of courts of admiralty, a libel *in personam* may be maintained for any cause within their jurisdiction, wherever a monition can be served upon the libellee, or an attachment made of any personal property or credits of his; and this practice has been recognized and upheld by the rules and decisions of this court. Rule 2 in Admiralty; *Manro v. Almeida*, 10 Wheat. 473; *Atkins v. Disintegrating Co.*, 18 Wall. 272; *New England Ins. Co. v. Detroit & Cleveland Steam Navigation Co.*, 18 Wall. 307; *Cushing v. Laird*, 107 U. S. 69; *Devoe Manufacturing Co., Petitioner*, 108 U. S. 401.

The judgment, delivered at October term, 1873, in *Atkins v. Disintegrating Co.*, just cited, is really decisive of this case.

The question there presented was the construction of that provision of the Judiciary Act of September 24, 1789, c. 20,

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§ 11, by which, after defining the jurisdiction of the Circuit Courts in "suits of a civil nature at common law or in equity," in which the United States were plaintiffs, or an alien was a party, or the suit was between a citizen of the State where it was brought and a citizen of another State; and also defining the criminal jurisdiction of the Circuit and District Courts; it was provided as follows:

"But no person shall be arrested in one district for trial in another in any civil action before a Circuit or District Court; and no civil suit shall be brought before either of said courts against an inhabitant of the United States by any original process in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ." 1 Stat. 79.

Upon a consideration of the acts of Congress upon the subject, and especially of other sections of the Judiciary Act of 1789, of which section 9 conferred upon the District Courts "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction," and jurisdiction concurrent with the Circuit Courts of certain "suits at common law" by the United States; 1 Stat. 77; section 21 authorized "final decrees in a District Court in causes of admiralty and maritime jurisdiction" to be reviewed in the Circuit Court on appeal, and section 22 authorized "final decrees and judgments in civil actions in a District Court" to be reviewed in the Circuit Court by writ of error; 1 Stat. 83, 84; it was demonstrated that the provision of section 11, above quoted, restricting "civil suits" to the district of which the defendant was an inhabitant or in which he might be found, did not include causes of admiralty jurisdiction; and it was therefore adjudged that a libel in admiralty *in personam* might be maintained against a corporation by attachment of its goods in a district not within the State in which it was incorporated.

The provisions of sections 9, 11, 21 and 22 of the Judiciary Act of 1789, above quoted, were reënacted in substantially the same words in the Revised Statutes. Rev. Stat. §§ 563, cls. 4, 8; 629, cls. 1-3; 631, 633, 739.

The provision of section 11 of the act of 1789, embodied in



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§ 739 of the Revised Statutes, was reenacted with no material alteration in the act of March 3, 1875, c. 137, § 1, as follows:

“ But no person shall be arrested in one district for trial in another in any civil action before a Circuit or District Court; and no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving such process or commencing such proceeding.” 18 Stat. 470.

The only changes (beyond the substitution of “ person ” for “ inhabitant of the United States ”) consisted in inserting, in the middle of the sentence, after the words “ any original process,” the words “ or proceeding; ” and in substituting, at the end of the sentence, for the words “ serving the writ,” the words “ serving such process or commencing such proceeding.” These changes in no way extended the meaning of the leading words “ civil action ” and “ civil suit; ” but merely affected the mode of commencing such action or suit, and were probably intended to cover actions at law commenced otherwise than by process, according to the practice, pleadings and forms of proceeding in the courts of the States, which had been made applicable to the Circuit and District Courts of the United States by the act of 1872, reenacted in the Revised Statutes. Act of June 1, 1872, c. 255, § 5, 17 Stat. 197; Rev. Stat. § 914.

The provision of the act of 1887 on which the petitioner relies differs from the corresponding provision of the act of 1875 in two particulars only :

1st. In the clerical mistake, “ process of proceeding ” for “ process or proceeding,” which has been set right by the act of 1888 correcting the enrolment of the act of 1887. Act of August 13, 1888, c. 866, § 1, 25 Stat. 433.

2d. In striking out the last clause, permitting civil suits to be brought in the district in which the defendant is found at the time of service, and thus confining them to the district of which he is an inhabitant. This change, far from weakening the reason of the decision in *Atkins v. Disintegrating Co.*, above cited, greatly strengthens it.

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Courts of admiralty are established for the settlement of disputes between persons engaged in commerce and navigation, who, on the one hand, may be absent from their homes for long periods of time, and, on the other hand, often have property or credits in other places. In all nations, as observed by an early writer, such courts "have been directed to proceed at such times, and in such manner, as might best consist with the opportunities of trade, and least hinder or detain men from their employments." Zouch. Adm. Jur. 141. In the same spirit this court has more than once said: "Courts of admiralty have been found necessary in all commercial countries, for the safety and convenience of commerce and the speedy decision of controversies, where delay would often be ruin." *The Genesee Chief*, 12 How. 443, 454; *Insurance Co. v. Dunham*, 11 Wall. 1, 24. To compel suitors in admiralty (when the ship is abroad and cannot be reached by a libel *in rem*) to resort to the home of the defendant, and to prevent them from suing him in any district in which he might be served with a summons or his goods or credits attached, would not only often put them to great delay, inconvenience and expense, but would in many cases amount to a denial of justice.

In the present case, the libellee had, in compliance with the law of Louisiana, appointed an agent at New Orleans, on whom legal process might be served, and the monition was there served upon him. This would have been a good service in an action at law in any court of the State or of the United States in Louisiana. *Lafayette Ins. Co. v. French*, 18 How. 404; *Ex parte Schollenberger*, 96 U. S. 369; *New England Ins. Co. v. Woodworth*, 111 U. S. 138, 146. And no reason has been or can be suggested why it should not be held equally good in admiralty.

The District Court for the Eastern District of Louisiana having jurisdiction both of the cause and of the parties, the

*Writ of prohibition is denied.*

A similar decision was made in the case, argued and decided at the same time, No. 9, Original, *Ex parte THE ST. PAUL FIRE AND*



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MARINE INSURANCE COMPANY OF ST. PAUL, MINNESOTA, which differed only in the petitioner and libellee being a corporation of Minnesota.

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HATHAWAY *v.* FIRST NATIONAL BANK OF CAM-  
BRIDGE.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF MASSACHUSETTS.

No. 223. Argued March 20, 21, 1890. — Decided March 31, 1890.

Where a case is tried by the Circuit Court without a jury, and it makes a special finding of facts, with conclusions of law, alleged errors of fact are not, on a writ of error, subject to revision by this court, if there was any evidence on which such findings could be made.

Where the Circuit Court finds ultimate facts, which justify the judgment rendered, its refusal to find certain specified facts, and certain propositions of law based on those facts, will not be reviewed by this court, on a writ of error, if they were either immaterial facts or incidental facts, amounting only to evidence bearing on the ultimate facts found.

THE case is stated in the opinion.

*Mr. Duane E. Fox* for plaintiff in error. *Mr. L. D. Norris* filed a brief for plaintiff in error.

*Mr. George F. Hoar* (with whom was *Mr. William Gaston* on the brief) for defendant in error.

MR. JUSTICE BLATCHFORD delivered the opinion of the court.

THIS is an action at law, brought in the Circuit Court of the United States for the District of Massachusetts, by a writ, dated September 22, 1881, by James S. P. Hathaway against The First National Bank of Cambridge, a national banking corporation.

The declaration contains three counts in tort, the substance of which is that the defendant had converted to its own use certain bonds of the United States, with the interest coupons thereon, the property of the plaintiff; and that it had con-