

administration of his trust as receiver, and not before paid or discharged, including stationery, clerk-hire, and travelling and other incidental expenses.

*Thirdly*, A sum of money to be retained by the receiver for his compensation as such, at the rate of \$10,000 per annum, from the time of his assuming the duties of his appointment to the time of closing up the business incident thereto, including a reasonable time for the settlement of his accounts not later than the first day of July next.

*Fourthly*, To the Rogers Locomotive and Machine Works the sum of \$15,800.84, and interest on the sum of \$10,707.81, at the rate of seven per cent per annum, from the twenty-fourth day of August, 1874, till paid; being the amount due to said company for locomotives received and used by said receiver, on which said company had a specific lien.

*Fifthly*, All unpaid sums due to laborers and servants actually employed in the operation and care of said railroad west of Lake City, during the pendency of this suit, and prior to the time when the said receiver took charge of said property (namely, from the 9th of December, 1873, to the sixth day of May, 1874); which sums, according to the report of said receiver, amount to \$12,000, or thereabouts.

*Sixthly*, Any balance of moneys that may remain in the hands of said receiver after the payment of the said charges, demands, and amounts, above specified, shall be paid by the receiver to the clerk of this court, who is hereby appointed register of the court to receive and keep the same subject to the further order of the court.

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WARFIELD v. CHAFFE ET AL.

The petition for the allowance of a writ of error forms no part of the record of the court below; and this court has no jurisdiction to determine a Federal question presented in such petition, but not disclosed by the record sent here from the State court.

ON motion to dismiss a writ of error to the Supreme Court of the State of Louisiana.

*Messrs. Durant and Hornor* for the defendant in error, in support of the motion.

*Mr. W. J. Q. Baker* for the plaintiff in error, in opposition thereto.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This action was commenced in the Fourteenth District Court in and for the Parish of Ouachita, La., to recover the amount due upon a note made by Mrs. Warfield, the plaintiff in error, to W. J. Q. Baker, and by him indorsed to the plaintiffs below, — John Chaffe & Brother, — and also to enforce a vendor's privilege. Judgment was asked for the amount claimed to be due upon the note, and also for "fifteen dollars costs of stamping." Attached to the petition was a copy of the note, bearing date May 3, 1867; below which was the following: "Original act duly stamped and cancelled by collector of Third District of Louisiana, this third day of September, 1872. — F. A. Hall, D'y Recorder."

Mrs. Warfield answered the petition; and, among other defences, she insisted that there were not any revenue-stamps on the note when it went into the hands of the plaintiffs, and that they had no authority to put stamps upon it. She thus, by the pleadings, tendered an issue of fact.

The principal contest between the parties was as to the plaintiffs' title to the note; and W. J. Q. Baker was permitted to intervene in his own behalf, and to insist that he was the owner.

At the trial in the District Court, no question as to the stamping of the note appears to have been presented or decided: certainly no testimony was offered on either side in respect to it. All the testimony in the case appears to be incorporated in the record. Judgment having been given against Mrs. Warfield and Baker in the District Court, they each appealed to the Supreme Court, where the judgment was affirmed in July, 1874. In the opinion of the court, which comes here as part of the record, the only reference to the question of stamps which appears is as follows: "The objection that the note was not stamped, not having been made when it was received in evidence, cannot now be considered."

In the petition presented to the Chief Justice of the Supreme



Court of the State for the allowance of this writ, it is stated, for the first time in the case, that the defendant, Mrs. Warfield, claimed the privilege, right, and immunity of being relieved and exempted from all liability on the note or obligation sued on, under the laws of the United States requiring such instruments to be stamped to give them validity at the time the instrument sued upon was executed; and the decision of the Supreme Court of the State denied the claim.

The record sent here from the Supreme Court does not disclose any such claim. The petition for the allowance of the writ in this court is not part of the record of the court below. We act only upon that record; and that does not show that any Federal question was either presented by the pleadings or upon the trial in the District Court, or decided by the Supreme Court. *Writ of error dismissed for want of jurisdiction.*

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### THE "COLORADO."

1. At night, during a dense fog, a collision occurred on Lake Huron between a bark of 420 tons, bound down, and a propeller of 1,500 tons, bound up, the lake. The wind was from the south. The bark, well manned and equipped, having competent lookouts, properly stationed and vigilant in the performance of their duty, and with her foresail and light sails furled, was, at a speed not exceeding four miles an hour, sailing by the wind, close-hauled on her starboard tack, heading south-east by east, displaying the proper lights, and, as required by law and the custom of the lakes, giving frequent signals of two blasts from her fog-horn, which could be heard at the distance of half a mile; which signify in that locality that she was on her starboard tack, close-hauled. She held this course, until, a collision becoming inevitable, her helm was put to starboard. The propeller, with but one lookout and an insufficient watch on deck, was heading north-north-west, and moving at the rate of five or six miles per hour. The officer in charge of the propeller heard but one blast of the bark's fog-horn when the vessels were near each other, and ported her helm; but then, hearing two blasts of a second signal, ordered her helm hard a-starboard. Before this order had much effect, she struck the bark, at an angle of about forty-five degrees, on her starboard side, nearly opposite the mainmast, thereby causing the total loss of that vessel and her cargo. *Held*, that the propeller was responsible for the disaster.
2. Where, in a collision between a propeller and a sailing vessel, the proofs show that the latter kept her course, the presumption of fault on the part of the propeller, arising in the absence of evidence tending to bring the case within