Court of Errors & Appeals.

JOHN GERAGHTY and WILLIAM TAYLOR, Harbor Masters, *Plaintiffs in Error.* *vs.* WILLIAM MCMICKER, Commander, &c., *Defendant in Error.*	*Points on behalf of Defendant in Error.*

This action in the Supreme Court was founded upon the provisions of the act of the legislature of New Jersey, approved March 31, 1869, entitled "An Act to appoint harbor masters and inspectors." See Laws of 1869, p. 1038.

The action was for fees claimed to be due to the harbor masters, by reason, as charged in the declaration, "that the steamship Calabria, a foreign, to wit, an English vessel, whose tonnage was registered or enrolled as of three thousand tons, on the day and year first aforesaid (13 December, 1872), the said defendant (William McMicker), being the commander thereof, arriving from a foreign port, entered the waters of the North River, within the limits of Jersey City, and was made fast to a wharf therein, and was unloaded and loaded thereat; whereby the plaintiffs became entitled to demand and receive, and the commander, owner or consignee of the said steamship Calabria, or one of them became bound to pay to the plaintiffs, within forty-eight hours after the arrival of the said vessel, as aforesaid, to wit, on the fifteenth day of December aforesaid, the sum of fifteen dollars," &c.

The defendant filed a demurrer to the declaration, and the Supreme Court sustained the demurrer, on the ground that the case as presented by the declaration fell within the principles adjudged by the Supreme Court and the Court of Appeals in these cases.

Hackley *vs.* Geraghty, 5 Vroom, 333.
Geraghty *vs.* Hackley, 7 Vroom, 459.

The following is the statement of facts on which the judgment of the Supreme Court and the Court of Appeals was founded, in the last named case, which it is insisted, are substantially the same state of facts set forth in the declaration of the harbor masters against William McMicker in the Supreme Court.

COURT FOR THE TRIAL OF SMALL CAUSES.

Before SAMUEL M. CHAMBERS, ESQUIRE, *Justice of the Peace.*

JOHN GERAGHTY ond WILLIAM TAYLOR, Harbor Masters of Jersey City and Hoboken, *Plaintiffs.* *vs.* EDWARD M. HACKLEY, Commander of the Steamship China, *Defendant.*	*In Debt.*

It is admitted that the defendant is the commander of steamship China; that said steamship China is a vessel of Great Britain, owned by British subjects, and is engaged in commerce between Liverpool, England, and the United States, carrying passengers and merchandise between Liverpool, England, and the port of New York. That the tonnage of the said steamship China is 2529 tons, as expressed in the register of the said vessel.

That she, the said steamship China, on the 23d day of June, 1869, made fast to her wharf at Jersey City, and did then and there unload and discharge her cargo at a wharf at Jersey City, and did take in another cargo to be transported to Liverpool, England. That said steamship brought passengers with her and took passengers to Liverpool on her departure.

That she made fast to her wharf at Jersey City. That the wharf aforesaid was the property of the Associates of

the Jersey Company, and was leased to the owners of the said steamship China for the exclusive use of the said China and other foreign vessels of said owners carrying on commerce between the United States and Great Britain.

That the plaintiffs were and are harbor masters appointed by the Governor of the State of New Jersey and approved by the Senate of the State of New Jersey, under the act entitled "an act to appoint harbor masters and inspectors," approved March 31, 1869. That the plaintiffs demanded of the said defendant the sum of $12.64½ cents within forty-eight hours after the said vessel arrived, which the said defendant refused to pay, and the same has not been paid by the said defendant or by any one in their behalf within forty-eight hours after said demand was made, or at any other time. That the said plaintiff, before the said sum of $12.64½ cents was demanded, delivered to the said defendant, a copy of the said act of the Legislature of New Jersey.

That Jersey City, by the regulations of the Treasury Department of the United States, is a part of the port of New York.

It is admitted that these were the facts proved in the above cause.

S. B. RANSOM,
Att'y for Plfts.

I. W. SCUDDER,
Att'y for Defts.

CASES AND REFERENCES ON THE PART OF THE DEFENDANT IN ERROR.

Constitution of the United States, article 1, sec. 8, Nixon's Digest VII.

"The Congress shall have power to regulate commerce with foreign nations and among the several States."

Article 1, sec. 10, Nixon's Digest IX.

"No State shall, without the consent of Congress, lay any duty of tonnage."

2d Story on the Constitution, sec. 1067, Gibbons *vs.* Ogden, 9 Wheaton, p. 1, 198, 199, 200, 201, 202.

Brown *vs.* Maryland, 12 Wheaton, 419, 445, 446.

New York Steamboat Company *vs.* Livingston, 3 Cowan, 713.

City of New York *vs.* Miller, 11 Peters, 158.

Passenger cases, 7 Howard, 393, 411.

License cases, 5 Howard, 574.

North River Steamboat Company *vs.* Livingston, 1 Hopkins, ch. 150.

Pennsylvania *vs.* Wheeling Bridge Co., 4 McLean, 287.

McCulloch *vs*, State of Maryland, 4 Wheaton, 427.

Almy *vs.* The State of California, 24 Howard, 169.

Steamship Company *vs.* Port Wardens, 6 Wallace, 31.

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New Jersey Court of Errors and Appeals.

JOHN GERAGHTY AND WILLIAM TAYLOR, HARBOR MASTERS, &c., *vs.* WILLIAM MCMICKER, COMMANDER, &c.	*In Debt.*

DECLARATION.

New Jersey Supreme Court, of the nineteenth day of April, 10
in the year one thousand eight hundred and seventy-three.

HUDSON COUNTY, *ss:*

William McMicker, Commander of the Steamship Calabria, the defendant in this suit, was summoned to answer John Geraghty and William Taylor, Harbor Masters of Jersey City and Hoboken, the plaintiffs therein, of a plea that he render to the plaintiffs the sum of fifteen dollars, which to them he owes and from them unjustly detains. And there- 20
upon the said plaintiffs by Potts, Linn & Babbitt, their attorneys, complain:

For that whereas the said plaintiffs were, on the thirteenth day of December, eighteen hundred and seventy-two, and before the commencement of this suit, and now are the Harbor Masters of Jersey City and Hoboken, in this State, by the Governor thereof, under a law of this State duly commissioned, and were in the possession of said offices of Harbor Masters as aforesaid, and had for a long time previous been in the possession of said offices, and during all that time 30

hitherto had performed and discharged all the duties of their said offices, as authorized and required by the act entitled "An Act to appoint Harbor Masters and Inspectors," approved March 31, 1869; and by force of said act, and by reason of the premises, were entitled to demand and receive from the commanders, owners or consignees, of all ships or vessels, of any foreign nation, that should enter the waters of the North river within the limits of Jersey City or Hoboken aforesaid, and load or unload at, or make fast to any wharf
10 therein, one-half of one cent per ton, to be computed from the tonnage expressed in the register of such ships or vessels respectively; and by the act aforesaid it was made the duty of the said commanders, owners or consignees, or of one of them, of any ship or vessel to pay said half of one cent per ton as aforesaid, within forty-eight hours after the arrival of such ship or vessel in the waters of the North river, within the limits of Jersey City or Hoboken aforesaid, at the office of the plaintiffs; and the plaintiffs say that the said steamship Calabria, a foreign, to wit, an English vessel, whose tonnage,
20 was registered or enrolled as of three thousand tons, on the day and year first aforesaid, the said defendant being the commander thereof, arriving from a foreign report, entered the waters of the North river within the limits of Jersey City, aud was made fast to a wharf therein, and was unloaded and loaded thereat; whereby the plaintiffs became entitled to demand and receive, and the commander, owner or consignee of the said steamship Calabria, or one of them, became bound to pay to the plaintiffs, within forty-eight hours after the arrival of said vessel as aforesaid, to wit, on the fifteenth day
30 of December aforesaid, the sum of fifteen dollars; and the plaintiffs further say that on the day last aforesaid, they demanded of the defendant the said sum of fifteen dollars, at Jersey City aforesaid, which said sum he then and there refused to pay

Whereby an action hath accrued to the plaintiffs to demand and have of and from the said defendant, the sum of fifteen dollars, above demanded.

And the said defendant has not, nor has any other person paid to said plaintiffs said sum of fifteen dollars, or any part thereof, although often requested so to do. To said plaintiff's damage fifteen dollars, therefore they bring this suit.

POTTS, LINN & BABBITT,
Pl'ffs' Att'ys.

General demurrer.

SCUDDER & VREDENBURGH
Def't's Att'ys.

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The Supreme Court, at the June Term, 1874, sustained the demurrer. No written opinion was delivered. The assignment of errors is general, that the judgment of the Court should have been for the Plaintiffs.

POTTS, LINN & BABBITT,
Pl'ffs' Att'ys.

SCUDDER & VREDENBURGH,
Def't's Att'ys.

Points of Plaintiffs in Error.

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I. The Case in 5th Vroom, p. 332, relies upon the case of the Port-Wardens of New Orleans, 6th Wallace, p. 31, which is not applicable to this case.

II. The compensation given by the Harbor Master Act is a fee, and neither a duty nor an impost.

III. The five dollars fee given by the Port-Warden law of Louisiana, " whether any services were rendered or not,' was extra legislative, beyond the scope of legislative power, and therefore void.

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IV. The case in 5th Vroom, reserves the question of constitutionality, if services are performed by the Harbor Master.

V. The Harbor Master law prescribes duties and services of an important and general nature to be performed by the Master for the benefit of all vessels using the harbor.

VI. The fees are given for the performance of these services.

VII. How have other Maratime States legislated for the preservation of order in their harbors? At least eight in precisely the same way as New Jersey.

How have the judicial tribunals looked upon this legislation? Two have sustained it,—and two—New
10 Jersey being one—hold it as a question upon which they have not passed.

VIII. In conclusion—the suit is for fees for services rendered by a public officer—such fees are neither a duty or an impost—and do not come within the inhibition of the Federal Constitution. The statute fixes both the service and the fee—the declaration avers the performance of the service and the demurrer admits it.

REFERENCES.

Act to appoint Harbor Masters, pamphlet Laws, March 11, 1869.

Geraghty *v.* Hackley, 5th Vroom, 332.

Port-Wardens of New Orleans, 6 Wallace, 31.

Revised Statutes of Louisiana, (ed. 1856) 314.

For definition of the words *tax* and *duty*, see Webster, Bouvier, Burrill, Montefiore, Story in his abridged Commentaries, sec. 474, Kent's Commentaries, Vol. I., marginal page 439.

Cooley on Constitutional Limitations, 487–8–9.

Revised Statutes of North Carolina, Vol. I., 462.

Code of Virginia, 1849, p. 440.

Code of Maryland, 1860, Vol. II., p. 205, sec. 269.

Wood's California Digest, 1850 to 1858, p. 478.

Hoffman's Laws relating to the City and County of New York, Vol. II., p. 44, also pp. 6 and 7.

Revised Statutes of Louisiana, 1856, p. 240, sec. 4.

Benedict *v.* Vanderbilt, 1 Robertson, 144.

The State tonnage tax cases, 12 Wallace, p. 204.

The State *v.* The City Council of Charleston, 4 Richardson, S. C. Repts. p. 286.

Alexander *v.* The Wilmington and Raleigh R. R. Co., 3 Strobbart, S. C., Repts. p. 594.

Harbor Master of Fredericksburg *v.* The owners of the Wenonah, Grattan, Vol. 21, p. 685.