

would have prevented the accident. This was required by the sailing rules of both nations, and was the plain duty of the steamer.

Having held the pilot-boat at fault upon another ground, I have not found it necessary to consider the defense made by the steamer that the pilot-boat was sailing with side lights, and not under a mast-head pilot light.

Both vessels being at fault, a decree is to be entered for the libellant for one-half the damages. Ordered accordingly.

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MASON v. ERVINE and others.<sup>1</sup>

(Circuit Court, E. D. Louisiana. December 10, 1885.)

1. ADMIRALTY—PRACTICE—APPEAL—BOND—PARTIES.

Where the motion and order for appeal were not taken against any of the numerous libellants by name, and where no bond was given in favor of any other than one of the libellants, the appeal can only hold as to him, and must be dismissed as to the others.

2. SAME—AMENDMENT OF PROCESS.

On appeal from district to circuit court, defective process cannot be cured by amendment.

3. SAME—DISMISSAL.

*The City of Lincoln*, 19 Fed. Rep. 430, followed.

On Motion to Dismiss Appeal.

*O. B. Sansum*, for libellant and appellant.

*J. R. Beckwith*, for defendants and appellees.

PARDEE, J. This case seems to be similar in all respects to the case of *Kelly v. The City of Lincoln*, decided by this court at the last term, and reported in 19 Fed. Rep. 460. In the *Kelly Case* an appeal was well taken against Kelly, but not against the other libellants. Here an appeal is well taken against John Ervine, but not against any of the other respondents. In the *Kelly Case* the appeal was dismissed as to all, Kelly included, because as against Kelly the amount in controversy was less than \$50. In the instant case it does not as yet appear whether the case is one that is appealable against Ervine alone. If it is, the appeal can stand as to him; if not, it can hereafter be dismissed. There is no authority for the court to allow by amendment new parties to be brought into the case on appeal. None of the parties respondent in the district court, except Ervine, are parties to the appeal, and no bond taken at this late day ought to be permitted to bring them in.

The motion to dismiss must be granted for all the respondents, except Ervine, and it is so ordered.

<sup>1</sup> Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

## YOUNG v. ARONSON.

(District Court, S. D. New York, April 17, 1886.)

## COURTS—FEDERAL AND STATE COURTS—EXECUTION—SUPPLEMENTARY PROCEEDINGS—RECEIVERS.

Upon an examination of a judgment debtor in proceedings supplementary to execution, in accordance with the state practice in common-law actions, as a substitute for the old creditors' bill, a federal court is not bound to appoint the same person as receiver that was previously appointed in a similar prior proceeding in the state courts. As these independent jurisdictions have no common superior, confusion and conflict will be most likely avoided by the appointment of independent receivers. Especially should a different receiver be appointed where circumstances afford reasonable suspicion that the prior receiver was obtained by collusion with the judgment debtor.

At Law.

*Nelson Smith*, for plaintiff.

*G. W. Carr*, for defendant.

BROWN J. Upon an examination in proceedings supplementary to execution upon a judgment of this court, in a common-law action, in accordance with the practice of the state courts under the state Code of Procedure, which has been in part adopted by this court, the plaintiff is entitled to the appointment of a receiver; and it is urged that the court should appoint the same receiver already appointed by the state court upon a small judgment of about \$100 prior to the proceedings in this action. Where similar supplementary proceedings are had upon judgments in different courts of the state, it is provided by section 2466 of the New York Code of Procedure that no other receiver shall be appointed, but that an order may be made in any subsequent cause extending the receivership to the proceeding in that cause. Section 2471 declares that such a receiver "is subject to the direction and control of the court out of which the execution was issued;" and, upon any subsequent orders extending the receivership to other judgments, "the control over, and direction of, the receiver with respect to that judgment remain in the court to whose control and direction he was originally subject."

The latter provision indicates a manifest objection to the appointment by a federal court of the same receiver that has been appointed in the state court. By accepting a subsequent appointment from a federal court, the receiver would become amenable to the federal jurisdiction. But no mere order appointing him, without his acceptance, could make him so. If he accepted the federal appointment, he would become subject to the direction of two independent tribunals, upon the application of different creditors, without concert of action, and with no common superior. Such a receiver would be liable to become subject to conflicting orders, and to conflicting duties, unless the federal court, or the state court, were to renounce any authority, direction, or control over him, or over the fund of which the receiver