

to work and wages and discipline, which is inserted in nearly the same words in many of the treaties between the United States and other commercial nations. The supposition that the phrase, "exclusive charge of the internal order of the merchant vessels," and the word "differences," were designed to embrace crimes, is excluded by what follows them; since, if such a meaning could be applied, then the courts of neither country can "on any pretext interfere," and the consuls "shall alone take cognizance" of crimes committed, either at sea or in port, by and among the officers and crews of vessels belonging to their respective countries, provided always that "the peace and tranquility of the port" are not disturbed, and no wrong or injury is inflicted upon any person not belonging to the ship. It is conceded that Wildenhuis' offense was committed within the territorial jurisdiction of New Jersey, but it is insisted that under the circumstances mentioned, and by force of the existing treaty, it becomes exclusively cognizable under the laws of Belgium. The consul does not claim the power to try him, but to sit merely as a committing magistrate. In reply to this it can be said that the treaty article makes no provision for the creation and organization of a consular court, nor does it even authorize the consul to act as a committing magistrate.

The facts attending the commission of the alleged crime, for which Wildenhuis is in custody, do not present such a case as is contemplated by the statute for the interference of this court. The suit must therefore be dismissed for want of jurisdiction, and the prisoners remanded.

THE BATTLER and another v. THE SAVANNAH.¹

(*District Court, E. D. Pennsylvania.* November 9, 1886.)

CONTRACTS—EVIDENCE.

An alleged contract must be proved before it can be enforced.

In Admiralty.

Charles Gibbon, for libelants.

Flanders & Pugh, for respondent.

BUTLER, J. The libels are founded on contract; the libelants alleging an engagement of their services, and a refusal to employ them when tendered. A careful examination of the testimony has not satisfied me that such a contract existed. The respondent contracted with Capt. Dahl, of the *Cynthia*, to take her (the respondent) to Philadelphia, for a consideration agreed upon, Capt. Dahl to find all the necessary means at his own expense. There is nothing whatever in the testimony to justify a belief that the respondent

¹Reported by C. Berkeley Taylor, Esq., of the Philadelphia bar.

entered into any contract with the libelants, directly or otherwise. The testimony of the master of the Savannah, on cross-examination, that Capt. Dahl was his "agent," might mislead, if considered without reference to his testimony in chief. Taken altogether, the statements of the witness show quite plainly that Capt. Dahl was not authorized to make contracts in the respondent's name, or on her behalf; nor does it anywhere appear that he undertook to do so.

This view of the facts renders other questions raised unimportant.

THE BELLE HOOPER.¹

VIRDEN *v.* THE BELLE HOOPER.

(*District Court, E. D. Pennsylvania.* November 9, 1886.)

PILOTS—DELAWARE STATUTE OF APRIL 5, 1881—ACT OF CONGRESS OF MARCH 2, 1837. (REV. ST. U. S. § 4236.)

The act of congress conferring the privilege on masters of vessels of selecting pilots other than pilots of the state of Delaware does not entitle them to refuse a Delaware pilot when they have no other.

In Admiralty.

Flanders & Pugh, for libellant.

Henry K. Edmunds, for respondent.

BUTLER, J. By the pilot act of Delaware (section 2, Amendments) it was the libellant's right to pilot the respondent out to sea. The act of congress conferring on the respondent the privilege of electing to take another, a Pennsylvania pilot, does not stand in the libellant's way. His right was subject to such privilege; but, inasmuch as the respondent did not avail himself of the privilege, the federal statute is unimportant in the case.

A decree must be entered in the libellant's favor.

¹Reported by C. Berkeley Taylor, Esq., of the Philadelphia bar.