

and admiralty brought up to the circuit court. Unless all suitors, including the United States, were previously required to give security upon bringing an appeal to the circuit court in equity or admiralty causes, this act was superfluous. Inasmuch as the only statute which required this to be done was one which by its language required the judge "signing a citation on writ of error" to take such security, the act of 1868 is a significant legislative interpretation of the meaning of those words. The revisers doubtless used the words in the sense which had been attributed to them by judicial and legislative construction, and, to make their meaning more unequivocal, coupled with them language not in the original statute, denoting that appellants and appeals were within the scope of the provision. Consequently it is a fair interpretation of section 1000 to conclude that when it speaks of signing a citation upon a writ of error, and requires the judge signing it to take security that the "appellant shall prosecute his writ or appeal to effect," it means that the judge who allows an appeal or a writ of error shall take such security. This interpretation gives effect to all the language of the section, embodies in the section the pre-existing law, and denotes why it was deemed necessary to relieve the United States by section 1001 from giving such security. The appellant will be permitted to file a bond or give security within 20 days *nunc pro tunc*. *Davidson v. Lanier*, 4 Wall. 454; *O'Reilly v. Edrington*, 96 U. S. 726.

LA SCALA *et al.* v. BOUGHTON.

(District Court, E. D. New York. November 23, 1883.)

SHIPPING—CHARTER-PARTY—CONSIGNMENT OF VESSEL—LIABILITY OF MASTER.

A memorandum indorsed on a charter-party, and signed by the master at a port in the course of the voyage, whereby he agrees to consign the vessel, on arrival at the destination, to a certain firm, if a contract at all, is one between the master and the charterers, and the firm, not being privy to it, can maintain no action against the master for loss of commissions occasioned by his refusal to make the consignment.

In Admiralty.

Libel by Diego La Scala, Filippo Modica, and Pietro Tassi, against D. Boughton, master of the steamer *Straithairly*, he being impleaded with others, for damages for refusal to consign the vessel to libelants.

Charles Stewart Davison, for libelants.

E. B. Convers, for respondent.

BENEDICT, J. The charter-party in evidence in this case, made at London between Pietro Tassi and the owners of the steamer *Straithairly*, contained no provision for the address of the steamer at New York. When the steamer arrived at Leghorn, from London, the following indorsement was made upon the charter-party: "The steamer will be ad-

dressed to Messrs. La Scala & Modica, in New York, whose orders I will follow in New York as to wharfage, discharge," etc. This was signed, "D. BOUGHTON, Master." In one branch of this case against the charterers, based upon this memorandum, it was held [*The Serapis*, 36 Fed. Rep. 707] that the memorandum created no liability on the part of the ship-owner to consign his vessel to Messrs. La Scala and Modica, because when the owners, as the charter-party shows, had expressly declined to make a contract for the consignment of the vessel in New York, it was beyond the master's authority to do so at the port of Leghorn, when the steamer was there in the course of prosecuting the voyage. The branch of the case now under consideration is against the master alone. Here, the libelants La Scala and Modica seek to hold the master personally liable, by reason of the memorandum referred to, for the damages sustained by them by reason of his refusal to consign the vessel to them upon her arrival in New York. The question now to be considered, therefore, is whether the memorandum referred to, signed by the master in Leghorn, gives La Scala and Modica a legal and equitable claim against the master personally for the loss of such commissions as they might have earned in case the vessel had been consigned to them in New York. Upon this question my opinion is that the memorandum in question does not give the libelants any legal or equitable claim against the master personally. The memorandum indorsed upon the charter, if it be a contract at all, was a contract between the ship-master and the charterers of the ship. The libelants were in no way parties thereto. Between the libelants and the master there was, therefore, no privity of contract; neither was there any obligation or duty on the part of the charterers to consign their ship to the libelants in New York, which can be taken to be a substitute for that privity necessary to create a cause of action. The libelants are in law mere strangers. They cannot intervene or claim by action the benefit of a contract made between the charterers and the master under the circumstances stated. The libel as against the master must also be dismissed.

UNITED STATES v. GREENMAN.

(District Court, D. Connecticut. December 15, 1888.)

PILOTS—VIOLATION OF NAVIGATION RULES—STATUTES—REPEAL.

Rev. St. U. S. § 4412, empowering the board of supervising inspectors to establish such regulations to be observed by steam-vessels, to which chapter 1, tit. 52 relates, in passing each other in the waters of the United States, as it shall from time to time deem necessary, is not repealed by act Cong. March 3, 1885, adopting the revised international regulations to prevent collision at sea, and a pilot violating a rule established by such board is liable to the penalty therefor imposed by section 4413.

On Demurrer.

George G. Sill, U. S. Dist. Atty., for the United States.

Hadlai A. Hull, for defendant.

SHIPMAN, J. This is a demurrer to an information for a misdemeanor under section 4413 of the Revised Statutes. I am of opinion that section 4412 of the Revised Statutes is not repealed by the second section of the act of March 3, 1885, entitled "An act to adopt the revised international regulations to prevent collisions at sea," but that the board of supervising inspectors still has power to establish such regulations to be observed by the steam-vessels, to which chapter 1, tit. 52, relates, and which are passing each other in the waters of the United States, as the board shall from time to time deem necessary for safety, such regulations to be in conformity with the existing laws of the United States. Article 20 of the international regulations, and rule 22 of the rules contained in section 4233 of the Revised Statutes declare the general duty of vessels which overtake each other, and are substantially alike. By virtue of section 4412 the board of supervising inspectors established rule 8, which specifies the particular duty of the pilot of a steamer overtaking and endeavoring to pass another steamer. This rule is still in existence, and for a willful refusal, in coast waters of the United States, to observe it, the offender is liable to a penalty by virtue of section 4413 of the Revised Statutes. The demurrer is not sustained.