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relates, in passing each other in the waters of the United States, as it shall from time to time deem necessary, is not repealed by act Cong.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 I am of opinion that section 4412 of the Revised Statutes is not repealed by the second section of the act of March 3, 1885, entitled "An act to adopt the revised international regulations to prevent collisions at sea," but that the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.

FILLI v. DELAWARE, L. & W. R. Co.

(*Circuit Court, S. D. New. York.* November 26, 1888.)

COURTS—FEDERAL JURISDICTION—CORPORATIONS—CITIZENSHIP.

Act U. S. March 3, 1887, providing that an action shall be brought in no other district than that of which defendant is an inhabitant, authorizes an action against a railroad corporation only in the state by whose laws it was created, though the greater part of its railway and its principal office are in another state, where its annual elections are held, and most of its officers and stockholders reside, and of which most of its directors are citizens.

At Law. On motion to set aside service of summons.

Plaintiff, Anthony Filli, an alien, brought suit against defendant, the Delaware, Lackawanna & Western Railroad Company, a Pennsylvania corporation, in the Southern district of New York. Defendant moved to set aside service of process on the ground that under the act of March 3, 1887, the action could not be brought in a district other than that of which defendant was an inhabitant. Upon the motion, plaintiff read an affidavit showing that the greater part of defendant's railroad is located in the state of New York; that its principal office is in the city of New York; that its annual elections of directors are held in the principal office; its books and records kept, and its stock transferred there; that its principal officers have their offices there; and that of its fourteen directors, eleven are citizens and residents of New York state, and only one is a citizen and resident of Pennsylvania.

Rogers, Locke & Milburn, (*Charles MacVeagh*, of counsel,) for defendant.

The court cannot take jurisdiction, unless the facts constituting such jurisdiction are affirmatively shown. *Bors* v. *Preston*, 111 U. S. 255, 4 Sup. Ct. Rep. 407; *Robertson* v. *Cease*, 97 U. S. 646; *Bank* v. *Reed*, 8 Reporter, 7. The court cannot take jurisdiction, unless the record shows affirmatively that the defendant corporation is an inhabitant of the Southern district of New York. Act March 3, 1887; *Short* v. *Railroad Co.*, 34 Fed. Rep. 225; *Tiffany* v. *Wilce*, Id. 230; *Loomis* v. *Gas Co.*, 33 Fed. Rep. 353; *Vinal* v. *Construction Co.*, 34 Fed. Rep. 228; *Swayne* v. *Insurance Co.*, 35 Fed. Rep. 1; *Railroad Co.* v. *Railroad Co.*, 33 Fed. Rep. 385; *Denton* v. *International Co.*, 36 Fed. Rep. 3; *Halstead* v. *Manning*, 34 Fed. Rep. 565. The record shows that the defendant is an inhabitant of the state of Pennsylvania. *Railroad Co.* v. *Harris*, 12 Wall. 65; *Railway Co.* v. *Whitton*, 13 Wall. 285; *Ex parte Schollenberger*, 96 U. S. 377; *Railroad Co.* v. *Koontz*, 104 U. S. 11; *Muller* v. *Dows*, 94 U. S. 444; *Steam-Ship Co.* v. *Tugman*, 106 U. S. 120, 1 Sup. Ct. Rep. 58; *Fales* v. *Railway Co.*, 32 Fed. Rep. 673. The objection to jurisdiction is properly taken by motion to set aside the service, and dismiss the complaint. *Manufacturing Co.* v. *Pope Manuf'g Co.*, 34 Fed. Rep. 818; *Denton* v. *International Co.*, 36 Fed. Rep. 1.

William P. Toler, (*George C. Holt*, of counsel,) for complainant.

A corporation can be an inhabitant of a state which did not create it. *Bank* v. *Deveaux*, 5 Cranch, 61; *Bank* v. *Slocomb*, 14 Pet. 60; *Railroad Co.* v. *Wheeler*, 1 Black, 286; *Muller* v. *Dows*, 94 U. S. 444; *Steam-Ship Co.* v. *Tugman*, 106 U. S. 118, 1 Sup. Ct. Rep. 58; *Insurance Co.* v. *French*, 18 How. 404; *Express Co.* v. *Kountze*, 8 Wall. 342; *Manufacturing Co.* v. *Pope Manuf'g Co.*, 34 Fed. Rep. 818; *Denton* v. *International Co.*, 36 Fed. Rep. 1; *Gibbs*