

Case No. 246a. ALLIANCE INS. CO. v. THE MORNING LIGHT.  
[Betts' Scr. Bk. 531.]

District Court, S. D. New York.

1862.

ADMIRALTY—PRACTICE—APPRAISEMENT.

[Where the clerk, at the instance of the claimant of an arrested vessel, and without notice to libellant's proctor, nominates an appraiser, and posts notice of the appraisal, the proceedings are irregular, and the appraisal should be set aside.]

[In admiralty. Libel in rem by the Alliance Insurance Company against the brig Morning Light to recover damages suffered by the schooner Jerry Fowler in a collision, and paid by libellant as insurer. Heard on libellant's motion to set aside an appraisal of the brig. Granted.]

Benedict, Scoville & Benedict, for libellant.

Beebe & Donohue, for claimants.

Before BETTS, District Judge.

In this case the brig was arrested, and in the custody of the marshal. Without notice to the libellant's proctor, the clerk, at the instance of the claimants, proceeded to nominate an appraiser; the notice of the appraisal was posted up, and the vessel appraised. The libellants thereupon moved to set aside the proceedings as irregular.

BY THE COURT. The rules in respect to the appraisal of the property under arrest all plainly contemplate a common action of the parties interested, or an opportunity to act together. The 61st rule permits proceedings instanter for appraisal in suits by the United States in rem, if the district attorney and claimants. are in presence of the court. In individual actions, either party may have an order entered of course for appraisal, or it may be done by mutual consent, and if the parties do not agree in writing upon the appraiser, the clerk shall name him, each party having a right to appeal instanter. Rules 62-69. These regulations imply that both parties are made cognizant of the action taken for the discharge of the property arrested. Betts, Adm. Pr. 43. The 40th rule expressly directs notice to be given libellant's proctor of applications for delivering up property on stipulation which is under arrest. The proceedings in this case must therefore be regarded as irregular, and the appraisal be set aside.