

Case No. 4,375.

THE ELLEN.

{4 Blatchf. 107.}¹

Circuit Court, S. D. New York.

Sept. 25, 1857.

APPEAL IN ADMIRALTY—NOTICE TO PROCTOR OF ADVERSE PARTY—PRACTICE—ACT OF MARCH 3, 1803.

1. On an appeal to this court from a decree of the district court, in admiralty, no citation is necessary, but only a written notice by the proctor to the proctor of the adverse party.
2. The 2d section of the act of March 3, 1803 (2 Stat. 244), made no change as to the mode of practice in bringing such an appeal.

{Appeal from the district court of the United States for the southern district of New York.}

In admiralty. This was a libel in rem, filed in the district court, by the United States against the brig Ellen. There was a decree by that court and an appeal to this court. No citation was issued on the taking of the appeal, and a motion was now made to dismiss the appeal for want of such citation.

Philip J. Joachimssen, Asst Dist Atty., for libellants.

Charles Donohue, for claimants.

NELSON, Circuit Justice. The question presented, in this case, is whether, on an appeal to the circuit court from a decree of the district court, in admiralty, a citation is necessary, as is required in the case of a writ of error. The appeal is regulated by the rules and practice of the two courts, which do not require a citation in the usual form, but only a written notice by the proctor to the proctor of the adverse party.

The 21st section of the judiciary act of 1789 (1 Stat. 83), provided for appeals in admiralty from the district court, but made no provision for a citation. This section was amended by the 2d section of the act of March 3, 1803 (2 Stat. 244), which reduced the amount necessary to the right of appeal, but made no change as to the mode of practice in bringing it. On a careful examination of that act, I am satisfied this is the true construction of the 2d section, so far as it applies to an appeal from the decree of the district court. There are other clauses applicable to an appeal from a decree of the circuit court to the supreme court, which require the usual citation.

The motion to dismiss the appeal is denied.

¹ [Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.]