

in any way incompatible with his being the *bona fide* purchaser of the goods, and the person to whom delivery was intended by the vendor to be made. The goods having been shipped without any bills of lading, no documentary evidence of title was required. It does not appear whether the bill for the goods presented was genuine or forged. Had the goods been addressed to Pearl street it would have been negligence and a violation of the sender's orders to deliver them to any different person elsewhere. As they were not so addressed, when they were rejected there, the carriers were warranted in the inference that they were intended for the Central-avenue man of the same name, who was the purchaser in fact. So far as I can perceive, the carrier is not chargeable with knowledge of any suspicious circumstances, and must, therefore, be absolved from liability.

Judgment for the claimants, with costs.

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RAWSON v. LYON and others.

(District Court, S. D. New York. March 15, 1883.)

PRACTICE—SECURITY FOR COSTS.

By the long-standing practice in courts of admiralty, parties prosecuting or defending or intervening are required to give a stipulation for costs. In actions *in personam*, such security was formerly obtainable under the express rule, when the process was by warrant, which was at the option of the libelant. Now that the process by warrant is abolished in ordinary cases, the requirement of security for costs should still be maintained under the supreme court rule 25, and an amendment of the old rule 44 of this court should be made, in order that no doubt may exist as to the proper practice.

In Admiralty.

*Benedict, Taft & Benedict*, for libelant.

*Scudder & Carter*, for respondents.

BROWN, J. There is no question that the ordinary practice in admiralty has long been to require a stipulation for costs from a respondent on entering his appearance and answering in an action *in personam*. Judge BETTS, in his book on Admiralty Practice, says: "This stipulation must be filed when a defendant comes in to defend, although the first process was a citation and not a warrant." Page 40. This is in accordance with the ancient practice. Clerke, *Praxis*, tit. 5, 11; *Pharo v. Smith*, 18 How. Pr. 47. When suits were commenced by warrant, rule 17 of this court expressly required bail to

be taken for \$100 above the sum claimed; and this was to cover costs. When warrants were abolished by supreme court rule 48, as the ordinary process for commencing actions, rule 17 was no longer expressly applicable to ordinary suits *in personam*; but the ordinary practice in this court to give security has remained as before, although it appears to have been occasionally omitted.

In all other cases, libelants and defendants and intervenors are, by express rules, required to give security for costs, except in the special cases of seamen, salvors, or persons suing *in forma pauperis*. Rules 17, 38, 44, 45. There is no reason why the defendants in actions *in personam* should form an exception to the usual requirement to file security for costs, which, under the former process by warrant, was always obtainable.

Rule 25 of the supreme court expressly authorizes this court to require security in actions *in personam*; and the practice usually followed hitherto should be confirmed by an amendment to rule 44 of this court, so that there may be no doubt about the proper practice in future, or the obligation of the respondents to file security. That rule will be amended by adding at the end the words "and the like stipulation, with surety for costs in the sum of \$100, shall be filed by the respondent in actions *in personam* at the time of entering his appearance or answer, or the same shall not be received unless otherwise specially ordered."

Motion granted.

## GLOVER v. SHEPPERD and another.

*(Circuit Court, W. D. Wisconsin. April 2, 1883.)*

## 1. REMOVAL OF CAUSES—MOTION TO DOCKET—CAUSE, WHEN CONSIDERED ENTERED.

When the papers are regularly transmitted from the state court to the clerk of this court and are on the files of the court on the first day of the first term after the filing of the petition for removal and bond, and proceedings have been taken in this court by both parties, although a formal motion to docket the case was not made, they must be considered as having been filed and the cause entered.

## 2. SAME—DIVERSITY OF CITIZENSHIP AT TIME OF APPLICATION.

It is enough that the proper diversity of citizenship of the respective parties exists at the time the application for removal is made; it need not be shown to have existed at time suit was instituted.

## 3. SAME—ALLEGATIONS AS TO DIVERSITY OF CITIZENSHIP—AMENDMENT OF PETITION—WAIVER OF DEFECT.

The allegation in a petition for removal that defendants are "*residents*" of Minnesota and Ohio instead of "*citizens*," is not a compliance with the statute; but the court may, where such defect is the result of inadvertence, allow the petition to be amended to correspond with the actual facts, especially where such defect has not been discovered, or objected to by the opposite party, and he has taken important steps in the cause, and prepared it for trial in the circuit court.

## Decision on Motion to Remand Cause to State Court.

*S. U. Pinney*, for plaintiff.

*C. C. Gregory* (with *N. H. Clapp*) and *I. C. Sloan*, for defendant.

BUNN, J. This cause was commenced in the circuit court of St. Croix county, Wisconsin. On February 20, 1882, the defendants, being non-residents of the state, filed their petition in the state court for the removal of the cause to this court, and filed a proper bond as required by law. Thereupon the court granted the petition, and the original papers, with a complete transcript of the record and papers in the cause, were transmitted by the clerk of the state court to the clerk of this court, who received them and placed them upon the files in his office in March, 1882, and before the sitting of this court in June of the same year, but the papers were not marked as filed by the clerk, nor has any motion been formally made to docket the cause in this court. But the parties, soon after the papers were sent to this court, and in May, 1882, entered into a stipulation to take testimony in the case, and a special examiner was appointed by this court and testimony was taken and the case proceeded with by both parties as