

does not appear that much of the time the bark was outside for safety could or would have been utilized for discharging; but the respondents urge that these days should, at least, be deducted from the delay for which demurrage is allowed. This claim, though plausible at first glance, cannot be allowed under the contract. The words "weather permitting" apply to the time to be taken for unloading, and not to the detention of the bark by the default of consignees. If the bark had been discharged with dispatch when the stormy season came on, she could have sailed for smoother seas and safer ports. The risks and losses she was compelled to meet to secure her safety will be hardly compensated by the allowance she will get as demurrage during that stormy season.

A decree will be entered in favor of libelant for \$2,650, being demurrage for 106 days at \$25 per day, with interest from December 24, 1881, with credit of \$550 deposit, with interest from November 24, 1882, and for costs of both courts.

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### THE CITY OF LINCOLN.

(Circuit Court, E. D. Louisiana. December, 1883.)

#### 1. APPEAL—BOND—PARTIES.

Where the appeal was taken and bond given before the decree below was made final by the signature of the judge, and where all parties against whom the decree below was rendered have not appealed nor severed, and where the motion and order for appeal were not taken against any of the numerous libelants by name, and where no bond was given in favor of any other than one of the libelants, and the judgment below in his favor was only for \$40, not sufficient to give jurisdiction to this court, the appeal will be dismissed.

#### 2. SAME—AMENDMENT OF PROCESS.

On appeal from district to circuit court defective process cannot be cured by amendment.

On Motion to Dismiss Appeal in Admiralty.

*Richard De Gray*, for libelants and appellees.

*Emmet D. Craig*, for claimants and appellants.

PARDEE, J. The appeal bond in this case is irregular and defective, (1) because the appeal was taken and bond given before the decree below was made final by the signature of the judge; (2) because all parties against whom the decree below was rendered have not appealed, nor have they severed; (3) because the motion and order for appeal were not taken against any of the numerous libelants by name; (4) because no bond was given in favor of any other libelant and appellee than Daniel Kelly, and the judgment below in his favor was only \$40, not an amount sufficient to give appellate jurisdiction.

<sup>1</sup> Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

It may be said that the first three grounds are not sufficient to enable the court to say that there is no appeal. There may be no rule of the district court (although the custom is invariable) requiring decrees to be signed by the judge; but see *Betts*, Adm. 98. The steam-ship company may be the only real party interested in the decree below, to be determined by examining the record. No motion for appeal may be necessary where notice is given and a proper bond given.

The fourth and last ground, however, is too serious to be explained away. I take it that the bond in the case is the real and only appeal process which in this case, at least, brings the case to this court. The decree below was in favor of some 20 odd libelants by names, for various sums. The appeal bond is in favor of Daniel Kelly and intervening libelants, without naming any one. The rule is well settled that such appeal process is defective. It must name all the persons which the appeal is intended to bring before the court; otherwise there can be no decree for or against them. See *Smith v. Clark*, 12 How. 21; *Deneale v. Stump* 8 Pet. 526; *Holliday v. Batson*, 4 How. 645.

Suggestion has been made that the court can grant leave for appellant to amend, but I do not know of any authority for the court to make such order where the effect would be to bring new parties before the court. There is no sufficient bond in this case to bring the parties here for the court to act upon them for any purpose.

The appeal will be dismissed.

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THE CITY OF BATON ROUGE.<sup>1</sup>

(Circuit Court, E. D. Louisiana. December, 1883.)

JURISDICTION—ADMIRALTY.

An unexecuted contract of affreightment gives no lien in admiralty.  
*The Pacific*, 1 Blatchf. 569, distinguished

Admiralty Appeal.

*Henry C. Miller* and *Walter S. Finney*, for libelant.

*Charles B. Singleton* and *Richard H. Browne*, for claimants.

PARDEE, J. Libel *in rem* to recover damages for the breach of a contract made between libelant and the master of the steam-boat City of Baton Rouge, to convey certain molasses from libelant's plantation, in the parish of Iberville, to St. Louis, "it being agreed that said molasses would be taken on board for conveyance to St. Louis on or about January 25, 1883, the said steam-boat being on her down

<sup>1</sup> Reported by Joseph P. Hornor, Esq., of the New Orleans bar.