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.

THE CITY OF BATON ROUGE.[1]

(*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

[1] Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

trip from St. Louis when said contract was made, and it being intended by said contract that said molasses would be taken on board said steam-boat on her return and up trip to St. Louis." The breach alleged is "but neither on said appointed day nor at any time did the said master call for, take on board, or convey said molasses as he had agreed to, but in all respects he failed to keep and carry into effect said contract." The case has been heard on an exception to the jurisdiction, and the question is whether an unexecuted contract of affreightment gives a lien. This question is well settled in the negative. *The Freeman* v. *Buckingham*, 18 How. 188; *Vandewater* v. *Mills*, 19 How. 82; and see *The Lady Franklin*, 8 Wall. 329; *The Keokuk*, 9 Wall. 517; *The Prince Leopold*, 9 FED. REP. 333.

The learned proctor who brings the libel in this case relies entirely, to maintain the jurisdiction, on *The Pacific*, 1 Blatchf. 569. In regard to that case, it should be noticed that the maritime contract for passage had been so far entered upon that the passage money had been paid, and one demand of the libel was for the return of the money. It is very probable that in just such a case jurisdiction would be maintained now. In our case no freight has been paid, no goods delivered, nor the maritime contract in any sense entered upon by the ship. The whole case is that the master contracted for the ship that on the return trip the molasses should be shipped. There is no case that I am aware of that gives a maritime lien for entire breach of such a contract.

The exception will be maintained, and the libel dismissed, with costs in both courts.

THE IMOGENE M. TERRY.

(*District Court, D. New Jersey.* February 2, 1884)

1. ADMIRALTY—MARITIME LIEN—CAPTAIN OF VESSEL.
The rule of law that the captain of a vessel has no lien upon it for his wages is not applicable to a person who, though calling himself captain, neither contracts directly with the owners, nor has charge of freights and moneys, but is, except in name, an ordinary seaman.

2. SAME—PLEADINGS—AMENDMENTS.
It is in the discretion of a court of admiralty to allow amendments in the pleadings even with respect to matters of substance, by a party who shows merits.

In Admiralty. Libel *in rem.*

Bedle, Muirheid & McGee, for libelants.

E. A. Ransom, for respondent.

NIXON, J. In the above libel the libelant, with some self-complacency, describes himself as master of the sloop Imogene M. Terry. But courts of admiralty deal with things, and not with words. If the proofs show that he is in fact an ordinary seaman, under the control of the master, his calling himself the captain ought not to hinder him from invoking the seaman's remedy for the collection of his wages. It is well settled in the admiralty that the captain has no libel *in rem* upon the vessel for his wages. *The Orleans* v. *Phœbus*, 11 Pet. 175. Two reasons are ordinarily assigned for this: (1) Because the freights of the ship pass through his hands, on which he has a lien for payment; (2) because his contract for hire is with the owners, and he is supposed to bargain with reference to their personal responsibility, and not with an intention to look elsewhere for satisfaction. *The Grand Turk*, 1 Paine, 73. The evidence shows that both these reasons failed in the present case. *Cessante ratione legis, cessat ipsa lex.* The libelant was not hired by the owners, but by the master of the Frank C. Barker. He earned no freights, and no money passed through his hands from the earnings of the vessel. When the crew of the Barker was made up by Capt. Raynor, he was employed with other fishermen, and at the same rate of compensation, to-wit, $25 per month, and three cents for every thousand fish caught. To carry on the fishing operations, some of the men were placed on board the Barker to aid in taking the fish, and others on two tenders, by which the fish were transported from the vessel to the respondent's manufactory on the shore. The libelant had charge of the tender Imogene M. Terry, but was as much subject to the orders and the control of Capt. Raynor as if he had remained on board the Barker. The same attempt was made to charge him with the cost of his grub, over three dollars per week, that was sought to be imposed on the other men. There was also a refusal to pay anything to him on account of the bonus for fish caught, although the fact that Capt. Raynor went with a num-