

Jenkins for the collision. As the respondents chose to litigate that question, and the proofs show them to be in the wrong, they cannot very well complain that they are adjudged to pay the costs. Let a decree in favor of the libellant be drawn for \$15 and costs.

THE GEORGE TAULANE.

(District Court, D. Delaware. January 23, 1885.)

PRACTICE IN ADMIRALTY—AMENDMENTS—DISCRETION OF COURT.

Particular facts necessary to be stated in libels *in rem*, the character of amendments and conditions on which they may be made, prescribed by admiralty rules 23 and 24; the design of the rules being to secure certainty and uniformity in pleading and practice.

In Admiralty.

Hoffecker & Hoffecker, for libellant.

Harry Sharpley, for claimant.

WALES, J. Libel *in rem* for damages to a cargo of canned fruit shipped on board the *Taulane*, at Lebanon, in the state of Delaware, and consigned to parties in Philadelphia. Libel filed July 15, 1884. On the same day the marshal attached the vessel at Lebanon. Claim, stipulation, and order of discharge were made July 19, 1884; answer and exception filed September 3, 1884. It is alleged that, by the carelessness and negligence of the master and crew in stowing the goods, the latter were exposed to the rain and damaged to the amount of several hundred dollars. Special exception has been taken that "it is not alleged, nor does it appear by said libel, that the said schooner was or is in this district." The libellant is, in fact, a corporation created by the laws of the state of Delaware, whereas it is described in the libel as a corporation of the state of New Jersey. The allowance of the exception is not resisted, but the libellant now appeals for leave to amend by substituting Delaware for New Jersey, and by adding to the second section of the libel the words, "and that the said schooner is now within the district of Delaware and the jurisdiction of this honorable court."

The question is, should this amendment be allowed as of course, and without terms? And this is a matter, within the discretion of the court, which is to be exercised in view of all the circumstances of the case, of the rights of the parties, and of a proper application of the admiralty rules and practice.

It is contended that the proposed amendment would not change the cause of action, or affect the stipulators who will not be discharged by an amendment, but are subject to all legal dispositions of the case by the court within the amount of their bond. Amendments in form only, in the addition and subtraction of parties, and

generally in all matters which do not prejudice the rights of the other side, are liberally allowed; and amendments in matter of substance may be allowed, at any time before final decree, upon such terms as the court shall impose. Ben. Adm. 483; 2 Pars. Shipp. & Adm. 415; 2 Pars. Marit. Law, 713-715; *The Harmony*, 1 Gall. 124; *Newell v. Norton*, 3 Wall. 266; *The Carozal*, 19 FED. REP. 655. Before the filing of the answer and exception this amendment might have been made as of course, without notice, on motion to the court; but at this stage of the proceedings, after general appearance, answer, and exception, the privilege of amending cannot be allowed without notice, and on such terms as the court may impose under the rules and practice of the court. Admiralty rules 23 and 24 prescribe the statements of fact necessary to be made in a libel, and the extent and manner of allowing amendments. It is the duty of the libellant to state, "if the libel be *in rem*, that the property is within the district;" "and where any defect of form is set down by the defendant upon special exceptions, and is allowed, the court may, in granting leave to amend, impose terms upon the libellant." The attaching of the vessel in the district, on the same day on which the libel was filed, does not cure the defective omission in the libel, nor give jurisdiction to the court. The marshal could not execute the process outside of the district. The averment that the vessel was in the district is made essential by rule 23, and cannot be dispensed with, whether treated as a matter of form or of substance. In *McKinlay v. Morrish*, 21 How. 344, the court calls attention to irregularities of pleading in admiralty, and to the importance of enforcing the rules and practice for pleadings and proofs in admiralty cases. These rules have been established for the purpose of securing certainty and uniformity in pleading, and cannot be relaxed without danger of continuing the evils they were designed to cure. The exception is allowed, with leave to the libellant to amend, on payment of costs.

MAYOR, ALDERMEN, ETC., OF NEW YORK, v. INDEPENDENT STEAM-BOAT Co., impleaded.

(Circuit Court, S. D. New York. January 30, 1855.)

REMOVAL OF CAUSE — FEDERAL QUESTION — FERRY PRIVILEGES — INVASION BY OWNERS OF LICENSED AND ENROLLED VESSELS.

Plaintiffs filed a bill against defendants, alleging that they are entitled to enjoy the exclusive right to establish and maintain ferries between New York and the opposite shore of North river, including Staten island, and that defendants have established and maintained a ferry between Pier 18 and various places on Staten island, and praying for an injunction and an accounting. Defendants denied plaintiffs' right to the exclusive privileges claimed, and asserted that they were not operating a ferry, but were engaged as common carriers in transporting persons and freight on the navigable waters of the United States, and that all of their boats and vessels were duly enrolled and licensed for carrying on the coasting trade, under the laws of congress. *Held*, that no federal question was involved, and that the cause was not removable from the state court into the United States court.

Motion to Remand.

E. Henry Lacombe, counsel to the corporation.

Work & McNamee, for defendant.

WALLACE, J. The question arising upon this motion to remand is whether the suit is one arising under the constitution or laws of the United States. If to any extent a federal law is an ingredient of the controversy by way of claim or defense the suit was properly removed, and the motion should be denied. The bill of complaint alleges, in substance, that the plaintiffs enjoy the exclusive right to establish and maintain ferries for the transportation of passengers and freight between the city of New York and all places upon the opposite shore of the North river, including Staten island; and that the defendants without permission of the plaintiffs have established and are engaged in maintaining a ferry between pier 18 on the North river and various places upon Staten island. The prayer is for an injunction restraining the defendants from employing any ferry-boats or other vessels in the transportation of persons or merchandise from or to pier No. 18, or any other place included in their franchise, to or from any landing place on the shores of Staten island. There is also a prayer for an accounting and damages. The answer denies the plaintiff's right to the ferry privileges claimed, and asserts that the defendants are not operating a ferry, but are engaged in the lawful transportation of passengers and freight, as common carriers, upon the waters of the United States, between pier No. 18, in the city of New York, and the several landing places on Staten island; and alleges that all of the boats and vessels employed by the defendants were duly enrolled and licensed for carrying on the coasting trade under the laws of congress.

If the right to maintain a ferry and exclude the defendants from establishing one could in any way preclude the defendants from the