ON REHEARING.

March 19, 1889.

BILLINGS, J. Since the opinion in this case was announced the charter-party of *The India,* 14 Fed. Rep, 476, 16 Fed. Rep. 262, referred to therein, has been obtained, and certain authorities have been cited in the brief of respondent for a rehearing. In the opinion rendered in the case it was stated that the question was whether the charterers were to have, and did have, control, management, and possession of the vessel, and a line of cases was referred to which maintain that by some similar charter-parties the possession and control were vested in the charterers. This line of cases must control me, unless this case is distinguishable from *The India.* An effort is made by learned proctor for respondent to show that a distinction exists, and, first, he points to the provision in the charter-party that the charterers shall have permission to appoint a supercargo, who shall accompany the steamer, and see that the voyages are prosecuted with the utmost dispatch. In connection with this clause the case of *Saville* v. *Campion,* 2 Barn. & Aid. 503, is cited. In that case the charter-party did not contain the words "let, to freight," but the whole "instrument," as the court terms it, contains matter of contract and covenant only. The agreement was to take on board the goods of the freighter, and sail to Madeira, etc. The owner further agreed that such passengers as might be required by the freighter should be conveyed in the ship; that all the cabins except one should be for the benefit and at the disposal of the freighter. There is also a clause providing for a supercargo to be sent out by the charterers. Since in that case there was no letting,—only a contract to carry freight,—the court held that the specification of the right of the charterers to appoint a supercargo was another evidence of the intent not to let. But the court did not hold that in all oases the specification in the charter-party of the right of the charterers to appoint a supercargo would show no possession or control of the vessel in them, for rights are specified or reserved in instruments as often to give emphasis to its general purport—as is the case here—as to make an exception to the general effect of instruments,—as was the case there. In all of the cases which are grouped together in the opinion of SAVAGE, C. J., in *Clarkson* v. *Edes,* 4 Cow. 478, great weight is attached to. the phraseology of the charter-party as to whether the vessel itself was hired, or whether the charter-party was merely a contract to carry freight. In the case before the

court the said owners "agreed to let," and the said charterers "agreed to hire, for the term of," etc.; and the charter-party further provided that "when the vessel is delivered to the owners' agent—that is, after, the termination of the voyage—any difference," etc. Therefore the general phraseology of the charter-party is that of an instrument which was intended; by the parties thereto to grant and "to freight let." So far as relates to the provisions of the charter-party that the charterers shall have permission to appoint a supercargo, who shall accompany the vessel, and see that the voyages are prosecuted with the utmost dispatch, it does not control the general effect of the charter-party, but is in aid of it. Much less does it do away with the particular provision that the captain, although appointed by the owners, shall be under the orders and directions of the charterers as regards employment, agency, or other arrangements. Now, in *Clarkson* v. *Edes,* 4 Cow. 477, although the language was that the vessel was let, the second and third clauses were that the party of the second part, the charterer, may load and discharge from on board the schooner such cargo in either of the ports or places as by the party of the first part (the owners) shall be ordered. The court held that those clauses were inconsistent with the possession, being in the charterer, and the correctness of this conclusion cannot be doubted; but the agreement in that case had not the features the present charter has. After a careful review of the cases, and a consideration of all the arguments urged, I am still of the opinion that in the present case it is my duty to follow the authorities referred to in my former opinion, and therefore the motion for a rehearing is refused.