

the same time. It provides that the tugs "shall not take or tow a larger number of boats or craft than they can at all times safely handle and fully protect," which is a direct recognition of the ordinary practice for tugs to take a tow of numerous boats, which may all belong to different owners.

The insurance, moreover, is not only against the liability for other boats injured, but also for all "loss or damage arising to their freights and cargoes, or each or any of them." These freights and cargoes are often owned by still other persons, to each of whom severally the tug and her owners may be legally liable. It is frequently the case that from a single collision or stranding the tug and her owners become responsible to numerous different damage claimants. If the construction contended for by the respondent is correct, the deduction of \$50 could be made in respect to each and every one of such different damage claims, whether for boats or the different parts of the cargoes, and thus not merely the sum of \$50, but many times that sum, amounting in all to a very considerable proportion of the insurance, might be deducted. It seems clear to me that the language of the policy is not compatible with such a result, and does not contemplate it. On the contrary, in insuring "against such loss or damage as the tug may become liable for;" and in agreeing "to indemnify the assured for loss or damage arising out of any accident by 'collision' etc. to any other vessel, or vessels or their cargoes" etc., the policy seems to me plainly to contemplate the fact that there may be numerous items of damage to different claimants arising upon a single accident, and that all such as may arise upon "any (single) accident constitute but a single 'loss' as between the insurers and insured." The policy is the insurer's own instrument, and if the intent was to deduct \$50 for each damage claimant's loss, instead of for the one loss which the accident caused to the assured, it was for the insurer to express that intent in the policy. Not having done so, the policy must be construed according to the legal relation between the parties to it. As between them, the "loss" is but one, upon a single "accident;" and consequently there should be but a single deduction of the \$50. The case of *Hernandez v. Insurance Co.*, 6 Blatchf. 317, seems to me not to conflict with this decision, but rather to sustain it.

PROVIDENCE WASH. INS. CO. v. BRUMMELKAMP.

(Circuit Court, N. D. New York. November 29, 1893.)

1. REFORMATION OF CONTRACTS—MISTAKE—INSURANCE POLICY.

Where an insurance company is requested to issue a policy like a previous one to the same party, and in copying from the prior policy the word "thence" is inadvertently substituted for "there," equity will reform the policy to express the intention.

2. MARINE INSURANCE—POLICY—CONSTRUCTION.

A vessel insured for one year with the provision, "Confined to dredging in Shinnecock canal, L. I., with liberty to proceed there via Long

Island sound into Peconic bay," does not cover a loss of the vessel during the year, in Long Island sound, on a voyage from Shinnecock canal to New York.

In Admiralty. Libel by the Providence Washington Insurance Company against Peter J. Brummelkamp for reformation of a policy of insurance, and to restrain the prosecution of an action at law thereon. Decree for complainant.

Carpenter & Mosher, for complainant.
Hyland & Zabriskie, for respondent.

WALLACE, Circuit Judge. The complainant's bill is filed to reform a policy of marine insurance issued by the complainant to the defendant, whereby the defendant's dredge Pioneer was insured for one year against loss for the sum of \$4,000, subject to the provisions and warranties contained therein, and to restrain the further prosecution of an action pending at law in this court, brought by the defendant against the complainant to recover the amount insured. The policy, in describing the risk insured, contained this provision: "Confined to dredging in the Shinnecock canal, L. I., with liberty to proceed thence via Long Island sound into Peconic bay." The vessel was lost during the year while in Long Island sound, whence she had proceeded from the Shinnecock canal into Long Island sound on a voyage to the port of New York. The bill of complaint alleges that by a mistake of the scrivener the word "thence" in the provision quoted was substituted inadvertently for the word "there," so that the risk covered by the policy should read "confined to dredging in the Shinnecock canal, L. I., with liberty to proceed there via Long Island sound into Peconic bay."

It is entirely clear that the word "thence" was substituted for the word "there" in the provision by the inadvertence of the scrivener. The complainant had issued to the defendant a policy on the dredge Trojan, of which the defendant was the owner, which dredge at the time was about to go to the Shinnecock canal, and there engage in dredging. The dredge Pioneer subsequently proceeded to Shinnecock canal, to be employed in dredging there, and the defendant was requested by the insurance brokers acting for the defendant to issue a policy upon the Pioneer similar to the one which had theretofore been issued by it upon the Trojan. In copying the provision of the Trojan's policy into the policy upon the Pioneer the word "there" was written "thence." The language of the provision suggests a mistake upon its face, because it is geographically impossible to proceed from the Shinnecock canal through Long Island sound into Peconic bay. The policy upon the Trojan was intended to cover a risk arising not only while the dredge should be employed in the Shinnecock canal, but during her voyage going from the Hudson river through Long Island sound and Peconic bay. It did not extend to a loss which might arise subsequent to the employment of the vessel in dredging in the Shinnecock canal. It was the intention as well of the insured as the

insurer that both policies should cover a similar risk, and the policy upon the Trojan accurately expressed the understanding between the parties. The complainant had no knowledge whether the dredges were to be employed in the Shinnecock canal for a longer or shorter period than a year; but it carefully limited its liability to a loss arising during the employment of the vessels there, or while proceeding there. Very likely the defendant supposed that under a policy worded as this one was intended to be he could recover in case of a loss happening at any time within the year, although after the vessel should cease to be employed in the Shinnecock canal. But he had no justification for such a supposition, because the language of the condition could not warrant it.

There must be a decree for the complainant reforming the policy according to the prayer of the bill, and enjoining the further prosecution of the suit at law.

THE BERKELEY.

DEAS v. THE BERKELEY.

(District Court, E. D. South Carolina. November 18, 1893.)

1. ADMIRALTY—PROCEEDINGS IN REM—VOID PROCESS.

A warrant of arrest for seaman's wages, issued by the clerk in the absence of the judge, contrary to the provision of a rule of court, is void.

2. SAME—VOID PROCESS—WAIVER—RELEASE BOND.

Where a release bond is given after seizure of a vessel under an invalid warrant of arrest, the claimant being then ignorant of such invalidity, the recital in such bond that the claimant and his surety personally appeared, and submitted themselves to the jurisdiction of the court, is not a waiver of the illegality, and does not operate as an appearance to the suit, and any proceedings founded thereon are coram non iudice. The *Orpheus*, 3 Ware, 145, followed.

In Admiralty. Libel by George Deas against the steam tug Berkeley for seaman's wages. On motion to vacate a decree. Granted.

C. B. Northrop, for libellant.

Ficken & Hughes, for respondent.

SIMONTON, District Judge. This is a motion to set aside a decree in admiralty. On 18th August, 1893, the libel was filed for seaman's wages, and a warrant of arrest asked for. By the rule of this court, (rule 9,) process in rem may be issued without a mandate of the judge, except in foreign attachment or in suits for seaman's wages. The judge was absent from Charleston, holding the court at Greenville, when this libel was filed. The clerk issued the warrant himself under the seal of the court, without the mandate of the judge. The marshal served the warrant, and arrested the vessel. In an hour or two after the arrest, the master and claimant went to the marshal, and, with J. F. Hernholm as surety, en-