
Statement of the case.

the said commission with witnesses to support their said claims; and, if they did so appear, whether or not it was before or after the seizure of their books and papers by the provost guard of St. Louis.

And it is further ordered that the said record, with the said additional findings of fact, be returned to this court with

ALL CONVENIENT SPEED.

HERNDON v. HOWARD.

Where an appellant in this court becomes bankrupt after his appeal taken, his assignee in bankruptcy upon the production of the deed of assignment of the register in bankruptcy, duly certified by the clerk of the proper court, may, on motion, be substituted as appellant in the case.

In this case Herndon had taken an appeal from the Circuit Court for the Western District of Texas; and after doing so had become bankrupt. His assignee in bankruptcy—one Masterson—now moved to be admitted as a party appellant in the cause with the original appellant, Herndon.

His motion was supported by the production of the deed of assignment of the register in bankruptcy of the District Court of the United States for the Eastern District of Texas, in the matter of his bankruptcy to Masterson, duly attested by the clerk of the court. The motion was founded upon the fourteenth section of the Bankrupt Law, which provides that the assignee in bankruptcy may prosecute and defend in his own name all suits at law and in equity pending at the time of the adjudication of bankruptcy, in which the bankrupt is a party, in the same manner and with the like effect as they might have been prosecuted or defended by the bankrupt, and which makes a copy of the register's assignment, duly certified by the clerk of the proper court, conclusive evidence of the right of the assignee to sue.

Statement of the case.

The CHIEF JUSTICE delivered the opinion of the court.

The section of the Bankrupt Law relied on, we think, governs the present case. It seems to require that Masterson, the assignee, be substituted as appellant for Herndon, the bankrupt, who may be said to be *civiliter mortuus*, precisely as an executor or administrator would be made party instead of an appellant actually deceased; and an order will be

MADE ACCORDINGLY.

THE QUICKSTEP.

1. Where the District and the Circuit Court concur in their view of facts in a collision case in admiralty, the case will come before this court with every presumption in favor of the correctness of the decision appealed from.
2. The fact that in a libel for collision a contract of towage is recited in the libel, does not necessarily convert the libel into a proceeding on the contract. Where the real grievance alleged is a wrong suffered by the libellant in the destruction of his boat, by the carelessness and mismanagement of the boat libelled, the reference to the contract is to be regarded as made by way of inducement to the real grievance.
3. An objection of a too general allegation of injury should be made in the court below. It cannot be made here for the first time and after the case has been heard below.
4. In admiralty, an omission to state some facts which prove to be material but which cannot have occasioned any surprise to the opposite party, will not be allowed to work injury to the libellant, on appeal, if the court can see that there was no design on his part in omitting to state them.
5. It is the duty of a vessel which undertakes to tow other boats, to see that the tow is properly made up and that the lines are strong and securely fastened.
6. A party who does not appeal, can be heard only in support of the decree.

APPEAL from the Circuit Court for the Southern District of New York in a matter of collision; the case, as assumed by this court upon the evidence, was this:

One Byrne, the captain and owner of the canal-boat Citizen, laden with wheat, contracted with the captain of the