

Case No. 826.

THE BAL TIC.

{1 Blatchf. & H. 149.}¹

District Court, S. D. New York.

Aug., 1830.

ADMIRALTY—SURETY FOR COSTS—PROCEDURE BY PETITION AND BY MOTION

1. The regular method of proceeding against a surety in a stipulation for costs in a suit in admiralty, is by petition, after notice to the surety. In such a case, the decree may be final and peremptory.
2. Upon a proceeding by motion, after a personal demand of the costs from the surety, a conditional decree only will be awarded.

In admiralty. This was a motion for a decree of condemnation against the surety in a stipulation in behalf of the libellant, in a suit in admiralty in rem, to pay costs, &c. [Granted.]

Notice of the decree dismissing the libel with costs, and of the return of the execution against the principal unsatisfied, was served on the surety, together with a taxed bill of the costs, and payment of the costs was regularly demanded.

BETTS, District Judge. The jurisdiction of the court over the parties and the subject matter, in bail stipulations, is fully established, and is exercised by awarding judgment and execution in a summary manner. *The Alligator*, [Case No. 248.] This power is necessarily incident to the court, in consequence of its jurisdiction over the principal cause.

It would be the more convenient and fit mode of practice, to pursue, in these cases, the course of the court in summary proceedings. The application to the court should be upon petition, a copy of which ought to be served on the party to be affected, and then the decree of the court might be peremptory. The present procedure, by motion, after a personal demand of costs from the surety, is sufficient to give the court cognizance of the matter, but, Instead of a final, only a conditional decree will be awarded in this state of the case. The surety should have been directly apprized of the proceeding, and have had the opportunity to acquit himself of the obligation without incurring further costs or subjecting himself to be attached for contempt of court.

A decree must be entered, that the surety pay the taxed costs in the principal cause within ten days after notice of this order, or that an execution issue against him for that amount and also for the costs of these proceedings.

¹ [Reported by Samuel Blatchford, Esq., and Francis Howland, Esq.]