

Case No. 1,606.

{5 Blatchf. 5.}<sup>1</sup>

BOKER v. BRONSON.

Circuit Court, S. D. New York.

Jan. Term, 1861.

PRACTICE—ORDERS—ENTRY OF ORDER ON DECISION.

1. The practice, in this court, on a decision being made by the court, is to enter a formal order upon it, and not to regard the decision it self as an order.

[Cited in *Plant v. Gunn*, Case No. 11,205.]

2. Where, on a motion for a new trial, a written decision was made by the judge holding the court, and filed, granting a new trial on condition of the payment of costs “within twenty days after service of this order,” and no other or more formal order was made, and the costs were not paid: *Held*, that the party making the motion was not in default, in not paying the costs.

At law. This was an action at common law [by John G. Boker against Greene C. Bronson], in which a verdict was rendered for the plaintiff. On a motion for a new trial made by the defendant, a written decision was made by the judge holding the court, and filed, granting a new trial on condition that the defendant “pay the costs of the trial within twenty days after service of this order.” [Case No. 1,605.] No other or more formal order was made. A copy of the decision was served, but, the costs not having been paid, the plaintiff now moved for judgment on the verdict. [Denied.]

Almon W. Griswold, for plaintiff.

James I. Roosevelt, Dist. Atty., for defendant.

SMALLEY, District Judge. The question of practice in this case is, whether the decision of the judge is to be considered as an order, or whether a regular order should have been entered. The practice in this court is, to enter an order upon a decision made by the court. As no such order was entered in this case, the defendant was not in default in not paying the costs. The proper course was for the plaintiff to enter the order and serve a copy of it.

Motion denied.

<sup>1</sup> [Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.]