

Case No. 5,650.
[3 Ben. 479.]¹

GRACE v. EVANS.

District Court, S. D. New York.

Nov., 1869.

ARREST IN ADMIRALTY—BAIL—ATTACHMENT.

1. The proper form of stipulation to be given for the discharge of a party arrested in a suit in admiralty, is for the appearance of the party to abide by the decree of the court in the cause, and not for the payment of the sum decreed.
2. Where a warrant of arrest was issued, with a clause directing the marshal, if the respondent could not be found, to attach his property, and the marshal returned that he had arrested the respondent, and had attached his property: *Held*, that the attachment must be set aside.

In this case, a libel was filed [by William L. Grace against Joseph Evans], alleging that the defendant, a master of a vessel, had sold cargo on board her belonging to the libellant, and had brought the proceeds to this port, and had refused to pay them over to libellant. On this, an order was made that the respondent be arrested and held to bail. A warrant was accordingly issued against him, with a clause providing that, if he was not found, the marshal was to attach his property or credits and effects. The marshal returned that he had arrested the respondent, and had also attached his credits and effects. The respondent thereupon tendered a stipulation, with sufficient surety, conditioned that the respondent should appear in court, to abide by the decree of the court in the cause. Objection was taken, on behalf of the libellant, that the stipulation ought to be, that the respondent should pay the amount decreed against him. The respondent also claimed that the attachment should be set aside, on the ground that the process only directed the service of the attachment, in case the respondent could not be found, and that, inasmuch as the marshal had arrested the respondent, and held him in custody, he had no authority to attach his property.

T. Scudder, for libellant.

C. Van Santvoord and R. D. Benedict for respondent.

THE COURT (BLATCHFORD, District Judge) held, that the libellant had no right to any further security than that which was offered by the respondent; and, on the filing of the stipulation offered, ordered the arrest and the attachment to be discharged.

¹ [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]