

Case No. 8,756.

THE McDONALD.

{4 Blatchf. 477.}<sup>1</sup>

Circuit Court, S. D. New York.

Nov. 30. 1860.

PRACTICE IN ADMIRALTY—COSTS—DISMISSAL FOR WANT OF JURISDICTION—COSTS ON APPEAL.

1. The district court on dismissing a libel for want of jurisdiction, has no power to award costs against the libellant.

[Cited in *The Hendrick Hudson*, Case No. 6,355; *Wenberg v. Cargo of Mineral Phosphate*, 15 Fed. 288; *Cooper v. New Haven Steamboat Co.* 18 Fed. 588; *Pentlarge v. Kirby*, 20 Fed. 898.]

2. Where the district court dismissed a libel for want of jurisdiction, and awarded costs against the libellant and this court on an appeal by the libellant from the whole decree, affirmed so much of it as dismissed the libel and reversed so much of it as awarded costs, no costs of this court were allowed to either party.

[Followed in *Pentlarge v. Kirby*, 20 Fed. 901.]

This was a libel in rem, filed in the district court, by Newell Chamberlain and others against the steamboat McDonald. That court dismissed the libel for want of jurisdiction, and awarded costs to the claimant. [Case No. 11,238.] The libellant appealed to this court from the whole decree. This court affirmed so much of the decree of the district court as dismissed the libel for want of jurisdiction [Id. 11,239], and the question now arose as to what decree should be made by this court in regard to costs, the libellant claiming that he should not be charged with costs either in this court or in the district court, and the claimant maintaining his right to recover costs in both courts.

James N. Platt and Gerard & Buckley, for libellant.

Erastus C. Benedict and Burr & Benedict, for claimant.

NELSON, Circuit Justice. It was erroneous in the court below to allow costs on the dismissal of the libel for want of jurisdiction. In such a case, by the settled practice of the supreme court, no costs are allowed. So much of the decree below as awarded costs to the claimant must, therefore, be reversed. As the libellant had a right to come to this court to reverse that part of the decree below which awarded costs against him, I shall not allow costs against him on the appeal, although a part of the decree appealed from is affirmed; and, because he claimed to reverse the whole decree, I shall not allow any costs to him on the appeal.

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