

THE ORIENT.

Circuit Court, S. D. New York. August 18, 1881.

DECREE—OMISSIONS IN—REVERSAL.

Where there was a stipulation that the intervenors should pay all costs and expenses which should be awarded against them, and the final decree awarded no costs or expenses against the intervenors, notwithstanding there was a deficiency in the proceeds to pay all the costs and expenses, the decree must be reversed.

Beebe, Wilcox & Hobbs, for libellants.

E. D. McCarthy, for intervenors.

BLATCHFORD, C. J. The stipulation of November 1, 1879, was that the intervenors should “pay all costs and expenses which shall be awarded against them by the final decree of this court, or, upon appeal, by the appellate court.” The final decree of November 29, 1879, in the district court, gave a recovery for \$749.68 to the libellants against the steam-boat Orient, which amount included certain costs, taxed in favor of the libellants at \$127.20, (that amount including fees of proctor, clerk, and commissioner,) and the fees of the marshal, taxed at \$251.49; but said final decree awarded no costs or expenses against said intervenors. It ordered that out of the moneys in court the clerk first pay the cost of the officers’ court, and then pay the balance on account of the amounts decreed to the libellants. On the face of it it contemplated a deficiency by using the words “on account of.” It was known to all parties that the proceeds in court were \$615, and that there must be a deficiency of \$144.38; yet there was no award for costs, or for any part or the whole of the deficiency, against the intervenors. The decree must be taken to have been made with knowledge of its provisions and effect. It was not appealed from, and was acquiesced in. If it was erroneous or inadvertent the libellants should have had it corrected 159 by the district court.

There is nothing purporting to correct it, or to award any costs against the intervenors. The order of March 29, 1880, and the decree and summary judgment of May 17, 1880, cannot be construed as making such correction or awarding any such costs.

The appellants are entitled to a decree reversing the said decree and summary judgment of May 17, 1880, with costs in both courts, to be taxed against the libellants.

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