

THE DELAWARE.¹
CUFF *v.* THE DELAWARE.

Circuit Court, E. D. New York.

December 13, 1887.

APPEAL—FINAL DECREE—DISMISSAL FOR “WANT OF EVIDENCE.

A decree of the district court dismissing a libel for want of evidence is not a final decree, within the meaning of the statute allowing appeals from the district court, in admiralty, and an appeal therefrom will not lie.

In Admiralty. On motion to dismiss appeal.

Goodrich, Deady & Goodrich, for libelant.

Carpenter & Mosher, for claimant.

LACOMBE, J. This is a motion to dismiss an appeal from a decree of district court, on the ground that such decree is not final, within the meaning of the statute allowing appeals from the district, court, in admiralty. When the case was regularly reached for trial in the district court, appellant’s counsel moved for a postponement, which was refused; and, upon his further statement that his witnesses were all away, and that he had no evidence to offer, counsel for claimant moved to dismiss the libel, as no evidence had been submitted. The motion was granted, and decree of dismissal entered. The case is clearly covered by the prior decisions of *The Merchant*, 4 Blatchf. 105; and *Farrett v. Campbell*, 7 Blatchf. 158.

The motion is granted.

¹ Reported by Edward G. Benedict, Esq., of the New York bar.