

THE LOPEZ.<sup>1</sup>  
PHIPPS *ET AL.* V. LOPEZ.

*District Court, S. D. Alabama.*

April 22, 1890.

ADMIRALTY—DECREE PRO CONFESSO.

A decree *pro confesso* in admiralty is not final, and merely authorizes the court to hear the case *ex parte*, either directly, or by reference to a commissioner to ascertain and report the amount due.

In Admiralty. Libel for supplies on open account.

A decree *pro confesso* was rendered against the schooner, whereupon the libelant's proctor moved the court for a final decree for the sum sued for as set up in the libel, without further proof in support of the claim.

*Hannia Taylor*, for libelant.

TOULMIN, J., (*orally.*) When the court adjudges a libel to betaken *pro confesso*, and proceeds to hear the cause *ex parte*, as provided for in admiralty rule 29, the *ex parte* hearing may take place at the time of the default, or on a future day in court, as the court may direct. The more usual course is to refer the matter to a commissioner to hear the parties, and make report thereon to the court. Ben. Adm. §§ 449–452; 2 Conk.

Adm. 178,191. The decree *pro confesso* is an interlocutory decree against the defendant or claimant, as the case may be. It is not a final decree, "such a decree as he can abide by," but the court is to "proceed to hear the cause *ex parte*, and judge therein as to law and justice shall appertain." The judge may himself determine the amount to be decreed, or, which is the usual practice, he may refer it to the clerk or to a commissioner to ascertain and report it. Id. 183-189. The case in 11 Wall. 268, (*Miller v. U. S.*,) cited by libellant's proctor, was a case of seizure on a proceeding for condemnation and forfeiture. In such cases, whether in revenue cases or admiralty suits *in rem* for condemnation and forfeiture of the property seized, (as, for instance, in prize cases,) the decree of condemnation is absolute, the only question being whether the property be forfeited or not. The rule in admiralty suits on claims *ex contractu* is different. In such cases the court must make some inquiry, and ascertain the sum which the plaintiff is entitled to recover, and for Which a final decree shall be rendered. Authorities *supra*. The motion is denied, and it is ordered that it be referred to the clerk to ascertain from proof the sum Which the libellant is entitled to recover, for which a final decree will be rendered.

<sup>1</sup> Reported by Peter J. Hamilton, Esq., of the Mobile bar.