

THE CITY OF FLORENCE.
YOUNG v. THE CITY OF FLORENCE.

(District Court, E. D. Louisiana. June 1, 1893.)

ADMIRALTY—COSTS—JURISDICTION.

The general rule that, where the court has no jurisdiction, it cannot adjudge costs, does not apply when want of jurisdiction does not appear by the averments of the libel, but is only disclosed by subsequent pleadings or evidence, after the parties are in court; and in such case costs may be adjudged against libelant on dismissing the libel. *Lowe v. The Benjamin*, 1 Wall. Jr. 187, followed.

In Admiralty. Libel by William Young against the steamboat City of Florence. Heard on application of the libelant for a rehearing and modification of the decree in respect to the costs, which were adjudged against him on the dismissal of the libel for want of jurisdiction. Denied.

John D. Grace, for libelant.
Rouse & Grant, for claimant.

BILLINGS, District Judge. This case is submitted upon an application of the libelant for a change in the decree which adjudged costs against him. The suit was a suit of a minority part owner to control the use of the vessel. The allegations in the libel were that the libelant had a title to, and owned, one-third of the boat. After the litigation had proceeded some way, and the cross libel had been filed, an amended libel was filed by libelant, by which it appeared that he had no legal title whatever to a third of the boat, but only a conditional contract for it. Upon these facts appearing the claimants excepted to the jurisdiction of the court to hear the case at the instance of the libelant, who had no title except an equitable title. The court maintained the exception, and it dismissed the libel at the libelant's costs. The question is, was there error in adjudging costs? The authorities cited by the proctor for the libelant abundantly justify his position that it is a general rule, where the court has no jurisdiction, it cannot adjudge costs; but there is an exception to that rule which is based upon clear and well-recognized reasons, and it is that where, according to the averments of the libelant, or plaintiff, or complainant, the court has jurisdiction, and it is not until there is a disclosure by plea and evidence that the want of jurisdiction could be arrived at, in such a case costs are adjudged. In *Lowe v. The Benjamin*, 1 Wall. Jr. 187, at page 188, Judge Grier says:

"But where, on showing of the pleas, writs, and declarations, the court has apparent jurisdiction of the subject-matter of the cause, and the want of jurisdiction is first disclosed by the plea and evidence, the defendant ought to have judgment for his costs in the same manner as if he had succeeded on the trial by the interposition of any other plea; and this, for the reason that the parties are in court on the issue, and judgment has been rendered thereon."

After stating the general doctrine, Judge Grier adds:

"The case before us is of the latter sort. The libel showed no want of jurisdiction, which was first stated in the answer. Jurisdiction was one of the issues tried, and the subject of evidence and argument on both sides. As well in the district court as here the parties were before the court, which had jurisdiction of the subject thus presented to them for trial; and the court proceeds to decree costs."

In *Thomas v. White*, 12 Mass. 370, the court adjudged costs for the defendant, and, after stating the general rule to be as is claimed by the learned proctor for the libelant, says:

"But in this case the court has jurisdiction of the subject, to wit, a probate bond, and it is only by the plea of the defendant, on which there must be an issue and judgment, that the want of jurisdiction in this particular suit can be maintained."

I think, therefore, costs were rightly adjudged, and that the application for a rehearing and modification of the judgment must be refused.

THE KENDAL.

YOUNG et al. v. THE KENDAL.

(District Court, D. South Carolina. May 18, 1893.)

1. ADMIRALTY—PLEADING AND PROOF—VARIANCE.

A stevedore's libel for services performed in loading a vessel alleged that the services were rendered on the master's request, and that by reason thereof there became due the sum demanded. There was no allegation that the services were reasonably worth that sum. *Held*, that this language did not necessarily import an implied contract and a claim on quantum meruit, and there was no variance when the proof showed an express contract.

2. SHIPPING—STEVEDORE'S CHARGE—REASONABLENESS.

A stevedore's charge of 45 cents per bale for loading cotton at Charleston, S. C., is a reasonable charge, it appearing that this is the uniform charge at that port, and the price contemplated and provided for in the charter party.

3. SAME—STEVEDORE'S LIEN—DEFENSES.

The charge of 45 cents per bale being reasonable and customary, the vessel may be held for that amount, notwithstanding that the stevedores were under a general contract to load all vessels coming to the consignees of this vessel, in consideration of paying them 10 cents per bale on each bale loaded.

4. SAME—MARITIME LIENS—NECESSITY FOR SERVICES—BURDEN OF PROOF.

When it appears that services rendered to a vessel were necessary, and that the contract therefor was made with the master in a foreign port, the presumption is that they were furnished on the credit of the vessel. And this presumption is not overthrown by simply showing that the owners had made arrangements to furnish other credit, or to supply funds. The proof must further show that these arrangements were effective in producing the result.

In Admiralty. Libel by Thomas Young & Co. against the British steamship Kendal to recover for services as stevedores. Decree for libelants.

Mitchell & Smith, for libelants.

Bryan & Bryan, for respondent.