eign port, and authorized by the laws of the country to which she belongs.

In this view of the subject, it is unnecessary to say anything in relation to the second plea of the defendant, since the matters relied on in the first are sufficient to bar the plaintiff of his action, without the aid of the additional averments contained in the second.

The judgment of the Circuit Court must therefore be affirmed.

MOSES C. MORDECAI, ISAAC E. HERTZ, JOSEPH A. ENSLOW, AND ISAAC R. MORDECAI, CARRYING ON BUSINESS UNDER THE NAME, STYLE, AND FIRM, OF MORDECAI & CO., LIBELLANTS AND APPELLANTS, *v.* W. & N. LINDSAY, OWNERS OF THE SCHOONER MARY EDDY, HER TACKLE, &C.

Where the decree of the District Court, in a case of admiralty jurisdiction, was not a final decree, the Circuit Court, to which it was carried by appeal, had no power to act upon the case, nor could it consent to an amendment of the record by an insertion of a final decree by an agreement of the counsel in the case; nor can this court consent to such an amendment.

The District Court having ordered a report to be made, the case must be sent back from here to the Circuit Court, and from there to the District Court, in order that a report may be made according to the reference.

THIS was an appeal from the Circuit Court of the United States for the district of South Carolina.

It was a libel filed on the 6th of April, 1854, in the District Court of South Carolina, by Mordecai & Co., against the schooner Mary Eddy, and all persons intervening.

A very brief narrative will be sufficient to show the condition in which the case was, when it left the District Court, and this is all that is required under the present opinion of this court.

In March, 1854, the Mary Eddy was in New Orleans, about to sail for Charleston. One hundred and two hogsheads of sugar were shipped on board of her, which were to be delivered to Mordecai & Co. The libel was for the non-delivery of these articles.

The answer admitted the shipment and arrival of the vessel in Charleston, and then averred the delivery of three hogsheads of the sugar, (together with some barrels of syrup,) the freight of which Mordecai & Co. refused to pay. The answer then alleged that the libellants, having refused to pay freight until the sugars were received by them at their store, or until possession had passed to them, the master unloaded the residue

of the sugars, and, when landed on the wharf, gave notice to Mordecai & Co. that he would deliver the articles to them upon payment of the freight; that Mordecai & Co. having refused to do this, the master retained the custody of the sugars in order to preserve his lien for the freight. A correspondence took place between the parties, which it is not necessary to state for the purposes of this report.

The district judge decreed in favor of the libellants, with costs, and then added:

"Mr. Gray, the commissioner and clerk of this court, will ascertain the charges to be made against the respective parties to this suit, and state the account between them. For this purpose, he is authorized to use the testimony already reported, and such further evidence as may be brought before him in relation to this point."

Without any further proceedings being had in the case, the claimants appealed to the Circuit Court, and the record was accordingly transmitted.

When the cause came up for hearing before the circuit judge, he reversed the decree of the District Court, and dismissed the libel with costs, whereupon the libellants appealed to this court.

The case was argued upon its merits by *Mr. Phillips* for the appellants, and *Mr. Johnson* and *Mr. Reverdy Johnson, jr.*, for the claimants, whose arguments it is not necessary to state in this report, in consequence of the case being decided upon a preliminary point.

Mr. Justice WAYNE delivered the opinion of the court.

This is an appeal from the Circuit Court of the United States for the district of South Carolina.

Upon the hearing of this cause in this court, it was suggested that the court had not jurisdiction of the case, on the ground that the District Court, which had original jurisdiction of it, had not given a final decree in favor of the libellants, before the cause was taken by appeal to the Circuit Court; from the decision of which, reversing the decision of the district judge and dismissing the libel, the appellants appealed to the Supreme Court. No such decree of the District Court is set out in the record; but the court, supposing it might be a clerical omission, gave to the counsel concerned in the cause time to ascertain the fact, in order that it might be made, either by consent of parties or by certiorari, a part of the record, that there might be no delay in the final disposition of the case by this court. The counsel having made the necessary inquiries

from the clerk of the District and Circuit Courts, and having reported to this court that no final decree had been extended or passed in favor of the libellants by the district judge, and that the case had been taken by appeal to the Circuit Court upon such imperfect record, and decided in that court, without any notice of the omission having been brought to its view either from the record or in the argument of the case, the counsel have applied to this court to permit them to amend the record by consent, by inserting in it what might be agreed upon by them to be a final decree, urging, as the merits of the case between the parties had been fully discussed here, that the court could proceed upon such amendment to decide the case.

We have examined the proposal of counsel in connection with the laws of Congress regulating appeals from the District Court to the Circuit Court, and from the latter to this court, and also the decisions of this court upon those laws, and we do not find, upon any interpretation which has been or could in our view be given to them, that it is in our power to grant the application of counsel for the amendment of the record as they propose it should be done.

The right of appeal is "conferred, defined, and regulated," by the second section of the act of March 2, 1803, (ch. 20, 1 Stat. at Large, 244.) Its language is: "That from all final judgments or decrees in any of the District Courts of the United States, an appeal, where the matter in dispute, exclusive of costs, shall exceed the sum or value of fifty dollars, shall be allowed to the Circuit Court next to be holden in the district where such judgment or judgments, decree or decrees, may be rendered; and the Circuit Court or Courts are hereby authorized and required to receive, hear, and determine, such appeal. And that from all final judgments or decrees rendered in any Circuit Court, or in any District Court acting as a Circuit Court in cases of equity, of admiralty, and maritime jurisdiction, and of prize or no prize, an appeal, where the matter in dispute, exclusive of costs, shall exceed the sum or value of two thousand dollars, shall be allowed to the Supreme Court of the United States; and that upon such appeal a transcript of the libel, bill, answer, depositions, and all other proceedings of what kind soever in the cause, shall be transmitted to the said Supreme Court." It is, then, only upon final judgments and decrees that appeals can be taken from either of the courts to the other courts. Without such a decree, neither the Circuit nor the Supreme Courts can have jurisdiction to determine a cause upon its merits, as was done in this case by the Circuit Court, from which decision it has been brought by appeal to this court. The Circuit Court had nothing before it to make

its decision available for the appellants, if its view of the merits of the case had coincided with the opinion of the district judge, or upon which its process could have been issued to carry out the judgment given by it in favor of the respondents. Nor could it have permitted an amendment of the record of appeal by the insertion of what the parties might have agreed to be a final judgment as to amount, without its having first received the judicial sanction of the district judge. And this court is as powerless in this respect as the Circuit Court was, as its jurisdiction depends upon that court having a proper legislative jurisdiction of the case. It cannot overlook the fact upon which its jurisdiction depends, *by any action in the case in the Circuit Court* upon *an irregular appeal.* The case in that court was coram non judice, and is so here. The appellants have the right to the execution of the order given by the district judge to the commissioner and clerk of the court, to ascertain the charges to be made against the respective parties to the suit, and to state an account between them; for which purpose he was authorized to use the testimony already reported, and such further testimony as might be brought before him in relation to that point. *That* the Circuit Court cannot direct to be done, nor can this court do so. All that we can do in the case, as it stands here, is to reverse the decree of the Circuit Court dismissing the appellants' libel, to send the case back to the Circuit Court, that the appeal in it may be dismissed by it for want of its jurisdiction, leaving the case in its condition before the appeal to that court, that the parties may carry out the case in the District Court to a final decree, upon such a report as the commissioner and clerk may make, according to the order which was given by the judge. The judgment of the Circuit Court is reversed accordingly.

TERENCE COUSIN, PLAINTIFF IN ERROR, *v.* FANNY LABATUT, WIDOW AND TESTAMENTARY EXECUTRIX, JULES A. BLANC, CO-EXECUTOR, AND OTHERS, LEGAL REPRESENTATIVES OF EVARISTE BLANC.

In Louisiana, all the evidence taken in the court below goes up to the Supreme Court, which decides questions of fact as well as of law. In the absence of bills of exceptions, setting forth the points of law decided in the case, this court must look to the opinion of the State court, (made a part of the record by law,) in order to see whether or not any question has been decided there which would give this court appellate jurisdiction, under the twenty-fifth section of the judiciary act.

A claim to land in Louisiana was presented to the commissioner appointed under the act of 1812, (2 Stat. at L., 713,) reported favorably upon by him to Congress,