

THOMPSON ET AL. V. THE JACHIN.
[N. Y. Times. June 10, 1862.]

District Court, S. D. New York.

1862.

ADMIRALTY PRACTICE—RIGHT OF AGENT TO
SUE—COMPETENCY AS WITNESS—DISCHARGE
FROM RECORD.

Motion to strike from the record a libelant.

This was a motion [by Samuel W. Thompson] to strike out the name of a party libelant. The action was brought to enforce a bottomry bond. The papers on the motion showed that the interest in the bond was really vested in other parties than the nominal obligee, who was only their agent.

HELD BY THE COURT: That in admiralty an agent is recognized as a competent party to sue in his own name in behalf of others in whom the actual interest exists. That to avoid the rigor of the common-law rule, and also generally of its own course of practice, which interdicts a party to the record from being heard as a witness, the familiar practice of the admiralty, as well as of chancery, is to discharge a party from the record, in order to reintegrate his competency as a witness, when no further interest than such technical one exists with him, and also to relieve him of his obligation of suretyship to the court for costs, on other surety being substituted. That there is, therefore, no foundation for the objections interposed on behalf of the respondent, as he does not allege that he will be deprived of any matter of defence by the means.

Motion granted, but, inasmuch as it does not rest on any equity, accruing since the suit was brought, it is granted on payment of costs of this hearing, and on condition that the defendant be allowed to add to the defence already interposed such as may be appropriate to or required by the change of parties in the action.

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