

washer. It has no eyelet and no anvil plate. The flanged plate does not act as an anvil plate to turn over the upper edge of an eyelet. Nor is the lower plate, or disk, of defendants' button the same or the equivalent of the lower disk of Mead. It is not inclosed by the cap; no eyelet is riveted down upon it; it is on the opposite side of the fabric. An anvil plate to rivet down the eyelet upon the lower disk is the essential feature in the Mead button, and this feature is not found in defendants' device.

The first claim of the Mead patent is as follows:

"(1) In a button provided with a central opening for receiving a spring stud, the combination of an inclosing cap, a perforated bottom disk, a second disk above the first, the button being attached as a whole to the fabric independent of said stud, substantially as set forth."

We do not find in defendants' button "the perforated bottom disk," and "a second disk (or anvil plate) above the first," which are the essential elements of this claim; and therefore we must hold that there is no infringement of this claim.

The only other claim involved in the present hearing is the third:

"(3) The combination of a plate having a central opening or bore, with a convex cap, E, inclosing and attached to said plate, and provided with a filling, F, also centrally perforated, substantially for purposes specified."

The experts differ as to whether the plate mentioned in this claim has reference to the upper or lower disk of the Mead button. But, upon either construction of the claim, there is no infringement, because defendants' button does not contain either of these disks. Bearing in mind the limited scope of the Mead patent in view of the prior art, and, for the purpose of this motion, assuming the patent to be valid, we do not think the complainant has made out a case of infringement which entitles it to a preliminary injunction. Motion denied.

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RAYMOND v. LA COMPAGNIE GENERALE, ETC.

WUERTZ v. SAME.

(Circuit Court, S. D. New York. November 10, 1898.)

ADMIRALTY—SUITS TO RECOVER FOR DEATHS—SECURITY FOR COSTS.

In actions brought on behalf of the next of kin against a steamship company to recover for deaths resulting from the sinking of a vessel which was a total loss,—defendant being therefore relieved from all liability for faults of navigation,—plaintiffs will be required to give security for costs, unless the inability of all the persons interested in the recovery to do so is shown.

Motion to Require Security for Costs.

Edward K. Jones, for the motion.

Kenneson, Craine & Alling, opposed.

LACOMBE, Circuit Judge. In view of the large number of these causes which seem to be pending in this court, the subject of requiring security for costs has been again considered. There is force in the contention of defendant that inasmuch as the statutory limitation of

liability (the steamer being a total loss) relieves it from all liability for faults of navigation, etc., the plaintiff's case is more than ordinarily speculative. Undoubtedly, the taking of testimony in support of and in opposition to the averments in the complaint will be an expensive matter; and the court is not unmindful of the fact that those averments are really not sworn to by any one, the usual verification being on information and belief. Nevertheless, individuals who may have a right to recover damages for the death of next of kin should not be deprived of their day in court, to show, if they can, that defendant's actionable negligence caused such death, merely because they are too poor to file security. On the other hand, the defendant should not be harassed by repeated trials of the same question, nor put to unusual and extraordinary expense in defending suits, the prosecution of which is left free to its adversaries. The following disposition of these and similar motions will be made: Where the affidavits clearly show that the persons interested in the recovery (i. e. the widow or next of kin) are all in such a condition pecuniarily that none of them is able to give security, the motion will be denied; otherwise it will be granted. The denials, however, are to be without prejudice to a renewal of the motion in the event of defendant prevailing on the trial of the first cause. If security be then exacted, defendant will thereafter be harassed only by litigants who deal with it on equal terms.

It remains only to dispose of the motions in the two causes above entitled. In the Wuertz case there is no sufficient proof of inability to furnish security. There is only the affidavit of the mother. Apparently, Eugene, Otto W., and George are of age, but none of them have sworn to their inability to give security. They should do so, and by affidavits which set forth facts, and not mere conclusions. In the Raymond case the affidavit is not sufficiently full as to plaintiff's pecuniary condition, and there is no affidavit presented by the sister of deceased showing her inability to furnish security. Plaintiffs may have 10 days in which to supply defects in proofs, if they can.

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#### THE BELVIDERE.

(District Court, S. D. Alabama. October 25, 1898.)

No. 831.

1. SEAMEN—ABANDONMENT OF SHIP—SHORTAGE OF SUPPLIES.

The fact that the master of a vessel did not furnish his crew with the full supply of lime juice required by the law and the shipping articles, in the absence of any claim that the men suffered or were made sick by reason of such deprivation, and where no complaint was made on that ground, does not authorize the crew to abandon the ship before the end of her voyage, and recover their wages, nor entitle them to extra wages.

2. ADMIRALTY—ENFORCING LAW OF FOREIGN COUNTRY—SEAMEN ON FOREIGN SHIP.

In exercising jurisdiction in admiralty upon a libel for wages against a foreign vessel, the court will, through comity, administer the law of the country whose flag the vessel carries, to which law the seamen, by shipping for service on such vessel, subject themselves.