

shank, and also a flange on the collet, or cylindrical tube or neck of collet. Between these flanges the cloth of the garment on which the button is used is held, and there is no such device included in the complainant's claim.

I can see no reason why the amendment to the answer should not be allowed to be filed. It pleads the effect of certain written instruments filed in the case subsequent to the original answer, and long before the case was submitted, and does not affect the facts in the case. It may be said to be an amendment to conform to the proof. There was no advantage in any way taken by the respondent, and the case, the proofs, and the facts shown would have been just the same had it been incorporated in the original answer. It does not otherwise add to the defenses.

The instruments of writing constitute an assignment, and, in legal effect, empower the assignee to sue in its own name, and it has a right to bring this suit.

Regarding the length of the wedge in complainant's button, it may be said that this feature does not appear in the original specifications of Williams & Lade, filed March 5, 1890, nor until their amendment of September 22, 1890. Then it appears for the first time. Under the authority of *Railway Co. v. Sayles*, 97 U. S. 564, and other subsequent cases, it would appear to be doubtful if a patent granted on an amendment of this kind, so different from the original claim, and filed several months afterwards, is valid, especially where the amendment is not sworn to by the applicant. See *Eagleton Mfg. Co. v. West, Bradley & Carey Mfg. Co.*, 111 U. S. 490, 4 Sup. Ct. 593. But, assuming the patent to be valid, I think there has been no infringement. For the reasons indicated, the court is of opinion that the bill should be dismissed, with costs, and it is so ordered.

THE ENOS SOULE.

(District Court, S. D. New York. June 17, 1899.)

MARITIME LIENS—SALVAGE ENTERPRISE—CONTRACT WITH AGENT OF OWNERS.

The local agent of the owners of a loaded barge, which had broken adrift at sea, employed a tug to go in search of it, agreeing to pay the tug \$100 per day for the search, and for bringing in the barge if found. The tug did not find the barge, which had been picked up by a steamer, and towed into port. *Held*, that the service rendered was not one of salvage, for which a suit in rem is authorized under Adm. Rule 19, but merely a salvage enterprise, and, the contract having been made by an agent of the owners, who were apparently in good credit, must be presumed to have been made on their credit, and not on the credit of the vessel.

This was a suit in rem in admiralty to enforce a lien claimed by libelants on the barge Enos Soule.

Owen & Sturges, for libelants.

Cowen, Wing, Putnam & Burlingham, for claimant.

BROWN, District Judge. The above libel was filed as in a cause of towage civil and maritime, by which the libelants claim a lien in

the sum of \$300 upon the barge Enos Soule for three days' service of the libelants' tug Hudson on the 29th and 30th of November and the 1st of December, 1898, in going to sea from Norfolk in the endeavor to find the Soule, which had broken adrift with a valuable cargo of coal. The authorized agent of the Atlantic Transportation Company at Norfolk had hired the Hudson for this purpose upon the agreement to pay \$100 a day for her services in searching for the Soule. The service was performed as agreed, but the Soule was not found by the Hudson, having been picked up by a steamer and towed into port. There is no dispute upon these facts, the defense being that the service constitutes no lien upon the Soule, but was rendered upon the personal credit of the transportation company.

The claimant of the Soule is the Knickerbocker Steam Towing Company, which on June 18, 1898, conveyed the Soule, with a number of other vessels, to the Atlantic Transportation Company and took back a mortgage upon the same vessels as security for the payment of a part of the price. The transportation company failed in December and a receiver was appointed of the property. A short time prior thereto the towing company took possession of the Soule and other vessels for default in payment, under the mortgage, and the Soule was subsequently sold pursuant to the provisions of the mortgage and bought in by the company. The present libel was filed on January 25, 1899.

The case of *The Williams*, Brown, Adm. 208, Fed. Cas. No. 17,710, was in some respects like the present case, although there the suit was brought nominally for salvage services and the employment was by the master. Longyear, J., dismissed the libel, but on appeal the libel was sustained by Emmons, J., on the broad ground that all contracts for the benefit of a ship are liens upon her. In the subsequent case of *The Ira Chaffee*, 2 Fed. 401, Mr. Justice Brown, in referring to this case, though stating that the above proposition is too broad, says that he has no doubt of the correctness of the ruling.

The service rendered in this case was not a salvage service, because the vessel was not found. It was merely a salvage enterprise, entered upon by the Hudson upon the contract of the agent of the owner to pay the Hudson \$300 for the endeavor to find the Soule and to tow her into Norfolk, if found. In the case of *The Williams*, the employment was substantially the same. The case does not fall within the provisions of the nineteenth rule of the supreme court in admiralty for a suit in rem, the language of that rule being

"In all suits for salvage the suit may be in rem against the property saved, or the proceeds thereof."

This imports a case in which the libelant has saved or contributed towards saving the property, which is not the case here. The remaining branch of the same rule provides for a suit in personam against the party at whose request the service has been performed, which would cover this case.

A contract for the service of a tug to go in search of a vessel in need of salvage assistance is evidently a maritime contract. When made under circumstances importing a pledge of the vessel as security for the payment, I see no reason why a lien for such a service

should not be upheld, as much as for the supply of any other necessity of the ship. In the case of *The Williams* the employment was by the master, whose contracts in behalf of the ship for such necessary service import an hypothecation of the ship. In this case, the employment was not by the master, but by the local agent of the owners. The owners at the time were apparently in good credit. There was no suggestion to the contrary. The bill for the service was made out against the company only, and not against the Soule; nor was any such claim presented until after the failure of the company. The decisions of this court in analogous cases require me to hold that the service was rendered upon the credit of the company, and not of the vessel; and as, moreover, no service was in fact rendered to the vessel, the libel should be dismissed, but without costs.

MOORE v. SUN PRINTING & PUBLISHING ASS'N.

(District Court, S. D. New York. June 28, 1899.)

1. SHIPPING—CHARTER OF VESSEL BY AGENT—RATIFICATION BY PRINCIPAL.

A yacht was chartered for the use of the New York Sun newspaper in gathering news during the war with Spain. Two charters were made,—one for two months, and one following for four months,—and before the expiration of the latter the boat became stranded, and was lost. The charters were procured by the manager of the news department of the paper, who was designated therein as the hirer, but who signed the same "for the Sun Printing & Publishing Company." A guaranty was also given at the time of the execution of the last charter to secure the performance of the contract by the charterer, and purporting to bind the Sun Company, which was signed by the same person, and in the same form. *Held*, that the two instruments must be regarded as having been executed by the same party, and as constituting one contract, and, the company having had the sole benefit of such contract, and having, in the usual course of its business, paid the hire of the boat, the expenses of its operation, and the premiums for certain insurance procured thereon during the term of the charter, it must be considered as having ratified the contract made in its behalf, whatever the original authority of the manager.

2. SAME—CONSTRUCTION OF CHARTER—STIPULATED DAMAGES FOR LOSS OF VESSEL.

The charter provided for the return of the boat in as good condition as it then was, usual wear excepted; that the hire should be paid on signing the agreement; that the charterer should be liable for all damage to the hull or equipment; and that the value of the boat for the purposes of the contract should be considered as \$75,000. It further required the charterer to furnish a guaranty in the sum of \$75,000 to secure any and all losses and damages which might occur to the boat, or that might be sustained by the owner by reason of any breach of the contract. The instrument of guaranty conformed to such requirements, and expressly limited the liability of the company thereunder to the sum of \$75,000. *Held*, that the guaranty was intended to secure the hire, as well as loss or damage to the boat, the full value of which must be considered as \$75,000 at the time the charter was signed; and hence, \$10,000 having been paid as hire, only \$65,000 additional was recoverable, under the contract, for its loss.

This was a suit in personam in admiralty by the owner of a vessel to recover for its loss from the charterer and his guarantor.

Zabriskie, Burrill & Murray, for libelant.

Franklin Bartlett, for respondent.