

pose or believe, at the time the condenser was contracted for, that it was to be supplied on the credit of the boat or its owners. This appears to have been an after-thought. Having in the beginning, with a knowledge of the terms of the charter-party, contracted with and given credit to the charterer, it is now too late for the libelant to charge the vessel for work and materials which were not ordered by the owners, and for which the decided weight of the evidence shows he was notified in advance they would not be responsible.

It was insisted on behalf of the libelant that as the boat had received the full benefit of the work and materials, and only half the bill had been paid, the owners are now equitably liable for the balance. But it does not follow that because the owners were willing and agreed to pay \$1,000 to the charterer for putting in the condenser, that, therefore, they must also pay the libelant an equal sum for the same work. The owners paid as much as they thought the condenser was worth to them, and the amounts and terms of payment were known to the libelant before he entered into the contract with Penny. The law does not recognize the existence of a lien on such facts as have been disclosed by the testimony in this case. *The Secret*, 3 Fed. Rep. 665; *The Norman*, 6 Fed. Rep. 406; *The William Cook*, 12 Fed. Rep. 919.

Let a decree be entered dismissing the libel, with costs.

THE GENERAL SEDGWICK.¹

THE REPUBLIC.

FLEMING v. THE GENERAL SEDGWICK and another.

(District Court, D. New Jersey. January 12, 1887.)

1. ADMIRALTY—AMENDMENT OF LIBEL—SUBSTITUTION OF PROCEEDINGS IN PERSONAM FOR PROCEEDINGS IN REM.

While it may be the practice, upon final hearing, to sometimes allow the substitution of proceedings *in personam* for proceedings *in rem*, where the record shows a clear right of recovery against those who have appeared and contested the claim on its merits, no such practice exists where the claimants have appeared solely for the purpose of excepting to the libel, and when the application to substitute proceedings *in personam* for proceedings *in rem* is founded upon the allowance of the exceptions. Such amendments cannot, under the rules, be permitted, unless it be that both remedies could originally have been joined in the same libel.

2. SAME—WHEN ALLOWED.

The substitution of proceedings *in personam* for proceedings *in rem* will not be permitted, unless both remedies could originally have been joined in the same libel.

In Admiralty. Exceptions to libel, and motion to amend.

¹ Reported by Theodore M. Etting, Esq., of the Philadelphia bar.

Ludlow McCarter, for libelant.
Alexander & Ash, for respondent.

WALES, J. A contract was made between the libelant and the claimants, for the transportation of passengers on vessels belonging to the claimants. The contract was a maritime one, but wholly executory, and no performance of it had been entered upon. The libelant has sued *in rem* for a breach. The vessels were attached under process, and released on bond. The claimants have appeared by their proctor only to except to the libel, and to object to the jurisdiction of the court. They have put in no answer. It is conceded that no lien exists on the vessels, and application is now made by the libelant's proctor for leave to amend the libel, by praying process and judgment *in personam* against the owners.

It has been decided in this circuit that proceedings *in rem* and *in personam* cannot be joined in the same libel, except as provided for in the supreme court rules in admiralty. *The Alida*, 12 Fed. Rep. 343. The present case does not fall within any of the exceptional provisions. It was held in *The Monte A.*, 12 Fed. Rep. 338, that such amendment could not be allowed where, under the rules, both remedies could not be conjoined in the same libel. In that case the owner had appeared, and put in his answer, and much testimony had been taken before it was discovered that no lien existed upon the vessel; and at the hearing, under the peculiar state of the pleadings and evidence, the libelant was permitted to amend, and proceed *in personam*. It has been said (under a *semble*) to be the practice of the admiralty court in some cases—in suits *in rem*, where the record shows a clear right to recover *in personam*, against one who has appeared and contested the suit—to allow the libelant to proceed to a decree *in personam*, (*The Zodiac*, 5 Fed. Rep. 222;) but the case at bar does not belong to that class.

Exceptions sustained, motion to amend refused, and ordered that a decree be entered dismissing the libel, with costs.

THE BURGUNDIA.¹

STRAUS and others *v.* THE BURGUNDIA, etc.

(*Circuit Court, E. D. New York. June 21, 1886.*)

CARRIERS—OF GOODS—SHIPS—DAMAGE TO CARGO—IMPROPER STOWAGE.

On the delivery of a consignment of eight drums of glycerine, two were found to be broken. On suit brought for the loss, *held*, that if all eight were stowed in an equally proper place, then the stowage of the two could not, in detail and arrangement, have been proper or sufficient. If the two were

¹ Reported by R. D. & Wyllys Benedict, Esqs., of the New York bar.