

honestly in this transaction, then the inference is strong that he was implicated in casting the Ashland adrift. That claimants' agent was acting honestly in the transaction can only be found at the expense of his intelligence. Swindling on the one side, and attempted subornation of perjury on the other, seems to be the most apparent conclusion from the showing made in the record. In the argument each side charged the other with the blame in incumbering the record with so much immaterial matter, so largely increasing costs in the case. Apparently the charge is correct, and on that account I deem it proper to divide the costs.

A decree will be entered in the case dismissing the libel, neither party recovering costs in the district court, but each party paying his own; the costs of this court, including cost of transcript, to be divided, each party to pay one-half.

THE PRINZ GEORG.¹

(District Court, E. D. Louisiana. February, 1884.)

1. JOINDER OF PARTIES.

Where a thing is defendant, and several persons are asserting rights in it, distinct, but before the same tribunal, the proceedings are, for certain purposes, necessarily to be considered together; *i. e.*, whenever it is necessary to rank the claims or to proportion the proceeds.

2. SAME.

When the claims rest upon a charge of a voluntary withholding of provisions, etc., the cases necessarily involve a common question, viz., whether an adequate supply of provisions was originally laden on board. The case is therefore analogous to cases of salvage or collision, in this respect, and for this reason the joinder would be permissible.

3. SAME.

The joinder is allowed even in cases which are in their origin distinct, and have no connection, save that they are asserted against a common *res*.

In Admiralty. An exception.

Richard De Gray and *R. King Cutler*, for libelants.

E. W. Huntington, *H. L. Dufour*, *Geo. H. Braughn*, *Chas. F. Buck*, *Max Dinklespeil*, and *Emmet D. Craig*, for claimants.

BILLINGS, J. This cause has been heard on an exception of a misjoinder of parties. The numerous libelants were steerage passengers on the libeled vessel on a voyage from Palermo to the port of New Orleans, and have joined in the suit to recover the penalty against the vessel established by the act of August 2, 1884, entitled "An act to regulate the carriage of passengers by sea," (22 St. at Large, 186,) as well as for the recovery of further damages. The suit is a proceeding *in rem*, and the numerous libelants assert distinct

¹Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

claims, each for himself. Can such claims be joined in one suit? I think, upon principle as well as authority, the question must be answered in the affirmative. Where a thing is defendant and several persons are asserting rights in it, distinct, but before the same tribunal, the proceedings are, for certain purposes, necessarily to be considered together; *i. e.*, whenever it is necessary to rank the claims or to proportion the proceeds. This would happen whenever the proceeds should be insufficient to pay all the claims in full. Again, when, as in this case, the claims rest upon a charge of a voluntary withholding of provisions, etc., the cases necessarily involve a common question, viz., whether an adequate supply of provisions was originally laden on board. The case is therefore analogous to cases of salvage or collision in this respect, and for this reason the joinder would be permissible. But I think the joinder is allowed even in cases which are in their origin distinct, and have no connection save that they are asserted against a common *res*. When there is a suit *in rem*, it is a prerequisite of jurisdiction that there should be a warrant and a seizure. In these cases there must be either the expense of 60 seizures, or there must be a joinder that one seizure may arrest for all the claims. Therefore the joinder is allowed. The difficulties of answering and defending are not enhanced, and the expense is reduced. It is for this reason, also, that the statute permits that suits separately commenced may be consolidated by the court when they are "of a like nature or relative to the same question." 3 St. 21; Rev. St. § 921.

Judge WARE, speaking of unconnected claims of material-men, thus lays down the rule:

"Being maritime liens, there is no doubt that they may be enforced by process in the admiralty, where all may join and have their rights settled in a single suit, or may intervene for their own interest, after a libel has been filed, and have the whole matter disposed of in or under one proceeding, or one attachment, instead of having as many suits as there are creditors." *The Hull of a New Ship*, Davies, (2 Ware,) 203, 205. See, also, Judge BERT's opinion in *The Childe Harold*, where the same rule was followed, *Olc.* 275.

The objection is not that the cause of each libellant is not distinctly and issuably stated, but that they are all stated in one pleading, and are in their nature separate causes of action accruing to distinct persons. In other suits the ruling might be very different, but in a proceeding *in rem*, in the admiralty, this is not irregular or unauthorized, and the exception must be overruled.

THE COROZAL.¹

(District Court, E. D. Louisiana. February, 1884.)

AMENDMENTS TO PLEADINGS—ADMIRALTY RULE NO. 24.

Admiralty rule No. 24 is not an arbitrary rule. It does not mean that in every case counts presenting new causes of action may, under all circumstances, be added, but leaves the matter to the discretion of the court, the rule being merely permissive, and the discretion to be exercised upon principles of justice toward the defendant. "Amendments are always limited by due consideration of the rights of the opposite party, and where, by the amendment, he would be prejudiced, it is not allowed."

In Admiralty. An exception to amended libel.

Richard De Gray, for libelant.

Charles B. Singleton, R. H. Browne, and B. F. Choate, for claimant.

BILLINGS, J. The vessel had been seized under the libel and released on a stipulation when the amended libel was filed. The original libel was for wages as engineer on a voyage from Cincinnati to the port of New Orleans. The amended libel seeks to recover for wages commencing at the time when the voyage is asserted in the original libel to have begun, and at the same rate, namely, at the rate of \$125 per month, for employment down to December 5th, under a contract whereby libelant agreed to devote his time, and did devote his time, first, to an attempt to purchase for the party, who subsequently owned and now owns the Carozal, and later to the superintendence of the building, for the present owner, the said Carozal. The further allegations in the amended libel are that after December 5th the libelant was employed as engineer, making the trip from Cincinnati to New Orleans. The fact that the property has been released on bail would not preclude a proper amendment of the libel; the principle being that the person bailing property is considered as holding it subject to all legal dispositions by the court. *The Harmony*, 1 Gall. 123, 125; *Rex v. Holland*, 4 Term R. 457, 458; and *Dunlap*, Adm. Pr. (marginal paging,) 214; *Newell v. Norton*, 3 Wall. 266. The question, then, is to be determined by the general rules controlling amendments in pleading in admiralty. The cause of action is clearly a new one, distinct from that set out in the original libel. The weight of authority is that new counts in revenue and instance causes may be added, but only under particular circumstances. *Sackett v. Thompson*, 2 Johns. 206; *The Harmony*, 1 Gall. 124. In *Petre v. Craft*, 4 East, 433, the court allowed the amendment on the ground that the amendment was of such a nature that the plaintiff could not thereby introduce any new fact in proof not originally within his contemplation; and in *Newell v. Norton*, *supra*, the court sanctioned the allowance of the amendment because it neither increased nor diminished the liability of the sureties upon the bond. I do not un-

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