HUGHES, J. Clarke's Praxis, which is of highest authority on admiralty law, lays down the following principles in title 44 under the head of "The Seizure of Goods by Different Creditors:"

"If any one is indebted to different persons, for the purpose of recovering their debts of that person separate judicial warrants will lie against the goods of the debtor, to procure their arrest. If the goods seized are not sufficient for the payment of all the creditors, he is to be preferred, and will first obtain a judicial decree for the possession of the goods, who first institutes his suit aforesaid, or had the goods aforesaid seized. The same order and form is also to be observed as to the remaining creditors, if, after the full payment of the first creditor, any goods remain, although not enough to pay all the rest."

I think the general teaching of the cases reported is in support of these principles, the exceptional rulings being due to exceptional circumstances presenting themselves in particular cases. I feel bound to decree in accordance with these principles, paying Baker first, Mayer & Co. next, and then the petitioners *pari passu*.

THE MINNIE L. GEROW.

BAIN *et al.* *v.* THE MINNIE L. GEROW.

(*District Court, E. D. Virginia.* June 30, 1880.)

WHARFAGE—RATES.

The principal wharf-owners of Norfolk and Portsmouth agreed among themselves on a schedule of rates, in which the rate on the entire tonnage of large vessels was fixed at $1 for each 100 tons. Prior thereto the customary rate was $1 per hundred on the first 300 tons and 50 cents per hundred on the remainder, and it appeared that few of those who signed the schedule afterwards charged more than these rates. *Held* that, in the absence of an agreement with the vessel, the court would enforce only this rate, though the wharf-owner testified that he was not at liberty to charge less than the schedule rate.

In Admiralty. Libel by Bain & Bros. against the ship Minnie L. Gerow for wharfage. Decree for defendant.

Walke & Old, for libelants.

Sharp & Hughes, for respondent.

HUGHES, J. The claim here is for wharfage due from the libeled vessel. There was no agreement between the agent of the vessel and the wharf-owners as to the amount to be paid. The charge was at the rate of $1 per 100 tons per day for 30 days upon the entire tonnage of the vessel, which was 1,304 tons; or $391.20. Deposit in the registry of the court has been made on behalf of the vessel at the rate of $1 per hundred on the first 300 tons, and half a dollar per hundred the rest of the tonnage, for a period of 30 days, or $240.60.

The only question is whether a dollar or a half dollar per day per 100 tons on the excess over 300 tons of the vessel's tonnage is the proper

charge. The decision must be controlled by the evidence in the case on this point. It is proved that the custom in Norfolk, in cases where no special agreement is made, is to charge half a dollar per hundred after the first 300 tons. That also seems to have been the schedule rate observed in Portsmouth before 1874. Yet in respect to this rate, both in Norfolk and Portsmouth, all the witnesses who testified on the point stated that in cases where special rates were agreed upon they were always lower. In the year 1874 a new schedule of wharf rates was established as between themselves by eight owners of the principal wharves in Portsmouth. In that schedule wharfage on vessels was put down at one dollar per hundred on the entire tonnage of large vessels. The libel in the present case is by one of the firms who were induced to sign that schedule, and it claims wharfage in accordance with that schedule. It seems that there are but few wharves in Portsmouth at which very large vessels can be moored with convenience. Mr. Peters, the head of one of the few firms owning such a wharf, says that he never charges more than half a dollar after the first 300 tons, and that his firm refused to sign the Portsmouth schedule. Mr. Neeley, one of the firm whose name stands first on the Portsmouth schedule, says that he has never charged, and would not charge, more than half a dollar. Mr. Bain, one of the libeling firm, says that he charges the schedule rate in all cases where there is no special agreement, and does not feel at liberty to "cut" the agreed rates. I think, on the whole, that the weight of testimony is that a dollar per hundred on the whole tonnage of large vessels is too high; and I am inclined to infer from all the circumstances that it was through inadvertence that that particular item got, in the form in which it stands, into the Portsmouth schedule. The rates of both schedules for wharfage on large vessels appear to me to be too high; but I am not at liberty to set my individual judgment in such a matter against that of leading business men of two cities. I was inclined, at the trial of this cause, to think myself concluded by the signatures appearing on the Portsmouth schedule; but on reflection the weight of evidence seems to condemn the charge there prescribed for wharfage on large vessels, and to show that, if it is adhered to at all by wharf-owners, it is only, as in the present case, because they feel bound not to "cut" rates agreed upon among the signers of the schedule. Indeed, it does not seem that many even of the signers of this Portsmouth schedule feel bound by their signatures to adhere to its charge for wharfage on large vessels, and I do not feel at liberty, therefore, to enforce that charge. The amount deposited in the registry by the agent of the owners of the ship Minnie L. Gerow must therefore be accepted as full compensation of the wharfage in this case, and I will so decree; but each party must pay his own costs.

CITIZENS' INS. CO. *et al.* *v.* KOUNTZ LINE *et al.*

(Circuit Court, E. D. Louisiana. June 4, 1883.)

1. CARRIERS OF GOODS—CONNECTING LINES—PARTNERSHIP.
Where the owners of several steam-boats are not in fact partners, and do not own or use any property in common, or share any of the profits, the fact that they allow their boats to be advertised as forming a line under a common name, and have a common agent, who solicits custom and transacts business for all, does not make them jointly liable for the torts and contracts of each other.

2. SAME—BILL OF LADING—NOTICE.
The fact that a bill of lading for goods shipped on one of the boats was made out in her name only was sufficient notice to the shippers that she and her owners alone were bound by the contract.

10 Fed. Rep. 768, affirmed.

In Admiralty. Appeal from the decision of the district court.

John A. Campbell and *O. B. Sansum*, for libelants.

Singleton, Browne & Choate, for respondents.

J. M. Harding, H. H. Walsh, and *The United States Attorney*, for interveners.

WOODS, J. The suit was brought *in personam* against the Kountz Line, the H. C. Yeager Transportation Company, the C. V. Kountz Transportation Company, the K. P. Kountz Transportation Company, and the M. Messe Transportation Company. These respondents were all incorporated companies, organized under the laws of the state of Missouri. The findings of fact show that they were distinct and independent corporate bodies, each owning in severalty its own property, carrying on its own business, without any sharing of profits by the other companies; the only connection between them being that there were some persons who held stock in all the companies, and that the Kountz line was the common agent of all the other companies. There was no evidence or finding to show that these several companies had ever agreed to form a partnership with each other, and no facts are shown or found from which a partnership between them could be inferred. It is sought, however, to charge them with a joint liability, because, it is alleged, they held themselves out, or suffered themselves to be held out, to the public as forming a combination in the nature of a partnership, or as being jointly bound for the contracts, misfeasances, and negligence of each other. We think nothing is disclosed by the record which sustains this contention of the libelants. The most that the findings established is that the boats of the several transportation companies had formed a line or combination to run in connection with each other, and under the management of a common agent, and the existence and the superior advantages offered by this line were advertised in various ways. But nothing appears, either in the evidence or the findings of fact, which would justify any shipper or passenger in supposing that these several corporations held or suffered themselves to be held out as jointly bound for the contracts of each other, or that each one would become an insurer for the