

against a defendant for several independent but analogous claims, and also against several defendants for claims arising out of the same transaction, where the claims themselves are analogous. On general principles there is no reason why a libel both in rem and in personam should not be retained in cases where the matter comes within the above definition, and where this practice is not forbidden by the rules of the supreme court. The present case raises a different question. The allegations of the libel are not entirely clear. The libel is entitled against Jones Bros. "and also against all persons lawfully intervening for their interest in the said schooner;" and it sets out that the schooner is owned by persons "who are to the libelant unknown," and speaks of Jones Bros. as "owners of said schooner," and refers to supplies furnished to the schooner on the credit of "Jones Bros. and her other owners," and on the credit of "her owners and said Jones Bros." Reading these allegations together, it appears that the schooner is owned by Jones Bros. and other persons who are to the libelant unknown. There is therefore in this case neither a unity of parties, nor a unity of cause of action, which would justify a joinder of action. The two claims arise from two unrelated transactions; and the only other ground on which the action ought to be maintained would be that the judgment in rem would affect the same persons against whom the judgment in personam would go, so that the persons interested in contesting the two claims would be the same in each case. But here Jones Bros. alone are entitled to be heard on one claim, while they, with perhaps many others, holding, perhaps, nearly the whole interest, must be heard to contest the other claim. It is therefore a case of two wholly unrelated suits combined in one action. An order will be made that the libel be dismissed, with costs, unless the libelant shall within 10 days discontinue as to one action, or so amend the libel as to strike out one of the claims.

HIGBEE v. NINETY-SIX HUNDRED CASES TOMATOES.

(District Court, D. Rhode Island. February 3, 1894.)

ADMIRALTY—PRACTICE—PAYMENT INTO COURT—RIGHTS OF LIBELANT.

On libel for freight, where the claimant pleads a tender, and pays the amount tendered into the registry of the court, the libelant is entitled to an order for the payment of that amount to him before there is any trial of the issue. *Mayor, etc., v. Patten*, 1 Cranch, C. C. 294, disapproved.

In Admiralty. On motion for the payment of money paid into court. Libel by Harry E. Higbee against 9,600 cases of tomatoes for freight. Motion granted.

W. G. Roelker, for libelant.

S. O. Edwards, for claimant.

CARPENTER, District Judge. This is a libel for freight money, and the claimant, in his answer, alleges a tender, and, in support of

this allegation, has paid into the registry of the court the sum of \$470.70, being the amount of the alleged tender. The libellant now moves for an order for the payment to him of this sum. The claimant resists the motion, and cites Mayor, etc., v. Patten, 1 Cranch, C. C. 294. The whole report of that case is as follows:

"Plea of tender, etc. Before trial of the issue, Mr. Swann, for the plaintiff, moved the court for leave to take out the money, and go on for the balance of his claim. 'Esp. N. P. 161. The court thought the plaintiff could not take the money out, and then proceed for more."

The case is certainly in point, but it does not appear to have been decided on argument, and is therefore not strictly an authority; and I can perceive no reason on which it is based. The tender implies a consent on the part of the claimant that the money in court is the property of the libellant, and it therefore must be paid to him in any event, and there seems no reason why the payment should not now be made. If it be found that there was, in fact, a tender, and that the tender was for the full amount due, the claimant will recover costs, which, as in all other cases of suits on claims ascertained to be unfounded, is taken to be full compensation. The principles laid down in *Espinasse* and the cases there cited seem to point to this conclusion, with which they are in no respect in conflict. There will be an order that the fund be paid to the libellant, after deducting the fee chargeable by the clerk.

THE JAMES ROY.

HYLAND v. THE JAMES ROY.

(District Court, S. D. New York. February 13, 1894.)

ADMIRALTY — PROPERTY IN POSSESSION OF ASSIGNEE OR RECEIVER — ATTACHMENT BY MARSHAL.

Property in the hands of an assignee for the benefit of creditors, unlike property in the possession of a receiver, is not in *custodia legis*; and one who has a maritime lien against it is not obliged to obtain the consent of a state court before arresting the property in the admiralty.

In Admiralty. On motion to set aside arrest of vessel by the marshal under process. Denied.

Charles M. Stafford, for petitioner.

Hyland & Zabriskie, for libellant.

Root & Clark, for the marshal.

BROWN, District Judge. The above libel was filed on the 2d of February, 1894, to recover damages to the libellant's scow, through the alleged negligence of the tug James Roy while having the scow in tow on the 23d day of November, 1893. Upon process in rem the marshal, on the 2d of February, arrested the tug and took her into his custody. The petition avers that the owner of the tug on the 16th day of December, 1893, made a general assignment for the benefit of his creditors, without preference; that the assignment was