

**THE MASTER:**—A firm of Bunton Bros. insured their stock with the applicants for \$2,500. The whole stock was destroyed by fire. The loss is admitted except as to the amount, the company offering to pay \$2,000 only. Bunton Bros. assigned to Cline for the benefit of their creditors, and the whole \$2,500 is demanded by Cline. The bank also claim the same sum as mortgagees. The company now ask to be allowed to pay into Court \$2,000. An action has been brought by Cline, as assignee, against the company and the bank for the \$2,500.

It does not seem that the motion can succeed unless the whole \$2,500 is paid into Court.

In 23 Cyc. 6, under "Interpleader," it is said: "It is an undeviating rule that where the (applicant) raises any question as to the amount of the claim which is the subject of the litigation, this alone will be fatal to the right to maintain a bill of interpleader." Many cases are cited. Of these it will be sufficient to mention *Mitchell v. Hayne*, 25 R. R. 151, 2 Sim. & Stu. 63. There the Vice-Chancellor said: "Interpleader is where the plaintiff is the holder of a stake which is equally contested by the defendants (i.e., the claimants), as to which the plaintiff is wholly independent between the parties, and the right to which will be fully settled by interpleader between the parties." The effect of that particular decision has been modified by Con. Rule 1104 (a), but the principle otherwise is not affected, but was affirmed as late as *Robinson v. Jenkins*, 24 Q. B. D. 275.

If the company think they are only bound to pay at most \$2,000, they could have tendered this before action to both the claimants. Even now they can pay that sum into Court under Con. Rule 419. In this way they will have every advantage that could accrue to them from an interpleader order, if such could be granted. That of itself might be a sufficient ground for refusing an order, as nothing would be gained by it. The action must still proceed as to the \$500, and no expense would be saved.

The motion will be dismissed with costs in the action to the plaintiff therein in any event, and with costs to the bank, fixed at \$10, to be paid by the company.