

be protected against the invasion of their franchise to establish and maintain a ferry. The defendants have encroached upon that right, or they have not. Whether they have or not does not depend upon the efficacy of their coasting license, or involve the authority of the United States to regulate commerce upon public waters. These matters are extraneous to the real controversy, because the franchise of the plaintiffs gives them no monopoly which conflicts with the authority of the United States or the derivative rights of the defendants; and no such effect is claimed for it by the plaintiffs. It is incumbent upon the court to ascertain whether, notwithstanding some of the averments in the pleadings, the federal question suggested is one which is a necessary ingredient in the case. *Manhattan Ry. Co. v. Mayor, etc.*, 18 FED. REP. 195. If it is found not to be, jurisdiction should be refused. The motion to remand is granted.

WILSON SEWING-MACHINE CO. v. WILSON.

(Circuit Court, D. Connecticut. January 3, 1885.)

SERVICE OF COMPLAINT—NON-RESIDENT DEFENDANT IN ATTENDANCE ON TRIAL.

A non-resident defendant, in attendance upon the trial of his case, at which trial his presence is necessary both as a witness and for the purpose of instructing his counsel, is protected while in such attendance from service by summons of a new writ or complaint against him.

Plea in Abatement.

L. W. Hubbard and *Wm. C. Case*, for plaintiff.

H. C. Robinson and *A. P. Hyde*, for defendant.

SHIPMAN, J. This is a plea in abatement, upon the ground that the complaint was not legally served. The plaintiff is a citizen of Connecticut, and the defendant is a citizen of the state of Illinois. On March 19, 1884, four actions at law were assigned for trial in this court: one being in favor of F. H. Alford, against the present defendant; and three being upon indorsed promissory notes in favor of the indorsee, the First National Bank of Chicago, against the makers, said Alford and Charles Dickinson. The defendant was an indorser upon each of said notes. In the case in which Alford was plaintiff, the defendant was the important witness in his own behalf, and his personal presence was necessary for the instruction of his counsel. He came from Chicago to Hartford, on March 18th, expressly to attend the trial of his case. The attorney for the bank had notified his client that it was necessary to be prepared to prove that it became the owner of the notes before maturity. Wilson knew the date when the notes were discounted, and, being here upon his own case, was ready and prepared to be used as a witness in the bank cases. He was in fact called by the defendants. The trial of Alford against Wilson commenced on March 19th and was finished on March 27th.

On March 20th, and before the defendant had been called as a witness, the complaint in this case was served upon him, in the court-house at Hartford, by summons. No attachment was ever made. Disregarding the fact that the defendant was in attendance in readiness to be used as a witness in the bank cases, the question is, is a non-resident defendant, in attendance upon the trial of his case, at which trial his presence is necessary, both as a witness and for the purpose of instructing his counsel, protected, while in such attendance, from service by summons of a new writ or complaint against him?

It is not denied that non-resident parties and witnesses, while in attendance upon the trial of causes with which they are connected, are privileged from arrest on civil process. The contention upon this plea is whether a non-resident defendant and witness is protected from service of a new writ by summons. Upon principle, the answer should be in the affirmative. It is important to the administration of justice that each party to a suit should have a free and untrammelled opportunity to present his case, and that non-resident defendants should not be deterred, by the fear of being harassed or burdened with new suits in a foreign state, from presenting themselves in such state to testify in their own behalf, or to defend their property. The inconvenience to which plaintiffs are subjected, by being compelled to sue defendants in the states of which they are citizens, is not so great as to justify the allowance of obstructions, by means of legal proceedings, which will preclude non-resident suitors from giving free and unrestricted attention to their cases when they are on trial. Public policy requires that the entrance of such suitors to the court-room should not be impeded.

The authorities upon the general question of the protection of non-resident parties and witnesses from the service of process, while they are in attendance upon the trial of cases in which they are concerned, are very numerous, and were collected in the defendant's brief. It is sufficient to cite only those which bear upon the precise point in this case, and which are: *Matthews v. Tufts*, 87 N. Y. 568; *Parker v. Hotchkiss*, 1 Wall. Jr. 269; *Lyell v. Goodwin*, 4 McLean, 29; *Halsey v. Stewart*, 4 N. J. Law, 366; *Miles v. McCullough*, 1 Binn. 77. The decision is confined to a case of a non-resident defendant; because the supreme court of Connecticut held, in *Bishop v. Vose*, 27 Conn. 1, that a non-resident plaintiff was not protected, while in attendance upon the trial of his case in this state, from the service of a new writ by summons. There is, perhaps, a reason why a plaintiff, who has voluntarily sought the aid and the protection of our courts, should not shrink from being subjected to their control, which does not apply to the condition of a defendant whose attendance is compulsory; and therefore I do not intend to express dissent from the doctrine of the Connecticut case, but to limit this decision to the facts which are before me.

The plea in abatement is sustained.

DOWNS and Husband v. ALLEN and another, Surviving Partners, etc.

SAME v. ALLEN.

ALLEN v. DOWNS and another.

(Circuit Court, D. Connecticut. January 5, 1885.)

1. **JUDGMENT OF ANOTHER STATE—ACTION ON—DEFENSE.**
Judgments of a court of one state can, in an action thereon in another state, be inquired into only in respect to the jurisdiction over the person or subject-matter embraced in the judgment, and in respect to notice to the defendant.
2. **SAME—EXTENT OF INQUIRY—RECORD.**
Such inquiry can be made, although the record of the judgment shows a service upon or an appearance by the defendant.
3. **SAME—JUDGMENT AGAINST SEVERAL—ALABAMA CODE.**
Under the Alabama Code a judgment against two or more is several as well as joint, and, in the event of the death of one of the joint obligors pending the suit, a judgment may be rendered against the survivors. It seems that an omission to suggest the death of one of the parties upon the record does not make the judgment void against the survivor.
4. **SAME—JUDGMENT AGAINST SURVIVORS NOT NAMED.**
In Alabama a judgment against the parties named therein, "or such of them as are now surviving," is a valid judgment against the survivors.
5. **SAME—SERVICE ON MEMBER OF LAW FIRM AFTER DISSOLUTION.**
The mere fact of the dissolution of a law firm does not necessarily dissolve the agency of each member, and the service of a notice of appeal, after such dissolution, on a member of the firm, who was both attorney and counsel, and who equally with his partner was charged with the management of the suit, will be sufficient to bind the client.
6. **SAME—JUDGMENT OBTAINED THROUGH NEGLIGENCE OF ATTORNEY.**
The laches or the negligence of an attorney, when there is no fraudulent combination or collusion with the opposing counsel, will not render void a judgment in favor of the successful party.
7. **SAME—ERRORS IN RECORD—JURISDICTION.**
In an action on a judgment obtained in another state, it is of no avail to show that there are errors in the record, unless they be such as prove that the court had no jurisdiction of the case, or that the judgment rendered was beyond its power.
8. **SAME—ALLOWANCE OF INTEREST.**
In an action on a judgment, the amount of which was doubled by 8 per cent. interest, a portion of which was compounded, the court may refuse to allow interest on the judgment.

At Law.

Charles R. Ingersoll, for plaintiffs.*William Hamersley and Orville H. Platt*, for defendants.

SHIPMAN, J. The first two named causes are actions at law upon judgments rendered by the chancery court for the Eighth district, Southern chancery division, of the state of Alabama, in favor of Mary A. Downs; one being against the members of the firm of Hopkins, Allen & Co., and the other against John Allen, one of said firm. The third case is a bill in equity, by said Allen, to restrain the defendants from prosecuting said actions at law, upon the ground that said judgments