

tering-carts when and where to water the streets. As their order was necessary for this purpose, the inspectors had authority and control over the drivers of the carts. The plaintiff's carriage was injured through the negligence of the driver furnished by Dean. The court held that he could not recover of the defendants. In *Michael v. Stanton*, 3 Hun, 462, one Hinkley was employed by Gilbert, who sent him to cart goods for the defendant, and told him where to load. The court said: "The defendant did not employ Hinkley, and had no power to discharge him. This is the only test by which to determine which is the master, and, as such, liable to the person injured." In *Fenton v. Steam-Packet Co.*, 8 Adol. & E. 835, a steam-vessel was under a charter-party for six months, for the conveyance of goods from Newcastle and Goole, or such other coasting stations as the charterer might from time to time employ it in; the owners to keep it in order and appoint the crew, but the crew to be paid by the charterer, as also all disbursements. The charterer did not interfere with the navigation of the vessel, but while he was on board, through the negligence of the crew, it ran against the plaintiff's boat. In a suit for the injuries the court held that the owners were liable. In *Dalyell v. Tyrer*, 28 Law J. Q. B. 52, a ferry-man hired from the defendant, for one day, a steam-tug and crew, to assist him in carrying passengers across. The ferry-man received the fares, but the defendant hired and paid the crew. By the negligence of the crew, the plaintiff, while being carried over the ferry, was hurt, and it was held that he was entitled to recover against the defendant. These authorities justify the instructions given to the jury in the present case.

The motion for a new trial is denied.

FINANCE CO. OF PENNSYLVANIA *et al.* v. CHARLESTON, C. & C. R. Co. *et al.*

Ex parte BRADFORD.

(Circuit Court, D. South Carolina. May 23, 1891.)

RECEIVERS.—ACTIONS AGAINST.

An action for personal injuries sustained before the appointment of a receiver cannot be maintained against him, but must be brought against the corporation.

At Law.

D. E. Finley and *B. A. Hagood*, for petitioner.

SIMONTON, J. This is an application for leave to sue the receiver. The cause of action is for personal injuries sustained long before the appointment of a receiver, while the road was in the hands of the president and directors of the company. There can be no doubt that a receiver is responsible for personal injuries suffered through the negligence of his employes during the receivership. *Ex parte Brown*, 15 S. C. 523.

It is equally clear that neither he nor the funds in his hands arising from the earnings of the road under him can be held responsible for wrongs committed before any receiver was appointed. *Davenport v. Railroad Co.*, 2 Woods, 519; *Ex parte Brown, supra.* As the court in this last case says: "The receivership is the transfer of the property to a new owner, who begins his work, cut off from the past, with new duties and new obligations." 15 S. C. 533. The proper course for the petitioner is to bring his action against the company. If the result of a judgment in his favor would be a lien on the property which could interfere with the lien of the mortgagees, (see Gen. St. S. C. § 1528,) then the receiver will be instructed to defend the suit. If any injunction be in existence which may prevent such a suit against the company, his petition should pray that it be suspended as to him. But he cannot have the sanction of the court for a suit against the receiver upon a cause of action for which, as such, the receiver cannot be responsible. The leave asked is refused.

UNITED STATES v. WOLTERS *et al.*

(Circuit Court, S. D. California. June 8, 1891.)

INTERNAL REVENUE—DISTILLED SPIRITS—LIABILITY OF STOCKHOLDERS OF DISTILLERY CORPORATIONS.

The stockholders of a corporation engaged in operating a distillery are "persons interested in the use of the distillery," within the meaning of Rev. St. U. S. § 3251, which declares that every proprietor and possessor, "and every person in any manner interested in the use, of" a distillery, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom.

At Law. On demurrer to complaint.

W. Cole, U. S. Atty., for United States.

Anderson, Fitzgerald & Anderson, for defendants.

Ross, J. This is a suit to recover of the holders of the stock of a corporation organized under the laws of California to engage in, and which did engage in, the business of distilling, a tax amounting to \$20,124.40 on spirits distilled by it, and of which tax, it is alleged, the distiller defrauded the government. The action is based on that clause of section 3251 of the Revised Statutes which declares that "every proprietor and possessor of, and every person in any manner interested in the use of, any still, distillery, or distilling apparatus, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom." Demurrers to the complaint have been filed by some of the defendants, and in their support it is urged that the language of the statute in question is not broad enough to include the stockholders of a corporation engaged in the business of distilling; that stock-