

## EVANS v. CARBON HILL COAL CO.

(Circuit Court, D. Washington, N. D. August 24, 1891.)

## MASTER AND SERVANT—FELLOW-SERVANTS.

A complaint wherein an employe, engaged in constructing a railway for transporting coal from defendant employer's mine, sues for injuries alleged to have been caused by the negligence of a miner, employed by defendant, while hauling lumber to be used in the mine in timbering up, is not demurrable on the ground that it shows the injury to have been caused by a fellow-servant.

At Law.

Action by J. R. Evans against the Carbon Hill Coal Company for injuries caused by the alleged negligence of an employe of defendant. Defendant demurs.

*Greene & Turner*, for plaintiff.

*Judson & Sharpstein*, for defendant.

HANFORD, J. The amended complaint in this case states facts which in my opinion are sufficient to entitle the plaintiff to recover damages for a personal injury caused by negligence. The defendant has demurred, and by the demurrer assumes and contends that, as the plaintiff alleges that he was at the time of the injury employed by the defendant as a laborer in assisting to construct a railway, or an extension to a railway, leading to the defendant's mine, and the person guilty of the negligent act complained of was at the same time employed by defendant as a miner, therefore it appears upon the face of said amended complaint that the case comes within the rule exempting employers from liability to servants for injuries caused by negligence of fellow-servants. It may transpire, when all the facts are shown, that this case does come within the rule stated; but unless the plaintiff, and the one who inflicted the injury upon him, were at the time engaged in a common employment, as well as working for a common master, the rule is not applicable. Now, without further information than this pleading gives as to the requirements of the service in which each of the actors in this cause was engaged at the time of the injury, I cannot decide that, as a matter of law, a laborer engaged in constructing a railway for transportation of coal from a mine is a fellow-servant in a common employment with a miner while at work outside of the mine, handling lumber to be used in the mine in timbering up. Let an order be entered overruling the demurrer.

BORNEMANN *v.* NORRIS.*(Circuit Court, N. D. Florida. June 19, 1891.)*

## EXECUTION—PLACE OF SALE.

Under the law of the United States relating to the sales of property taken under execution in common-law cases pending in the circuit court, defendant in execution is entitled to have the sale of land seized under execution made at the door of the court-house in the county in which it is situated.

At Law.

Before LAMAR, Justice, and PARDEE, Circuit Judge.

LAMAR, Justice. This cause came on to be heard upon a motion to quash execution issued herein, and to set aside the levy under execution, for reasons on file, and after notice to parties interested, and was argued by Messrs. E. K. Foster and B. M. Miller, attorneys for movers, and Mr. J. M. Barrs, attorney for plaintiff; whereupon, the court being of opinion that, under the law of the United States relating to the sales of property taken under execution in common-law cases pending in this court, and particularly where required by the defendant in execution, the sales of lands seized under execution should be made at the door of the court-house in the county in which the lands are situated, it is ordered that the advertisement made by the marshal in this case of property seized in Volusia county, state of Florida, be, and the same is hereby, quashed, and that the marshal proceed under the execution in his hands in this case to advertise and sell the property seized according to law, unless otherwise restrained by orders from this court.

*In re* CARRIER *et al.**(District Court, W. D. Pennsylvania.)*

## 1. BANKRUPTCY—DISCHARGE—OPPOSING SPECIFICATIONS.

Under Rev. St. U. S. § 5110, cl. 2, concerning bankruptcy, which provides that no discharge shall be granted if the bankrupt has concealed any writings relating to his estate, a specification, filed in opposition to the discharge of a bankrupt, which charges that he has concealed from his assignees "certain papers" relating to judgments obtained against him prior to his adjudication, "the papers" so concealed being a receipt of one S. for the notes on which the judgments were recovered, is insufficient, in that it is vague and uncertain.

## 2. SAME—LOSS OF PROPERTY.

Under Rev. St. U. S. § 5110, cl. 2, which provides that no discharge shall be granted if the bankrupt has been guilty of any fraud or negligence in the care of property belonging to him at the time of the presentation of his petition, "or if he has caused, permitted, or suffered any loss, waste, or destruction thereof," a specification charging that the bankrupt entered into a conspiracy with third persons, and caused a large quantity of timber to be cut and removed from land belonging to the estate, for the purpose of defrauding his creditors, is sufficient, though the timber was removed four years after the adjudication in bankruptcy, as such statute applies to both voluntary and involuntary bankruptcy.