

within the jurisdiction of said courts; and that in this case service has been made in the mode so prescribed. These are the essentials of jurisdiction, and all that is necessary to bring the case and the defendant fully within the jurisdiction of the court. *U. S. v. Telephone Co.*, 29 Fed. Rep. 35.

The pleas are all bad, and will be overruled.

OHIO & M. RY. CO. v. PRESS PUB. CO.

(Circuit Court, S. D. New York. November 17, 1891.)

1. LIBEL—WHAT IS ACTIONABLE—RAILROAD COMPANIES—NEGLIGENCE.

Language which charges a railroad company with such incapacity or neglect in the conduct of its business that belief in its truth would prevent persons from employing it as a common carrier is actionable without proof of special damage.

2. SAME—ACTION—PLEADING—FRIVOLOUS DEMURRER.

Where the complaint in an action by a railroad company for libel alleges that defendant maliciously published the false statement that more than half the ties in plaintiff's road were rotten, and that it was dangerous to run trains fast thereon, a demurrer thereto as failing to state a cause of action is frivolous.

At Law. On motion for judgment on demurrer.

Action by the Ohio & Mississippi Railway Company against the Press Publishing Company for libel. Defendant demurred to the complaint, on the ground that "it appears on the face of the complaint that the said complaint does not state facts sufficient to constitute a cause of action." Plaintiff moved for judgment on the demurrer as frivolous.

Butler, Stillman & Hubbard, for plaintiff.

Lowrey, Stone & Auerbach, for defendant.

LACOMBE, Circuit Judge. The demurrant has wholly mistaken the cause of action set forth in the complaint. Defendant's publication is not declared upon as a "libel on a thing." A corporation, though an artificial person, may maintain an action for libel; certainly for language concerning it in the trade or occupation which it carries on. *Insurance Co. v. Perrine*, 23 N. J. Law, 402; *Mutual Reserve Fund Life Ass'n v. Spectator Co.*, 50 N. Y. Super. Ct. 460; *Omnibus Co. v. Hawkins*, 4 Hurl. & N. 87, 146; *Bank v. Thompson*, 18 Abb. Pr. 413. It is elementary law that every legal occupation from which pecuniary benefit may be derived creates such special susceptibility to injury by language charging unfitness or improper conduct of such occupation that such language is actionable, without proof of special damage.

The complaint avers that plaintiff is a railway corporation, duly organized and existing under the laws of the states of Ohio, Indiana, and Illinois, and a common carrier of goods and passengers, and that it maintains and operates certain lines of railroad. The occupation of the plaintiff, therefore, is the proper, safe, and business-like maintenance and operation of its railroad, so that it may reasonably discharge its

duties as such common carrier of goods and passengers. Language which charges the plaintiff with such incapacity or neglect in the conduct of its business that belief in the truth of the charges would, as a natural and proximate consequence, induce shippers of goods and passengers to refrain from employing the plaintiff as such common carrier, is actionable without proof of special damage. The particular language complained of here is the statement in defendant's newspaper that "over one-half of the ties in the road-bed [of the plaintiff] are rotten, and it is dangerous to run trains very fast." Such a publication is manifestly within the principle above laid down; and, as the complaint further avers that the statement was "false, * * * malicious, and made for the purpose of injuring the credit and business of the plaintiff," a cause of action is set forth in the complaint.

Motion for judgment on the demurrer as frivolous is granted.

UNITED STATES v. HOUSTON *et al.*

(District Court, D. Kansas, First Division. November 23, 1891.)

1. JUDGMENTS—DEATH OF PARTY—REVIVOR—JOINT DEFENDANTS.

Gen. St. Kan. § 4528, declares that on the death of a defendant pending an action wherein the right survives against his personal representatives, revivor shall be had against them; and section 4536 provides that, if a defendant dies after judgment and before satisfaction thereof, his personal representatives may be made parties in the same manner as is prescribed for reviving actions before judgment.

Held, that under these sections, where one of several joint defendants has died after judgment, the judgment may be revived against his personal representative without joining the other defendants, for section 1101 provides that in all cases of joint obligations suit may be brought against any one or more of those liable.

2. LIMITATION OF ACTIONS—TEMPUS NON OCCURRIT REE.

Where the United States has recovered judgment against several defendants, its right to revive the judgment against the executor of one of them, since deceased, is not affected by Gen. St. Kan. § 2890, providing that actions against executors and administrators shall be commenced within three years from the time of notice of appointment and giving bond, and that otherwise the claim shall be forever barred.

At Law. *Scire facias* by the United States against Mrs. J. F. Streeter, as executrix of James Streeter, deceased.

J. W. Ady, U. S. Dist. Atty.

J. W. McClure, for defendant.

PHILIPS, J. This is a proceeding to revive a judgment against Mrs. J. F. Streeter, executrix of James Streeter, deceased. It appears from the petition that on the 13th day of October, 1880, the United States, to its own use, recovered judgment in this court on the bond of Samuel D. Houston, James Streeter, and Samuel M. Strickler. Since the rendition of said judgment, to-wit, the 16th day of July, 1886, said James Streeter died, testate, in the state of Kansas, and his will was admitted to probate on the 29th day of July, 1886. The defendant, Mrs. J. F. Streeter, was made the executrix of said estate. She is a resident of