FISHER v. YODER.

(Circuit Court, W. D. Pennsylvania. December 17, 1892.)

No. 1.

1. FEDERAL COURTS—JURISDICTION—RECEIVERS OF NATIONAL BANKS.
The federal courts have jurisdiction of suits by receivers of national banks, to collect the assets thereof, without regard to the citizenship of the plaintiff.

2. NEW TRIAL—DISCRETION OF COURT—NONRESIDENT JUROR.
Where there has been a fair trial, and the verdict is fully warranted by the evidence, the court will not, in the exercise of its discretion, grant a new trial because one of the jurors was a nonresident of the district, which fact was not disclosed at the trial.

At Law. Action by B. F. Fisher, receiver of the Spring Garden National Bank of Philadelphia, against L. T. Yoder, to recover assets alleged to belong to the bank. There was verdict and judgment for plaintiff, and defendant now moves for a new trial, and in arrest of judgment. Denied.

B. C. Christy and J. S. Ferguson, for the motion.
Walter Lyon, opposed.

BUFFINGTON, District Judge. This is a motion for a new trial. Fisher, the plaintiff, is the receiver of the insolvent Spring Garden National Bank of Philadelphia, and both he and Yoder, the defendant, are citizens of Pennsylvania. It is urged that, by reason of their citizenship, this suit will not lie. That Fisher, the receiver of the national bank, is an officer of the United States, and as such is entitled to bring the present suit to collect assets of the bank, there is no doubt. His right to do so is fully sustained in the cases following. The thoroughness with which the question is there discussed renders further opinion needless. Platt v. Beach, 2 Ben. 303; Stanton v. Wilkeson, 8 Ben. 357; Stephens v. Bernays, 41 Fed. Rep. 401; 44 Fed. Rep. 643; Price v. Abbott, 17 Fed. Rep. 506; Hendee v. Railroad Co., 26 Fed. Rep. 677; Armstrong v. Trautman, 36 Fed. Rep. 275; Yardley v. Dickson, 47 Fed. Rep. 835.

It is also urged such new trial should be granted because John W. Held, one of the jurors sworn in the case, was a nonresident of the district when the cause was tried. He had previously lived in the district, but had moved therefrom. These facts were not learned until after the trial. The general line of decision is that nonresidence of a juror is not, of itself, a sufficient reason to compel the grant of a new trial. It is a question of sound discretion whether, under all the facts connected with the case, it should be done. In the present case, there was a fair trial, the verdict was fully warranted by the evidence; and no other reason against the justness of the verdict, save the nonresidence of the juror, being urged, we think it ought to stand. To grant a new trial under such facts would be to prefer form to substance. It is therefore ordered that judgment be entered for the plaintiff, receiver, and against the defendant.

BUCKLES v. CHICAGO, M. & ST. P. RY. CO.

(Circuit Court, W. D. Missouri, W. D. January 2, 1893.)

1. RES JUDICATA—DECISION ON MOTION.
Plaintiff took a nonsuit in a state court after the hearing of the evidence and the giving of the instructions, and then within a year reinstituted the action in the same court. The cause was then removed, and in the federal court a motion was granted to stay further proceedings until plaintiff had satisfied the costs in the first proceeding. *Held*, that this order, though made on motion, was res judicata as to all questions involved therein, and plaintiff could not, after a regular term of court had intervened, maintain a motion to set the same aside, and proceed with the cause, except on showing compliance with its conditions.

2. NONSUIT—FAILURE TO PAY COSTS—NEW ACTION.
Even if this decision should not be considered as coming within the rule of res judicata, the court would not entertain a motion to set it aside, and proceed with the cause, when no new facts were shown, and it did not appear that any new knowledge had come to the plaintiff in the mean time; her only excuse for failure to pay the costs being her poverty.

At Law. Action by Mary J. Buckles against the Chicago, Milwaukee & St. Paul Railway Company, instituted originally in the state court. In that court plaintiff took a nonsuit after the hearing of the evidence and the giving of instructions, but afterwards, and within a year, reinstituted the action in the same court. Defendant then removed the cause to the federal circuit court, where, on motion made by it, an order was granted to stay further proceedings in the cause until plaintiff had paid the costs assessed against her in the first proceeding in the state court. See 47 Fed. Rep. 424. Plaintiff now moves to have that order vacated. Denied.

Sherry & Hughes and W. M. Burris, for plaintiff.
Pratt, Ferry & Hagerman, for defendant.

PHILIPS, District Judge. On the 16th day of September, 1891, this court, on due consideration, in a written opinion, reported in 47 Fed. Rep. 424, sustained a motion by defendant, staying all further proceedings by the plaintiff in this action until she had paid the costs incurred in a former suit herein, in which she took a voluntary nonsuit. Now again comes the plaintiff, more than one year after judgment was entered on said motion, and after one regular term of this court has intervened, and presents her motion, asking to have the judgment on said motion vacated.

No reason is assigned for this motion of other facts than such as existed at the time of the hearing of the former motion, and no fact is alleged of materiality, which was not known to plaintiff at the hearing of said first motion. She merely pleads poverty, and an inability to provide money sufficient to pay the costs made in her first litigation. She had her day in court on the merits, and she urges nothing now which she might not have urged against the granting of the first motion.

It is contended by her counsel that said motion of September, 1891, was merely incidental to the proceeding in the cause, and that the judgment thereon possesses none of the qualities of a final ad-