

middle of the train, who told him to get on the caboose at once, as he had orders to run right out. A brakeman showed him the caboose. In order to reach the caboose, he was not compelled to get on a track or to cross a track. He had only to walk alongside the train between the tracks 3 and 4, the space between them being sufficiently great to enable him to do so safely. When plaintiff was on his way to it, a locomotive came up behind him on the main track, struck him, knocked him down, and ran over his arm. The witnesses called by him vary in some particulars, but they all agree in saying that the locomotive came up with cylinder cocks open, steam escaping, and making a great noise. They differ as to the question whether a bell was ringing or not. It is agreed on all hands that, if plaintiff had been standing between the tracks, he could not have been hurt. Plaintiff does not know where he was standing. The clear inference is that he was either on the main track, or dangerously close to it, unnecessarily. Upon this review of the testimony, we concur with the court below. Apart from the fact that there is no evidence of contract relation between the plaintiff and the defendant, as passenger or otherwise, it is clear that the plaintiff, perfectly familiar with the locality, in a place of known danger, a railroad yard, in which locomotives were constantly passing, walked on or dangerously near to a track, the main track, where, by his own admission, a man could pass safely between the tracks if he walked carefully. His injuries were the result of his own act. *Bancroft v. Railroad Co.*, 97 Mass. 278. He cannot hold the defendant responsible for them. See *Railroad Co. v. Depew*, 12 Am. & Eng. Ry. Cas. 66; *Railroad Co. v. Houston*, 95 U. S. 702; *Railroad Co. v. Aspell*, 23 Pa. St. 147. When it is shown that an injury would not have happened except for the culpable negligence of the party injured, there can be no recovery, even though there be concurring negligence on the other party. The track of a railroad over which frequent trains are passing is a place of danger. A person who goes upon it unnecessarily, or without valid cause, voluntarily incurs a risk for the consequences of which he cannot hold other persons responsible; certainly not without adequate proof that he took active measures of precaution to guard against accident. *Bancroft v. Railroad Co.*, supra.

The judgment of the circuit court is affirmed, with costs.

SIPE et al. v. COPWELL.

(Circuit Court of Appeals, Sixth Circuit. January 2, 1894.)

No. 82.

JUDGMENTS—COLLATERAL ATTACK—STATE AND FEDERAL COURTS.

A decision by a state court, sustaining personal service while defendants were attending court as parties, is binding on the federal courts, and the judgment founded upon it cannot be collaterally attacked therein on the ground that such service was void. 51 Fed. 667, affirmed.

In Error to the Circuit Court of the United States for the Northern District of Ohio.

This was an action by Roger F. Copwell against John F. Sipe and Carl C. Sigler on a judgment in favor of the plaintiff, Copwell, against the defendants, Sipe and Sigler, rendered by the supreme court of Rhode Island. A demurrer to the answer was sustained. 51 Fed. 667. A judgment having been rendered for the plaintiff in default of further defense, the defendants bring error.

Ong & Hamilton, for plaintiffs in error.

Hutchins & Campbell, for defendant in error.

Before LURTON, Circuit Judge, and BARR and SEVERENS, District Judges.

LURTON, Circuit Judge. This is a suit upon a judgment rendered by the supreme court of Rhode Island against the appellants, Sipe and Sigler, and in favor of the appellee, Copwell. 23 Atl. 14. The defense interposed by the answer was that the judgment was void because jurisdiction was obtained by the service of process upon the defendants thereto when they were in attendance upon the supreme court of Rhode Island, as parties defendant to a suit then pending for trial. A demurrer to the answer was sustained, (51 Fed. 667,) and judgment rendered for the plaintiff in default of further defense. The judgment of the circuit court upon the demurrer filed by the appellants is now assigned as error.

Is the judgment of the Rhode Island court void? We think it is not. That court had jurisdiction of the subject-matter. This is not contested. It had jurisdiction of the defendants by personal service of the writ of summons. The defendants pleaded in abatement the circumstances under which they had been summoned, and insisted that they were exempt from summons while in attendance as parties to another suit then and there pending against them in the same court. This presented an issue for adjudication. It was decided adversely to the contention then and now urged by appellants. The determination of that question was clearly within the jurisdiction of the Rhode Island court. Its solution depended upon the statute or common law of that state. It decided that the Rhode Island statute, exempting witnesses from arrest or summons while in attendance as witnesses, did not apply to any other than witnesses. It further decided that there was nothing in the public policy of that state which exempted parties to pending suits from service of process in new suits.

Whether these questions were rightly or wrongly decided is a matter of no importance in the present aspect of the question. The court had jurisdiction to determine these issues. The soundness of the adjudication cannot be questioned in a collateral attack. *Cooper v. Reynolds*, 10 Wall. 308; *Trust Co. v. Seasongood*, 130 U. S. 482, 9 Sup. Ct. 575; *Chicago & A. R. Co. v. Wiggins Ferry Co.*, 108 U. S. 18, 1 Sup. Ct. 614, 617.

It is not a question as to the effect of constructive or substituted service, as in *Pennoyer v. Neff*, 95 U. S. 714. There was actual serv-

ice of process. Whether there was an abuse of the process of the court was a question for the determination of the court whose process is complained of. *Construction Co. v. Fitzgerald*, 137 U. S. 98-105, 11 Sup. Ct. 36. The decision of the Rhode Island court, at most, would be erroneous, and in no view of the case is the judgment void. Having jurisdiction of the subject-matter, and of the person by actual service of process, it had the power to determine for itself that its process had not been abused, nor the jurisdiction acquired fraudulently. Its judgment is entitled to full respect, and cannot be reviewed by the circuit court. It is accordingly ordered that the judgment of the circuit court be affirmed.

MERCHANTS' EXCH. BANK v. MCGRAW.

(Circuit Court of Appeals, Ninth Circuit. January 15, 1894.)

No. 110.

1. SALE—DELIVERY—WHEN TITLE PASSES.

By agreement for a sale of goods the sellers were not to part with possession until payment should be made by cashing their draft on the purchasers, with bill of lading attached. The purchasers' bank agreed with them to guaranty payment of the draft on the understanding that the goods and bill of lading were to be its property as security, and wired the sellers' bank that the draft, with bill of lading attached, would be paid, whereupon the latter bank cashed it. *Held*, that the delivery by the sellers of the goods to the railroad company consigned to the purchasers, and taking a bill of lading to that effect, did not pass title to the purchasers, and that the sellers' bank acted as the agent of the purchasers' bank in receiving and transmitting the bill of lading.

2. JUDICIAL NOTICE—STATE STATUTES.

The courts of the United States take judicial notice of the public statutes of the several states.

In Error to the Circuit Court of the United States for the Northern Division of the District of Washington.

At Law. Action by the Merchants' Exchange Bank of Milwaukee, Wis., against John H. McGraw for conversion. Judgment of dismissal. Plaintiff brings error. Reversed.

Lichtenberg, Shepard, Lyon & Denny, (Charles E. Shepard and Sylvester & Scheiber, on the brief,) for plaintiff in error.

Fishback, Elder & Hardin and Henry F. McClure, for defendant in error.

Before McKENNA and GILBERT, Circuit Judges, and HAWLEY, District Judge.

GILBERT, Circuit Judge. The plaintiff in error, a banking corporation of Milwaukee, Wis., brought an action for damages against the defendant in error for wrongful conversion of 100 bales of hops. On the 2d day of December, 1890, A. F. Luening & Co., hop dealers of Milwaukee, Wis., had an account with their bank, the plaintiff in error, which account was at that date overdrawn. A. F. Luening, a member of the firm, stated to the cashier of the bank that