

to the bank. See, also, *Swift v. Winterbotham*, L. R. 8 Q. B. 244, and *Richardson v. Silvester*, L. R. 9 Q. B. 34.

In *Hunnewell v. Duxbury*, 154 Mass. 286, 28 N. E. 267, action was brought by one who had taken the note of the company of which the defendants were directors on faith of the certificate required by law to be filed with the secretary of state by a foreign corporation doing business in the state. The law required that the certificate should state the amount of capital subscribed for and the amount paid in. It was held that the object of the certificate was not to procure credit among merchants, but to give permission to do business in the state, and not being made to the plaintiff, though the plaintiff might naturally rely upon it, he could not maintain an action for deceit against the directors.

In *Bank v. Sowles*, 46 Fed. 731, the directors, during a run upon the bank, signed and placed conspicuously in the public banking room a statement that the bank was sound, and would pay all its liabilities. The president of the plaintiff bank loaned money to the defendants on the strength of this notice and of certain oral representations made by the defendants. The oral representations were excluded, on the ground that the statute of Vermont, in which state the case arose, required such representations to be made in writing. The court held that the defendants were not liable upon the written statements. It said:

"That such a representation was so made somewhere, at some time, to some person, by the persons sought to be charged, is not sufficient; it must be made to the person seeking to charge them."

The court cited *Grant v. Naylor*, 4 Cranch, 224; *Russell v. Clark*, 7 Cranch, 69. The court further said:

"This writing was not delivered to, nor to any one for, the plaintiff, and the plaintiff was not one of those for whom it was obviously intended. If it had been signed by the defendants as individuals, instead of as directors, it would not appear to have been a representation to the plaintiff on which they could be charged, within the meaning of this statute. But, further, this notice was an official statement of the defendants as directors, on its face, made to the then creditors to inspire confidence, rather than as individuals to procure loans."

This case did not depend upon the local statute. The only effect of that statute was to shut out the oral representations, and confine the plaintiff to the written statements. These cases are in accord with the general principles of law applicable to this case. Upon the doctrine in them stated, and upon the general principles therein stated, as well as upon the considerations heretofore set forth, the demurrer must be sustained, and the petition dismissed.

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#### KEATS v. NATIONAL HEELING MACH. CO.

(Circuit Court of Appeals, First Circuit. January 29, 1895.)

No. 92.

#### 1. INJURIES TO SERVANT—NEGLIGENCE OF MASTER—DANGEROUS MACHINERY.

Employing a set screw on a revolving shaft in the ordinary way is not negligence, making a master liable for injuries to his servant caused by the screw catching the servant's clothing.

## 2. SAME—FAILURE TO WARN SERVANT.

Nor is a master guilty of negligence in not having given warning of danger from such screw to a servant who was a mechanic of mature years, had worked on the premises for some time, and might have performed his work without danger by adopting a different method of reaching it.

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

This was an action by Charles Keats against the National Heeling Machine Company for personal injuries received by him while working for defendant, caused by his clothing being caught by a set screw on a rapidly revolving shaft in defendant's factory. At the trial the court directed the jury to find for defendant, and judgment for defendant was entered on the verdict. Plaintiff brought error.

Samuel A. Fuller, for plaintiff in error.

Darwin E. Ware and James Hewins, for defendant in error.

Before COLT and PUTNAM, Circuit Judges, and NELSON, District Judge.

PER CURIAM. We do not find in this case any evidence of negligence on the part of the defendant in the construction and arrangement of its premises and machinery. The employment of a set screw upon a revolving shaft, which caused the injury to the plaintiff, was the common and ordinary way in which such shafts were constructed. The defendant was a mechanic of mature years, and had worked on these premises for some time before the accident occurred. It is also shown that he might have performed the work without danger by another method of reaching it, requiring, perhaps, a little more time. Upon this state of facts, we think the defendant had no reasonable cause to believe that the plaintiff would do the work in such a way as to expose himself to danger, and that it was not guilty of negligence in not warning him. The rule laid down in cases where employes are set at work in positions of unusual and concealed danger is not applicable to the present case. In our opinion, there was no evidence of negligence sufficient to support a verdict by the jury for the plaintiff, and the court below committed no error in directing a verdict for the defendant. Judgment affirmed.

## WABASH WESTERN RY. v. BROW.

(Circuit Court of Appeals, Sixth Circuit. February 5, 1895.)

No. 199.

## 1. REMOVAL OF CAUSES—OBJECTION TO JURISDICTION—APPEARANCE.

The filing of a petition for removal of a cause from a state to a federal court, without objecting to the jurisdiction of the state court over the defendant's person, constitutes a general appearance; and it is too late, after such removal, to urge, in the federal court, that that court has no jurisdiction over the defendant by virtue of the process issued.

## 2. EVIDENCE—NEGLIGENCE—FELLOW SERVANTS.

Plaintiff, a car repairer in the employ of defendant railroad company, while at work in defendant's yards, was injured in a collision, caused by the negligent misplacing of a switch by a switchman, also in defend-