upon appeal, and of his counsel, should be made out of the funds collected by him during his receivership as the rents, issues, and profits of the waterworks plant. All these issues were determined in favor of appellees, except those mentioned in the sixth paragraph above, viz. whether the instruments of mortgage under which appellants claim were made in good faith, and for a valuable consideration, and, if so, whether they were withheld from record by their procurement, or with their consent, or in fraud of creditors, which were determined in favor of appellants. And the decree in terms declares the validity of the mechanic's lien decrees obtained by appellees to the full extent of the amount of each of those decrees, with interest; that appellants were privies to and concluded by said lien decrees; that each of said lien decrees was, as a lien, prior to the instruments under which appellants claim, and to all other liens or rights of appellants in the property, and should be enforced, and specifically authorized appellees to proceed to the enforcement and satisfaction of their respective mechanics' liens upon and against the franchises and property of said Oconto Water Company 'in accordance with and as provided in their respective decrees establishing the same'; that appellants were stockholders of the defendant Oconto Water Company, of its unpaid stock, amounting to $100,000, and 'liable for all unpaid amounts upon such stock so far as may be necessary to discharge the indebtedness of said Oconto Water Company, not exceeding, however, the sum of $100,000'; that defendant Oconto Water Company's indebtedness to unsecured creditors was as follows, viz.: To Chapman Valve Manufacturing Co. on a judgment, for the sum of $838.88, with interest; to Sherwood, Sutherland & Co. for $790.22, with interest; to Dickinson Bros. & King for the sum of $341.63, with interest, and to Cook & Hyde for the sum of $85, with interest; that appellants pay 'the amounts respectively adjudged due to the above-mentioned unsecured creditors (naming them), together with their respective costs as herein adjudged; and also that said defendants S. D. Andrews and W. H. Whitcomb be, and they are hereby, ordered and required to pay any deficiency that may be found due to said secured creditors, to wit, the National Foundry & Pipe Works, Limited, and the said R. D. Wood & Co., if any there shall be after applying to the satisfaction of their said respective mechanics' lien decrees hereinbefore referred to the proceeds of the sales made thereunder, the amount of said deficiency being made to appear to the satisfaction of this court, and an order for such payment entered at the foot of this decree'; that the bonds issued by the defendant Oconto Water Company and held by appellants were void, and that they be delivered up to the clerk of the court to be canceled; that the receiver be paid for his services and disbursements and for those of his counsel the sum of $5,000 out of the moneys collected by him 'arising from the operation of said plant by said receiver'; and that complainant recover of the appellant its costs in the suit, taxed at the sum of $254, and have execution for their collection. Andrews and Whitcomb, the Oconto City Water Supply Company, and the city of Oconto (defendants below) prayed an appeal from the decree, which the court allowed."

The authorities cited in opposition to the motion are: Trust Co. v. Madden, 25 U. S. App. 430, 17 C. C. A. 238, 70 Fed. 451; Elder v. McClaskey, supra; Farmers' Loan & Trust Co., Petitioner, 129 U. S. 206, 9 Sup. Ct. 265; Dainese v. Kendall, 119 U. S. 53, 7 Sup. Ct. 65; Bank v. Sheffey, 140 U. S. 445, 11 Sup. Ct. 755; Grant v. Insurance Co., 106 U. S. 429, 1 Sup. Ct. 414; St. Louis, I. M. & S. R. Co. v. Southern Exp. Co., 108 U. S. 24, 2 Sup. Ct. 6; Ex parte Norton, 108 U. S. 237, 2 Sup. Ct. 490; Hill v. Railroad Co., 140 U. S. 52, 11 Sup. Ct. 690; Forgay v. Conrad, 6 How. 202; Whiting v. Bank, 13 Pet. 15; French v. Shoemaker, 12 Wall. 86; Railroad Co. v. Fosdick, 106 U. S. 82, 1 Sup. Ct. 10; Dufour v. Lang, 4 C. C. A. 663, 2 U. S. App. 477, 54 Fed. 913; Blossom v. Railroad Co., 1 Wall. 655; Bronson v. Railroad Co., 2 Black, 528; Railway Co. v. Sim-

mons, 123 U. S. 52, 8 Sup. Ct. 58; Marin v. Lalley, 17 Wall. 14; Fleitas v. Richardson, 147 U. S. 538, 13 Sup. Ct. 429.

We are of opinion that, in so far, at least, as it was determined that the decrees which had been obtained by the National Foundry & Pipe Works and R. D. Wood & Co., respectively, were prior to the mortgage of Andrews and Whitcomb, and that the franchises and property of the Oconto Waterworks might be sold to satisfy those decrees; that Andrews and Whitcomb were the holders of unpaid stock, and should pay the demands specified of unsecured creditors; and that the bonds held by the appellants were void, and should be surrendered for cancellation,—the decree was final. The motion is therefore overruled.

BALTIMORE & O. R. CO. v. McLAUGHLIN.

(Circuit Court of Appeals, Sixth Circuit. April 14, 1896.)

No. 387.

1. UNITED STATES COURTS — JURISDICTION — ALLEGATIONS OF CITIZENSHIP — AMENDMENT.
   An amendment to the original pleading of the plaintiff in an action speaks as of the time of filing such original pleading; and, where it relates to the citizenship of the plaintiff, it need not expressly state that its allegations refer to that time.
2. SAME—CORPORATIONS.
   An averment that the defendant in an action is an association of persons duly incorporated under the laws of a particular state is a sufficient allegation of citizenship for the purpose of giving jurisdiction to the federal courts.
3. CARRIERS—LIMITATION OF LIABILITY—CONTRACTS.
   A railroad company cannot, by conditions in the contract of carriage, limit its liability for injuries to persons carried on its trains, caused by the negligence of its servants; and an attempt to limit the authority of an agent of such a company to make contracts of carriage, within the ordinary scope of his authority, by requiring such a condition to be inserted in the contracts, is nugatory.

In Error to the Circuit Court of the United States for the Eastern Division of the Southern District of Ohio.

This action was begun in the circuit court of the United States for the Southern district of Ohio, Eastern division, by John R. McLaughlin, against the Baltimore & Ohio Railroad Company, to recover damages for an injury sustained by him while riding upon a freight car of the defendant, with two horses which he had shipped from Bloomingburg, Ohio, on the defendant's railroad, to Columbus, Ohio. In the original petition the plaintiff made no averment as to his own citizenship, and simply averred that the defendant company was an association of persons duly incorporated under the laws of the state of Maryland, and that on or before the 14th day of April, 1891, the defendant was in the occupancy of, and operating the Columbus, Cincinnati & Midland Railroad, a line of railroad running from Columbus, Ohio, in Franklin county, to Cincinnati, Ohio, and was engaged in the business of carrying passengers and hauling freight over the same for hire and reward. A demurrer was filed to this petition, for want of jurisdiction, which, by consent of counsel for plaintiff, was sustained, and leave was given to file an amended petition within five days from the entry. In that amended petition the averments as to jurisdiction were as follows: "Now comes John R. McLaughlin, plaintiff herein, by leave first obtained, and for his cause of action