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

J. C. Cooper, for plaintiffs in error.
E. K. Foster and Geo. M. Robbins, for defendants in error.

Before PARDEE and McCORMICK, Circuit Judges, and NEWMAN, District Judge.

NEWMAN, District Judge. As these two cases involve the same subject-matter, they were, by consent of parties, submitted on one record. The Bradley Fertilizer Company, having a judgment against John E. Pace, procured summonses of garnishment to be issued, one directed to Thomas E. Wilson, and the other to William M. Brown. The purpose of the garnishment was to test the validity of assignments made by Pace to Wilson on January 1, 1895, and by John E. Pace and Arthur J. Doyle, partners under the firm name of Pace & Doyle, to William M. Brown on January 3, 1895. Both garnishees answered, denying indebtedness in any way to Pace, or that they had in possession any goods, chattels, credits, or effects of said Pace. These answers were traversed by the plaintiff, and the issue raised thereon was, by stipulation of the parties, submitted to the court for trial and determination without a jury; the court to make special findings of law and fact in the case. The court made various findings of fact, several findings of mixed questions of law and fact, and also findings of law; and, as a final conclusion of law and fact in both cases, the court found for the defendant and garnishees, and judgment was rendered accordingly.

These assignments were attacked in several particulars as being invalid under the Florida law. We shall notice those grounds only upon which the greater stress was laid for the plaintiffs below (plaintiffs in error here). It is urged that the assignment from Pace to Wilson did not convey to the assignee the interest of Pace in the firm of Pace & Doyle; that is, any interest after payment of partnership debts. By the statute of Florida (Rev. St. §§ 2307, 2308), all the assignee's property, of every description, must be embraced in the assignment. The language of the assignment from Pace to Wilson, so far as material here, after describing specifically certain property, is as follows:

"Also, all goods, chattels, stock, promissory notes, debts, claims, judgments, property, and effects of every description, belonging to the party of the first part, wherever the same may be, except such property as is exempt by law from levy and sale under an execution under the law of Florida."

This is broad enough and sufficient to convey to Wilson, as assignee, Pace's individual property, and also his interest in the partnership property of every kind.

It is further urged that the bond executed by Wilson was not a good and sufficient bond, and was not properly approved. The principal reason urged against the sufficiency of the bond is that the sureties thereto did not each become liable for the full amount of the bond. The bond was in the sum of $50,000; Wilson, as principal, obligating himself for the full amount of the bond, and 10 sureties for

$5,000 each, one for $1,500, and one for $1,000, making the total amount for which the sureties became liable $52,500. The court found, as matter of law, that this bond, although made up as above stated, was sufficient under the law of Florida requiring assignees to give bond. The Florida law on the subject (Rev. St. § 2310) requires that the "assignee shall give bond approved by the clerk of the county where the assignor lives * * * and payable to the governor of Florida, in double the value of the property assigned." We agree with the court below that this was a good bond, and that it complied with the law.

Some question is made under the language of the statute requiring the bond to be filed "immediately." The assignment was dated January 1st, and the bond January 4th. The assignment was not filed in the clerk's office until January 4th, and the oath of Pace required by the statute was made on the 4th of January. So it seems that the assignment was really being made during three or four days, and all of the papers necessary seem to have been made during that period.

We are satisfied, also, with the finding of the court that the assignment from Pace to Wilson was properly recorded. We see no necessity for the record of Pace's individual deed in Brevard county. While we hold that the effect of the deed was to convey Pace's interest in the partnership property, after paying the partnership debts, it was such a contingent interest as would not require the record of the deed in the county where the partnership assets were situated. The title to the real estate was in the firm, and Pace's individual right was in what Pace & Doyle's assignee might have left after paying partnership debts.

The deed from Pace to Wilson is made to Wilson, "his successors and assigns"; and it is claimed that the word "heirs" should have been used, and, as it does not appear, that the entire estate in Pace's real estate was not conveyed. On the contrary, we think it uses the proper language. A conveyance to an assignee for the benefit of creditors, "his successors and assigns," is in the proper form.

It is also claimed that because the deed from Pace to Wilson, according to its language, was "signed and sealed," but was not "delivered," in the presence of the attesting witnesses, that the same is invalid. No question is raised but that, as a matter of fact, the deed was delivered. The assignee accepted the trust, and went into possession of the property. We think this objection equally untenable.

These are the only objections we care to notice. The other questions raised are such that, in view of the findings of fact and law by the court below, need not be especially mentioned. These two deeds, the one from Pace to Wilson, and from Pace & Doyle to Brown, seem to have been, in effect, one transaction. At least, they aim at a common purpose. It is not seriously contended that together they do not convey all the property of the parties. They convey the individual property of Pace, and the partnership property, to all the creditors alike, containing no preferences. For this reason the assignments should be favored and upheld, if possible.

Counsel for plaintiffs in error urged that the case of Williams v.

Crocker, decided by the supreme court of Florida in 1895, and reported in 18 South. 52, is favorable to them on some of the questions first mentioned. We do not see that it affects the precise questions involved here. It does hold, however, that the purpose of the assignment law of Florida was to prohibit partial assignments for the benefit of creditors, and prohibit therein the preferment of one creditor over another. Such we will also consider the purpose of this assignment law, and we think that purpose was carried into effect by the assignments before us in this case. Considering the grounds of objection to these assignments, therefore, either separately, or taking the whole transaction together, we think that the court below was right in finding in favor of the garnishees on the issues made, and the judgment of the court below is accordingly affirmed.

PEIRCE v. KILE.

(Circuit Court of Appeals, Seventh Circuit. May 31, 1897.)

No. 348.

1. MASTER AND SERVANT—NEGLIGENCE—PRESUMPTIONS.
   As between master and servant, proof of the occurrence of an accident raises no presumption of negligence. If the circumstances speak the negligence of the master, and that can be deduced therefrom as a natural and reasonable inference, the duty of explanation is cast upon him, but proof to warrant such inference must be brought forward by him who charges the negligence, and it cannot be established by conjecture or speculation, or drawn from a presumption.
2. SAME—SAFE APPLIANCES—DIRECTING VERDICT.
   Where the only evidence of negligence as the cause of an accident is the fact that a rope broke, and it is clearly shown that the rope was of a size and quality sufficient for the work in which it was used, that there was no sign of wear or defect in it, and that the break was a fresh one, it is error to refuse to direct a verdict for the defendant, who is charged with negligence in furnishing an improper or inadequate rope.

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

This action was brought by Robert Kile, administrator of the estate of Eli M. Davis, deceased, defendant in error, against the appellant, Robert B. F. Peirce, receiver of the Toledo, St. Louis & Kansas City Railroad Company, to recover damages for negligently causing the death of Eli M. Davis. The only count of the declaration upon which reliance is placed is predicated upon the negligence of the plaintiff in error in failing to furnish proper and adequate machinery and appliances, and in furnishing improper and inadequate appliances, for use by the intestate of the defendant in error in the course of his work. The plea was the general issue. The trial resulted in a verdict for the plaintiff below, and to reverse the judgment rendered upon the verdict this writ of error was sued out from this court. The evidence established the following facts: Eli M. Davis was a bridge laborer, and one of the bridge gang in the service of the receiver of the railroad. At the time of the accident he was employed, under the supervision of a foreman, in loading piles on flat cars. The piles were to be used in the repairing and rebuilding of bridges and were being loaded for transportation over the road. They were from 58 to 60 feet in length, tapering from 23 to 24 inches in diameter at the butt to about 10 inches at the smaller end. The bridge gang consisted of six men, who were aided in this work by a track gang, and the work proceeded in the presence of a number of the citizens of the locality, who were standing by, watching

the progress of the work. The flat cars upon which the piles were loaded were provided with iron sockets, known as "pockets," placed at stated intervals around the lower edge of the car. Stakes or standards were placed in the sockets of the car on the further side from the stack of piles. Some of these were split saplings, and were placed in the sockets with the round side towards the outside of the car. Others were round saplings. Two switch ties, 16 feet long and 10 inches wide, were placed, one end resting on the car and the other upon the ground on that side of the car nearest the piles, and were used as skids or slides up which the piles were hauled upon the car by means of two tackles consisting of two double blocks with lines reeved through them. These tackles were attached to the two outer stakes on the outer side of the car by slings of rope passed around the stakes into the ends of which the blocks were hooked. The ropes used in the slings were 1¼-inch Manilla ropes. In one tackle a 1-inch fall line was used, and in the other a line of 1¼-inch. The pile was rolled to the foot of the skids, and the tackle attached to both ends of the pile; the smaller rope to the smaller end. The men engaged pulled first on the one tackle, hauling that end of the pile upon the skid some two feet, and the fall rope being then fastened to prevent the pile slipping down, the opposite end of the pile was raised in like manner, and so the pile was hauled up upon the car. Occasionally the piles would stick upon the skids or become jammed. To overcome this obstruction, a pinch bar was used to raise the pile upon the skid when the men hauled upon the tackle. At the time of the accident two layers of piles had been loaded upon the car, occupying a space of three feet in height above the floor of the car. The accident occurred during the hauling of the last pile, which was somewhat heavier than the others, and when the pile had been hauled upon both skids nearly to the top. Some of the bridge gang and section men were hauling on the fall rope at the west end of the pile, assisted by some bystanders. Davis, standing at the west side of the skid, was prying up the pile with a pinch bar to overcome some obstruction. The men engaged in hauling on the fall rope tugged several times with the rope, but could not move the pile, and while thus hauling upon the rope the sling holding the tackle to the post on the west end broke, allowing the pile to slide down the skids, striking Davis upon the chest, and throwing him against the bank of a ditch at the side of the track, and instantly killing him. After the accident the rope was examined, and showed a clean, new break, presenting no sign of wear or defect. This rope was a Manilla rope 1¼ inches in diameter, and was of the best grade on the American market. In size it was somewhat heavier than was ordinarily used for work of this character. Its breaking strength was about 4,000 pounds. It had been supplied, through the master of bridges, to the foreman, about a year before the accident, and had been used occasionally when heavy work was done, about four or five times a month. There was no evidence given by the plaintiff below, other than the fact of the accident itself, to show that the rope was defective or insufficient. The evidence upon the part of the defendant below was to the effect that the rope was of the best quality, of sufficient strength for the work in which it was employed, was in good condition and was not defective. At the conclusion of the evidence the court was moved to direct the jury to return a verdict for the defendant. This motion was overruled by the court, to which ruling a proper exception was reserved, and such ruling is assigned for error.

Clarence Brown and Charles A. Schmettau, for plaintiff in error.

F. W. Dundas, for defendant in error.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

JENKINS, Circuit Judge (after stating the facts as above). The declaration charges a failure by the master to furnish adequate machinery and appliances, and negligence upon his part in furnishing appliances which were improper, inadequate, and of insufficient strength for the required service, and that the death of the defendant in error resulted from such negligent discharge by him of