WHEELER v. SMITH.

(Circuit Court, N. D. Illinois. February 15, 1897.)

ACTION AGAINST RECEIVER—NECESSITY OF LEAVE OF COURT—FEDERAL COURTS.
The statute allowing receivers of federal courts to be sued without leave applies to a receiver appointed by a territorial court for a corporation created by act of congress; as, in making such appointment, the court acts as a federal, and not as a local, court.

At law. Action on the case by Rose F. Wheeler, administratrix, against Charles W. Smith, as receiver of the Atlantic & Pacific Railroad Company. Defendant filed a plea in abatement, denying jurisdiction.

Julius A. Johnson, for complainant.
Robert Dunlap, for defendant.

GROSSCUP, District Judge (orally). The defendant, Smith, is the receiver of the Atlantic & Pacific Railroad, a road running from a point in New Mexico to a point in California, and was appointed in one of the territorial courts of Arizona. The jurisdiction of the court is due to the fact that the railroad, by act of congress, is a federal corporation. The suit here is by the plaintiff as administratrix, and was brought without leave having first been obtained from the Arizona court that its receiver might be sued. The defendant, by a plea in abatement, challenges the jurisdiction of the court. The statutes of the United States provide that receivers of United States courts may be sued without leave of the court having first been obtained. The only inquiry is whether the defendant, within the meaning of this statute, is a receiver of the United States court. The territorial courts of the United States sit in a double capacity: First, as courts of the United States having cognizance of all questions that properly come within a federal court,—such, for illustration, as those arising under the constitution and laws of the United States; second, as local courts, enforcing the municipal laws of the territory.

Whether congress meant, by the act in question, to permit receivers representative of the court in its local capacity to be sued anywhere, without leave having first been obtained, is not a question I need decide. It is plain to me that the appointment of this defendant as receiver for this railroad was done by the court in its federal, as distinguished from its local, capacity. The jurisdiction is founded upon the company's being a United States corporation, and corporations created by the United States are, by virtue of that fact, amenable to the federal courts. The plea to the jurisdiction cannot be sustained.

BLUMENTHAL et al. v. CRAIG.

(Circuit Court of Appeals, Third Circuit. June 2, 1897.)

1. JURISDICTION OF FEDERAL COURTS—CITIZENSHIP—ACTION BY NEXT FRIEND.
A next friend conducting a suit in behalf of an infant is not a party to the action, and his citizenship is not a test of the jurisdiction of the federal courts.

2. OPINION EVIDENCE—MASTER AND SERVANT—DEFECTIVE MACHINE.
In an action in which one of the issues is whether the condition of a machine by which the plaintiff has been injured of itself warned plaintiff of danger, it is not error to allow a more experienced workman to testify as to whether he would have known the machine, in such condition, to be dangerous.

3. MASTER AND SERVANT—DEFECTIVE MACHINERY—EVIDENCE.
When a witness is called for the purpose of showing that a machine, through which an accident has happened, is not absolutely safe, even when in perfect condition, it is not error to allow him to be asked, on cross-examination, whether he had ever known of such an accident through a perfect machine.

4. SAME—CONTRIBUTORY NEGLIGENCE—YOUTH AND INEXPERIENCE.
In considering the question of contributory negligence, youth and inexperience of a plaintiff are to be taken into account, and it is not error, in connection with proper instructions as to the obligations of the plaintiff, to direct the jury to make proper allowance therefor, nor to refuse a requested instruction which applies to the case of a minor,—a rule applicable where minority and inexperience are not factors.

5. SAME—DEFECTIVE MACHINERY—ASSUMPTION OF RISK.
A defect in a machine and the risk in operating it when defective are not necessarily the same, and the risk may not be patent and obvious, though the defect is so.

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

Lewis C. Vandegrift, for plaintiffs in error.
Levi C. Bird and George Gray, for defendant in error.

Before ACHESON and DALLAS, Circuit Judges, and BUFFINGTON, District Judge.

BUFFINGTON, District Judge. This case comes before us on a writ of error to the circuit court of the United States for the district of Delaware. David F. Craig, the plaintiff below, and defendant in error here, by his next friend, Andrew McDougall Craig, brought suit in the superior court of Delaware against Ferdinand Blumenthal and Julian S. Ulman, trading as F. Blumenthal & Co., to recover damages for the loss of a hand and arm while working in their employ. Subsequently the said Andrew McDougall Craig, by agreement of parties, was duly admitted by the court to prosecute the case as next friend of the plaintiff, who was a minor. Thereafter, as appears by the record of that court removed to the court below, the defendants filed a petition, signed by counsel as "Attorneys for Petitioners," alleging the petitioners were citizens of the state of New York, and that "David F. Craig, the plaintiff above named, was then, and still is, a citizen of the state of Delaware," and averring the statutory amount was in dispute. With the petition they filed a bond with surety given to David F. Craig, who was therein styled the plaintiff,