

UNION ASSOCIATED PRESS v. TIMES-STAR CO. BREWER v. SAME.
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 v. SAME. SAME v. LOUISVILLE PRESS CO. UNION ASSOCIATED
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 INTER-OCEAN PUB. CO. UNION ASSOCIATED PRESS v. SAME.

(Circuit Court, E. D. New York. January 13, 1898.)

SERVICE OF PROCESS—FOREIGN CORPORATIONS—RESIDENT AGENTS.

A salaried agent of a nonresident newspaper corporation, empowered to solicit advertisements, make contracts therefor, and receive payment, who carries on the business at an office having the name of the newspaper on its windows, is not "a managing agent," through whom the corporation may be served, under Code Civ. Proc. N. Y. § 432. *Brewer v. Knapp*, 82 Fed. 694, and *Fontana v. Chronicle-Telegraph Co.*, 83 Fed. 824, reversed.

These were 14 actions at law for libel, brought by the Union Associated Press and by William S. Brewer, respectively, against the Times-Star Company and various other newspaper companies incorporated by states other than New York. The cases were heard on motions to set aside the service of summons.

Campbell & Hause, for plaintiffs.

Henry W. Taft, for some defendants.

Shaw, Baldwin & Stotesbury, for other defendants.

LACOMBE, Circuit Judge. The facts in all these cases are more or less similar to those rehearsed in *Union Associated Press v. Times Printing Co.* (Cir. Ct. S. D. N. Y., Oct. 1 and Oct. 29, 1897) 83 Fed. 822, and in *Brewer v. Knapp*, 82 Fed. 694. Upon consideration of the questions presented, I am by no means so confident that my former decision in the *Fontana Case*, 83 Fed. 824, was correct, or that Judge Tenney and myself were right in holding that the several individuals served with process were "managing agents" of the defendants. I am, however, more than ever impressed with the importance of having this jurisdictional point decided in each case, before the time of the court is consumed in trying the merits of the controversy. Here we have (including the cases named in the caption and the others on the calendar) nearly 50 libel suits, all brought by the same parties against different newspapers, located in widely scattered states, with no suggestion that the libel was ever published or circulated here by defendants, or that they have ever done anything more in the way of business here than to solicit advertisements through some advertising agent, who in most cases acts as advertising agent for several other papers, and has no control over the rates to be charged or the space to be given. It is hardly to be supposed that congress intended the federal circuit courts to exercise such comprehensive and far-reaching jurisdiction, except when a case coming strictly within the language of the statute is made out. The proper disposition to make of this entire group of cases would seem to be to grant these motions. By

reviewing such decision in some test case, the plaintiff may have the jurisdictional question settled, and neither side be exposed to the unnecessary burden of trying the case on the merits, with the chance of the appellate court setting aside the judgment for lack of jurisdiction. The question presented is one of grave importance. Probably there are but few newspapers in the United States which do not publish advertisements originating in this city, or which do not solicit such advertisements here. If this and the adjoining (Southern) district are, for that reason, to be considered the proper forum for suits against the owners of such papers, wherever they may reside and conduct their business of publishing and circulating such papers, it seems probable that our calendars may be seriously overburdened. Motions are all granted

KELLEY v. KELLEY et al.

(Circuit Court, S. D. Ohio, W. D. January 20, 1898.)

No. 4,693.

1. EXECUTORS DE SON TORT—CONTRACTS—PERSONAL LIABILITY.

The sons and sole heirs at law of a banker, who died intestate, continued the business of the bank after his death, and prior to the appointment of an administrator; and during such time certificates of deposit were issued, and deposits received, in the name of the bank. Some of the certificates were in renewal of former certificates canceled, and some covered deposits made both before and after the father's death. *Held*, that the sons had no power to bind the estate by any new contracts, though the business was continued for its benefit, and that they became individually liable on the obligations so created.

2. SAME—EFFECT OF PROVING CLAIM AGAINST ESTATE.

Where persons assuming control of the property and business of a decedent created obligations which were not binding upon the estate, but were upon them individually, they were not released from liability by the fact that such obligations were presented and allowed as claims against the estate.

This was an action by Josh Kelley against Lindsey Kelley, Ironton A. Kelley, and Joshua F. Austin, to charge them as partners in the conduct of the business of the Exchange Bank of W. D. Kelley after the death of said W. D. Kelley.

Frank F. Oldham, R. B. Miller, and Julius L. Anderson, for plaintiff.

A. C. Thompson, for defendant J. F. Austin.

W. A. Hutchins and John Hamilton, for other defendants.

SAGE, District Judge. The petition is for the recovery of the amount of two certificates of deposit, dated, respectively, April 1, 1893, and April 12, 1893, and for a balance due upon deposits made by plaintiff in the bank of the defendants; the total amount being \$4,026.43, with interest, as claimed in the petition. W. D. Kelley, whose name appears in the title of the bank, died intestate on the 2d day of October, 1891.

The answer of the defendants Lindsey Kelley and Ironton A. Kelley sets up: That the Exchange Bank of W. D. Kelley was established in the city of Ironton in 1854 by their father, William D. Kelley.