

tions, the general manager of the defendant wrote the plaintiffs that, at a certain day in the future, he would be in Chicago, and a conference might then be had between them respecting an adjustment of their differences. The conference was postponed several times, but was, in the end, held, in pursuance of this suggestion of the defendant's general manager. I can find that the plaintiffs in no sense fraudulently invited or lured the general manager of the defendant to Chicago, that, under the pretense of a conference, they might serve him with summons in the action brought.

The conference proved unavailing, whereupon, at its conclusion, in pursuance of a prearrangement made by the plaintiffs, a deputy sheriff served upon the general manager of the defendant a summons in the action now pending. The purpose of the motion under consideration is to vacate service. The action was removed by the defendant upon a special appearance for the purpose of vacating the service.

A corporation is not necessarily found in the county or district merely because one of its general officers may be there, though the officer be its general manager. But when he is in the county or district, under charge of the corporation, to do something with respect to the business upon which the suit is brought, and when his being there is not the result of fraudulent enticement, I can see no reason why service on him is not service upon the corporation, or why the corporation is not, in his person, and during the time covered by his presence for such a purpose, itself present in the county or district. Had the matter been the manager's individually, and the suit been against him individually, there can be no doubt the service, under the circumstances stated, ought to be maintained; but the general manager was, for the time being, in the matter in which he was sent, the corporation, and brought to this county and district the presence of the corporation as effectually as that could be done. The corporation sending him to transact the corporate business was, within the limits of that business, itself present. The motion to vacate must be overruled.

RYAN et al. v. SMITH et al.

(Circuit Court of Appeals, Ninth Circuit. February 7, 1898.)

No. 393.

MASTER AND SERVANT—NEGLIGENCE OF FELLOW SERVANT.

Deceased was employed as a dumper engaged in unloading coal hoisted from a vessel in large buckets, to which were attached pieces of rope called "tails," which, in the operation of dumping, the dumpers took hold of, to steady and pull the buckets towards them. These "tails" were made, spliced, and put on the buckets by the dumpers, the rope being furnished by the employer. The giving way of one of these tails, from not being properly spliced, resulted in the fall of deceased through a hatchway, and his consequent death. *Held*, that the negligence was that of fellow servants, for which the employer was not responsible.

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

Reddy, Campbell & Metson, for plaintiffs in error.
Sydney V. Smith, for defendants in error.

Before GILBERT and ROSS, Circuit Judges, and HAWLEY, District Judge.

ROSS, Circuit Judge. This action was brought by the plaintiffs in error (plaintiffs also in the court below) to recover damages for the death of Charles Ryan, who was at the time of his death in the employ of the defendant Smith, as receiver of the Oregon Improvement Company, and engaged as dumper in the unloading of coal from the bark "Empire." The coal was hoisted in large tubs or buckets, to the sides of which were fastened pieces of rope, called "tails," which, in the operation of unloading, the dumpers took hold of, for the purpose of pulling the buckets towards them, and steadying the buckets in the operation of dumping the coal. The evidence in the case was to the effect that Ryan came to his death by the giving way of one of the tails hung to one of the tubs, which tail was not properly spliced, resulting in the fall of Ryan through one of the hatches of the vessel into its hold, and his consequent death. The evidence tended to show that the defect in the tail in question was that it was plaited, instead of spliced, and that the defect was obvious upon inspection. The evidence further tended to show that it was customary for the dumpers, including Ryan, to make and splice the tails, and put them on the buckets for themselves; the rope for such tails being provided by the employer, and hung in the engine room of the vessel. It is not claimed upon the part of the plaintiffs that the rope from which the tails were made was defective. There was no evidence tending to show that any tails were made or put on the buckets by any one but the dumpers. Manifestly, in doing that work, as well as in the act of dumping the coal, the dumpers were fellow servants. Upon the case as presented, the defect in the splicing of the tail, which caused the death of Ryan, could only be attributed to the negligence of one or more of the dumpers; and, that being so, whether it was the negligence of Ryan himself or of one or more of his fellow servants, his representatives, under the well-settled rule, are precluded from recovering damages from the employer. To such a case as the present, the general rule that it is the master's duty to keep the machinery and apparatus with which his work is done in good order and repair, and that this duty cannot be so delegated as to exempt the master from liability, does not apply. *Cregan v. Marston*, 126 N. Y. 568, 27 N. E. 952; *McGee v. Cordage Co.*, 139 Mass. 445, 1 N. E. 745; *Noyes v. Wood*, 102 Cal. 389, 36 Pac. 766; *Railroad Co. v. Jewel*, 46 Ill. 100. The judgment is affirmed.

THE LAURADA.

UNITED STATES v. THE LAURADA.

(District Court, D. Delaware. March 1, 1898.)

1. NEUTRALITY LAWS—CONSTRUCTION.

While it is not the purpose of our neutrality laws in any manner to check or interfere with the commercial activities of citizens of the United States or of others residing therein and interested in commercial transactions, nor to render unlawful mere commercial ventures in contraband of war, they were designed to prohibit acts and preparations on the soil or waters of the United States, not originating from a due regard for commercial interests, but of a nature distinctively hostile in a material sense to a friendly power, engaged in hostilities, and calculated or tending to involve this country in war, whether an incidental or indirect commercial profit does or does not result from them.

2. SAME—FITTING OUT AND ARMING VESSEL.

It is not necessary to a forfeiture of a vessel under section 5283 of the Revised Statutes of the United States that the furnishing, fitting out, or arming of her for the prohibited purpose should be completed within the limits of the United States. It is sufficient that, by prearrangement within the limits of the United States, the vessel having been procured here, the furnishing, fitting out, or arming is to be effected or completed after she has gone beyond those limits.

3. SAME—INTENT.

It is necessary to a forfeiture that the intent that a vessel furnished, fitted out, or armed to cruise or commit hostilities against the subjects or property of a foreign prince with whom the United States is at peace, within the meaning of section 5283, shall be formed within the limits of the United States and shall be of a fixed and unconditional nature. Where such intent originates on the high seas beyond the limits of the United States, though on an American vessel which then for the first time is intended to commit such hostilities, no forfeiture accrues under the section.

4. SAME.

If a vessel be provided, coaled, and provisioned by her master in the United States, by prearrangement, for the purpose of transporting and landing in Cuba an armed military expedition from the United States against the Spanish government in Cuba, in aid of the Cuban insurgents, quere whether such vessel is furnished or fitted out with intent that she should be employed in the service of the Cuban insurgents to commit hostilities against the subjects or property of Spain, within the meaning of section 5283.

This was a libel of information against the steamer *Laurada* for violation of the neutrality laws.

Lewis C. Vandegrift, U. S. Dist. Atty.
Gray, Ward & Gray, for the *Laurada*.

BRADFORD, District Judge. In this case a libel of information was filed on behalf of the United States against the American steamship *Laurada*, her tackle, apparel and furniture, praying that the same be condemned and declared forfeited for an alleged violation of section 5283 of the Revised Statutes, containing certain provisions of the neutrality laws of the United States. That section is as follows:

"Sec. 5283. Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming, of any vessel with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or