

O'DONNELL v. NEE.

(Circuit Court, D. Massachusetts. March 7, 1898.)

No. 636.

1. SLANDER—REPETITION OF ACTIONABLE WORDS.

An admission by defendant, at plaintiff's request, and in the presence of a third party, that on a previous occasion he had used the alleged slanderous words, is no ground of action, when it does not appear that the language was originally used in the presence of a third party.

2. SAME—PLEADING.

A declaration is defective which fails to set forth the alleged slanderous words substantially as they were uttered.

This was an action by Francis O'Donnell against Thomas Nee for slander. The case was heard on demurrer to the declaration.

E. H. Savory, for complainant.

Albert A. Gleason, for defendant.

COLT, Circuit Judge. This is an action of slander. The present hearing was on demurrer to the declaration. The declaration alleges that the defendant, on January 7, 1897, in the yard of the New York, New Haven & Hartford Railroad Company, located at Boston, falsely and maliciously accused the plaintiff of the crime of larceny. The alleged slanderous words are as follows:

"The plaintiff said to one Curry, 'The watchman' (meaning the defendant) 'has accused me of hiding brass to steal.' Said Curry turned to the defendant, and said, 'Is that so?' whereupon the defendant said, 'Yes' (meaning thereby that the plaintiff was guilty of the crime of stealing said brass)."

It does not appear that the language complained of was originally used in the presence of a third party; but it does appear that subsequently the defendant, in the presence of the plaintiff and a third party, admitted that he had used such language. We believe the sound rule of law to be that the repetition of alleged slanderous words made in the presence of a third person at the special request of the plaintiff does not of itself constitute a ground of action.

Upon the allegations in the declaration, there was no such publication as would entitle the plaintiff to a right of recovery. *Heller v. Howard*, 11 Ill. App. 554; *King v. Waring*, 5 Esp. 13; *Smith v. Wood*, 3 Camp. 323; *Weatherston v. Hawkins*, 1 Term R. 110. The allegations in the second and third counts of the declaration, although more specific than in the first count, quoted above, in no way affect the principle of law which we deem controlling in this case. The fourth count of the declaration is defective, in not setting forth the alleged slanderous words substantially as they were uttered. *Lee v. Kane*, 6 Gray, 495; *Clay v. Brigham*, 8 Gray, 161. Demurrer sustained.

PINNEY v. NEVILLS et al.

(Circuit Court, D. Massachusetts. March 4, 1898.)

No. 658.

ATTACHMENT—STOCK IN FOREIGN CORPORATION.

In Massachusetts, there being no statute authorizing it, there can be no attachment of shares of stock in a foreign corporation owned by a non-resident defendant.

This was an action, commenced by attachment, by George M. Pinney against William A. Nevills and others. The case was heard on a motion to discharge the trustee.

Gaston & Snow, for plaintiff.

Charles M. Reed, for defendants.

COLT, Circuit Judge. This suit was originally brought in the state court, and removed to this court. The plaintiff is a citizen of Massachusetts, and the defendants are citizens of California. No personal service was made on any of the defendants. The only service which was made was by attachment of certain certificates of stock belonging to the defendants, in the hands of the National Bank of the Republic, located in Boston. These were certificates of stock of the Rawhide Gold-Mining Company, a corporation organized under the laws of West Virginia. The question presented on these motions is whether shares of stock in a foreign corporation owned by a nonresident defendant can be reached by process of attachment under Massachusetts law. The statutes of Massachusetts provide that shares of stock in a corporation organized under the laws of the state, or under the laws of the United States, where such corporation has a usual place of business in the state, may be attached. Pub. St. Mass. c. 161, § 71; Id. c. 171, § 45. There is no provision in the Massachusetts statutes that shares of stock in a foreign corporation can be reached by attachment, except in the case of a corporation organized under the laws of the United States. The general rule of law is that shares of stock in a foreign corporation owned by a nonresident defendant are not subject to attachment. *Plympton v. Bigelow*, 93 N. Y. 592; *Ireland v. Reduction Co.*, 19 R. I. 180, 32 Atl. 921; *Denton v. Livingston*, 9 Johns. 96; *Winslow v. Fletcher*, 53 Conn. 390, 4 Atl. 250; *Smith v. Downey* (Ind. App.) 34 N. E. 823. Motions granted. Case dismissed for want of jurisdiction.

BUFORD v. KERR.

(Circuit Court, W. D. Missouri, W. D. March 17, 1898.)

1. COURTS—FOLLOWING STATE COURTS.

Where the supreme court of Missouri held that an estate passed by a will is a statutory estate, and that the effort of the testator to further control the estate was in contravention of the statutes of Missouri, the federal court will follow such decision.

2. ADVERSE POSSESSION—LIMITATION OF ACTIONS.

In Missouri, a defendant who has held open, notorious, exclusive, continuous, and adverse possession for more than 10 years after the plaintiff became of age is held to have acquired title by virtue of the statute of limitations.