

a well-established rule of law that, whether a husband and wife are living together or apart, the wife's domicile, in the eye of the law, is that of her husband, and that she is not capable of establishing a separate domicile. The husband has the right to choose the domicile, and the wife must abide by his decision, except, perhaps, in some special cases where the husband acts in bad faith; and, if the wife refuses to take up her abode in the place of domicile chosen by the husband, this is an act of desertion on her part. All of the text writers and authorities, so far as we have examined them, agree substantially on these propositions. *Barber v. Barber*, 21 How. 582; *Bennett v. Bennett*, 3 Fed. Cas. 212; *Ashbaugh v. Ashbaugh*, 17 Ill. 476; *Greene v. Greene*, 11 Pick. 410-414; *Bish. Mar. Wom.* § 157; *Schouler*, Dom. Rel. §§ 37, 38, and cases cited. As a corollary from these propositions, it follows, we think, that, in a legal sense, the plaintiff's present domicile, like that of her husband, is in the state of Alabama, and that, he having gone there with an intent to make it his home, and being a citizen of that state, the plaintiff must also be regarded, in a legal sense, as domiciled in the state of Alabama, and as being a citizen of that state. The laws of Missouri have enlarged the power of married women to acquire, hold, and control property, but, in the absence of a legal separation, they have not empowered them to establish a domicile different from that of their husbands. In the latter respect their disabilities remain the same as at common law. The court is therefore constrained, of its own motion and upon the facts appearing upon the face of the record, to remand the case to the state court, and it will be so ordered.

ADAMS, District Judge, concurs.

CHRISTIE et al. v. DAVIS COAL & COKE CO. et al.

(District Court, S. D. New York. February 20, 1899.)

JURISDICTION—SERVICE OF PROCESS—FOREIGN CORPORATION—LOCAL AGENT.

The Mexico Central Railway Company, a Massachusetts corporation, having its principal office in Boston and its railroad operations in Mexico, had a local agent for many years in New York City, where it maintained continuously a local office, and where a portion of the regular business of the company was conducted by the agent in making rates for through freight, and procuring business contracts. *Held*, that service of process upon the local agent was sufficient to give this court jurisdiction for the purpose of making the corporation a third party defendant, upon a petition on the analogy of the fifty-ninth rule in admiralty.

In Admiralty. Service on foreign corporation.

Convers & Kirlin, for libelants.

Cowen, Wing, Putnam & Burlingham, for petitioner Davis Coal & Coke Co.

Evarts, Choate & Beaman and Tredwell Cleveland, for petitioner Mexican Cent. Ry. Co.

BROWN, District Judge. Upon the petition of the original defendant, the Davis Coal & Coke Company, the Mexican Central Rail-

way Company was brought in as an additional defendant upon the analogy of the fifty-ninth rule of the supreme court in admiralty. The latter company is a Massachusetts corporation. Service of process was made by the marshal upon Mr. Carson, the "Eastern Agent" of that company in this city. A special plea or exception has been interposed to the jurisdiction of the court, on the ground that such service was insufficient, because Mr. Carson was neither an officer, nor a director nor a manager of the company. The plea is accompanied by the affidavit of Mr. Carson, and other affidavits have been submitted in behalf of the petitioners. The papers thus submitted leave no doubt that the principal places of business of the corporation are in Massachusetts, where its main office is situated and where its officers and directors all reside, while its railroad and the property connected therewith are in Mexico. The company, however, has maintained an office in this city with a local Eastern agent for 15 years past, during all which time, with the exception of 1885 and 1890, it has regularly appeared in the City Directory with an office in Broadway or Exchange Place with a named agent or manager. Mr. Carson for several years past has been named as manager at No. 1 Broadway, where the company exhibits a conspicuous sign above and at the side of the entrance, with Mr. Carson's name stated as "Eastern Agent." Letters are also submitted signed by Mr. Carson as Eastern agent during November and December, 1898, headed with the company's name at the same address, and at the "office of the Eastern agent," making rates for freight and treating of the handling of coal and coke at Tampico.

The fact that an office should be thus maintained in this city for 15 years with a person always acting as an agent for the company for business purposes and in the actual transaction of its business, is in my judgment sufficient to authorize the lawful service of process upon this agent, as a true representative and agent of the company here. The company does transact and has long transacted business here; and though the business transacted here by the local agent may be, and probably is, but a minor portion of its whole business, it is evidently a regular part of its business, and not in the least accidental or temporary. The agent here represents the company for the regular transaction of a portion of its business, and that is sufficient under the federal authorities. *St. Clair v. Cox*, 106 U. S. 350, 359, 1 Sup. Ct. 354; *Goldey v. Morning News*, 156 U. S. 518, 522, 15 Sup. Ct. 559, and cases there cited; *Steamship Co. v. Kane*, 170 U. S. 100, 18 Sup. Ct. 526. It would seem to be sufficient also to constitute a "managing agent" within the state law, although that would not be essential here. See *Tuchband v. Railroad Co.*, 115 N. Y. 437, 440, 22 N. E. 360.

Exceptions overruled.

TEXAS CONSOL. COMPRESS & MANUFACTURING ASS'N v. STORROW
et al.¹

(Circuit Court of Appeals, Fifth Circuit. February 21, 1899.)

No. 793.

1. CIRCUIT COURT OF APPEALS—RIGHT OF APPEAL.

An appeal may be taken to the circuit court of appeals from an order appointing a receiver for a corporation, and granting an injunction restraining its officers from interfering with him.

2. SAME—QUESTIONS PRESENTED FOR REVIEW.

An appeal to the circuit court of appeals from an order appointing a receiver for a corporation, and enjoining its officers from interfering with him, carries up the entire order and merits of the case for review.

3. CORPORATIONS—INSOLVENCY—RECEIVERS—APPOINTMENT—PREFERRED STOCKHOLDERS—RIGHT TO APPLY.

Preferred stockholders of a corporation are not entitled to the appointment of a receiver pending an action for its dissolution, etc., in the absence of a clear showing that it is insolvent, and that its affairs have been, and are likely to be, mismanaged, to the detriment of stockholders and creditors.

4. SAME.

In the absence of statutory authority, a court of equity should not appoint a receiver, with a view to the dissolution of a corporation, at the instance of a stockholder, unless the corporation is insolvent, or its affairs are being fraudulently mismanaged.

5. SAME—APPLICATION BY CREDITOR.

In United States courts a creditor of a corporation, whose claim has neither been reduced to judgment nor admitted, has no standing in equity to apply for the appointment of a receiver therefor, though the corporation is insolvent.

Appeal from the Circuit Court of the United States for the Eastern District of Texas.

This case was before the court at its last term, and was decided May 17, 1898. A statement of the facts up to that date, together with the opinion of the court, will be found in 31 C. C. A. 139, 87 Fed. 612. On a return of the case to the circuit court the complainants filed a supplemental bill, and thereupon renewed their motion for a receiver. In addition to the matters which had been alleged in the several pleadings before the court on first appeal, the supplemental bill contains, in substance, the following allegations:

(1) That on the 3d day of July, 1897, while this suit was pending, the board of directors, contrary to the rights of preferred shareholders, and without authority in fact or law, authorized the president and secretary and treasurer to sell and dispose of the press at Bowie, and said press was then and there sold for \$15,000 to the El Reno Compress & Storage Company, a foreign corporation doing business in Oklahoma territory, and said El Reno Company removed the property beyond the jurisdiction of this court. The terms of sale were \$7,500 cash, and a note for \$7,500, which note was discounted, and sold for \$7,000 cash; the total sum realized being \$14,500. That complainants were thus deprived of their rights in said press, and a portion of the assets in which they have an interest were unlawfully dissipated. That when this press was sold and removed, it was held under a lease, or claim of lease, by a party at Bowie; and because same was removed said party has instituted suit against the defendant company in the district court of Montague county, claiming a large amount of damages for breach of said lease contract, which suit is undetermined.

(2) That in May, 1897, it was ascertained that the net profits from the business for the current year 1896-97 was sufficient to pay the dividend which ought to be paid upon preferred stock; and said dividend which ought to have been declared, to wit, the sum of \$21,000, then and there became a charge

¹ Rehearing denied March 14, 1899.