

nishing the victuals and men, and is the sole person responsible for the mode in which the business is conducted. I am not ready to believe that congress intended to punish the guilty by a penalty of \$20, and the innocent one of \$200. Of course, they might do so by a blunder; but that is not to be lightly imputed, and I find that a perfectly reasonable and not unnatural construction of section 4515 refers to the foregoing parts of the title. If this construction is wrong, the sections are repugnant, because section 4521 purports to impose the penalties, and all the penalties, for a violation of section 4520, and the particular provision for coasting voyages must prevail over the one for voyages in general.

I am, therefore, of opinion: (1) That the offence of receiving on board ship a seaman who has been engaged contrary to title 53 is an impossible one, because there is nothing in that title that requires an engagement to be made before the seamen are received on board; (2) if that section has any application, it has none to coasting voyages; and, as a corollary; that no penalty was incurred by the Thomas W. Haven, when the master, being about to proceed from Boston to South Amboy, received seamen on board without having made a written contract with them.

**Libel dismissed.**

## McMAHON v. HENNING, Receiver.

*(Circuit Court, D. Kansas. July 30, 1880.)*

1. MASTER AND SERVANT—NEGLIGENCE.—A master is liable for negligence in the use of defective machinery, whereby his servant was injured, although the negligence of a fellow servant contributed to the injury.
2. SAME—RECEIVER—COMP. LAWS OF KANSAS, (1879,) c. 84, § 29—*Quere*, whether a receiver, engaged in the operation of a railroad, is a "railroad company" within the meaning of section 29, c. 84, of the Compiled Laws of Kansas, (1879,) which provides that "every railroad company, organized or doing business in this state, shall be liable for all damages done to any employe of such company in consequence of any negligence of its agents, or by any mismanagement of the engineer or other employe, to any person sustaining such damage."

Motion for New Trial.

*Gage & Ladd*, for plaintiff.

*Pratt, Burmbach & Ferrey* and *S. O. Thatcher*, for defendant.

McCrary, C. J. The plaintiff sued defendant, as receiver of the Lawrence, Leavenworth & Galveston Railroad Company, to recover damages for personal injuries received while in defendant's employ. The defendant was, at the time of the accident, engaged in operating said railroad under an appointment from this court as receiver thereof. The plaintiff sought to recover upon two grounds—*First*, that his co-employe, one Bowles, who, at the time of the accident, was acting as yard master, was guilty of negligence in running certain cars, to be coupled together, at a great and dangerous speed, causing the injury to plaintiff, who was engaged in coupling; and, *second*, that defendant was guilty of negligence in using cars dangerous and defective in their construction, whereby plaintiff was injured. It was alleged that the coupling pin was old and bent, and that the bumpers were improperly constructed and located, and were thereby rendered exceedingly and unnecessarily dangerous. Issue was joined upon these allegations, the cause was tried before a jury, and there was a special finding by the jury as follows:

The jury was directed to answer the following questions:

"If the jury find the defendant guilty of negligence, which