

OLESON v. THE IDA CAMPBELL.

(District Court, D. Minnesota. March 9, 1888.)

ADMIRALTY—JURISDICTION—TORTS—DEATH BY WRONGFUL ACT.

Gen. St. Minn. p. 825, § 2, providing that, "when death is caused by the wrongful act or omission of any party, the personal representatives of the deceased may maintain an action, if he might have maintained an action had he lived," etc., does not confer upon the United States district court jurisdiction of a libel *in rem*, filed by the administratrix of an injured person to enforce a marine tort, as in case of death from such a tort the action does not survive in admiralty.

Edward H. Ozmun, for libelant.

Warren H. Mead, for claimant.

NELSON, J. A libel *in rem* is filed by the administratrix of the deceased to enforce a marine tort. The remedy is prosecuted under the statute of the state of Minnesota, (Gen. St. p. 825, § 2.) It reads as follows:

"When death is caused by the wrongful act or omission of any party, the personal representatives of the deceased may maintain an action, if he might have maintained an action, had he lived, for an injury caused by the same act or omission," etc.

An answer and claim are interposed, and it is insisted that the statute gives this court in admiralty no jurisdiction. It is true that a remedy can be enforced in admiralty for a marine tort, if the injured party survived, but in case of death from such a tort the action does not survive in admiralty. It is therefore a disputed and unsettled question whether or not a state statute, like the one cited, is applicable in such case to authorize an action in admiralty by the representatives. Elaborate views *pro* and *con* have been expressed by eminent judges. Without referring to them *in extenso*, I shall follow the expression of opinion denying the jurisdiction of a court of admiralty to entertain such an action under the statute. Decree ordered dismissing libel.

In the admiralty suit *in personam* of Annie Oleson, Adm'x, etc., v. Peter F. Ritchie, owner of steam-boat Ida Campbell, a decree dismissing libel is also ordered.

MILLER-MAGEE Co. *et al.* v. CARPENTER.*(Circuit Court, S. D. Ohio, W. D. February 29, 1888.)***1. COURTS—FEDERAL JURISDICTION—JURISDICTIONAL AMOUNT—PATENTS FOR INVENTIONS—ACTION FOR INFRINGEMENT.**

Neither Rev. St. U. S. § 711, vesting in the United States courts exclusive jurisdiction of patent and copyright cases, nor section 699, providing for appeals and writs of error in such cases, without regard to the sum in dispute, was repealed by act Cong. March 3, 1875; and neither can therefore be repealed by act March 3, 1887, which only purports to amend the former act. Both acts merely refer to those cases where the state and federal courts have concurrent jurisdiction.

2. SAME—VENUE—DEMURRER.

Where a bill shows on its face that defendant is not an inhabitant of the district wherein the suit is brought, defendant may assert his objection to being served out of the district of his residence by demurrer as well as by motion to dismiss.

In Equity. On demurrer to bill.

Jere F. Twohig and *Hawson & Sons*, for complainants.

Parkinson & Parkinson, for defendant.

JACKSON, J. The complainants, citizens of Ohio and Pennsylvania, as the present owner and licensees of letters patent No. 281,101, for certain new and useful improvements in book binding, issued February 26, 1883, to Andrew J. Magee, instituted this suit September 3, 1887, against the defendant, a citizen and resident of Covington, Ky., to restrain his use and infringement of said patent. Service of process was had upon the defendant at Cincinnati, Ohio. In obedience to said process, defendant has appeared, and demurred to the jurisdiction of this court "for that it appears by said bill of complaint that this defendant is not an inhabitant of the district wherein this suit is brought, and for that it does not appear by said bill of complaint that the amount in controversy is sufficient to give jurisdiction to this court." The bill makes no allegation or averment as to the amount involved in the controversy; and the second ground of demurrer assumes that, under the act of March 3, 1887, it must appear upon the face of the bill, in patent cases as in other civil suits, that the matter in dispute exceeds, exclusive of interest and costs, the sum of \$2,000, in order for this court to entertain jurisdiction. This position is not well taken. Under the statutes of the United States the circuit court has exclusive jurisdiction of all cases arising under the patent-right laws of the United States, without reference to the amount involved. The act of 1875 in no way changed or affected the jurisdiction. The act of March 3, 1887, is only amendatory of the act of March 3, 1875, and in respect to patent cases, leaves the jurisdiction of this court just as it stood prior to and after the passage of the act of 1875, so far as the amount involved is concerned. Before the act of 1875, this court had jurisdiction in patent suits without reference to the amount involved. That act did not change this jurisdiction or introduce any requirement as to amount in dispute in patent cases; and in