

THE PHENIX.

LOWNDES v. THE PHENIX.

(District Court, D. South Carolina. March, 1888.)

ADMIRALTY—PRACTICE—BOND FOR COSTS—JURATORY CAUTION.

In admiralty, under a strict rule that a stipulation for costs must be filed with the libel, upon a proper showing one may be allowed to sue upon "a juratory caution," and, when a libel has been filed, with security, which is shown to be bad, upon a motion to file additional security the court will not order an absolute dismissal upon failure to file such security.

In Admiralty. Motion for additional security for costs.

Inglesby & Miller and *J. P. K. Bryan*, for libellant.

I. N. Nathan, for claimant.

SIMONTON, J. The libel is for personal injuries to one of a gang of stevedores engaged in loading the steam-ship. When libellant filed his libel, he gave the stipulation for costs, with one Gardner as surety. The claimant has filed a certificate from the state court showing that there are entered against Gardner several judgments yet unsatisfied. Upon this he moves an order that libellant give additional security on pain of dismissal of his libel. The proctors for libellant state that probably he cannot give additional security, and in this event they ask that the privilege of a juratory caution be reserved to him. Suits *in forma pauperis*, or, using the technical words in admiralty, upon "a juratory caution," are recognized in the district courts of the United States. *Bradford v. Bradford*, 2 Flip. 281; *Polydore v. Prince*, Ware, 410; *Thomas v. Thorwegan*, 27 Fed. Rep. 400. And this in courts in which there is an imperative rule requiring security for costs. We have such a rule, (25). There is much to commend this indulgence to poor suitors. It would be abhorrent to a sense of justice to refuse the remedy for a clear right on the only ground that the suitor cannot give a bond for costs. But it may be abused. In a port filled with shipping the temptation may be very strong to libel a ship just about to sail and force the payment of a groundless or extravagant claim. If there be no check in the shape of a stipulation for costs, this may lead to irreparable loss, or intolerable wrong. No final rule on this subject will be made. Let an order be taken, requiring additional security, to be put in within five days. If at the expiration of this time no security be put in, and if it be established in a proper way that none can be put in, the merits of the case *prima facie* will be examined.

CONNOR *et al.* v. VICKSBURG & M. R. Co.

(Circuit Court, E. D. Missouri, E. T. October 5, 1888.)

1. COURTS—FEDERAL COURTS—JURISDICTION—NON-RESIDENT CORPORATION.

Under the provision of act of March 3, 1887, that no civil suit shall be brought in the federal courts in any district other than that whereof defendant is an "inhabitant," but that, where jurisdiction is founded only on diverse citizenship, suit shall be brought only in the district of the residence of one of the parties, a circuit court in Missouri has no jurisdiction of an action against a corporation created by the state of Mississippi, and having its principal office there, for damages for acts amounting to a violation of the interstate commerce law, though defendant has an office and agent in Missouri, and plaintiff resides there, and though the petition shows a cause of action at common law.

2. SAME—OBJECTIONS TO JURISDICTION—MOTION TO DISMISS.

Where the petition shows on its face that the court has not jurisdiction of the cause, the action may be dismissed on motion. The objection need not be first raised by demurrer.

At Law. Motion to set aside the return, and to dismiss the suit.

Minor Meriwether and Henry W. Bond, for plaintiffs.

Pollard & Werner, for defendant.

THAYER, J. In this case plaintiffs are citizens of Missouri, and the defendant is a corporation created by the laws of the state of Mississippi, and has its chief office and place of business in that state. The petition avers that defendant also has an office in the city of St. Louis, and has an agent in this city for the transaction of its business. Process has been served on the alleged agent, in accordance with the laws of Missouri regulating service upon foreign corporations. Defendant appears specially, and moves to set aside the marshal's return of service, and to dismiss the suit on two grounds: *First.* Because the petition shows that the cause of action is of such character that defendant can only be sued thereon in a federal court, in the district where it was incorporated and has its chief office,—that is, in Mississippi. *Second.* Because (as it is claimed) the person on whom process was served was not its agent at the time of service. An objection is raised to any consideration of the first point of the motion, for the reason that it is not raised by demurrer. With reference to that objection it is only necessary to say that, where it is claimed that a petition shows on its face that the court is without jurisdiction of the cause, I can conceive of no substantial reason why the defendant should not be permitted to move a dismissal of the same on that ground. In such case it is, in my opinion, wholly immaterial whether the jurisdictional question is raised by demurrer or by motion to dismiss. I accordingly proceed to consider whether the first point of the motion is well taken.

The first section of the act of March 3, 1887, regulating the jurisdiction of federal courts, provides that "no civil suit shall be brought before either of said courts (district or circuit) against any person * * *