

Counsel for Plaintiff in Error.

District of Columbia, and to amend the complaint and proceed with the cause in favor of that one of the plaintiffs alleged to be a citizen of Minnesota. Jurisdiction of the case as to four plaintiffs could not be maintained on the theory that when the trial terminated it might be retained as to one. The Circuit Court was right and its judgment is

Affirmed.

HOOE v. WERNER. No. 373. Submitted with No. 374, above, and on the same briefs.

THE CHIEF JUSTICE: The only difference between this case and that just decided is that the proposed amendment was allowed and the action then dismissed for want of jurisdiction. For the reasons above given, this case must take the same course as that.

Judgment affirmed.

MARTIN v. ATCHISON, TOPEKA AND SANTA FE
RAILROAD COMPANY.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW
MEXICO.

No. 170. Submitted January 25, 1897. — Decided April 5, 1897.

The plaintiff in error was in the employment of the defendant in error as a common laborer. While on a hand car on the road, proceeding to his place of work, he was run into by a train, and seriously injured. It was claimed that the collision was caused by carelessness and negligence on the part of other employes of the company, roadmaster, foreman of the gang of laborers, conductor, etc. *Held*, that the co-employes whose negligence was alleged to have caused the injury were fellow-servants of the plaintiff, and hence that the defendant was not liable for the injuries caused by that negligence.

THE case is stated in the opinion.

Mr. Neill B. Field for plaintiff in error.