

fering patent to annul the latter, the present bill falls so far short of presenting a case within either section that it reasonably cannot be said to invoke the application of either. Recognizing that this is so, counsel for the plaintiff in his brief not only frankly concedes that he finds no statute in point, but endeavors to maintain the jurisdiction of the District Court by a reference to the general powers of Federal courts when sitting as courts of equity, evidently forgetting that such powers can be exerted only in cases otherwise within the jurisdiction of those courts as defined by Congress.

Some stress is laid in the brief upon portions of the bill charging fraud in the procurement of the Eppler patent, but as only the United States can maintain a bill to annul the patent on that ground (*Mowry v. Whitney*, 14 Wall. 434; *United States v. Bell Telephone Co.*, 128 U. S. 315, 368; *United States v. American Bell Telephone Co.*, 159 U. S. 548, 555) these allegations cannot affect the solution of the question of jurisdiction here presented.

Our conclusion is that this is not a suit arising under the patent laws.

*Decree affirmed.*

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## PENNSYLVANIA COMPANY *v.* DONAT.

ERROR TO THE COURT OF APPEALS FOR THE SEVENTH  
CIRCUIT.

No. 564. Motion to dismiss or affirm submitted October 18, 1915.—  
Decided November 1, 1915.

In an action based on the Employers' Liability Act the trial court properly submitted to the jury for its determination whether on the facts shown in regard to movement of cars coming from without the State, the plaintiff was or was not engaged in interstate commerce and

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properly refused to charge that he was not so engaged and therefore could not recover.

A writ of error to review such a judgment is so frivolous as not to need further argument and a motion to affirm must be granted under § 5 of Rule 6.

224 Fed. Rep. 1021, affirmed.

THE facts, which involve the duty of this court in the case of a frivolous appeal in a case under the Employers' Liability Act, are stated in the opinion.

*Mr. Rufus S. Day, Mr. Samuel Herrick, Mr. R. B. Newcomb, Mr. James B. Harper, Mr. A. G. Newcomb, Mr. E. C. Chapman, Mr. George M. Skiles, Mr. Thomas J. Green, Mr. Roscoe C. Skiles and Mr. Otto E. Fuelber*, for defendant in error in support of the motion.

*Mr. Samuel O. Pickens, Mr. Frederic D. McKenney, Mr. Elmer E. Leonard, Mr. James H. Rose and Mr. Fred E. Zollars* for plaintiff in error in opposition to the motion.

Memorandum opinion by MR. JUSTICE McREYNOLDS, by direction of the court.

The question presented upon this writ of error is "so frivolous as not to need further argument," and the motion to affirm the judgment below must be granted. (Rule 6, § 5.)

Basing his claim upon the Employers' Liability Act of April 22, 1908, c. 149, 35 Stat. 65, Marion Donat began the original action in the United States District Court for Indiana against the Pennsylvania Company, a carrier by railroad, to recover damages for personal injuries alleged to have been suffered by him while employed as a yard conductor. The trial court refused a request to charge that he was not engaged in interstate commerce when the accident occurred and therefore could not re-

cover. This refusal is the sole ground upon which error is now asserted.

Two loaded coal cars coming from without the State were received in the carrier's yard at Fort Wayne, Indiana. They were destined to Olds' private switch-track connecting with the yard; and acting under instructions Donat commenced the switching movement requisite to place them thereon. There was evidence tending to show that in order to complete this movement it became necessary to uncouple the engine from the loaded cars and with it to remove two empty ones from the private track. While engaged about the removal defendant in error was injured. The trial court submitted to the jury for determination whether he was engaged in interstate commerce at the time of the injury, and in approving such action (224 Fed. Rep. 1021) the Circuit Court of Appeals was clearly right. *N. Y. Cent. & Hudson River R. R. v. Carr*, 238 U. S. 260, 262-263.

*Affirmed.*

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CHICAGO, ROCK ISLAND & PACIFIC RAILWAY  
COMPANY *v.* DEVINE, ADMINISTRATOR OF  
MASON.

ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

No. 391. Motion to dismiss or affirm submitted October 25, 1915.—  
Decided November 8, 1915.

In a suit in the state court under the Employers' Liability Act, defendant's contentions that plaintiff's intestate was not engaged in interstate commerce and that a state statute limiting amount of recovery controlled involve Federal questions, and, unless wholly frivolous, this court has jurisdiction.

In this case, however, as both of the propositions are so wanting in sub-