

The record before us not only fails to show that the fault of the "Selja" might not have been one of the causes of the accident, or that it probably was not, or that it could not have been one of the causes of it, but, on the contrary, it clearly shows, as we have seen, that the negligent failure to observe the statutory rule contributed directly to cause the collision.

The case is not one for the application of refinements as to what would have been good seamanship without the rule, such as we are invited in argument to consider, nor is it a case for consideration of the doctrine of major and minor fault. Both of the masters were palpably negligent in respects which contributed directly to cause the collision; the negligence of each continued to operate as an efficient cause until the moment when the accident occurred, and we agree with the lower courts that the case is one in which the master and owner of the "Selja" must be left to suffer their self-inflicted loss.

The judgment of the Circuit Court of Appeals is

Affirmed.

MEMPHIS STREET RAILWAY COMPANY v.
MOORE, ADMINISTRATOR OF DOUGLAS.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SIXTH CIRCUIT.

No. 623. Argued January 29, 1917.—Decided March 6, 1917.

Where no conflict with the Federal Constitution or laws is involved, a construction of a state statute by the highest court of the State is accepted by this court as conclusive.

The act of Tennessee providing that when nonresidents qualify in the State as the personal representatives of decedents dying and leaving assets therein such nonresidents shall be treated as citizens of the

State for the purpose of suing and being sued, was not intended to exclude them from resort to the federal courts.

The purpose of the act as construed by the State Supreme Court was to permit them to sue *in forma pauperis*.

232 Fed. Rep. 708, affirmed.

THE case is stated in the opinion.

Mr. Roane Waring, with whom *Mr. Luke E. Wright* was on the brief, for petitioner.

Mr. Ike W. Crabtree, with whom *Mr. Milton J. Anderson* was on the briefs, for respondent.

MR. JUSTICE CLARKE delivered the opinion of the court.

The respondent, S. C. Moore, a citizen of Arkansas, in his representative capacity as administrator of the estate of Ivy B. Douglas, deceased, under appointment by the Probate Court of Shelby County, Tennessee, sued the petitioner, the Memphis Street Railway Company, a corporation organized under the laws of Tennessee, in the United States District Court for the Western District of Tennessee, for wrongfully causing the death of his decedent. He recovered judgment, which was affirmed by the Circuit Court of Appeals and the case is here on certiorari for review of the holding of that court that the plaintiff had legal capacity to maintain the suit in a federal court.

On the face of the declaration there was the requisite diversity of citizenship to give the federal court jurisdiction, but the petitioner claims that the respondent, Moore, although a citizen of Arkansas, must be treated as a citizen of Tennessee under the statute of that State, entitled "An Act to declare that for the purpose of suing and being sued, a nonresident of Tennessee, who qualifies as executor or administrator in Tennessee shall be considered a citizen of Tennessee, and to provide for the service of

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process upon him" (c. 501, p. 1344, Acts of 1903), which provides:

"That whenever a nonresident of the State of Tennessee qualifies in this State as the executor or administrator of a person dying in or leaving assets or property in this State, for the purpose of suing and being sued, he shall be treated as a citizen of this State."

The remainder of the act prescribes the method of service of summons upon such a nonresident executor or administrator.

Upon a full review of the legislation of the State in *Southern Railway Co. v. Maxwell*, 113 Tennessee, 464, the Supreme Court of Tennessee decided that the sole purpose of this act is to extend to such nonresident executors and administrators as are described in it the privilege of suing in the state courts *in forma pauperis*, and that the effect of it, when read with the other statutes of the State on the subject, is to confine this privilege to the people of the State or to suits devoted to their interest, "since the right is not extended to non-resident administrators generally, but only to those who have qualified in this State as the personal representative of persons dying or leaving assets or property in this State." No conflict with the Federal Constitution or laws being involved, this construction of the state statute will be accepted by this court as conclusive. *Elmendorf v. Taylor*, 10 Wheat. 152, 159; *Old Colony Trust Co. v. Omaha*, 230 U. S. 100, 116.

But irrespective of this rule we quite agree with this authoritative declaration that the only purpose of the act is to determine privileges in the state courts of nonresidents who may be appointed administrators or executors of the estates of persons such as are described in the act. There is nothing whatever in the statute which indicates any intention on the part of the legislature to exclude nonresident executors or administrators from resort to fed-

eral courts under appropriate conditions and the construction which is urged upon us to give to it such an effect is too strained and artificial to be allowed. The judgment of the Circuit Court of Appeals is

Affirmed.

McALLISTER, ADMINISTRATRIX OF McALLISTER, *v.* CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF KENTUCKY.

No. 748. Submitted January 30, 1917.—Decided March 6, 1917.

An order of a District Judge allowing a writ of error from this court and containing a recital that the judgment was based solely upon lack of jurisdiction supplies the place of the certificate required by § 238, Judicial Code.

An allegation in a petition for removal that the plaintiff's motive in joining resident and nonresident defendants is to prevent removal to the federal court is not in itself sufficient ground for removal, but specific facts supporting the charge of fraud must be alleged.

When the plaintiff's petition states a case of joint liability in tort under the state law against a resident and a nonresident defendant and the petition to remove the case on the ground that it contains a separable controversy fails to aver facts showing that the joinder is fraudulent, the District Court must remand.

Under the law of Kentucky a railroad company, though not required by speed laws, must nevertheless take notice of the places where numerous people are accustomed to cross or otherwise to be upon its tracks, and, by moderating speed, maintaining proper look-out, and giving proper signals, must exercise due care to save them from injury by trains. Failure to observe this duty resulting in injury or death is actionable negligence.

Under the law of Kentucky lessor and lessee railroad companies are jointly liable for injury or death inflicted on persons on the