INTERSTATE COMMERCE—GARNISHMENT OF ROLLING STOCK OF FOREIGN CORPORATION TO COMPEL IT TO SUBMIT TO JURISDICTION OF STATE COURT IS AN UNREASONABLE BURDEN THEREON.

Atchison, Topeka & S. F. R. Co. v. Wells, Adv. Opinions Supreme Court, page 533, June, 1924:

Wells, a citizen and resident of Colorado, sued the defendant in Texas for personal injuries sustained while in the employment of the defendant in New Mexico. Personal service on defendant could not be obtained in Texas, and Wells garnished a Texas railroad whose line connected with the Sante Fe, which had in its possession Sante Fe rolling stock and which owed to it large sums on traffic balances. Constructive service was made upon the Sante Fe by serving one of its officers in Kansas, and by publication in a Texas newspaper. The Sante Fe did not appear in the action and judgment was rendered against it by default. The garnishee's objection to the jurisdiction was overruled and judgment was rendered against it in satisfaction of the judgment entered against the Sante Fe.

The Sante Fe brought suit in a federal court in Texas to enjoin the enforcement of these judgments. The bill was dismissed, the decree dismissing it was affirmed by the Circuit Court of Appeals, and the case was brought to the Supreme Court on a writ of certiorari.

The Court held that the fact that rolling stock is being used in interstate commerce does not render it immune from seizure by attachment or garnishment.

That the writ of garnishment is void because it was used to give the courts of Texas jurisdiction over a foreign corporation which did not own or operate a railroad in that State, and which had not consented to be sued there. The seizure of the rolling stock and credits of the Sante Fe for the purpose of compelling it to submit to the jurisdiction of the courts of Texas constituted an unreasonable interference with interstate commerce.

JUDGMENT—RES JUDICATA—DOES NOT APPLY TO SECOND WRIT OF HABEAS CORPUS BROUGHT ON GROUNDS SIMILAR TO THOSE SET UP IN FIRST WRIT.

Wong Doo v. United States, Advance Opinions, page 611, June, 1924:

This is a second petition for a writ of habeas corpus by a Chinese in custody under an order of deportation issued under Sec. 19 of the Immigration Act of February 5, 1917.

In the first petition the validity of the order was assailed on two grounds: First, that the Secretary of Labor issued it without lawful jurisdiction; and second, that the administrative hearing on which it rested was not adequate or

fair. The return answered fully both grounds. At the hearing in the district court, the petitioner offered no proof in support of the second ground and the Court ruled against him on the first. The petitioner appealed to the Circuit Court of Appeals, and it affirmed the decision.

Later, the second petition was presented to the same district court. In it the petitioner relied entirely on the second ground set forth above. The return denied the charge and set up the prior petition and proceedings thereon as a bar to the second petition. The district court ruled that the doctrine of *res judicata* applied and held that the decision in the first case was conclusive in the second. On appeal to the Circuit Court of Appeals, the decision was affirmed.

The Supreme Court held that the doctrine of *res judicata* does not apply to a refusal to discharge a prisoner on habeas corpus. That in those courts where the prisoner presents a second petition, the weight to be given to the prior refusal is to be determined according to a sound judicial discretion, guided and controlled by a consideration of whatever has a rational bearing on the subject.

The judgment was affirmed, however, on the ground that the case was one in which, according to a sound judicial discretion, controlling weight must have been given to the prior refusal. The petitioner was making an abusive use of the writ of habeas corpus by withholding proof on one of the grounds set up in the first petition, and then attempting to use such proof to support a second petition.

MUNICIPAL CORPORATIONS—OPERATION OF FIRE DEPARTMENT—LIABLE FOR NEGLIGENCE OF EMPLOYEES.

A peculiar and startling decision is handed down by the Supreme Court of Florida in the case of *Maxwell v. City of Miami,* 100 So. 147. The plaintiff sued the City of Miami to recover damages for injuries sustained when his automobile, which he was driving, was struck by an automobile used by the fire department of the city to take officers of the department to a fire. At the time of the accident, the city automobile was on its way to a fire.

The plaintiff alleged that the automobile was being driven in a wanton, reckless and negligent manner. The City demurred to the petition, relying on the doctrine that a municipality is not liable for injuries received by persons from its agents while engaged in the performance of a purely governmental duty. The trial court sustained the demurrer but the case was reversed by the Supreme Court.

Whitfield, P. J., says: "Whether the operation of a fire department by the city may be technically denominated a governmental or a corporate function, the rule in this State is that a municipality is liable for injuries caused by