

can have adequate relief in a court of law by a suit to recover damages for the wrong done, or by *mandamus* to compel a fulfillment of its corporate obligations. These remedies undoubtedly exist; but is there no other and better remedy for the redress of such wrongs? Suppose defendant should entirely suspend its operations and refuse to run trains upon its road, it would be in default, and everybody injured thereby could sue and recover the specific damages sustained. But is the public without redress, and are the courts without power to interfere, at the instance of one or more individuals, and protect the public as well as individuals from the threatened deprivation of the benefits and advantages intended to be provided by the building of the road? Or suppose the defendant should ignore the claims of some populous neighborhood, whose business justified and whose necessities required depot accommodations for the receipt and discharge of passengers and freight, and in this way force the people of such locality to transact their business through a depot eight or ten miles distant—is there no redress except through a multiplicity of suits to be prosecuted at law by each injured party, or such relief as could be obtained through the tardy and inadequate process of *mandamus*? These remedies exist. But they are not the only means of relief. The defendant, by accepting its charter, assumed certain obligations in favor of the public in the nature of a *quasi* public trust, and the duty of enforcing the execution of this trust, in the absence of some statute providing another and different remedy, devolves upon courts of equity. All matters of confidence and trust are within their peculiar cognizance. They may restrain or command, remove a trustee and substitute another in his stead, or execute the trust themselves, as the exigencies of each particular case may require. Their jurisdiction has been well established and defined. No court, I presume, exercising equity powers would hesitate, upon proper application, to command the defendant, in the contingencies supposed, to provide a depot or operate its road, for the obvious reason that the road was authorized and built for and dedicated to the public, and the public has a right to use it; and if the officers representing the corporation were to refuse to execute the trusts reposed in them, in the particulars mentioned, or in any other respect, it would be the imperative duty of the courts of equity, on due application, to interfere, and by an exercise of their extraordinary powers compel a faithful observance and discharge of all of its obligations. If these courts can lawfully do this, their supervising authority over such corporations to the extent of the public interest

in them is vindicated; that is, they can compel them to keep their roads, rolling stock, and machinery in good condition; force them to establish and maintain depots at suitable points where the business and public necessities require them; provide suitable means of access to and egress from their trains; forbid injurious discriminations; and, to the extent of their means, supply all the facilities for the safe transmission of persons and property contemplated by their charters. Their authority to do this was affirmed and applied in the recent litigation between the express and the railroad companies, in which the railroad companies admitted an obligation to receive, carry, and deliver express freight, but contended that they were only bound to do so when the freight to be carried was delivered into their custody to be carried in the usual way at their risk and on their freight trains, to be delivered by them to the consignees. But every court before which the question was argued held otherwise.

In the last of these cases, recently decided by Mr. Justice Miller and Judge McCrary at St. Louis, Missouri, the court ordered the railroad company, upon a motion for a preliminary injunction, to furnish the express company with suitable freight cars to be attached to its passenger trains for the transportation of its freight in care of its own messengers, and at the rates fixed by the court, thus recognizing in the fullest possible manner the authority of the court to supervise and control the action of the railroad company in the public interest.

Now, if it was competent for the court to thus interfere and control the railroad company in a matter of detail in its business affairs, why may I not, if the facts of this case justify relief, compel the defendant railroad company to make deliveries of live-stock consigned to complainant on the same terms and in the same manner as under like conditions deliveries are made by it to its co-defendant?

The business of receiving, feeding, dealing in, and forwarding live-stock is legitimate and necessary. To do so on a scale commensurate with the trade of Cincinnati in that line necessitates large expenditures in the erection of buildings and equipment of suitable yards; and, being both legitimate and useful, everybody engaging in it is entitled to equal facilities in the use of railroads, upon which they are largely dependent for success; for it is obvious if the railroads centering at Cincinnati, or the officials who control them, are permitted to combine and establish a stock-yard as a private enterprise, and by contract make it *the* depot of the roads for the receipt and delivery of all the stock brought to or carried through the city, and withhold like

accommodations from their competitors, they can suppress competition, and establish and maintain a monopoly in that particular department of trade, and subject the public to the payment of undue and unreasonable exactions for the services rendered.

I am very clear that no such right exists. Where a railroad company assumes to receive, take care of, water, feed, and forward stock as a part of its undertaking to transport them, as it may lawfully do, they are at liberty to select such agencies as they may choose to employ for the purpose, and the exercise of the right is no wrong to any one else. But that is not the question here. The complainant does not complain of defendant's transacting its business through its own agents. Its complaint is that the defendant refuses to deliver stock consigned to his yard to him, except through the yards of co-defendant, and it is against this unauthorized and injurious discrimination that he seeks relief. The two yards are contiguous. They are both connected with the Cincinnati & Baltimore Railroad Company's road (over which the defendant is running its trains) by suitable switches. The railroad defendant can receive stock from and deliver stock to the one as easily as to the other, but refuses to do so. The discrimination is contrary to a sound public policy and injurious to the complainant. It gives to the United Railroad Stock-Yards Company important advantages in the receipt and shipment of stock, over the complainant—an injustice which no railroad company, in the exercise of its *quasi* public functions, ought to be permitted to inflict upon any one engaged in a lawful and necessary pursuit. The power to prevent such an abuse is, as we have already affirmed, vested in courts of equity until the legislature shall provide another and different remedy.

A preliminary injunction, corresponding in its scope with the restraining order heretofore issued, is therefore granted, on complainant's entering into a bond in the penalty of \$20,000, with securities to be approved and accepted by the clerk, conditioned to prosecute the suit with effect, or in the event he fails to do so that he will pay the defendants all such damages respectively sustained by reason of the wrongful suing out of said injunction.

NOTE. The temporary restraining order was as follows: "It is therefore ordered by the court that the defendant railroad company shall, so long as said company shall continue to deliver stock to the United Railroads Stock-Yards Company, until the further order of the court, desist from making any discrimination between the complainant's yards and those of the United Railroads Stock-Yards Company, and shall receive all the stock consigned, or which