

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

the shipper shall desire to consign, to said complainant's yards, and transport and deliver the same upon the same terms and in the same manner that stock is received and transported and delivered unto the United Railroads Stock-Yards Company, upon giving bond in the sum of \$20,000."

It may be noted, as a part of the history of this controversy, that the Marietta & Cincinnati Railroad Company, operating the Cincinnati & Baltimore Railroad, had established a switch to the United Railroads Stock-Yards, and made that its live-stock station for the city of Cincinnati, and refused to establish or permit the establishment of a switch to, or station at, the stock-yards of the complainant in the principal case. That being the only road reaching the stock-yards of the complainant he was practically cut off from access to or from the railroads of the city. The Marietta & Cincinnati Railroad Company was in the hands of receivers appointed by the common pleas court of Ross county, Ohio. An application was made to Judge Baxter to compel the receivers to afford the complainant equal facilities with those accorded his competitor. As the receivers had been appointed by the state court, and its road and property were therefore under its control, his honor refused the application and remitted the complainant to the state court for redress. Afterwards application was made to the Ross county court, and, after full hearing, an order entered directing the receivers to afford to the complainant equal facilities with those granted to the rival yard. For a report of the decision of the Ross county common pleas court, which was delivered by Judge Minshall, see 7 Cincinnati Weekly Law Bull. 295.

See, on the subject of railroad discrimination, *Hays v. Pennsylvania Co.* 12 FED. REP. 309, and note thereto. Also the *Express Company Cases*, before Justice Miller and Judge McCrary, 10 FED. REP. 210, 869.—[REP.]

DUNSCOMB and others v. HOLST and others.

(Circuit Court, W. D. Tennessee. June 21, 1882.)

1. JUDICIAL SALE—RIGHT OF PURCHASER TO DEMAND GOOD TITLE—WILL.

At a sale of land at public auction by an officer of the court, where the title to the land was acquired by the defendant under the following devise in a will: "I bequeath to my daughter [the land in question] for her and her children's sole and separate use, free from any claim or control of her husband,"—and the purchaser at the sale declined to comply with the terms of his purchase, alleging a defect of title, *held*, that a title acquired by such a devisee is not of such clear and indisputable character as the purchaser has a right to demand, and that a court of equity will relieve the purchaser from complying with his bid made at the sale.

2. SAME—SAME—PRACTICE—RESALE.

That under such circumstances, and after an investigation of the title by the master, the court will order a resale of such interest in the land as the defendants to the suit may have.

In Equity.