

son, the beneficiary of the assignment, could not complain, because, as to complainants, his assignment was as yet void. *Vigilantibus non dormientibus jura subserviunt*,—it is the vigilant, not those who sleep on their rights, whom the law serves. And the court granted the order prayed for in the complainant's bill. The creditors in these two suits did succeed in bringing suit in time. They forestalled by suit the deed of January 5, 1883, before it was recorded, and while it was yet null and void. Their suit was brought for that purpose, and founded on section 5, and not on section 1, of the 114th chapter of the Code. It was brought in time. It was brought for a valid cause of action. It would stand and be sustained, and the relief sought would be given, even though the deed of January 5, 1883, were free from fraud.

I do not think, therefore, that the order of January 10, 1883, given by me at Alexandria, was improvident. The case was urgent. A trenchant order was necessary to the ends of justice, and it was given with entire confidence in its propriety. Sometimes harsh and prompt measures are the very essence of justice, and this is more especially so when they are necessary to save honest creditors from irremediable loss by the fraud and covin of others.

---

### FARGO v. REDFIELD and others.

(Circuit Court, D. Vermont. November 29, 1884.)

#### RAILROAD COMPANY—EXPRESS FACILITIES—ROAD IN PART IN FOREIGN JURISDICTION—INJUNCTION.

An injunction may be granted by the circuit court to restrain a railroad corporation, one part of whose line is in a foreign country and the other in a state, from interfering with the facilities enjoyed by an express company, and from refusing to receive and transport its messengers and express matter for reasonable and just compensation over that part of the road within the state. *Southern Express Co. v. St. Louis, etc., Ry. Co.* 10 FED. REP. 210, followed.

#### In Equity.

*Luke P. Poland*, for orator.

*W. D. Crane*, for defendants.

**WHEELER, J.** The principles laid down by Mr. Justice MILLER in *Southern Express Co. v. St. Louis, etc., Ry. Co.* 10 FED. REP. 210, must be and are fully recognized as authoritative in this class of cases. No real question is made about their general correctness. The principal controversy is in respect to their application to the circumstances of this case. The principal line of the defendants' railway, over which the orator claims the right to do express business, lies about one-fifth in Vermont and four-fifths in Canada. The part in Vermont belonged to a Vermont corporation; the part in Canada

to a Canadian corporation. The Vermont corporation leased its road to the Canadian corporation for 99 years, and the Canadian corporation mortgaged the whole to the defendant trustees—two of whom reside in Canada and one in Vermont—to secure mortgage bonds, and the trustees are in possession for breach of the condition of the mortgage. The other defendant is their manager of the whole. It is argued for the defendants that no relief can be granted here, because the accommodation of express companies by railroad companies in the province of Quebec, where the Canadian portion of this railroad lies, is regulated by statute, which would cut the rights of the orator down to what the defendants are willing to afford; that the court here has no jurisdiction over the enforcement of rights to accommodation on railroads in Canada; and that any attempted relief as to the part in Vermont would be ineffectual on account of the connection of that part with the part in Canada, and should not be undertaken. The orator insists that the statute does not materially alter the common law as to the rights in question, and that as the relief now sought by injunction is strictly *in personam*, and the parties are now before this court, the relief may properly be granted as to the whole line, the same as if it was wholly within this territorial jurisdiction.

The statute relied upon does not appear to much, if any, vary the rules of the common law upon this subject. It merely provides that any railway company granting any facilities to any incorporated express company shall grant equal facilities on equal terms and conditions to any other incorporated express company demanding the same. St. Quebec, 43 & 44 Vict. § 59, cl. 3. This is almost identical with the fifth proposition laid down by Mr. Justice MILLER, except that he applies the doctrine to all engaged in express business, instead of confining it to incorporated express companies. This statute might not stand in the way of the relief claimed by the orator. There is no question but that courts of equity may and do afford relief beyond their territorial jurisdiction by affecting the persons of parties within it, as by enforcing contracts in respect to land lying out of it. *Penn v. Lord Baltimore*, 1 Ves. 444; 2 Story, Eq. § 743. But here the relief sought is not of a private character. The defendants stand upon the rights of, and are performing the duties of, a public corporation in Canada and of another in Vermont. They do not hold the property as private tenants in common, but are administering a trust involving public as well as private interests. It does not seem proper that the performance of such duties should be enforced by any but the domestic tribunals. The orator has a contract in respect to what is now asked, but an enforcement of the contract is not sought; what is sought by this bill is accommodation for express business over the defendants' road at reasonable rates. The contract is to be resorted to only as evidence of reasonableness of accommodation and rates. The subject is of such a public character that so much of it as is

without this jurisdiction is left to be dealt with by the tribunals where it is. *W. U. Tel. Co. v. Pacific Tel. Co.* 49 Ill. 90; High, Inj. § 34. The connections between the parts of the road in the different countries might render the affording of relief by the courts of the other jurisdiction as difficult alone as that of the courts here, and the same reasons that would restrain this court within this jurisdiction would restrain those within that. The presumption is that the courts there will do full and exact justice to all interests in that jurisdiction, and nothing remains to this court but to do the same, so far as they are perceived, to the interests involved within this jurisdiction.

The defendants have a contract with the Dominion Express Company for doing express business over their lines at rates greatly in excess of what the orator is paying, and greatly beyond what the orator claims to be a reasonable rate. They offered to contract with the orator upon the same terms, which the orator declined to do for the reason, as alleged, that the rates would be ruinous; and the defendants have notified the orator to quit their lines or pay that rate. The orator has no right, and claims none, to interfere with any contract with any other company or person, but appears to have the right to have its agents and parcels transported over the defendants' road at reasonable rates, to be agreed upon by the parties or fixed by the courts. To fix an arbitrary rate, and deny all facilities except at that rate, is a denial of the right unless the rate is reasonable. The parties differ widely as to what is reasonable, and what might be quite reasonable with only one company doing the business might be very unreasonable if there were more; and what would be reasonable for the whole line might be greatly disproportionate to what would be for a part or parts only. What would be just cannot in any manner be settled in advance. The orator is entitled to the accommodation and facilities without waiting for an adjustment of the rates by the court, by furnishing security for their payment when adjusted, by agreement, or by the court. There is no question between the parties as to the solvency of the orator, or of the surety proposed by the orator, in case one should be required.

As this subject is now viewed, in view of the case cited, and of the decisions made by the highest courts as to the duties of common carriers to carry for all at reasonable and just rates, it is considered that the orator is entitled to a preliminary injunction similar to the one granted in that case, as to so much of the defendants' road as lies within the state and district of Vermont.

Let a writ of injunction issue to restrain the defendants, their managers, agents, and servants, from interfering with the facilities now enjoyed by and accorded to the orator on the railroad of the defendants within the state and district of Vermont, and from refusing to receive and transport the messengers and express matter of the orator for reasonable and just compensation therefor, to be agreed upon by the parties or adjusted by the court; the orator to be liable for all

such compensation, and to file a bond in this cause in the penal sum of \$10,000, with sufficient surety, to be approved by a master within 20 days, for further security of the same.

**BALTIMORE & O. R. Co. v. ALLEN, Auditor, and others.**

*(Circuit Court, W. D. Virginia. August 30, 1884.)*

**1. TAXATION — ROLLING STOCK OF FOREIGN RAILROAD CORPORATION—WHERE TAXABLE.**

The rolling stock owned by a railroad company incorporated under the laws of one state, and employed in operating railroads leased by it in another state, is personal property, and taxable to the road in the state of its domicile and not in the state where it is so used.

**2. SAME— BALTIMORE & OHIO RAILROAD COMPANY—TAXATION UNDER VIRGINIA STATUTE.**

The Baltimore & Ohio Railroad Company is a foreign corporation, and its rolling stock, used in operating leased roads in the state of Virginia, is not liable to taxation under the tax laws of that state.

**Motion for Injunction.**

*Sheffey & Bungardner and Wm. B. Compton, for plaintiff.*

*Frank S. Blair, Atty. Gen., for defendants.*

PAUL, J. The Baltimore & Ohio Railroad Company, a corporation under the laws of the state of Maryland, has for a number of years been the lessee of the following railroads in the state of Virginia, incorporated by various acts of the Virginia legislature, and owned by Virginia corporations, viz.: The Winchester & Potomac Railroad, the Winchester & Strasburgh Railroad, and the Strasburgh & Harrisonburg Railroad; the last named being part of the old Manassas Gap Railroad. The said Baltimore & Ohio Railroad Company also works or operates the Valley Railroad from Harrisonburg to Staunton. None of these railroads, so leased and operated by the Baltimore & Ohio Railroad Company, own any rolling stock, but the same is furnished by the Baltimore & Ohio Company. The domicile or home office of the Baltimore & Ohio Railroad Company is in the city of Baltimore, state of Maryland. Section 20, chapter 119, of Acts of the Virginia Legislature, session 1881-82, prescribes the mode of assessing railroads and canals for purposes of taxation, and the following provision designates what property shall be taxed:

“Every railroad and canal company, not exempted from taxation by virtue of its charter, shall report annually on the first day of June, to the auditor of public accounts, all of its real and personal property of every description as of the first day of February of each year, showing particularly in what county or corporation such property is located, and classifying the same under the following heads: (1) Roadway and track or canal bed. (2) Depots, depot grounds and lots, station buildings and fixtures, and machine-shops. (3) Real estate not included in other classes. (4) Rolling stock, including passenger, freight, cattle or stock, baggage, mail, express, sleeping, palace, and all other

cars owned by or belonging to the company; boats, machinery and equipments, houses and appurtenances occupied by lock-gate keepers and other employes. (5) Stores. (6) Telegraph lines. (7) Miscellaneous property."

The said railroad companies, the Winchester & Potomac, the Winchester & Strasburgh, the Strasburgh & Harrisonburg, and the Valley Railroads, made their reports to the auditor of public accounts as required, and were, by the board of public works, duly assessed on their roadways and tracks, depots, and other real estate owned by them. Their reports showed that they were not the owners of any rolling stock. On the \_\_\_\_\_ day of June, 1883, S. Brown Allen, auditor of public accounts for the state of Virginia, assessed the Baltimore & Ohio Railroad Company with taxes on its rolling stock, used on said roads, for the years from 1870 to 1881, inclusive, amounting in the aggregate, for 11 years, to the sum of \$22,249.25, and on the \_\_\_\_\_ day of June, 1883, placed said taxes in the hands of J. Ed. Hamilton, treasurer of Augusta county, Virginia, for collection. On the \_\_\_\_\_ day of June, 1883, said Hamilton, treasurer, distrained certain property, such as engines, passenger cars, box cars, stock cars, etc., belonging to the Baltimore & Ohio Railroad Company, and on the refusal of said company to pay the taxes so levied for, advertised said property to be sold at public auction. To prevent this sale a restraining order was, on the petition of the Baltimore & Ohio Railroad Company, awarded on the \_\_\_\_\_ day of \_\_\_\_\_, 1883, by the judge of this circuit, inhibiting the said Hamilton, treasurer, from making sale of said property. It is, on a motion by the defendants, S. Brown Allen, auditor, and others, to dissolve this restraining order, that the court is called upon to decide the question as to the liability of the Baltimore & Ohio Railroad Company for the taxes levied on its rolling stock employed by it in its operation of the aforesaid railroads, leased by it in the state of Virginia.

The first question presented is the character of the property on which the tax is assessed. Is it realty or personalty, or does it fall within the definition of movable fixtures? The doctrine that the engines, cars, etc., used in operating a railroad, are movable fixtures, is not sustained by the current of authorities. It is in no sense real property, or savoring of the realty. That it is personal property cannot be successfully controverted, and therefore, as the subject of taxation, it is governed by the same general rules applicable to other personal property. "The weight of authority is that it is personal estate to be taxed to the road where it has its domicile." Burroughs, Tax'n, 186. That it may, by the legislature, be treated as real estate is admitted; that the legislature of Virginia has not so treated it is conceded; that the Baltimore & Ohio Railroad Company is a foreign corporation is not disputed. We think that a careful reading of the act of the Virginia legislature (chapter 119, Sess. Acts 1881-82) shows that the tax to be imposed on the real and personal property of railroads is to be imposed on home railroads—those char-