

never in fact described or conveyed the north 15.02 acres of the N. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of this section 30. This disposes of this case, and the question of the *bona fides* of the defendants becomes immaterial; but we are satisfied from the evidence that, before either of the defendants obtained any conveyance of this land, at least four of the complainant's grantees were occupying houses standing upon this north 15.02 acres, claiming title under the complainant and Hoyt. This was notice of complainant's rights and title. *Morrison v. March*, 4 Minn. 429, (Gil. 325;) *New v. Wheaton*, 24 Minn. 409. The proofs also establish the fact that this 15-acre tract was worth at least \$50,000 in 1888; that defendant Charles J. Doolittle discovered the condition of the title to this tract by examining the title to the south 15 acres of the quarter quarter, as he was negotiating a loan upon it; that he examined all the general indexes in the register's office under the letter S to see if Schellenbarger had conveyed this northerly 15 acres. And he testifies "he did not know how much interest he [Schellenbarger] might have there, but at any rate he thought he would go into it for a speculation, and risk a little money in it, and there might be something in it." He then obtained a quitclaim deed of Schellenbarger and wife, for which he paid \$30. About a year afterwards, in August, 1889, he conveyed to his brother, Ormus, for \$3,200, (\$500 cash and the \$2,700 mortgage on the land,) and then first recorded his deed from Schellenbarger. Ormus never saw the land, although he lives within 75 miles of it, and knew nothing of its value, but bought it solely on his brother's representations to him. Under this proof the defendants have no better title in equity or at law than Schellenbarger had, in any event, and Schellenbarger's testimony shows that he had none in equity, and we have found he had none at law. The complainant is entitled to the relief prayed for in the bill. Let a decree be entered accordingly.

NELSON, District Judge, concurs.

RHEA *et al.* v. NEWPORT N. & M. V. R. Co.

(Circuit Court, D. Kentucky. April 7, 1892.)

I. NAVIGABLE WATERS—OBSTRUCTION—ERECTION OF BRIDGES—LIABILITIES.

A railroad company, empowered by its charter to erect and maintain a bridge across the Cumberland river, in Kentucky, "so as not unreasonably to obstruct navigation," while rebuilding a portion of the bridge which had been blown down, erected a temporary bridge, which interfered with navigation, but arranged with all the packet companies plying the river for the transfer of all freight without extra charge to shippers. The amount of traffic of the railroad largely exceeded that on the river, and public convenience was in fact subserved by the plan pursued by the railroad company. *Held*, that this was not an unreasonable obstruction of navigation, and a shipper who refused to send his grain by water under the arrangement was not entitled to recover the extra freight paid for transporting it by rail.

2. INTERSTATE COMMERCE—STATE REGULATIONS.

The commercial power of congress is exclusive of state authority only where the subjects upon which it is exerted are national in their character, and admit and require uniformity of regulations affecting alike all the states; and when the subjects within that power are local in their nature or operation, or constitute mere aids to commerce, the states may provide for their regulation and management until congress intervenes and supersedes their action. *Cardwell v. Bridge Co.*, 5 Sup. Ct. Rep. 423, 113 U. S. 205, followed.

3. SAME—BRIDGES.

The erection of a bridge entirely within a state across a navigable river running partly within and partly without the state is not a matter so intimately connected with interstate commerce as to be under the exclusive control of congress; and, in the absence of congressional action, the state has authority to regulate the same. *Railway Co. v. Backus*, 46 Fed. Rep. 216, distinguished.

In Equity. Bill by B. S. Rhea & Son against the Newport News & Mississippi Valley Railroad Company to restrain the obstruction of navigation in the Cumberland river, and to recover damages alleged to have been sustained on account of the obstruction. Bill dismissed.

Frazier & Dickinson and Dodd & Dodd, for complainants.

Holmes Cummins, Bullitt & Shield, and Humphrey & Davie, for defendants.

JACKSON, Circuit Judge. This cause is now before the court upon exceptions on the part of both complainants and defendants to the report of the special master, filed herein February 15, 1892, and for final hearing upon the merits. The conclusions reached by the court upon the whole case render it unnecessary to notice and consider the master's report and the exceptions thereto in detail. The bill was filed April 9, 1890, to restrain the defendant from obstructing the navigation of the Cumberland river, and to recover the special damage sustained by complainants because of such obstruction. The defendant is a Connecticut corporation, engaged in operating a line of railway from the city of Louisville, Ky., to and through the city of Paducah, Ky., to the city of Memphis, Tenn. This line of railroad, originally chartered by the state of Kentucky under the name of the Chesapeake, Ohio & Southwestern Railroad Company, and to whose rights and franchises the defendant has succeeded, crosses the Cumberland river at a point near Kuttawa, in Lyon county, Ky., on a bridge consisting of a draw-span and adjacent fixed spans. The original railroad company, to whose rights and franchises the defendant has succeeded, was fully authorized by the legislature of Kentucky to erect and maintain a bridge at said point, "so as not unreasonably to obstruct the navigation of any navigable stream." The bridge, the river, and both banks thereof, at the place of crossing, are situated wholly within the limits or territory of the state of Kentucky. The bridge over the river, as constructed and maintained prior to March 27, 1890, constituted no unlawful obstruction or interference with the free navigation of the Cumberland river, which rises in Kentucky, flows southward into and through Tennessee, and then back again into Kentucky; and, after crossing the latter state, empties into the Ohio river. On March 27, 1890, the draw-span and one adjacent fixed span of said bridge were blown down by a tornado of great violence.

The defendant took prompt steps to rebuild its bridge, and in doing so erected, or caused to be erected, temporary false work on piles across the river, under the draw-span, upon which its line was continued, while the bridge was being rebuilt or repaired. The piles and false work obstructed and interrupted the ordinary navigation of the river from about the 8th to the 23d of April, 1890. On and after the latter date, boats which had been cut down for the purpose could and did pass under the other fixed and uninjured span of the bridge, and were of sufficient capacity to carry all of complainants' freight to Nashville, Tenn. Before closing the channel of the river, the defendant arranged with the captain and superintendent of the only regular line of steamers or packet companies navigating the river, to place one or more boats below, and another or others above, the bridge, so as to continue regular trips, and transfer freight and passengers at the point of obstruction, by means of a barge anchored under the bridge, which means and method of transfer was continued during the entire time the channel was closed. The agreement between the defendant and the said packet companies plying the river was to the effect that the former should pay the latter \$600 per week, and that the latter should transfer all freight without extra charge to shippers; the intent of the agreement being to protect shippers against any increased charge or rate of freights because of the temporary obstruction to the ordinary navigation of the river. Under and in pursuance of this agreement with defendants, the steamers or packet companies maintained the usual and ordinary freight rate; and on the 23d of April, 1890, notified complainants that they were prepared and ready to carry or transport all their freight (chiefly corn in sacks) from the lower Cumberland and Ohio river to Nashville, without even transferring the same at the bridge; but complainants declined to ship that way, as they had previously declined to ship by boat, and allow this freight to be transferred at the bridge by means of the anchored barge. But from the 9th of April to some time in May, 1890, they had their freight carried or brought to Nashville by railroad, at an extra cost of 4 cents per 100 pounds. The additional freight rate thus paid by them on these shipments of grain, over and above the river rate, amounted to \$1,800.41. Complainants furthermore intimate that they had paid out \$500 for traveling expenses and extra labor, and sustained damage to grain in the sum of \$242.64, on account of said obstruction of the river by defendant. These three amounts, aggregating the sum of \$2,543.05, the special master has reported as the loss sustained by complainants, and which they are entitled to recover of the defendant, on account of its temporary interruption of the ordinary navigation of the river in rebuilding or repairing its bridge, as aforesaid.

The special master finds and reports that—

“Defendant could have rebuilt its draw-span by erecting its false work up and down the stream, thus leaving the span open while the work was in progress; but this would have severed its line much more completely than the mode actually pursued severed the line of navigation, inasmuch as its passengers and freight would have had to be ferried over the river; an operation