"The doctrine of relation is a fiction of law adopted by the courts solely for the purposes of justice, and is only applied for the security and protection of persons who stand in some privity with the party that instituted the proceedings."

See, also, *Heath* v. *Ross*, 12 Johns. 140.

The insurance company stands in no relation of privity with the parties who instituted the proceedings resulting in the appointment of a receiver. It is believed that no court has ever held that a forfeiture may be created by relation. Such an application of the doctrine would defeat, rather than further, the purposes of justice. The property had been destroyed, and a right of action for its loss had arisen, before the receiver was appointed. No rule of law and no principle of justice will permit the defendant to escape liability therefor on the grounds set forth in this paragraph of answer. The property having been destroyed, the appointment of the receiver as to it was ineffective. As to the property insured, no change of title or possession had occurred before the fire. None took place after the fire, unless the decree could change the title and possession of property which had already ceased to exist. That the decree could have no such effect seems too plain for serious debate.

BARROTT v. PULLMAN'S PALACE CAR CO.

(Circuit Court, N. D. New York. June 22, 1892.)

SLEEPING CAR COMPANY—LIABILITY FOR LOSS OF MONEY.

A sleeping car company is bound to use reasonable care to protect only so much money carried by a passenger as is necessary and appropriate, in view of his circumstances and condition in life, for his wants and comforts during his contemplated journey, and is not liable if a sum of money carried for another purpose is stolen from him through the negligence of its servants, provided no special circumstances exist which impose on it a peculiar duty with reference to such money.

At Law. Action by Ammial W. Barrott against Pullman's Palace Car Company to recover for certain moneys lost while on a sleeper. Verdict for defendant directed.

Upon the trial of this case before WALLACE, Circuit Judge, and a jury, it appeared, by testimony offered for the plaintiff, that while plaintiff was occupying a berth in one of the sleeping coaches of the defendant, as a passenger upon the Delaware & Lackawanna Railroad Company on a trip from Hoboken to Binghamton, in the state of New York, the sum of $4,114, belonging to him, was stolen from the berth. The evidence tended to show that he had procured this money at Hoboken for the purpose of buying cattle in the vicinity of Owego, where he resided, and where it was impracticable to obtain currency except in small sums; that he inclosed the money in an envelope which he carried in an inside pocket of his vest adapted for the purpose; that he and a companion occupied together a lower berth in the coach, the plaintiff sleeping at the

side near the aisle; that when he retired at night he placed his vest under the pillow of his bed; and that in the morning, when he arose to dress, the vest and the money were gone, and could not be found by the defendant's employes, although diligent search was immediately made. The plaintiff testified, among other things, that when he started upon the trip from Hoboken he put some $35 or $40 in his pocketbook for use upon the journey home, and the money thus carried was not disturbed. The theory of the action was that the plaintiff's money was stolen by some person who was enabled to accomplish the theft through the negligence of the defendant.

Frank A. Darrow and *Alexander Cumming*, for plaintiff.

Alexander & Green and *Allan McCulloh*, for defendant.

WALLACE, Circuit Judge, (*charging jury.*) It is my duty to instruct you that the plaintiff is not to have a verdict, upon any theory of the facts, for the loss of any money which he was not carrying as a passenger for the purposes of his journey. The defendant, as a sleeping car company, was not a common carrier or an insurer. By accepting compensation for furnishing sleeping accommodations to the plaintiff, the defendant assumed the obligation to exercise reasonable care to protect from loss or injury all such property as plaintiff was entitled to carry with him as a passenger. Every traveler, by railroad or other conveyance, is entitled to carry with him such a sum of money as is reasonably appropriate, in view of his circumstances and condition in life, to provide for his wants and comfort during his contemplated journey. If it is lost, or any part of it, while in any sense within the custody of the sleeping car company, by the negligence of the officers and servants of the company, and without contributing negligence on the part of the passenger, the sleeping car company is liable. If the passenger chooses to carry any other money, he does so at his own risk, unless some special circumstances exist to impose some peculiar duty upon the company. No such special circumstances have been shown in this case. The circumstance that the plaintiff had put aside for the expenses of his trip the money which he carried in his pocketbook indicates quite cogently what sum he himself considered as adequate for his needs; and, if you conclude that this was all the money he was entitled to carry for his traveling expenses, he has sustained no loss for which the defendant is responsible, and the defendant should have a verdict.

UNITED STATES *v.* HOPEWELL *et al.*

(*Circuit Court of Appeals, First Circuit.* September 15, 1892.)

1. CUSTOMS DUTIES—CLASSIFICATION—COMMON GOAT HAIR.
Under the tariff act of 1890, common goat hair, even if not fit for combing, is dutiable at 12 cents a pound, under Schedule K, par. 377, class 2, and is not embraced in paragraph 604 of the free list. 48 Fed. Rep. 630, reversed.

2. CIRCUIT COURT OF APPEALS—JURISDICTION—REVENUE APPEALS.
Under the judiciary act of March 3, 1891, (26 St. at Large, p. 828,) a judgment of the circuit court, on an appeal from the decision of the board of general appraisers, is reviewable, not in the supreme court, but in the circuit court of appeals, the case being one "arising under the revenue laws."

3. SAME—APPEAL—IRREGULARITIES—AMENDMENT.
An appeal by the United States from the judgment of the circuit court, on an appeal from the board of general appraisers, can only be allowed on the application and in the name of the attorney general, when the record does not show that the court is of opinion that the question involved is of such importance as to require an appeal. But where such an appeal is irregularly taken, in the name of the collector of the port by the district attorney, and the parties admit, in the circuit court of appeals, that same was in fact taken by direction of the attorney general, and consent that the petition for appeal may be amended by substituting his name for that of the collector, the circuit court of appeals has jurisdiction to allow such amendment.

4. APPEAL—CITATION—PARTNERSHIP.
On such an appeal it is an irregularity to address the citation to the importing firm instead of to the individual partners, but such irregularity is cured by the general appearance of the partners in the appellate court without making any objection.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

Petition for a review of a decision of the board of general appraisers assessing a duty of 12 cents a pound on certain goat hair. The circuit court reversed such decision, holding that the hair was embraced in the free list. 48 Fed. Rep. 630. The United States appeals. Reversed.

Frank D. Allen, U. S. Atty., and *Henry A. Wyman*, Asst. U. S. Atty.

Josiah P. Tucker, for appellees.

Before GRAY, Circuit Justice, PUTNAM, Circuit Judge, and NELSON, District Judge.

GRAY, Circuit Justice. This was a petition to the circuit court by John Hopewell, Jr., Olindus F. Kendall, and Frank Hopewell, representing that they were "partners in trade, doing business in Boston under the firm name of L. C. Chase & Co.," and signed, "L. C. Chase & Co., Petitioners, by J. P. Tucker, Attorney," praying for a review, under the act of June 10, 1890, c. 407, § 15, of a decision of the board of general appraisers, affirming a decision of the collector of the port of Boston and Charlestown, assessing on two bales of goat's hair, imported by the petitioners, a duty at the rate of 12 cents a pound, under paragraphs 377 and 384 of Schedule K of the tariff act of October 1, 1890, c. 1244, imposing such a duty on "hair of the camel, goat, alpaca, and other like animals." The petitioners, having duly protested against the assessment, contended that their goods should have been