

such accounting, repay and restore * * * all sums gained, realized, or obtained by said defendants, or any of them, * * * and such other further relief as may be proper in the premises." The right of the plaintiff is to have restored to the company he represents all sums it was defrauded of, if it was defrauded; and the measure of relief would be such sums, whether they were lodged in the hands of one defendant or distributed evenly or unevenly among them all. The accounting is prayed against all.

The defendant further urges that the directors are not connected with the frauds, and are but nominal parties, and must be disregarded in arranging the parties to the controversy. But the complaint charges them with being participants in the acts of fraud; maybe not as directly and precisely as it might, but sufficiently for the purposes of this motion. They could not have been ignorant and inactive. As to the other defendants, they may be said to have been instruments as to the company, whose officers they were in every proper sense,—they were principals in the frauds. It would be extending too much indulgence to assume that the officers of a valuable mine, which "had acquired," to quote the complaint, "a high reputation for the known richness of its ore deposits," should, besides paying an exorbitant price for milling them, accept, during a series of years, only 70 per cent. of their real product, giving to others two and a half millions of dollars, the property of the company which they represented. Again, it would be extending too much indulgence to assume that they were ignorant of the value of the stock of the company which they issued. It was their duty to know. I think, therefore, that the complaint, as far as this motion is concerned, is sufficient to connect O'Connor, Fish, and Wells with the frauds alleged. The motion to remand is therefore granted.

THOMAS v. EAST TENNESSEE, V. & G. RY. CO., (COOK, Intervener.)

(Circuit Court, N. D. Georgia. February 17, 1894.)

RECEIVERS—INJURIES TO EMPLOYEES—COMPENSATION.

Where a person in the employ of a receiver has been injured in the discharge of his duty without negligence on the part of either, the court may order that his wages be paid him for the time during which he was disabled, in the view that the officers of the court should be required to act towards their employes as persons of ordinary humanity and right feeling would act under similar circumstances; but such compensation should be confined to faithful and deserving employes, and to those who merit such consideration. *Missouri Pac. Ry. Co. v. Texas & P. Ry. Co.*, 33 Fed. 701; *Id.*, 41 Fed. 319,—limited.

In Equity. On exceptions to master's report. Intervening petition of Frank G. Cook in the suit of Samuel Thomas against the East Tennessee, Virginia & Georgia Railway Company. Exceptions sustained.

Smith, Glenn & Smith, for plaintiff.

Dorsey, Brewster & Howell, for defendant.

NEWMAN, District Judge. This was an action against Henry Fink and Charles M. McGhee, receivers of the East Tennessee, Virginia & Georgia Railway Company, to recover damages for injuries alleged to have been sustained by the intervener by reason of the negligence of the servants and agents of the receivers. The special master found that both the intervener and the receivers were free from negligence; that there was no liability on the part of the receivers to the intervener for his injuries. He suggests to the court, however, on the authority of *Missouri Pac. Ry. Co. v. Texas & P. Ry. Co.*, 33 Fed. 701; *Id.*, 41 Fed. 319,—decided by Circuit Judge Pardee,—the propriety of requiring the receivers to pay to the intervener his wages for the time he was actually laid up on account of his injuries. To pay the intervener for his lost time is a mere gratuity, of course, there being no legal liability on the part of the receivers. The view of the circuit judge doubtless was that the receivers, as officers of the court, should be required to act towards their employes as persons of ordinary humanity and right feeling would do under similar circumstances towards their employes. If an individual acting for himself, or even as head of the corporation, who has a faithful employe who is injured, although without any fault on the part of the employer or the other employes, the injured employe being himself free from fault, the employer, if actuated by proper feeling, would feel disposed to at least allow the injured person compensation for his lost time. As stated, it was probably this view of the matter which actuated the circuit judge in making the orders he did in the cases named. No views are expressed and no reasons are given by the circuit judge such as to show to what extent or to what character of cases he believes the rule should be applied.

Instruction by the court to receivers to compensate injured employes under the circumstances and for the reasons above stated, it seems to me, should be confined to faithful and deserving employes, and to those who merit such consideration at the hands of the employer. It could hardly be claimed that if a receiver had in his service an employe who had been negligent and unfaithful in the discharge of his duties, and who had been kept in his service simply because he had no one for the time being to supply his place, and such employe was injured without fault on the part of the receivers, the court would require them to pay such person anything in a case where they are not legally liable. It seems to me that, while the court might very well direct its officers to do that which a just employer would ordinarily do, it would not require him to go beyond that, and give the money which he holds for the benefit of the creditors of the corporation to one wholly undeserving. To hold that it is the duty of receivers of a railroad in every case where an employe is injured, and both the receiver and employe are free from fault, to pay the employe his wages for his lost time, would establish a rule which would necessarily drift into a matter of legal right, and ingraft an entirely new principle on our jurisprudence. This I do not believe the circuit judge intended. His orders were doubtless confined to the par-

ticular cases before him, which were probably such as commended themselves to him, and there was no intention to establish a precedent or a new rule of law such as I have indicated. With this expression of views on the subject, it is ordered that this case be referred back to the special master for the purpose of determining whether or not, considered as above indicated, the intervener is entitled to have from the receivers his wages for his lost time.

CENTRAL TRUST CO. OF NEW YORK v. SHEFFIELD & BIRMINGHAM COAL, IRON & RY. CO.

ALABAMA IRON & RY. CO. et al. v. ANNISTON LOAN & TRUST CO. et al.

(Circuit Court, N. D. Alabama, N. D. February 21, 1894.)

1. COURTS—TERM TIME AND VACATION—SALES—CONFIRMATION.

Equity Rule No. 1, U. S. Cir. Ct., provides that "the circuit courts, as courts of equity, shall be deemed always open for the purpose of * * * issuing and returning mesne and final process," etc. *Held*, that the question of the confirmation of a sale made under a decree in chancery is one as to the exercise and sufficiency of final process, and may be determined in vacation, especially when each of the parties has brought the other before the chancellor on the subject by a rule nisi,—the one to show cause why the sale should not be confirmed; the other, why it should not be set aside.

2. JUDICIAL SALES—TERMS AND ADVERTISEMENT—PROSPECTIVE ACT.

Act Cong. March 3, 1893, regulating the manner in which property shall be sold under orders and decrees of any United States courts, is prospective, only, in its operation, and does not apply to cases where decrees have been rendered prior to that act, specifically providing for the place of sale, and the time and place for advertisement.

3. SAME—CONFIRMATION—MANNER OF SALE—PRICE.

An objection that property was sold at judicial sale as a whole, and not in the parcels in which it actually existed, and that either of such parcels was of sufficient value to discharge the lien for which the whole was sold, is not available against confirmation of the sale, where neither party objected to the decree which directed its sale as a whole, and where there is no offer to pay higher price in case the bidding shall be reopened.

In Equity. On rule to show cause against confirmation of sale. The original proceeding was a bill filed by the Central Trust Company of New York against the Sheffield & Birmingham Coal, Iron & Railway Company. The Anniston Loan & Trust Company filed an intervening petition in this suit, and had a decree therein. The Alabama Iron & Railway Company and others thereupon filed a supplemental and dependent bill of complaint against the trust company and others. Rule absolute.

Henry B. Tompkins, for complainants.

Knox & Bowie, for defendants.

Before PARDEE and McCORMICK, Circuit Judges.

PARDEE, Circuit Judge. In the case of The Central Trust Company v. The Sheffield & Birmingham Coal, Iron & Railway Company,