

would be entitled to the pledge. The claim of the bank to hold any of these deposits for the payment of its own debt cannot be maintained without holding that the agreement of the Central Vermont that the bank might hold the excess of deposits over the rent for its security so operated as an assignment or pledge of the future receipts from stations and the Fitchburg balances to the bank as to give the bank a right to them after the right of the Central Vermont had been superseded, and before they had been deposited or earned. But this agreement could not operate upon these sources of income any further than the Central Vermont could so carry it out as to create an excess for the security of the bank's debt, which that company did not and could not do to any extent at all. The receivers created and deposited for themselves, in other rights, what the bank claims to hold as such excess; and, without regard to any form the deposits have been given, they have a right to the results of those they have made. Report of master accepted and confirmed, and balance of deposit thereupon decreed to receivers.

UNITED STATES v. TENNESSEE & C. R. CO. et al.
(Circuit Court of Appeals, Fifth Circuit. April 20, 1897.)

No. 538.

PUBLIC LANDS—RAILROAD GRANTS—FORFEITURE.

Lands sold by a land-grant railroad company prior to the forfeiture act of September 29, 1890, and which lie opposite to and coterminous with a part of the road which was completed and in operation before that act, are not subject to forfeiture thereunder.

Appeal from the Circuit Court of the United States for the Northern District of Alabama.

This was a bill in equity, filed by the United States against the Tennessee & Coosa Railroad Company, Hugh Carlisle, and others, under the act of congress of September 29, 1890, to forfeit certain land granted to the state of Alabama to aid in the construction of a railroad. The circuit court, after a hearing on the merits, entered a final decree, the material part of which was as follows:

First. The court finds that prior to the 29th day of September, 1890, the Tennessee & Coosa Railroad Company had sold to bona fide purchasers all the lands embraced in the first 120 sections, which, by the terms of the granting act, it was authorized to sell in advance of the construction of the road; that these sales were bona fide and made to aid in the construction of the road; that the allegations of the bill that the sale to Carlisle was without consideration and colorable are not sustained by the evidence, but the sale to Carlisle was bona fide, and based on good consideration, and the proceeds of the sale used in the construction and equipment of the road. Second. The court finds that the Tennessee & Coosa Railroad from Gadsden to Littleton, a distance of 10 and $\frac{22}{100}$ miles, was completed and in operation on and before the 29th day of September, 1890, and that the lands described in Exhibit D to original bill, to wit, the lands embraced in and conveyed by the deed from the Tennessee & Coosa Railroad Company to Hugh Carlisle, bearing date the 4th day of April, 1887, are lands which lie opposite to that part of the road which was completed and in operation on the 29th day of September, 1890, and therefore not within the lands forfeited by the act of

September 29, 1890. The court is therefore of the opinion that there has been no forfeiture of the lands as to which a judicial declaration of forfeiture is sought by the bill, and it is accordingly ordered and decreed that the relief sought by the bill be denied, and the bill dismissed.

From this decree, the United States have appealed.

Emmet Oneal and Frank White, for appellant.

Oscar R. Hundley and Amos E. Goodhue, for appellee.

Before PARDEE and McCORMICK, Circuit Judges, and NEWMAN, District Judge.

PER CURIAM. Considering that the Tennessee & Coosa Railroad Company had the right to sell, and did sell, the 120 sections of the land grant before the act of forfeiture, and that the forfeiture act of 1890 did not forfeit any portion of the land grant lying opposite to and coterminous with that portion of the railroad then completed and in operation, we find no error in the decree appealed from, and it is therefore affirmed.

VAN PATTEN v. CHICAGO, M. & ST. P. RY. CO.

(Circuit Court, N. D. Iowa, W. D. June 29, 1897.)

1. ACTION FOR DAMAGES UNDER INTERSTATE COMMERCE ACT — NECESSARY SHOWING.

When relief by way of damages is sought under the provisions of the interstate commerce act, upon the averment that a shipper has been charged an unreasonable rate for goods transported by a railway company, the plaintiff, in order to be entitled to recover, must show that the rate charged is unreasonable according to the provisions of that act.

2. SAME—STANDARD OF REASONABLE RATES.

The interstate commerce act provides for and prescribes a standard by comparison with which it may be determined whether a given rate is or is not to be deemed unreasonable within the meaning of the act; and that standard is the rate adopted, printed, and kept posted, as required by the statute, by those engaged in the business, and subject to the effects of free competition. Courts and juries cannot resort to any other standard.

3. SAME—ACTIONS FOR DAMAGES—DEFENSES.

It is a good defense to an action for damages for alleged extortionate, unjust, discriminating, and unreasonable freight charges to show that the defendant, in obedience to the interstate commerce act, has adopted, printed, and posted a properly proportioned schedule of rates, and that the charges complained of are in accordance with those in the schedule.

Submitted on Demurrer to Answer.

Harl & McCabe and Spencer Smith, for plaintiff.

George R. Peck and Burton Hanson, for defendant.

SHIRAS, District Judge. In the first count of the petition filed in this case the plaintiff avers, in substance, that in the year 1893 he shipped over the line of railway owned and operated by the defendant railway company, between the town of Manning, Iowa, and the city of Chicago, Ill., certain car loads of grain for which the railway charged a rate per 100 pounds, it being then averred:

"That said rate so charged was an unjust, unreasonable, and extortionate charge for such service, and subjected this plaintiff and the town of Manning