## NASHVILLE, C. & ST. L. RY. CO. v. McCONNELL et al. LOUISVILLE & N. RY. CO. v. DUCKWORTH et al. WESTERN & A. RY. CO. v. SAME.[1]

(Circuit Court, M. D. Tennessee. August 19, 1897.)

1. INJUNCTION—RESTRAINING BROKERAGE IN RAILWAY TICKETS.
The managers of the Tennessee Centennial Exposition at Nashville secured from railroads the issuance of special round-trip tickets to such Exposition at greatly reduced rates. Such tickets were receivable for transportation over different roads from those issuing them, but were not transferable, providing by their terms that they should be void if presented by a person other than the original purchaser, and such purchaser was required to identify himself before validating agents appointed for that purpose at the Exposition. Defendants were ticket brokers or "scalpers" engaged at Nashville in buying such tickets from the holders, and in reselling the return portions to others for use in violation of the contract contained therein; giving a guaranty of their acceptance for passage, and assisting the purchasers in fraudulently identifying themselves as the original purchasers before the validating agents. *Held*, that the railroad companies were entitled to injunctions to restrain defendants from carrying on the business of so dealing in such tickets.

2. SAME—MATTERS AFFECTING COURT'S DISCRETION—INJURY TO PUBLIC.
In such suits the national and state character of the Exposition, its public importance, and the fact that its success is imperiled by the withdrawal of such tickets from sale by some of the roads, and their threatened withdrawal by others, in consequence of the acts of the defendants, are matters proper to be taken into consideration as factors moving the court to some extent to the exercise of its discretionary power to grant an injunction.

3. SAME—JURISDICTION OF FEDERAL COURT—AMOUNT IN DISPUTE.
In a suit for an injunction the amount in dispute, for jurisdictional purposes, is not determined by the amount which the complainant might recover from defendant in an action at law for the acts complained of, but by the value of the right to be protected, or the extent of the injury to be prevented, by the injunction.

4. SAME—PARTIES—JOINDER OF DEFENDANTS.
In a suit by a railroad company for an injunction to restrain the purchase from passengers of partly-used tickets, nontransferable by their terms, and their resale for use in violation of the contract contained therein, where different brokers are engaged in dealing in the same class of tickets they may be joined as defendants.

5. SAME—PRINCIPLES GOVERNING THE REMEDY—NOVEL USE OF WRIT.
In the use of the writ of injunction, courts exercise a sound discretion, governed by recognized principles of equity jurisprudence and regulated by analogy. It is not a fatal objection that the use of the writ for the particular purpose for which it is sought is novel.

6. SAME—RESTRAINING INJURY TO BUSINESS.
The right to carry on a lawful business without obstruction is a property right, and its protection is a proper object for the granting of an injunction, when the ordinary remedies are inadequate.

7. SAME—SUBJECT-MATTER OF SUIT.
A suit by a railroad company to restrain ticket brokers from buying and reselling railroad tickets to be used in violation of the contract contained therein is not based on such contract, but the subject-matter is the illegal use made of the tickets by defendants, not parties thereto, to the injury of the business of the complainant; and hence any remedy provided by the contract itself for its violation is not a bar to the relief sought.

8. SAME—INDUCING THE BREAKING OF CONTRACT—INTERFERENCE BY THIRD PERSON.
One who wrongfully interferes in a contract between others, and, for the purpose of gain to himself, induces one of the parties to break it, is liable

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[1] See note at end of case.

to the party injured thereby; and his continued interference may be ground for an injunction, where the injury resulting will be irreparable.

9. SAME—IRREPARABLE INJURY.
Where it is clearly shown that a complainant's rights are being violated, and that injury results, and the only remedy at law is by a large number of suits for damages, which, by reason of their number and cost, will produce no substantial results, the injury is irreparable, and affords ground for injunction.

10. SAME—RESTRAINING ACT PUNISHABLE AS A CRIME.
It is not an objection to the jurisdiction of a court of equity to grant an injunction to protect property rights that the act sought to be enjoined is also a violation of the criminal law, nor that it might properly be made the subject of criminal legislation which the legislature has not seen fit to provide.

Suits in equity by the Nashville, Chattanooga & St. Louis Railway Company against George E. McConnell and others, by the Louisville & Nashville Railway Company against W. S. Duckworth and others, and by the Western & Atlantic Railway Company against W. S. Duckworth and others. Heard on motions for preliminary injunctions on the pleadings and proofs.

W. L. Granbery, for Nashville, C. & St. L. Ry. Co. and Western & A. Ry. Co.

J. M. Dickinson and Smith & Maddin, for Louisville & N. Ry. Co.

J. H. Acklen, Pitts & Meeks, and Lellyett & Barr, for brokers.

CLARK, District Judge. A restraining order was heretofore allowed on the bills in these cases, and they are now before the court on application for preliminary injunctions upon the pleadings and proofs offered to support and oppose the motion. The cases are heard together for convenience, the proofs being treated as offered in each case, so far as applicable and competent. The remedy now sought, if granted, will constitute a new application of the injunctive process of the courts, so far as I am advised, and so far as precisely the facts of this case are concerned. I deem it therefore proper to state the case, and my views in respect thereto, with sufficient fullness that the ruling may be clearly understood.

The suits grow out of what is known as the "Tennessee Centennial and International Exposition," now being held at the city of Nashville, Tenn.; the time appointed for keeping open that Exposition being from May 1 to October 31, 1897. In order to aid in the success of this Exposition, and to widely extend its benefits to the public, the leading railroad companies of the country, after some difficulty, were induced to enter into an agreement to issue and sell during the period of said Exposition a special contract ticket, conveniently designated as the "Tennessee Centennial Ticket." This is sold as a round-trip ticket only, and at one-third of the regular price at which tickets are sold in the ordinary business of the railroads. So far as the provisions of the contract of transportation affect the matter now under consideration, it is sufficient to say that the contract between the carrier and the passenger is for a round trip, both to and from the Exposition; it being agreed that in consideration of the special reduced rate the ticket issued as evidence of the contract shall not be transferable, and shall become and be void in the hands of any third

party acquiring it in violation of the agreement. The original purchaser is required to sign this contract in the ticket issued, and is further required to identify him or her self before persons known as "validating agents," appointed for that purpose at the place of the Exposition. In short, the contract clearly and distinctly provides that all parts of the tickets shall be used only by the original purchaser, and that it shall be valid and good for transportation only in the hands of such purchaser. These provisions are very plain, and very well understood. That special ticket contracts of this kind, restricting the use thereof to the original purchaser, are valid contracts, has not been made a question in the case, and could not be, the authorities being uniform in sustaining such contracts as valid obligations. It is disclosed by the record in the cases that a considerable number of persons, known as "ticket brokers" or "ticket scalpers," are located in the city of Nashville, the place of the Exposition, and engaged in the business of buying and selling the return portion of these tickets, in violation of the contract, and it is to restrain further prosecution of this particular branch of the brokers' business that the bills in these cases are brought. Without going into elaborate detail, it is sufficient to say that it appears that all of the defendants are engaged in buying and selling these special-contract tickets. In conducting their business, many, if not most, of the defendants have persons employed for the purpose of boarding incoming trains at Nashville, and diligently working the passengers with a view to buying the return coupons of these tickets, and also for the purpose of selling, as far as may be done, to such passengers coupons for other points. It does not distinctly appear that others of the defendants go further than to conduct their business at their office, and to deal in these tickets as far as may be done by diligent work at the office directed to this class of tickets. Some of the scalpers in this business are known as "foreign brokers"; being persons who have come from other states and places to the city of Nashville for the purpose, presumably, of carrying on this business during the period of the Exposition only. The brokers permanently located at Nashville, and there when the Exposition opened, are called, for convenience, "local brokers," to distinguish them from these "foreign brokers." When these return coupons are purchased, in order to effect a sale thereof, and make them available to subsequent purchasers intending to use them in violation of the contract, it becomes necessary for the scalper or broker to agree with such persons to refund the money paid in the event the fraud is detected, and the ticket therefore cannot be used. It further becomes necessary, of course, for the person purchasing from the broker to go before the validating agents and declare that he is the same person originally purchasing and using such ticket in coming to the Exposition. It is not necessary to add, what is plainly indicated by the situation, that the person using or attempting to use the return coupon makes before the validating agent, solemnly, a deliberate misrepresentation, and practices upon the company, in the event the ticket is used, an obvious fraud. The ticket providing that it shall become void in the hands of any person other than the original purchaser, the ticket is, in law, worthless; and it is obvious

enough that the company is damaged and sustains loss to the extent of the full regular fare for the mileage over which each one of these fraudulent coupons is used. There is no process of reasoning, however strained, which can, even as a matter of form, conceal this practical fact, that the company is deliberately cheated out of the value of the regular fare of every mile of its line over which travel is made under color of one of these void papers. It is not necessary to do more than thus state the facts to show to any fair mind that this is clearly the case. It further appears from the record that the purchasers of these tickets from the brokers are carefully instructed by them as to the safest method of making a false identification, in claiming to be the original purchaser, and that in many instances the fraudulent purchaser is accompanied by the broker's agent, and aided in making effectual the imposition. The particular details as to the manner of doing this need not now be stated. In addition to this, it also appears from the mutilated ticket contracts themselves, as well as the testimony in the cases, that by means of pasting parts of different tickets together, by cutting out dates and amounts, and plugging in place thereof false dates and amounts, by taking out the signature of the original purchaser by the use of acids, and by other thoroughly objectionable methods, the most obvious frauds, not to say forgeries, are committed, in order to effectually handle these fraudulently purchased and fraudulently sold coupons. Indeed, the defendants' eminent counsel do not controvert the existence of these methods, and the subject is dismissed with the statement that there are abuses in all lines of business. It is due, just in this connection, as a part of the statement of the case, to say that not all of the defendants are actually engaged in these ruder features of doing business; and it may be justly said that, with one or two exceptions, the business of the local brokers is not conducted in these more offensive methods. It might be regarded as unkind to be more specific just here, by giving names. The fact does remain, however, that the defendants all admit squarely that they are engaged in the business of buying, selling, and causing purchasers to use, these void coupons, with the distinct knowledge and intention that they will use them; and the court finds no difficulty in affirming the existence of the further fact that they aid in accomplishing this result beyond merely buying and selling to purchasers.

The right to make and issue this special form of ticket, furnishing a reduced rate, and thereby aiding in a great public purpose such as that of an Exposition, is fully recognized both at common law and by legislation. It has often been decided by the courts that the use of one of these tickets in violation of the contract by a person other than the original purchaser is a fraud upon the common carrier. This is no longer a question. These Centennial tickets having been issued under an agreement between the railroad companies to recognize over their lines such tickets, by whatever common carrier issued, there can be no doubt that every company named in such tickets, and over whose lines these tickets call for transportation, is a party to the contract,—as much so as the initial carrier issuing the ticket,—and entitled to the full benefits and subject to the full

obligations of the contract, whatever the result of this may be. Whatever relief or redress, therefore, any particular common carrier concerned in one of these tickets may be entitled to at law or in equity is available to such carrier on tickets issued by other carriers as well as those issued by such particular carrier; and the damage sustained by such carrier is not confined to the tickets which it issues, but also extends to tickets to which it is a party in the sense above explained, and the damages which are resulting and may probably result to the carrier are to be estimated in this aspect of his right to protection in respect of both classes of tickets. It is not necessary, after having stated the facts at length, to say that it is perfectly apparent that practically these complainants are without any adequate redress at law for violation of these ticket contracts, and that for damages which they may sustain, if there is no remedy in equity, there is none whatever, in any just sense. Indeed, I do not understand the eminent counsel for the defendants to contend that the multitude of suits at law, in any form in which they might be technically maintained, would bring any substantial result to the complainants. On the contrary, it is perfectly apparent that it would only involve the companies in further loss, in the outlay necessary to meet large bills of cost against insolvent persons, to say nothing of other difficulties which are obvious enough. It may be reasonably supposed that one of these brokers will purchase and sell at the lowest limit 500 tickets during the Exposition, with the average loss to the carrier on each ticket of $5. If 500 separate suits at law for breach of the contract in each ticket is the only mode of redress to the carrier, it requires no comment to show that here is a striking failure of justice. The injury is obviously irreparable. It may make this point more clear if a right understanding is had of what constitutes an irreparable injury. In Wahle v. Reinbach, 76 Ill. 322, the supreme court of Illinois approved a definition of these terms in the following language:

"By 'irreparable injury' is not meant such injury as is beyond the possibility of repair, or beyond possible compensation in damages, nor necessarily great injury or great damage, but that species of injury, whether great or small, that ought not to be submitted to on the one hand or inflicted on the other; and, because it is so large on the one hand, or so small on the other, is of such constant and frequent recurrence that no fair or reasonable redress can be had therefor in a court of law."

In Parker v. Woolen Co., 2 Black, 551, Mr. Justice Swayne, discussing the subject of interference by a court of equity on the accepted ground of a multiplicity of suits, said:

"It will also give its aid to prevent oppressive and interminable litigation, or a multiplicity of suits, or where the injury is of such a nature that it cannot be adequately compensated by damages at law, or is such as, from its continuance or permanent mischief, must occasion a constantly recurring grievance, which cannot be prevented otherwise than by an injunction. Mitf. Eq. Pl., by Jeremy, 114, 145; Jeremy, Eq. Jur. 300; 1 Dick, 163; 16 Ves. 342; Corporation of the City of New York v. Schermerhorn, 6 Johns. Ch. 46; Railroad Co. v. Artcher, 6 Paige, 83."

So, in Warren Mills v. New Orleans Seed Co., 65 Miss. 391, 4 South. 298, the facts were that complainant was in the business of buying, collecting, and crushing cotton seed, and was the owner of several