isfaction of his obligation upon the note, because he received and retained, and has realized upon, the other notes and securities which were delivered to the bank at the time the agreement was made, as part of the same transaction. But the notes and securities which the defendant delivered to the Columbia National Bank were rightfully the property of the Columbia National Bank, because they were taken by the defendant in liquidation of stock which he held as trustee for the Columbia National Bank. The plaintiff therefore had a right to realize all he could upon said securities, for the benefit of the trust which he represents; and the defendant has no legitimate claim of right to retain the remaining portion of the dividend which he received in money, nor any legal right to pay the note which he gave in consideration of money received in any kind of property other than money. Findings of fact and a judgment in favor of the plaintiff will be made and entered in accordance with this opinion.

FIRST NAT. BANK OF CONCORD v. HAWKINS.

(Circuit Court of Appeals, First Circuit. July 20, 1897.)

No. 202.

Opinion on Petition for Rehearing. For former opinion, see 24 C. C. A. 444, 79 Fed. 51.

Reargued before COLT and PUTNAM, Circuit Judges, and WEBB, District Judge.

PUTNAM, Circuit Judge. The plaintiff in error has filed a petition for a rehearing, resting on Bank v. Kennedy, 167 U. S. 362, 17 Sup. Ct. 831, which was decided a few weeks after our decision in this case. The issue considered by the supreme court was the liability of a national bank as a stockholder in a state savings bank, while the question before us was as to its liability as a stockholder in another national bank. The question discussed by the supreme court was more largely that of ultra vires than that of the policy of the statutes relating to national banking associations, and its line of decisions which we understood to bind us in the case at bar was not particularly noticed by it. Therefore it does not follow beyond question that Bank v. Kennedy is decisive of the case at bar. Inasmuch as the defendant in error has undoubted means of relief by a writ of error, we, under the circumstances, are of the opinion that the petition should be denied. Petition for rehearing denied; mandate to stay until further order.

UNITED STATES v. DE COURSEY.

(District Court, N. D. New York. August 17, 1897.)

1. INDICTMENT — VIOLATION OF INTERSTATE COMMERCE ACT — DESCRIPTION OF OFFENSE.
   An indictment under section 2 of the interstate commerce act, which fully and amply alleges all the details of time, place, distance, amount, and kind of freight transported for A., and then charges that the service was for a less compensation than was received from B. "for doing for him a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions," sufficiently describes the services rendered for B.
2. RECEIVER OF RAILROAD—CRIMINAL LIABILITY—FAILURE TO OBSERVE JOINT RATE.
   A receiver not being bound to continue contracts made before his appointment, is not criminally liable, under section 6 of the interstate commerce act, for the violation of a joint tariff previously established by the railroad company of which he is receiver and another company, and which he has not ratified, adopted, or recognized in any way.

William F. Mackey, Asst. U. S. Atty., and John T. Marchand, for the United States.

John G. Milburn, for defendant.

COXE, District Judge. The indictment contains two counts. The first count alleges that the defendant, being receiver of the Western New York & Pennsylvania Railroad Company and a common carrier, received from one George E. Henry, for transporting his coal, more money than he received from the Fairmount Coal & Coke Company for doing a similar service; that this was accomplished by means of a drawback paid the Fairmount Company of $485.41; that the payment of this sum was an unlawful and unjust discrimination in favor of the coal company and against said Henry which is prohibited by section 2 of the interstate commerce act. It is argued that this count is defective for the reason that it fails to state facts sufficient to sustain the charge of unjust discrimination. There is no allegation, it is said, stating the kind of merchandise transported for Henry or the points between which it was carried or the amount received from him. In a strict technical sense this is true. But, on the other hand, it will be admitted, that the allegation as to the transaction with the Fairmount Company is ample and concise. All the details of time, place, distance and amount are there clearly stated. The indictment then proceeds, using the language of the statute, to charge that the service was for a less compensation than was received from Henry "for doing for him a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions." This language imports into the averment regarding Henry the statements already made concerning the coal company. For instance, there can be no doubt that the allegation is that the merchandise carried for Henry was coal; that in June, 1894, it was conveyed from Sligo Branch mines and Fairmount, or near these places, to the city of Buffalo, or near that city, in about the same quantities as that shipped by the