

"It might continue in that condition for a year or two years, or for only a day. * * * We do not mean to say that if a tax collector should be stationed at every ferry and railroad depot in the city of New York, charged with the duty of collecting a tax on every wagon load or car load of produce or merchandise brought into the city, that it would not be a regulation of and restraint upon interstate commerce, so far as the tax should be imposed on articles brought from other states. We think it would be, and that it would be an encroachment upon the exclusive power of congress."

Bearing upon this question is the case of *Brown v. Maryland*, 12 Wheat. 419; also, *Leisy v. Hardin*, 135 U. S. 108, 10 Sup. Ct. 684. In this case, Mr. Chief Justice Fuller, speaking for the court, says:

"That the point of time when the prohibition ceases, and the power of the state to tax commences, is not the instant when the article enters the country, but when the importer has so acted upon it that it has become incorporated and mixed up with the mass of property in the country, which happens when the original package is no longer such in his hands; that the distinction is obvious between a tax which intercepts the import as an import on its way to become incorporated with the general mass of property, and a tax which finds the article already incorporated with that mass by the act of the importer."

This live stock is shipped from different states for immediate sale, and, if the market at Kansas City is not satisfactory, it is to be shipped to another market. I cannot believe it ceases to be the subject of interstate commerce when unloaded into the stock yards. Sections 4386 and 4387 of the Revised Statutes humanely prohibit any railroad company whose road forms any part of a line over which animals are conveyed from one state to another from confining them in cars over 28 consecutive hours without unloading them for rest, water, and food for at least 5 consecutive hours. Under the act of congress of May 29, 1884, establishing a "Bureau of Animal Industry," and the act of March 3, 1891, for the inspection of live cattle, hogs, etc., the general government has established inspectors at the Kansas City Stock Yards, assuming that such stock comes within the purview of said acts of congress. While realizing the importance of the issue involved in this case, and the responsibility of making application of the "Anti-Trust Act" to a new order of facts, I am impelled to the conclusion that, under the facts and the law applicable thereto, the prayer of this bill should be granted.

HENNESSEY v. BUDDE et al.

(Circuit Court, S. D. New York. August 26, 1897.)

1. VIOLATION OF INJUNCTION—FINDING OF REFEREE.

The finding of a referee, upon conflicting evidence, that an injunction defendant has not violated the injunction, will not be disturbed.

2. SAME—COSTS OF REFERENCE.

Where an injunction complainant has proceeded to a reference in a proceeding to punish the defendant for a violation of the injunction, he should, if unsuccessful, pay the costs of the reference.

John A. Straley, for the motion.

S. L. Pincoffs, opposed.

LACOMBE, Circuit Judge. As the case stood when it was sent to the referee, there was such a conflict of evidence on the face of the affidavits that complainant was not entitled to an order punishing the defendants, or either of them, for contempt. Had the matter stopped there, the application would have been denied, without costs. Hoping, however, to make out a case of violation of the injunction, complainant proceeded to the reference, and, if unsuccessful, should pay the costs thereof.

Before the referee, complainant, irrespective even of Duffy's testimony, made out a prima facie case, but upon all material points defendants' witnesses flatly contradicted those called by the complainant; and the court sees no reason to overrule the conclusions of the referee, who saw the witnesses and heard their testimony. The objections to report are overruled, report confirmed, and order to that effect entered, providing that complainant pays the referee's fees and expenses of the reference. Referee's fee is fixed at \$75

CALIFORNIA SAFE-DEPOSIT & TRUST CO. v. YAKIMA INV. CO. et al.

(Circuit Court, D. Washington, S. D. July 5, 1897.)

1. IRRIGATION COMPANIES—PREFERRED DEBTS—EQUITY RULE OF PRIORITY.

The modern rule of equity, giving preference and priority to debts incurred in the operation of railroads over existing mortgages, has its foundation and justification in, and has been evolved from, conditions peculiar to the nature of railroad franchises; and it is a serious question whether it may properly be extended to cases where the mortgaged property consists of canals and works for irrigating land.

2. SAME—LATERAL DITCHES—COST OF CONSTRUCTION.

Claims for services in the construction of lateral ditches extended from time to time, as required in the actual operation of conducting water to the different tracts of land to be irrigated by an irrigation company, will be treated as cost of original construction, and not preferential debts, even under the equity rule applicable to railroads.

Charles E. Shepard, for petitioners.

D. J. Crowley, for receivers.

O. F. Paxton, for plaintiff.

HANFORD, District Judge. Now, on this 5th day of July, 1897, this cause having been brought on for hearing upon the petitions of H. K. Owens and George J. McLean to establish their respective claims as preferred creditors of the defendant company, pursuant to a stipulation in writing, whereby the parties have consented that said cause may be heard and determined as to the claims of said petitioners, at Seattle, and the court having heard and considered the pleadings of the parties, and the evidence, and arguments of counsel, and being now sufficiently advised in the premises, doth find as follows:

(1) The petitioner H. K. Owens is a civil engineer, and skilled in his profession.

(2) At a time prior to the appointment of the receivers, to wit, in the month of June, 1893, said petitioner H. K. Owens was employed by the defendant the Yakima Investment Company as a consulting