

other Griffin merchants, might obtain by increasing the Macon rates, when compared to the stupendous disadvantage which would almost certainly result to the latter community, and to one of its principal railroads, if the competition of carrier with carrier and market with market, ever present there, should be ignored by the courts? Shall the authorities of government have no concern for the safety of millions of capital invested or accumulated through long years of enterprise and diligent business exertion by the people of the latter city? Shall the millions they have invested in railroads from their own means, to afford to the state great systems of transportation, result in their ruin? Shall government undertake the impossible, but injurious, task of making the commercial advantages of one place equal to those of another? It might as well attempt to equalize the intellectual powers of its people. There should be no attempt to deprive a community of its natural advantages, or those legitimate rewards which flow from large investments, business industries, and competing systems of transportation to facilitate and increase commerce. The act to regulate interstate commerce has no such purpose, and yet this appears to be the inevitable result of the relief the complainants seek in this case, without any adequate corresponding advantage either to themselves or to the community in which they live. The application is for a temporary injunction, the first effect of which would be to immediately disorganize and disarrange the entire commerce of which Macon is the receiving and distributing point, with the more injurious consequences to which I have already adverted. For the reasons stated, and because of this immediate and this ultimate result, the order of the interstate commerce commission, on which the application is based, is believed to be contrary to the policy of the law, and the relief sought by the complainants in this application is denied.

CITIZENS' BANK OF TINA, MO., v. ADAMS et al.

(Circuit Court, N. D. Illinois. February 15, 1897.)

No. 22,883.

EQUITABLE LIEN—ADVANCES BY BANK.

A bank advancing money to stockmen for the purchase of stock, with the understanding that, according to the previous course of business, the stock would be shipped to commission merchants, sold, and the proceeds placed to the credit of the bank, for its reimbursement, gives the bank a right to such proceeds as against the commission merchants, who are aware of the understanding and previous course of business, and they cannot appropriate such proceeds to the payment of a debt due them from the shippers.

F. A. Riddle, for complainant.

L. H. Bisbee, for defendants.

GROSSCUP, District Judge (orally). The material facts in this case are as follows: Parsley & Markwell were buyers of cattle and shippers

of the same to the stock yards at Chicago, beginning early in 1889 and running until October, 1892. They had an arrangement with the complainant whereby the complainant honored their checks for the cattle thus purchased, and thus advanced them the purchase money. During this whole period the cattle were shipped to the defendants, who were commission merchants in the Chicago Stock Yards, who, upon the receiving and selling of the same, after the deduction of their commissions, deposited the proceeds principally with the Drovers' National Bank of Chicago to the credit of the complainant. Occasionally a small amount, such as from \$5 to \$45, seems to have been given in currency to Markwell, and sometimes drafts and checks for considerable amounts appear to have been credited to the defendants' account as against Parsley & Markwell; but almost the entire amount of the proceeds during this period of more than three years was deposited directly to the complainant,—so much, at least, undoubtedly, as kept the complainant's charges on account of advances to Parsley & Markwell fully balanced. The fact that Adams & Burke during this whole period made these deposits to the credit of the complainant was unquestionably due to the arrangement between the parties to the transaction. or, at least, to the request made by Parsley & Markwell upon Adams & Burke that the proceeds should thus be dealt with. During this period, from time to time, beginning in August, 1890, and ending in November, 1891, drafts were given by the defendants to Parsley & Markwell, for which the defendants took Parsley & Markwell's notes. These aggregated \$5,000. The first note was executed by Parsley & Markwell as a firm, but upon its renewal, and at the insistence of the defendants, the note was executed, supposedly, by Parsley and Markwell each individually. This indebtedness ran along from August, 1890, until October, 1892, without any portion of it being paid, and without its existence ever having come to the knowledge of the complainant. During that whole period the defendants were receiving, each month, large amounts from the proceeds of shipments of Parsley & Markwell, and deposited the same, as usual, to the credit of the complainant. At almost any time during this period the defendants were obtaining from the shipments enough money to discharge this note. I am convinced that the defendants knew that the complainant was advancing money upon the faith of the arrangement that the proceeds should be deposited to their credit, and knew, also, that any interruption of this arrangement by the withholding of proceeds to pay off these notes would lead to a rupture, and probably to a demand by the bank for a return of the fund. The last shipment made was in October, 1892, when the cashier of the complainant, in the presence and hearing of a soliciting agent of the defendants, advanced something like \$8,000, upon the assurance that, as soon as the stock was received in Chicago, the money would be deposited to the credit of the bank to meet certain obligations that the bank was obliged to keep with another bank. The defendants, however, upon the receipt and sale of this stock, withheld sufficient to pay off their note, and deposited the balance. This bill is to compel them to account to the complainant for the sums thus withheld.

I hold, upon the ruling in *Bank v. Gillespie*, 137 U. S. 411, 11 Sup. Ct. 118, that as between the defendants, the commission merchants, and the complainant advancing the money, and by virtue of the understanding between them, both as evidenced by a long course of dealing and direct communication, the complainant bank was the beneficial owner and shipper of these cattle, and was therefore entitled to the proceeds up to the amount of its advancements. There will therefore be a decree for the complainant.

ADAMS et al. v. CITIZENS' BANK OF TINA, MO.¹

(Circuit Court of Appeals, Seventh Circuit. January 3, 1898.)

No. 401.

CUSTOM—EQUITABLE LIEN—DECLARATION OF AGENT—PLEADING.

A firm purchased live stock, paying therefor with money borrowed from a bank under a promise that the proceeds of the sale thereof "should come back to the bank," and consigned the same to a commission firm, who, in prior like consignments, had deposited the proceeds of sales to the credit of such bank for the benefit of the consignors, but who applied a portion of the proceeds in this instance to the payment of a note owing to them from the consignors, who authorized such application. Prior to the shipment, an agent of the commission firm stated to the bank, but not in the presence of the consignors, that the proceeds would be deposited in the usual way, but it appeared that the bank did not rely thereon, but upon the good faith previously shown by the commission men. *Held*, that the bank had no equitable lien or interest in either the stock or in the proceeds of the sale, entitling a recovery from the commission firm of the amount retained by them from the proceeds of such sale. *Bank v. Gillespie*, 11 Sup. Ct. 118, 137 U. S. 411, distinguished.

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

This suit was brought by the Citizens' Bank of Tina, a corporation of Missouri, against George Adams and John C. Burke, citizens of Illinois, doing business under the name of George Adams & Burke, as commission merchants selling live stock at the stock yards of Chicago. John Parsley and William Markwell, residing at Tina, Mo., were partners, engaged there in purchasing and shipping live stock to the Chicago market for sale, shipping mainly, if not exclusively, to Adams & Burke. Frank Lovell was an agent of Adams & Burke, employed to solicit consignments of stock to that firm for sale. Parsley & Markwell were accustomed to pay for stock which they purchased by means of checks, which commonly were overdrafts, upon the Citizens' Bank, the bank being reimbursed by the net proceeds of sales, which, under instructions to that effect from Parsley & Markwell, Adams & Burke were accustomed to deposit with the Drovers' National Bank of Chicago to the credit of the Citizens' Bank for the use or benefit of Parsley & Markwell. The original bill was amended by striking out the fourth to ninth paragraphs, inclusive, and inserting other or modified averments, and, as amended, the bill charges, in substance, in addition to the facts above stated, that on October 1, 1892, Parsley & Markwell, having purchased of Joe Allamong & Son a number of cattle for the price of \$8,012.68, gave in payment a check upon the Citizens' Bank; that, in pursuance of the usual and ordinary course of the business relations which had existed between the bank and Parsley & Markwell and Adams & Burke for several years before, the bank credited Allamong & Son with the amount of the check, and thereby paid them the full price of the stock so sold; that Adams & Burke had notice, before the sale of the stock by

¹ Rehearing denied March 5, 1898.