

passes not the slightest upon the rights of others. While one of his agents did write to the defendant, suggesting an imitation of plaintiff's package, yet the defendant forbade any such imitation; and, when the agent who had so written saw the defendant's package, he commented in language quite emphatic upon the idea of its presenting any similarity. The diminution in the plaintiff's sales, and the increase of defendant's, are easily accounted for. The defendant sold to dealers at a less price than the plaintiff,—something like six cents a pound to jobbers. It is not strange, therefore, that they preferred to deal in his, rather than the plaintiff's, goods; for, the retail price being the same, on every package the dealer made a trifle more by selling defendant's than plaintiff's. It is not at all improbable (indeed, it is suggested by the testimony) that not infrequently the dealers sought to press defendant's package on the purchaser in lieu of plaintiff's. But a competition which rests on the matter of difference in price is not a competition which the courts can declare unfair, or can restrain. It is a competition which must be met in some other way than by a lawsuit. So, while we are not disposed to question the good faith of the plaintiff in this suit, or of the executive committee of the association in the change of ruling, we think that the testimony as a whole cannot be said to disclose any unfair competition, and nothing more than ordinary and proper business competition between manufacturers and sellers. Our conclusion, therefore, is that there was no error in the decision of the circuit court, and its decree is affirmed.

UNITED STATES v. SOUTHERN PAC. R. CO. et al.
(Circuit Court, S. D. California. April 25, 1898.)

No. 600.

PUBLIC LANDS—RAILROAD GRANTS—CONFIRMING TITLE OF BONA FIDE PURCHASERS.

Act March 2, 1896 (29 Stat. 42), supplementing Act March 3, 1887 (24 Stat. 556), confirmed the title of bona fide purchasers of land patented under railroad grants, though such patents were issued after the commencement of suit by the United States to forfeit the grants, where made in pursuance of contracts previously entered into by the railroad company in good faith.

This was a suit in equity by the United States against the Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, trustees, and the Central Trust Company of New York.

The United States Attorney and Joseph H. Call, Special Asst. U. S. Atty.

W. F. Herrin and Wm. Singer, Jr., for defendants.

ROSS, Circuit Judge. The main purpose of the bill in this suit is to obtain a decree quieting, as against the Southern Pacific Railroad Company and its mortgagees, the complainant's alleged title to all of the odd-numbered sections of land in California within the indemnity as well as the primary limits of the grant made by congress to the Atlantic & Pacific Railroad Company, of date July 27, 1866 (14 Stat.

292), with the exception of certain specified subdivisions involved in previous litigation between the parties. The defendants assert title to and rights in the lands under and by virtue of the grants made by congress to the Southern Pacific Railroad Company by the same act (July 27, 1866), as well as by the joint resolution of congress of June 28, 1870 (16 Stat. 382), and by the act of March 3, 1871 (16 Stat. 573). These grants were the subjects of full consideration in cases heretofore brought in this court, and finally determined on appeal by the supreme court of the United States. *U. S. v. Southern Pac. R. Co.*, 146 U. S. 570, 13 Sup. Ct. 152; *U. S. v. Colton Marble & Lime Co.*, 146 U. S. 615, 13 Sup. Ct. 163; *U. S. v. Southern Pac. R. Co.*, Id.; and *Southern Pac. R. Co. v. U. S.*, 168 U. S. 1, 18 Sup. Ct. 18. In my opinion, those decisions of the supreme court determined that the Southern Pacific Company, by its grants, acquired no interest or right in or to any of the odd-numbered sections of land embraced within the granted or indemnity limits of the Atlantic & Pacific Railroad Company, and mortgaged none to its co-defendants. I am of opinion, further, that by the act of congress of March 2, 1896 (29 Stat. 42), supplementing that of March 3, 1887 (24 Stat. 556), such of the lands described in the bill as have been patented by the authorities of the United States to, and were sold by, the defendant railroad company, for value and in good faith, were thereby confirmed to such purchasers, whether such patents were issued prior to the institution of this suit or subsequent thereto for lands for which a contract of sale had been entered into in good faith and for value between the railroad company and the purchaser. For such lands no suit can be maintained by the government to disturb the title of the purchaser, for the reason that congress, by the legislation referred to, has confirmed it. *Winona & St. P. R. Co. v. U. S.*, 165 U. S. 463, 483, 17 Sup. Ct. 368, 381. The reasons for these conclusions will be found fully stated in the opinions in the cases cited, and it is deemed unnecessary to now do more than to refer to them. I do not understand that there is any dispute between the parties as to the lands for which patents have been issued, nor, as to the patents that were issued after the commencement of the suit, that it is disputed that they were for lands purchased of the railroad company in good faith, and for value, before the commencement of the suit. A decree will be entered canceling such of the patents as were issued to the Southern Pacific Railroad Company for lands included in the bill, and not sold by it to a purchaser in good faith and for value, and quieting the title of the complainant, as against the defendants, as to all such lands, and as to all unpatented odd-numbered sections included in the bill situated within 30 miles on either side of the Atlantic & Pacific Railroad as indicated by the map filed by it in 1872 in the general land office, and further decreeing that the complainant take nothing as to such of the said lands as have been patented and were sold by the defendant company to purchasers in good faith and for value.

TUTTLE v. CLAFLIN et al.

(Circuit Court, S. D. New York. March 29, 1898.)

1. ATTORNEY AND CLIENT—LIEN FOR COMPENSATION—AUTHORITY TO RETAIN.

Where an assignee for benefit of creditors, who was engaged in prosecuting a suit for infringement of a patent belonging to the estate, contracted with a third person, who was suing the same party for infringement on another patent, to unite their interests for their mutual benefit, and authorized such third person to carry on or settle the litigation at his own expense and divide the net amount recovered equally between them, *held*, that the latter had authority to employ a solicitor and counsel who should be entitled to a lien for their fees on the fund recovered by their efforts.

2. SAME—SOLICITOR AND COUNSEL.

Whether a claim for counsel fees is made directly or indirectly through the solicitor is immaterial, since a fund recovered by their efforts is subject to the payment of the fair and reasonable value of their services, before it can be turned over to the parties entitled.

3. SAME—AMOUNT OF FEE.

\$13,285 *held* to be a reasonable fee for counsel who expended portions of their time for 322 days, aggregating at least 163 full days' labor, in the prosecution of a patent infringement suit.

4. SAME—LIEN—ENFORCEMENT.

Services of counsel in an equity suit, resulting in a money decree in favor of a trust estate, are secured by a lien on the decree, and will be enforced by the court which rendered it, and which is familiar with all the facts showing the value of the services.

This was a proceeding in the above-entitled cause to enforce a lien for fees, in favor of the solicitor and counsel for complainant, on the fund recovered by their services. See 19 Fed. 599; 62 Fed. 453; 13 C. C. A. 281, 66 Fed. 7; 22 C. C. A. 138, 76 Fed. 227; 27 C. C. A. 255, 82 Fed. 744. The cause is heard on motion to confirm the master's report. The master found and reported as follows:

The action was brought for infringement of certain letters patent, and for the recovery of profits realized by the defendants from such infringement. It proceeded to final hearing, and resulted in a decree in favor of the complainant, entered on April 3, 1884, whereby it was referred to a master, to take and state the usual account of profits and damages. Proceedings upon this accounting were begun on April 10, 1884, and remained in progress until the filing of the master's report on August 26, 1893. As a result of this accounting, and after a long and vigorously contested litigation, there was finally paid into court, to the credit of this cause, the fund upon which a lien is claimed by the petitioners, amounting to \$43,513.76, with interest thereon at the rate of 1½ per cent. per annum from April 19, 1897, the date of the deposit. The complainant's original solicitor was one Charles B. Stoughton. The claimant Milliken was substituted as solicitor of record on the 10th of April, 1884, and the petitioner Benjamin F. Lee was retained as counsel in or about the month of March, 1890, while the proceedings before the master were in progress. Each of the gentlemen named remained connected with the case until its termination. The claim of Mr. Milliken is \$3,500, and that of Mr. Lee, as originally presented in a bill rendered by him to the complainant and his solicitor at the close of the case, is \$12,350, less credits of \$1,850, or \$10,500. Objections are made to these claims—First, on the ground that the charges for services are excessive in amount; and, second, that the claims have no priority or lien upon the fund. The last-named objection will be first considered. The facts pertinent thereto are as follows:

The patent involved in this suit was owned by the Elm City Company, a corporation organized under the laws of the state of Connecticut. On March 9, 1876, said corporation, being insolvent, made a voluntary assignment for