

there are incumbrances on properties which his present customers are intending to purchase.

This case comes up on demurrer to a bill filed by the Commonwealth Title Insurance and Trust Company, charging that the defendant, Samuel Bell, clerk of the circuit court for the Eastern district of Pennsylvania, wrongfully denies to its representatives access to the indices, records, and papers of his office.

John G. Johnson, for plaintiff.

James M. Beck, for defendant.

DALLAS, Circuit Judge. By section 2 of the statute of August 1, 1888, entitled "An act to regulate the liens of judgments and decrees of the courts of the United States" (25 Stat. 357; Rev. St. Supp. p. 602), it is provided:

"That the clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross-indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public."

The plaintiff is a corporation engaged in the business of giving certificates and making insurances with respect to the existence of liens upon real estate, etc. It alleges that it has applied to the defendant, who is the clerk of the circuit court for this district, requesting him to give to its representatives access to the indices, cross-indices, records, and papers in his office, at such times and under such circumstances as would not interfere with the proper conduct of the business of the office, for the purpose of ascertaining whether or not there were incumbrances against properties intended to be purchased by its customers. This request the clerk, it is alleged, has declined to accede to. It will be observed, and, in view of certain decisions, it should be noted, that the plaintiff's demand does not extend beyond the assertion of a right to make examinations for the specific purpose of ascertaining the existence or non-existence of incumbrances upon properties which its actual present customers are intending to purchase. It is, therefore, this restricted right which is denied by the sixth ground assigned as cause of demurrer, but, in my opinion, congress has expressly conferred it by enacting that "such indices and records shall, at all times, be open to the inspection and examination of the public." This question was before Judge Caldwell in the case of *In re Chambers*, 44 Fed. 786, and, after fully considering and discussing the whole subject in a manner which is quite satisfactory, he arrived at the conclusion which I, also, have reached, and which seems to be the only possible one. The other causes of demurrer assigned need not be now considered. The plaintiff may, if it should be so advised, move for leave to amend its bill; and the defendant will have leave to answer *sec. reg.*, and he may, by answer, again present any of the questions presented by this demurrer, other than that which has now been considered and disposed of. Subject to this reservation, the demurrer is overruled.

## SOUTHERN PAC. CO. v. BOARD OF RAILROAD COM'RS et al.

(Circuit Court, N. D. California. April 25, 1898.)

No. 12,129.

**1. TAXATION OF RAILROAD PROPERTY—VALUATION—RETURN—ESTOPPEL—EVIDENCE.**

The return by a railroad company of a valuation of a part of its property to the board of equalization does not constitute an estoppel, in an aggregate valuation of the whole property, made up in part by county assessors, but is nevertheless competent evidence of the value of such part of the property, to be considered in arriving at the valuation to be placed upon the whole property for the purpose of fixing rates of transportation.

**2. PROCEEDINGS OF RAILROAD COMMISSIONERS—REDUCTION OF RATES—INTENTION OF COMMISSIONERS.**

In a suit to enjoin the board of railroad commissioners from enforcing resolutions alleged to have been adopted reducing rates of transportation, the court will consider what the board did in reference to the disposition of such resolutions, but not what it or its members intended or threatened to do.

Mr. Herrin (J. C. Martin, J. E. Toulds, E. S. Pillsbury, and John Garber, of counsel), for complainant.

W. F. Fitzgerald, Atty. Gen. of Cal. (Robt. Y. Hayne and W. W. Foote, of counsel), for defendants.

**MORROW**, Circuit Judge (orally). This is a suit in equity brought by the complainant against the board of railroad commissioners to enjoin the board from enforcing certain resolutions reducing the rates of transportation on grain and other freight on the lines of railroad operated by the complainant in the state of California. The complainant interposed 50 exceptions to the answer of the defendants, and 1 additional exception after the report of the master had been filed, making 51 exceptions in all. The exceptions were referred to Hon. A. C. Freeman, master pro hac vice, who has submitted an able report upon the issues involved in the bill of complaint, and the pertinence and materiality of the matters alleged in the answer, to which exceptions have been taken. To the report of the master the complainant has filed 13 exceptions; and the defendants, 6 exceptions. The exceptions of the complainant refer mainly to the allegations contained in the answer respecting the valuations placed upon the railroad property returned to the board of equalization. The answer sets up the provisions of the constitution and the law of the state, under which returns are made by the various railroad corporations in the state to the board of equalization concerning the actual value of the roadway, roadbed, rails, and rolling stock owned by such corporations, and, in accordance with such requirement, the returns of the complainant, fixing the valuation of the roadway, roadbed, rails, and rolling stock of the various lines of road leased to the complainant. There is also an averment respecting the assessments made by the county assessors of the various counties through which the lines of road pass, fixing the value of the depots, stations, shops, buildings upon the right of way, water tanks, telegraph lines, sheds, signal apparatus, steamers, terminal yards, and all the railroad property not included under the designa-