

the *Debris* or any other case. Indeed, all that was said in the discussion of the questions in that case, as will be seen from the extracts given, leads in a contrary direction. The case was a new one, involving vast interests. The manifest hardship of stopping hydraulic mining, upon mining investments was painfully evident to the court; and being extremely anxious not to interfere with those interests any further than was absolutely necessary to protect the rights of others wrongfully injured by these operations, and wishing to be in a position to relieve the mining interests from any unnecessary hardship, should any change of conditions or other contingency arise by which it could properly be obviated, it was in conclusion observed:

"As it is possible that some mode may be devised in the future for obviating the injuries, either one of those suggested, or some other successfully carried out, so as to be both safe and effective, a clause will be inserted in the decree giving leave on any future occasion, when some such plan may have been successfully executed, to apply to the court for a modification or suspension of the injunction."

The clause suggested, whether wisely or not we do not yet know, was accordingly inserted in the decree. But it in no degree indicated what would be deemed "safe and effective" to protect the interests of the parties in such sense as to justify a modification of the decree; and there was, certainly, no indication as to what means would be "safe and effective" as to the mine then in question, and much less at the point where the dam now under consideration is located.

Let the motion be denied, and the order temporarily suspending the operation of the injunction against the Liberty Hill Consolidated Mining & Water Company be vacated, and the injunction reinstated.

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CENTRAL TRUST CO. *v.* WABASH, ST. L. & P. RY. CO. (HANNIBAL WATER CO., Intervenor.)<sup>1</sup>

(Circuit Court, E. D. Missouri. June 26, 1886.)

WATER COMPANIES—CONTRACTS—SALES—RAILROADS.

Where, under a contract with a water company, a railroad is authorized to use a specified quantity of water for so much per annum, but consumes only a portion of that quantity, it cannot sell the balance.

In Equity.

This is an action to recover the value of water taken by the receivers of the Wabash, St. Louis & Pacific Railway Company from the mains of the intervenor, at the round-house of the Missouri Pacific Railway Company. The defense is that the water was sold to the defendant by the Missouri Pacific Railway Company, and that the

<sup>1</sup> Reported by Benj. F. Rex, Esq., of the St. Louis bar.

latter had a right, under its contract with intervenor, to make the sale. Said contract provides that the intervenor shall furnish water to the Missouri Pacific Railway Company, "at Hannibal station, in their tank, at round-house, and at Penstock, \* \* \* for the general uses of the road at this point, for a term of ten years, \* \* \* for the sum of \$1,080 per annum. \* \* \* It is further agreed and understood that the above price \* \* \* is based on an average daily consumption of 50,000 gallons, to be determined either by meter measurement or by the estimated capacity of the engines watered. \* \* \* When said daily average shall exceed 50,000 gallons, the party of the second part shall pay for such excess at the rate of 10 cents per 1,000 gallons." The amount used by both the Wabash and the Missouri Pacific Railway Company did not exceed 50,000 gallons per month.

*H. D. Wood*, for intervenor.

*G. S. Grover*, for receivers.

TREAT, J., (*orally*.) In the matter of the intervening petition of the Hannibal Water Company, according to the terms of the contract submitted to the court, it appears that an arrangement was made between the intervenor and the Missouri Pacific Railroad for the supply of water, determined by the provisions of said contract. There was no authority on the part of the Missouri Pacific Railroad to sublet or furnish supplies to other parties. It having done so, and received from the respondent in this case that amount of money, it should refund the same, for the value of the water supplied belongs to the intervenor, and not to the Missouri Pacific.

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*In re* NORTH BLOOMFIELD GRAVEL MIN. CO.

WOODRUFF *v.* NORTH BLOOMFIELD GRAVEL MIN. CO. and others.

(*Circuit Court, D. California. May 9, 1886.*)

CONTEMPT—VIOLATION OF INJUNCTION—MINING DEBRIS.

Running a tunnel 2,500 feet into respondent's mine, and washing the earth removed therefrom, and washing the earth from caves of the banks, occurring from time to time, by a hydraulic monitor, and other washings of earth and *debris* by water flowing over the high banks of the mine into a tributary of the Yuba river, is a violation of the injunction perpetually restraining defendants "from discharging or dumping into the Yuba river, or its tributaries, any of the tailings, boulders, cobble-stones, gravel, sand, clay, *debris*, or other refuse matter," from any of their mines; constitutes a violation of the injunction; and a contempt. Punishment: A fine of \$1,500 imposed as a punishment for the contempt.

Before SAWYER, J.