

the purchase money, the company should execute to the purchaser a quitclaim deed, and the company should have a credit for the lands so quitclaimed at the rate of 25 cents per acre, this upon the presumption that the company had paid. But no payment of any money was ever made by the company to the state, so that no title ever vested in the company under this act; and all the confirmations provided in the act became inoperative, so far as it related to these lands, the title to which thereafter rested, as the act terms it, in the state, unless since transferred to others by patent; so that, in my opinion, the act of 1873 in no way conflicts with the rights and title of complainant.

The main defense set up to the original bills and rights set up in the cross-bills is that the defendants in the one and the complainants in the other are innocent purchasers for value, without notice of the defects in the chain of title under which they hold, and of any notice of complainants' title, and are not affected thereby. As to the chain of title under which they claim, they are chargeable with notice of all that goes to make their chain of title, so far as the same appears of record, or facts to which they refer, and upon which they depend, whether they examined them or not. If they did not, they must take the consequences of their neglect. Hall and wife claim under Baldwin's deed. That deed refers to the act of 1871. By reference to that act they would have found that lands theretofore sold were not transferred to the company. They would further have found that the bond was required as a condition precedent to the transfer of the lands to the company, and the place where the bond was to be filed, and could be found; and, if the one purporting to be the one required was not discovered to be sufficient, must be held to take the risk that it was the proper bond, and that the claim of title was complete from the state,—the source of title under which both parties claim. For these reasons I am satisfied that Hall and wife and Mrs. Turner do not occupy the position of innocent purchasers for value without notice of the defect in their own claims of title. The registry laws of the state have no bearing upon the title of complainant under his certificate of purchase; these laws do not require these certificates or patents to be registered as notice to the world of their existence. The patents may be registered, and copies made evidence, and that is all. The bar of six months, provided in the act of 1873, only applied to the company, and, before it expired, the company had forfeited all rights to any of the lands by reason of noncompliance with any of the conditions imposed, and no limitations of the time within which the patents should be applied for as against the state or any one else than the company have been passed by the legislature; and, the patents having been issued to the lands in controversy, I must hold that the plaintiff has shown a good title, equitable and legal, to the lands in controversy, and that the defendants to the original bill and complainants to the cross-bills have failed to establish their title to these lands so as to entitle them to the relief prayed for in the cross-bill.

Mrs. Turner has filed, as evidence in the cause, deeds from the auditor, but has failed to show the tax sales and report of the tax collector by

which the title to the lands under the sales was vested in the state, and without which the auditor's conveyance, even if the sales were valid, must fail to show title under them in Mrs. Turner. While the complainants under their cross-bills are not entitled to have their titles declared valid, and that of Bradford declared void and a cloud upon their titles, and to have them canceled as prayed for, yet, under the general prayer in the cross-bills, they are entitled to have the money expended by them in the payment of taxes, and Mrs. Turner is entitled to have the money paid by her to the auditor for the purchase of the title of the state refunded to her, with interest from the time the same was so paid. It makes no difference that Bradford applied to the tax assessor to have the lands assessed in his name, and that he applied to the tax collector to pay the taxes, and was refused the right to do so. The taxes were a charge upon the lands, and Hall and wife and Mrs. Turner paid them, believing in good faith that the lands belonged to them. They are justly and equitably entitled to have the money, with interest, refunded to them, and this charge will be a lien on the lands, and, if not paid within 60 days, the clerk of this court, as commissioner, will be directed to sell so much of the land for which the taxes were paid by the respective parties as will pay the same with the costs of sale. The result is that the prayer of the complainant in the original bill must be granted, and the prayer of the complainants in the cross-bills, with the exception stated, must be denied. The complainant in the original bill will pay one-half the costs in each case, and the defendants in each case will pay the other half of the costs respectively.

THOMAS *et al.* v. PEORIA & R. I. RY. CO. *et al.*, (WESTERN CAR CO.,
Intervenor.)

(Circuit Court, N. D. Illinois. August 29, 1888.)

1. RAILROAD COMPANIES—BONDS AND MORTGAGES—FORECLOSURE—ACCOUNTING—CAR RENTS—LEASES—PUBLIC POLICY.

On foreclosure of the railroad mortgage in this case and the adjustment of claims of intervening creditors, the contract of lease of cars to the mortgagor company, by the car company dominated by the same persons, cannot be made the basis of an accounting for the use of the leased cars.

2. SAME.

But the lessor is entitled to such reasonable rent as could be obtained in the open market for similar cars, to be used in the same manner.

3. SAME—RECEIVERSHIP—CHARGES ON INCOME—CAR RENTS.

Where both before and during a receivership of the property of a railroad corporation pending mortgage foreclosure, moneys from current receipts are expended for improvements and equipment, a claim for rent of cars may be charged on the income during the receivership, and, if that is inadequate, upon the proceeds of the mortgaged property.

4. SAME—CLAIMS ACCRUING SIX MONTHS BEFORE RECEIVERSHIP.

In the absence of special circumstances, the income during the receivership, or the proceeds of the sale, will not be charged for rent of cars, claims for loss of cars, etc., accruing more than six months before the receivership.