

this case. So that the parties who entered (the patentees) had the right to purchase, and the government has received full pay,—the highest fixed price for the lands it has conveyed. While it may be true as a general proposition that a party may not do indirectly what he cannot do directly, yet when a new factor enters into any transaction it is limited thereby. Now, the right to purchase existed in these six individuals. They exercised that right, and it has gone; because, once exercised, it ceases. That is a new factor which enters into this transaction. Again, this is not one of those entries of land in which the party must by the statute act in his own behalf alone, and file an affidavit that he is not doing so for the benefit of others. No such provision exists in respect to the purchase of coal lands. A party purchasing may contract before his purchase to sell, and that contract may be enforced; and I know no reason why he may not contract away his right to purchase, it being a valuable right given by congress, having some of the elements of property, and with no prohibition upon its sale. So that it amounts to this: that while the ultimate purchaser—the party who paid the money—is this defendant, which could not purchase directly, it is true that the government has obtained full price for the lands, and also true that the parties in whose names the purchase was made lost by their purchase this property right given by the act of congress. There is therefore a new factor in the transaction. Under these circumstances the government cannot claim that it has been defrauded or wronged by the purchase of these coal lands. The demurrer to the bill will be sustained.

KINSLEY v. BUFFALO, N. Y. & P. R. Co.

(Circuit Court, W. D. Pennsylvania. November 20, 1888.)

1. CARRIERS—OF FREIGHT—DISCRIMINATION.

The doctrine of *Hays v. Pennsylvania Co.*, 12 Fed. Rep. 309, that discriminations by railroad companies in freight rates, based solely on the amount of freight shipped, are unwarrantable, approved.

2. SAME.

The larger proportionate expense attending the handling and transportation of a smaller shipment of freight does not, of itself, warrant a railroad company, or a receiver operating the railroad, in charging a higher rate thereon than was charged for a larger shipment.

3. SAME.

Such increased proportionate expense does not differentiate the service performed for the several shippers, nor the conditions or circumstances under which it was performed.

In Equity.

In the matter of the petition of A. L. Couper, alleging that G. Clinton Gardner, receiver of the Buffalo, New York & Philadelphia Railroad Company, (appointed by the court,) had made undue and unreasonable discrimination between himself and other persons in freight charges for the transportation of oil, etc.

R. F. Glenn, for petitioner.

James D. Hancock, for the receiver.

Before MCKENNAN and ACHESON, JJ.

PER CURIAM. The petitioner seeks to obtain reimbursement from the receiver of the sum of \$478.44, with interest from April 3, 1887, which he alleges was unlawfully exacted from him as and for freights for the transportation of oil upon the railroad in the custody of the receiver. The exaction of this sum is admitted, as is also the fact that a less rate was charged to another shipper of oil upon the railroad. This charge is justified by the master upon the ground that the quantity of oil shipped by another shipper was much larger than that shipped by the petitioner, and hence that the larger proportionate expense attending the handling and transportation of the smaller shipment warranted a higher rate than was charged for the larger shipment. In this conclusion we do not agree with the learned master. It does not differentiate the service performed for the several shippers, nor the conditions or circumstances under which it was performed. The only difference is that in one case the quantity shipped was larger, and in the other case it was smaller. This has been repeatedly held to be an insufficient and unwarrantable reason for discriminating rates of charge. See *Hays v. Pennsylvania Co.*, 12 Fed. Rep. 309. In the statement of the law by Judge BAXTER we concur, and for this reason we cannot approve the master's finding that the petition ought to be dismissed. We agree with the master that the petitioner's claim for hire of cars ought to be disallowed. We therefore direct that a decree be entered in favor of the petitioner for the sum of \$478.44, with interest from April 3, 1887, and costs against the Buffalo, New York & Philadelphia Railroad Company.

GOODRIDGE *et al.* v. UNION PAC. RY. CO. *et al.*

(Circuit Court, D. Colorado. January 9, 1889.)

1. CARRIERS—OF GOODS—DISCRIMINATION—CONSIDERATION.

To a complaint by dealers in coal against a railroad company for discrimination in allowing freight rates to a rival coal company lower than schedule rates, defendant alleged that defendant had become liable to the favored company for trespass on its mines; that defendant had given up the working of certain coal mines, and had procured the favored company to take said mines off defendant's hands; and in order to procure the coal needed for defendant's consumption, and to settle the claim for trespass, and to get rid of the operation of the mines, defendant entered into a contract by which the favored company was to supply all defendant's coal at a low figure, and defendant was to carry said company's coal at a low figure; and that by reason of said facts it was believed when said contract was made that the amount to be paid by said favored company would be equal to the schedule rates. *He'd.* that the answer set up considerations received by defendant from the favored company, for which less rates were given to the latter, on which no estimate could be made to ascertain the amount of the charge, and such answer was insufficient.