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*Western Telegraph Company v. Magnetic Telegraph Company.*

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structions from the captain to go for the brig, and to get there before the Hector if he could."

We are of opinion, therefore, that the evidence clearly shows that this collision was occasioned wholly through the fault of the master and pilot of the Mabey.

The decree of the Circuit Court is therefore reversed, with costs, and the record remitted with instructions to enter a decree in favor of libellant, and have such further proceedings as to justice and right may appertain.

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THE WESTERN TELEGRAPH COMPANY, APPELLANTS, *v.* THE MAGNETIC TELEGRAPH COMPANY AND ARUMAH S. ABELL AND ZENUS BARNUM.

Where there was a telegraph company from Baltimore to Wheeling, with branches to Washington and Pittsburg, and another company from Pittsburg to Philadelphia, and from Harrisburg to Baltimore; and the former company complained that the latter received messages at Philadelphia, sent from Pittsburg and Wheeling, directed to Baltimore and Washington; and there was no direct infringement of the patent right, nor any violation of a contract, the case is without a legal remedy.

Every person is at liberty to use a circuitous route, if he prefers it to a shorter route.

THIS was an appeal from the Circuit Court of the United States for the district of Maryland.

The case is stated in the opinion of the court.

It was argued by *Mr. Cornelius McLean* for the appellants, no counsel appearing for the appellee.

*Mr. McLean's* points for the complainants and appellants were the following:

1st. That they are, under their assignment, entitled to all the business between Wheeling and Pittsburg, and Washington and Baltimore.

The defendants could not have set up a parallel line of telegraph between those points, and the question is simply whether

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they can do indirectly and by combination what they could not do directly.

This court has decided that question, where a slave was brought into Alexandria, which the master had a right to do, by referring it to the jury to find whether the slave had been brought there for the purpose of being introduced into Washington county, of the District of Columbia. (*Lee v. Lee*, 8 Peters Sup. Co. Rep., 44.)

In that case, the court take the ground that what cannot be done directly cannot be done indirectly. (*United States v. Quincy*, 6 Peters Supreme Co. Rep., 466; *The William King*, 2 Wheat., 148.)

It has been decided in Maryland, that although a man may part with his personal property, yet he cannot give it away to defraud his wife. (*Feigley v. Feigley*, 7 Md. Rep., 561.)

It will be contended that the contract and combination alleged on the bill is an indirect way of doing what could not be directly done, and an infringement of the complainants' rights, so as to destroy the value of their patent.

2d. It will be contended, as claimed in the bill, and as a corollary from the first claim, that the complainants, being entitled to the carrying of telegraphic messages between those points, have also the right to the carriage of all messages reaching those points, and destined for other points on their said line, or other points to which their line is the shortest and most direct route; and that the defendants cannot lawfully combine, as alleged in the bill, with others, to divert them from the complainants' line.

Mr. Justice McLEAN delivered the opinion of the court.

This is an appeal from the Circuit Court of the United States for the district of Maryland.

On the 30th of April, 1849, a contract was entered into between Amos Kendall, as attorney in fact for Samuel F. B. Morse and Alfred Vail of the first part, and the Western Telegraph Company of the second part.

In the agreement, it was stated that the United States had heretofore granted to Samuel F. B. Morse letters patent for the

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magnetic telegraph, known as Morse's Telegraph; and that the said Morse subsequently assigned a portion of his interest in the said letters patent to Alfred and Leonard V. Gale; and the said Morse, Gate, and Vail, subsequently, by letters of attorney, recorded among the transfers of patent rights, constituted Amos Kendall their true and lawful attorney, for them and in their behalf, &c. And whereas the said Western Telegraph Company are desirous to obtain, in due form, the privileges of said letters patent for lines of telegraph belonging to them between Baltimore and Wheeling, with a branch therefrom to Washington city, and a branch from Brownsville to the city of Pittsburg:

Now, the said Amos Kendall, in consideration of thirty-six thousand dollars paid to him in the stock certificates of the Western Telegraph Company, hath, as far as he possesses legal authority, by virtue of the power of attorney aforesaid, or otherwise, granted, assigned, and conveyed, to the Western Telegraph Company, the full and exclusive right to use the invention of the said Morse, secured by letters patent on the said lines from Baltimore to Wheeling, with branches to Washington and Pittsburg, respectively, for the remainder of the time yet to come in the said letters patent, with the benefit of any extensions and renewals thereof, it being understood that the right granted is to be for one wire only, unless with the consent of the patentee.

And Francis O. J. Smith conveyed his right to the Western Telegraph Company's existing lines from Baltimore, in the State of Maryland, to Wheeling, in the State of Virginia, and in branches to Washington and Pittsburg cities, in full right, on the 27th of March, 1857.

These conveyances vested in the Western Telegraph Company all the right which the patentee had, on the conditions stated, to use and enjoy the lines designated for the transmission of telegraphic messages, in as full and ample a manner as the patentee could himself have enjoyed, had no assignment of his right been made.

But it is alleged that another assignment of Morse's patent was made to a company from Pittsburg to Philadelphia, and



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to another company from Harrisburg to Baltimore, and that, by conspiring with those companies, the Magnetic Company has taken messages at Philadelphia, sent from Pittsburg and Wheeling, directed to Baltimore and Washington, and other similar messages from the Harrisburg line directed to Washington; and also messages from Washington and Baltimore, by Philadelphia and Harrisburg, to Wheeling and Pittsburg, and through those points to points further west; and that this was done by uniting the lines or working them together, under a contract, in order that they might get, in conjunction with the other companies, the whole of the business between those points.

The complainants do not seem to be well advised as to what means of combination, conspiracy, or contract, the injury complained of has been done; but they charge that, by the means alleged, their lines have in a degree been destroyed. They are only able to say that the business on their lines has been diverted by the magnetic lines. And the equitable powers of the court are invoked against the injuries complained of.

The bill does not allege any direct infringement of the patent owned by the Western Telegraph Company by the Magnetic Company. Those lines are free to transmit any messages that may be forwarded on them. But the complaint seems to be, that at the points where the operations of the Western Telegraph cease, whether it be east, north, or west, the messages are not forwarded by the Western Telegraph, but they are, by the means used, diverted from those lines, and sent by circuitous routes, or at least by lines of increased length.

It must be expected that great competition will exist in the transmission of intelligence, where telegraphic lines have been established throughout the country. But it would be difficult to find a remedy for these evils, whether real or supposed, which are not founded on contract. It was in the power of the Western Telegraph Company to form connections with other lines, so as to secure uninterrupted communications. But if these precautions have not been observed, and a supposed convenience or dispatch has been deemed a sufficient security for the co-operation of the lines connected with the Western Tele-

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graph Company, and no contract, express or implied, is shown, the complainant is without remedy.

Men, unless legally bound to certain duties, may, from whim or caprice, indulge their supposed interests or resentments without responsibility. Unless certain rates of transmitting intelligence have been established, a reduction of such rates, whether done secretly or publicly, will affect the profits on other lines.

Nothing set up in the bill, in the form of a contract, entitles the complainant to relief. A choice of lines may well be exercised, if there be no violation of the patent, although the circuitous line passes over a greater distance, as this can be no ground of complaint. It violates no contract, and almost necessarily grows out of the competition in this branch of business.

From the facts stated in the bill, there seems to be no ground for relief. Judgment affirmed.

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THE WESTERN TELEGRAPH COMPANY, APPELLANTS, *v.* GEORGE C. PENNIMAN AND JOHN KING.

The decision in the preceding case again affirmed.

THIS case, like the preceding, was an appeal from the Circuit Court of the United States for the district of Maryland, and was a branch of the same case.

The case is stated in the opinion of the court, and was argued by the same counsel as the preceding.

Mr. Justice McLEAN delivered the opinion of the court.

This case is before us by an appeal from the Circuit Court of the United States for the district of Maryland.

The Western Telegraph Company, a corporation incorporated by the States of Maryland, Virginia, and Pennsylvania, have filed their bill against George C. Penniman and John King, citizens of Maryland, and charges them with the violation of the patented rights of the Western Telegraph Company,