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*Western Telegraph Company v. Penniman et al.*

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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,

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under a contract made with Morse, Vail, and Smith, dated the 8th of March, 1840. The above-named persons are alleged to be the sole proprietors of the right to construct and use Morse's electro-magnetic telegraph, by him invented and patented, on the route between Baltimore, in the State of Maryland, and New York and Harrisburg, in the State of Pennsylvania, for and in consideration of thirty dollars per mile, by the route on which the telegraph has been or may be constructed, between the points or places aforesaid. And said right, through their agent, Amos Kendall, was conveyed unto John C. Penniman and his assigns, to construct between the points or places aforesaid the said telegraph, with one or more wires, with the apparatus for working the same and the improvements therein. And the said Morse & Co. covenant not to grant to any other person or persons the right to construct any other line of telegraph under the patent aforesaid, within the aforesaid limits, either in a direct or indirect line.

The contract between Kendall, as attorney of Morse and Vail, with the Western Telegraph Company, granted to it in due form the privileges of said letters patent for lines of telegraph belonging to it, between Baltimore and Wheeling, with a branch therefrom to Washington city, and a branch from Brownsville to the city of Pittsburg, &c.; and the right of Francis O. J. Smith, which was also conveyed, was limited 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; the right herein conveyed and so limited by said territorial termini being one-fourth part of said invention and letters patent, &c.

The complainants pray for an injunction, and that an account may be taken, for a breach of its patent privileges.

The defendants procured an assignment of Morse's patented electro-telegraph between the cities of Baltimore and Harrisburg, and afterwards a like assignment from him between Baltimore and Wheeling, with the right of a branch to Pittsburg and Washington; and it is alleged that complainants claim the right to telegraphic business on the Morse plan between

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those points; not only all that commence and end at these several points, but all that, starting at remote points, has to reach either of those points by coming through either of the others.

There can be no doubt that the right of transmitting on the lines conveyed to the Western Telegraph Company are as full and ample as would have been the rights of the patentee, had he never assigned them.

The assignment of Morse's to a company from Pittsburg to Philadelphia, and from Washington to Baltimore, Philadelphia, and New York, it is alleged, has enabled the defendants to take messages at Harrisburg from Wheeling, directed to Baltimore and Washington, and other southern points; and has also, in like manner, taken messages from the Magnetic Company between Washington and New York at Baltimore, and transit them to Pittsburg, and to points west, through Pittsburg. And this was done, it is said, in conjunction with the said companies, in order to get the business which, but for said combination, would and ought to have come by the complainants' line.

The charges against Penniman and King are, substantially, the same combinations as charged against the agents of the Magnetic Company; and we can only say, as was said in the other case, the assignees may claim a protection in all the rights assigned to them; and if, in any respect, their patent has been infringed, a remedy is open to them. But it does not appear that the defendants were limited as to the use of the lines owned by the Western Telegraph Company, although the points on their lines were shortest. Each person, in using a telegraph line, is free to select his own conveyance. There are several things which recommend telegraphic lines. The machinery should be kept in proper order; strict attention should be given to the transmission of messages, and competent persons engaged in the office. Where there is much competition, great energy is required; and if this be wanting, success may not be expected.

The principal ground of complaint in the bill is, that the business of the Western Telegraph Company has been divert-



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ed from it, and thrown upon other lines, greatly to its injury, and it would seem that circuitous routes have been selected, rather than the more direct ones. If this be so, does it afford a ground for relief? There is no obligation on a person sending a telegraphic message to select the shortest or the longest line. He may consult his own interest or choice in such a matter, and he incurs no responsibility to any one, unless he has entered into a contract to forward all such messages on a particular line. No such allegation is contained in the bill, and there is no charge that the Western Telegraph Company has been molested in the exercise of its patented rights, except by the transfer of its business to other lines; and it is not alleged that these lines are prohibited from carrying messages by reason of their contiguity to the plaintiffs' lines.

Judgment affirmed.

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JAMES C. CONVERSE, ADMINISTRATOR OF PHILIP GREELY, DECEASED, PLAINTIFF IN ERROR, *v.* THE UNITED STATES.

1. The provisions in the appropriation acts of 1849 and 1850, &c., &c., must be construed in connection with the previous laws in relation to the same subject matter.
2. A compensation for extra services where no certain compensation is fixed by law cannot be allowed by the head of a Department to any officer of the Government who has by law a fixed or certain compensation for his services in the office he holds. Nor can it be allowed by the court or jury as a set-off in a suit brought by the United States against an officer for public money in his hands.
3. No allowance beyond his fixed compensation can be made except for the performance of certain duties required by law to be performed, for which the law grants a certain compensation to be paid, and which have no connection with the duties of the office he holds.
4. The Secretary of the Treasury, under the acts of Congress above mentioned, was authorized to appoint an agent to purchase all the supplies necessary for the light-house service throughout the United States, and to make the necessary disbursements therefor. And such agent was entitled to a compensation of two and a half per cent. on the amount disbursed, and the money was appropriated to pay it.
5. The Secretary had a right, under these laws, to select as agent any one already holding office, if he supposed him to be best qualified for the duty. But he had