E.T.V.&G.R.R. v. Excelsior Coal Co. Agreement. 2vo

This agreement made and entered into this 1st day of May 1892 by and between The East Tennessee Virginia and Georgia Railway Company and the Excelsior Coal Company, Witnesseth, That the attached drawing shows the proposed location of a track scale and a scale track on said Railway Company's line (known as the Brierfield, Bloctor & Birmingham Railway, said location being on the 17th mile of said Railway, from Birmingham Junction) which said Excelsior Coal Company is particularly desirous of having placed and established there; said drawing being hereby made part of this agreement, and is to be referred to accordingly, fully and in all respects. # The said location lying and being in the County of Shelby, State of Alabama.

For drawing see map Book

The location is fixed and defined by said drawing, and lies upon the westerly side of said Railway Company's line; said scale track is for 198 feet in length (switch point to switch point). It lies 2407 feet north of mile post No. 16 and (in the same distance being) 163 feet north of the Gurnee Junction Switch, and runs thence northwardly 498 (switch point to switch point) The center of the track scale is 276 feet from the South end of the scale track and 222 feet from the North end thereof - Said Railway Company hereby agrees to establish and maintain said scale track as shown and also hereby grants permission unto the said Excelsior Coal Company to place and to establish said track scale upon its premises as aforesaid for its own private use, as shipper, in shipments, routed over said Railway Company's line or lines and connections and the use accorded to the Railway Company hereunder, and none other, but subject to all the

agreements, terms and conditions contained and expressed therein. Said track scale is to be provided, placed and established by said Excelsior Coal Company, and repaired, maintained and operated by it at its own sole cost and expense.
Said track scale is to be erected and established and so placed, situated and maintained in the position it now occupies at all times as the Railway Company shall require and demand: all at the sole cost and expense of said Excelsior Coal Company. For any failure to discharge this duty and obligation in such respects, resulting in damages to any person or property, said Excelsior Coal Company shall alone be responsible and liable; and hereby expressly agrees and undertakes to discharge its liability therefor, and to fully protect and indemnify the Railway Company against any and all such damages so resulting.
In consideration of the privilege aforegranted, said Excelsior Coal Company agrees that the Railway Company is also to, and shall have the full, free and equal use of said track scale with itself, for the purposes of said Railway Company, in the transaction of its business and in the performance of its Railroad and general business with this exception, the said scale shall not be used by said Railway Company for the purpose of weighing coal mined by any other parties than the Excelsior Coal Company, the Kahaba Coal Mining Company, their successors and assigns.
The Railway Company hereby reserves the right and the same is hereby acknowledged, to cause the removal of said track scale, at any time by giving notice in writing sixty days in advance, for such removal, to said Excelsior Coal Company. The removal in such case, is to be made by the said Excelsior Coal Company and the premises left in good and safe condition, and on a level with the bed of the nearest adjacent Railroad Tracks, all at the cost and expense of said Excelsior Coal Company; and the removal and work aforesaid must be accomplished within the sixty

days term of notice, else shall said Excelsior Coal Company forfeit all its rights, title and interest therein, and the same shall immediately upon the failure of said Excelsior Coal Company so to do and perform, become and be forever vested in said Railway Company, with absolute and unconditional title unto said track scale and scale track. And the said Excelsior Coal Company, its successors and assigns, shall have the privilege of removing said scale from the property of said Railway Company by giving ten days notice of its intention so to do and in case said privilege is exercised, the said Excelsior Coal Company agrees to fill the excavations, caused by said removal to a level with said Railway Company's tracks.

In Testimony whereof the parties by proper officers having authority so to do, have signed, executed and delivered this instrument, in duplicate on the day and year first above written.

East Tennessee Virginia and Georgia
Railway Company
By C. H. Hudson,
General Manager

Excelsior Coal Company
By Cornelius Radde
Vice President.

State of Tennessee }
County of Knox } S.S.
City of Knoxville } I. Dan. Kelly Commissioner of Deeds, &c., for the State of Alabama, at Knoxville Tenn., hereby certify that the East Tenn. Va. & Ga Railway Company, whose name is signed to the foregoing instrument by C. H. Hudson its General Manager, acknowledges, through said officer, that being informed of the contents of the within instrument, it executed the same voluntarily on the day the same bears date; said company appearing by said officer who made acknowledgement as aforesaid, for and in behalf of said Company, and by its order and authority and as its act and deed. and I further certify

that I am personally acquainted with said C. H. Hendson who is known to me to be the General Manager of said Company - Witness my hand and official seal at office, this 25th day of May 1892.

Seal

Daul Kelly
Commissioner of Deeds &c for the State of Alabama in Tennessee at Knoxville.

The State of Alabama }
Bibb County } I, John D. Wilkins, Notary Public, in and for said State and County, hereby certify that Cornelius Badee whose name is signed to the foregoing instrument and who is known to me to be the vice president of the Exculsion Coal Company, acknowledged before me on this day, that being informed of the contents of the instrument he executed the same voluntarily on behalf of and for said Company on the day the same bears date. Given under my hand and seal this the eleventh day of June A.D. 1892.

Seal

John D. Wilkins,
Notary Public, Bibb Co - Ala.

Filed for record June 16, 1892 & recorded,

R. W. Cobb Judge of Probate.