

Case No. 4,669. FARMERS' LOAN & TRUST CO. v. ST. JOSEPH & D. C. RY. CO. ET AL.
[3 Dill. 412.]¹

Circuit Court, D. Kansas.

1875.

RAILWAY MORTGAGE—ROLLING STOCK—WHETHER REALTY OR PERSONALTY.

1. Rolling stock and other property strictly appurtenant to a railroad is part of the road, and a mortgage thereof in connection with the road if duly recorded as a mortgage of realty, need not be recorded also as a chattel mortgage.
2. But a different principle applies to coal, oil, and such personal property as may be used, or is commonly used, for other than railway purposes. Such property would be subject to execution if not held by a mortgage thereof, duly executed and recorded.

Bill to foreclose. The plaintiffs are trustees in a railway mortgage executed by the defendant company [the St. Joseph & Denver City Railway Co.] to secure bonds. The mortgage covers, inter alia, "the rolling stock and other property appertaining to said railroad." It was duly recorded as a real estate mortgage, but not as a chattel mortgage, as the latter, to be valid, are required to be recorded by the laws of Kansas (Gen. St. p. 584, § 9 et seq.). Certain judgment creditors of the mortgagor levied upon the rolling stock embraced in the mortgage; and the question was whether their rights were prior to those of the plaintiffs.

Ashbell Green and John Doniphan, for plaintiffs.

Nathan Price and W. D. B. Motter, for judgment creditors.

Before MILLER, Circuit Justice, and DILLON, Circuit Judge.

MILLER, Circuit Justice. After having taken time to consider the question involved in this case, my judgment is that it was not necessary, as to the rolling stock, to record the instrument as a chattel mortgage. As to this it is sufficient even as to creditors, that the mortgage was duly registered as a mortgage of real estate. In my opinion rolling stock and other property strictly and properly appurtenant to the road, is part of the road and covered by the mortgage in question, which in terms embraces rolling stock. The cases are conflicting upon the point as to the nature of rolling stock, but considering the peculiar character of a railroad, the true principle is the one above stated. Under the provisions of this mortgage a different principle would apply to fuel or other property personal in its nature and which is used, or is such as is commonly used, for other than railway purposes. Such property would be subject to the levy and not be held by the mortgage. Judgment accordingly.

¹ [Reported by Hon. John F. Dillon, Circuit Judge, and here reprinted by permission.]