nation proceeding of defendant in Red River county, and that under the terms of the contract the complainant telegraph company was fully authorized to use and proceed in the name of the railway company in protecting and defending the exclusive grants conveyed by the contract, which would have enabled it to have protected its rights, if any, in the proceedings for condemnation, and have thus rendered unnecessary the proceedings by injunction, in the absence of a hostile combination of the railway company with other parties. The restraining order of October 28, 1884, is hereby vacated, and the application for the injunction prayed for in the bill is refused; and it is so ordered. It is also ordered that the demurrer and original answer presented to me and considered upon this application be filed with the papers of the cause, and that these orders be likewise filed.

CENTRAL TRUST CO. OF NEW YORK v. TEXAS & ST. L. RY. IN MISSOURI AND ARKANSAS.

(Circuit Court, E. D. Missouri and E. D. Arkansas. 1884.)

PRACTICE—MODIFICATION OF ORDERS PASSED BY DISTRICT JUDGES IN DIFFERENT STATES—RECEIVERSHIP UNDER FORECLOSURE OF RAILROAD MORTGAGE.

Where, on default in payment of the debt secured by a mortgage executed by a consolidated railroad company operating its road within several states, the mortgage is foreclosed, and a receiver appointed in a proceeding before a United States district judge in the circuit court for one of such states, and, subsequently, the same person is appointed a receiver in a similar proceeding by a district judge in the circuit court in another state, and a difference arises, under the order of the two courts, as to a mere matter of administration and procedure, and not as to any substantial rights of the parties, the circuit judge will not interfere or modify such orders.

On Application of Complainant for Modification of certain Orders of above Courts.

BREWER, J. The defendant is a corporation running a railroad through the states of Missouri and Arkansas, and existing by consolidation of two corporations,—one of Missouri, the other of Arkansas. Its line also extends into the state of Texas; but, for the purposes of the present question, this fact is immaterial and may be disregarded. As such consolidated corporation, it executed a mortgage on all its property to complainant as trustee. Defendant having defaulted in the payment of interest, the complainant filed its bill to foreclose. Such bill was filed in the circuit court for the Eastern district of Missouri, and on application a receiver was appointed on January 12, 1884. Thereafter, and on March 5, 1884, a similar bill was filed in the circuit court for the Eastern district of Arkansas, and, on application, the same person was appointed receiver by that court. Both these orders are of a general nature, providing simply for the appoint-

ment of the receiver, directing him to take possession and operate the road. On the twenty-fourth of March, 1884, and on the twenty-ninth of May, the Honorable SAMUEL TREAT, holding the circuit court in the Eastern district of Missouri, made two orders in respect to claims, and on the sixteenth of May, the Hon. HENRY C. CALDWELL, holding the circuit court for the Eastern district of Arkansas, also entered an order in respect to the settlement of claims. The orders of the two courts differ in some respects, and application is now made to me to set aside all these orders and to make for both courts an order which shall be uniform in its operation. The order in the circuit court for the Eastern district of Missouri was the same as the order of that court in *Blair* v. *St. Louis, H. & K. R. Co.* 19 FED. REP. 861; and the order in the Eastern district of Arkansas was the same as the order of that court in *Dow* v. *Memphis & L. R. R. Co.* 20 FED. REP. 266–269, where the orders and reasoning of the court in support of them are set out. The differences between the orders of the two courts may be briefly stated thus: The circuit court of Missouri required all claims to be presented to the master for allowance; the circuit court of Arkansas, that they might be ascertained by suit in the state courts, providing, however, that the property in the possession of the receiver should not be touched by process issuing out of such courts. The former court required the receiver to pay out of the earnings of the road all debts for labor, materials, and supplies, and all outstanding debts for necessary operating and managing expenses in the ordinary course of business incurred after the first of September, 1883; the latter, that all debts due for freight and ticket balances, for work, labor, and supplies, and all obligations incurred in transporting passengers and freight, or for injuries to persons and property, accruing since the first of September, 1883, should in similar manner be paid.

It seems to me clear, under the decisions of the supreme court, that neither of these orders is in excess of the proper powers and discretion of a court appointing a receiver. *Miltenberger* v. *Railway*, 106 U. S. 286; S. C. 1 Sup. Ct. Rep. 140; *Trust Co.* v. *Souther*, 107 U. S. 591; S. C. 2 Sup. Ct. Rep. 295; *Trust Co.* v. *Walker*, 107 U. S. 596; S. C. 2 Sup. Ct. Rep. 299. Indeed, as to the classes of claims for which payment is provided, I think the difference between the two orders is very slight; for under the description, debts for necessary operating and managing expenses in the ordinary course of business, would, I think, fairly be included traffic and freight balances, so that probably Judge CALDWELL'S order in this respect differs from Judge TREAT'S only in providing for injuries to persons and property occurring since the first of September, 1883; but this, doubtless, is a trifling matter. The other is the more important difference, and yet, after all, it is simply in the manner of determining claims. Under neither order can the possession of the receiver be interfered with. Under these circumstances ought the application of complainants to