3. SAME—CLAIMS ENTITLED TO PREFERENCE AS TO INCOME.
Claims for labor and supplies which have accrued within six months of the appointment of a receiver are entitled to be paid out of the net income of the receivership. Ordinarily, older claims are not entitled to any preference.

4. SAME—CORPUS.
Semble, that claims entitled to preference as to income may, in exceptional cases, and where a special equity appears, be made a first lien upon the *corpus* of the mortgaged property.

5. SAME—INTERVENING CLAIMS—EVIDENCE—COMPANY'S BOOKS.
Where the application for a receiver contains no charge of fraud and deceit on the part of the company's officers, a master to whom intervening claims are referred may be authorized to pass upon uncontested claims without any other evidence than the admissions in the company's books, where the facts upon which such claims rest fully appear from the books, and additional evidence appears to him unnecessary.

In Equity. Exceptions to master's report.

Walter C. Larned and *Theo. G. Case*, for Complainant.

John O'Grady, for the receiver.

James D. Carr and *Geo. D. Reynolds*, for the intervenors.

BREWER, J. 1. The first exception runs to a matter of practice. On the twenty-fourth of March, 1884, this court, in its order respecting intervening claims, directed the master as follows:

"It is further ordered, that when an intervening claim, so far as the facts on which it rests, appears from the books of the defendant to be correct, the master may proceed to pass thereon without further evidence, unless, in his opinion, further evidence is needed, or some person in interest appears to contest the same."

The master has acted upon this direction, and its propriety is now challenged. The exception will be overruled. If no receiver had been appointed, the company would settle with its creditors upon the basis disclosed by its own books, and where the application for a receiver contains no charge of fraud and deceit on the part of the officers of the company, there is no impropriety in accepting the admissions contained in its books as *prima facie* a fair basis of settlement with claimants. It would be an unnecessary burden and expense to require extrinsic and independent evidence. Full protection against improper claims is secured by the right given to any party in interest to appear and contest, as well as by the duty imposed on the master to require testimony, if any appears to him necessary.

2. Claims for labor and supplies accruing since the default in payment of interest in 1881, more than two years prior to the appointment of the receiver, have been allowed by the master, and exceptions are taken to such allowance. In the order appointing a receiver no provision for the payment of claims was made, and it is conceded that there is nothing to show that since the default in the payment of interest there has been any diversion of income to permanent improvements. Now, the broad proposition is laid down by counsel that, unless a diversion as stated is shown, or unless the court, as a condition of appointing a receiver, requires the payment of certain claims, none can be preferred to the mortgage debt; that when the

mortgagees take possession by a receiver, the income, as well as the property of the company, become theirs. I think the supreme court has decided against this claim. In *Miltenberger* v. *Railway Co.* 106 U. S. 286, S. C. 1 Sup. Ct. Rep. 140, it appears that the receiver was appointed August 26, 1874. On October 3, 1874, an order was made directing the payment of traffic balances accruing before the appointment of the receiver. And the order was sustained. I quote at length from the opinion, because it bears upon a question yet to be considered:

"In respect to the $1,000 due other and connecting lines of the road for materials and repairs, and for ticket and freight balances, a part of which, as stated, was incurred more than ninety days before the twenty-sixth of August, 1874, the first petition stated that payment of that class of claims was indispensable to the business of the road, and that, unless the receiver was authorized to provide for them at once, the business of the road would suffer great detriment. These reasons were satisfactory to the court. In the examination by the master of the accounts of the receiver evidence was taken as to the payment by him of items due, when he took possession, for operating expenses, and of moneys due other and connecting lines for the matters named. The report of the master shows that he disallowed several items in the receiver's accounts, claimed under the above heads, where the claims were made on the ground that the creditors threatened not to furnish any more supplies on credit unless they were paid the arrears. His action, sanctioned by the court, in allowing items within the scope of the orders of the court, appears to have been careful, discriminating, and judicious, so far as the facts can be arrived at from the record. It cannot be affirmed that no items which accrued before the appointment of a receiver can be allowed in any case. Many circumstances may exist which may make it necessary and indispensable to the business of the road and the preservation of the property for the receiver to pay pre-existing debts of certain classes out of the earnings of the receivership, or even the *corpus* of the property, under the order of the court, with a priority of lien; yet the discretion to do so should be exercised with very great care. The payment of such debts stands, *prima facie*, on a different basis from the payment of claims arising under the receivership, while it may be brought within the principle of the latter by special circumstances. It is easy to see that the payment of unpaid debts for operating expenses, accrued within ninety days, due by a railroad company suddenly deprived of the control of its property, due to operatives in its employ, whose cessation from work simultaneously is to be deprecated in the interests both of the property and of the public, and the payment of limited amounts due to other and connecting lines of road for materials and repairs, and for unpaid ticket and freight balances, the outcome of indispensable business relations, where a stoppage of the continuance of such business relations would be a probable result in case of non-payment, the general consequence involving largely, also, the interest and accommodation of travel and traffic, may well place such payments in the category of payments to preserve the mortgaged property in a large sense, by maintaining the good-will and integrity of the enterprise, and entitle them to be made a first lien. This view of the public interest in such a highway for public use as a railroad is, as bearing on the maintenance and use of its franchises and property in the hands of a receiver, with a view to public convenience, was the subject of approval by this court, speaking through Mr. Justice WOODS, in *Barton* v. *Barbour*, 104 U. S. 126."

I think, therefore, that the mere omission to make the payment of these claims a condition of the appointment of a receiver is no bar to

their present allowance; and I may add this further suggestion: It is said that the court, as a condition of the appointment of a receiver, may, in his discretion, require the payment of certain claims; but that discretion is not an arbitrary one. It may not require the payment of any claims that it desires, but only such claims as it is equitable should be paid,—claims that, in equity, are paramount to those of the mortgagees,—and if it is equitable that these claims should be paid prior to the mortgage debt, then what difference can there be in the mere time of making an order therefor? In all cases the payment of such claims rests on the fact that it is equitable that they should be paid, and oftentimes this equity can only be determined upon a full investigation into their nature,—an investigation which cannot be had at the time the receiver is appointed.

What claims are entitled to such equitable preference? The master has reported in favor of all claims accruing since the default in payment of the interest on the mortgage debt,—a period of over two years. This seems to proceed upon the assumption that the mortgagees, by failing to take action, have made the mortgagor company their agent to incur debts; have impliedly consented that all such debts should take preference of their secured claims. I do not think that this principle is sound. There is no implied agency to that extent, and I do not think that the rulings of the supreme court are based upon any such doctrine. The idea which underlies them I take to be this: that the management of a large business, like that of a railroad company, cannot be conducted on a cash basis. Temporary credit, in the nature of things, is indispensable. Its employes cannot be paid every month. It cannot settle with other roads its traffic balances at the close of every day. Time to adjust and settle these various matters is indispensable. Because, in the nature of things, this is so, such temporary credits must be taken as assented to by the mortgagees, because both the mortgagees and the public are interested in keeping up the road, and having it preserved as a going concern, and whatever is necessary to accomplish this result must be taken as assented to by the mortgagees. In this view, such temporary credits accruing prior to the appointment of the receiver must be recognized by the mortgagees and such claims preferred. Now, for what time prior to the appointment of a receiver may these credits be sustained? There is no arbitrary time prescribed, and it should be only such reasonable time as, in the nature of things and in the ordinary course of business, would be sufficient to have such claims settled and paid. Six months is the longest time I have noticed as yet given. Ordinarily I think that is ample. Perhaps, in some large concerns, with extensive lines of road and a complicated business, a longer time might be necessary. Certainly, so far as the present road is concerned, six months is ample. If any person permits a claim to continue longer than that he certainly has no right to be considered other than as a general creditor, with no preference over a secured