ceiver had not been appointed.[1] The rule laid down in *Burnham* v. *Bowen* commends itself by its clearness, but that case, like the others from which I have quoted, furnishes no test by which we may distinguish between current debts entitled to be paid out of current income and those which have fallen into the mass of ordinary floating debts, and ceased to be entitled to any preference.[2] The real question in such cases seems to be whether or not the debt is stale. *Vigilantibus non dormientibus æquitas subvenit.* If the claimant has been guilty of laches, no preference will be allowed. It is difficult, if not impossible, to lay down any fixed rule or rules as to when claims should be considered stale. Each case must be governed by the particular facts which appear therein. The limit of six months fixed in the principal case does not seem to be supported by the authorities.

The following are cases in which a preference has been allowed claims more than six months old: In *Douglass* v. *Cline*[3] the company had defaulted in the payment of bonded interest more than eight months before the appointment of a receiver, and wages earned after the default were ordered to be paid out of the net income of the receivership, though no special equities appeared. In *Skiddy* v. *Railroad Co.*[4] unassigned claims for labor performed during the 12 months prior to the receiver's appointment were allowed against the receiver's net income. In *Williamson's Adm'r* v. *Washington City, V. M. & G. S. R. Co.*[5] claims for services rendered and materials furnished in 1874 and 1875 were allowed a preference, though no receiver had been appointed until June, 1876. In *Atkins* v. *Railroad Co.*[6] a railroad company, being unable to pay its employes, obtained a loan of the amount due for wages from certain bondholders, to whom notes for the amount loaned were given. The loan was made in order to prevent an impending strike, and upon the condition that the amount loaned should be applied to the payment of the wages then due, and that the notes given the lenders should be paid out of the first net income of the road. A receiver was appointed about 22 months after the debt was incurred, and it was held that the net income of the receivership should be applied towards the repayment of the loan.[7] And in *Hale* v. *Frost*[8] a claim for materials furnished before default in the payment of bonded interest, and about three years before the appointment of a receiver, but for which a note had been given, which only matured about 16 months before a receiver was appointed, was allowed against a fund in court.

On the other hand, it has been held that an order appointing a receiver which authorized him "to pay the amounts due and maturing for materials and supplies about the operation and for the use of" a road, did not authorize him to pay a renewed promissory note given for re-rolling iron for the use of the road three years before his appointment.[9] So, where the president and directors of a road had contracted a debt for supplies and repairs in 1874 and

[1] The debt was evidenced at the time the receiver was appointed by business paper of the company, maturing at a future date, and this paper was renewed at maturity, but whether by order of court or not does not appear.

[2] Debts of the latter class are never paid out of the receiver's income. Duncan v. Railroad Co. 2 Woods, 542, (1876;) Brown v. Railroad Co. 19 How. Pr. 84, (1860;) Huidekoper v. Locomotive Works, 99 U. S. 258, (1878.)

[3] 12 Bush, 608, (1876.)

[4] 3 Hughes, C. C. 320, (1879.) It has since been held that assigned and unassigned claims stand upon the same footing. Union Trust Co. v. Walker, 107 U. S. 596, (1882.)

[5] 33 Grat. 624, (1881.)

[6] 3 Hughes, C. C. 307, (1879.)

[7] Persons who lend money for payment of bonded interest are not entitled to any preference. Railroad Co. v. Douglass, 12 Bush, 673, (1877.)

[8] 99 U. S. 389, (1878.) A claim for materials furnished for construction purposes was disallowed, but for the reason, as it seems, (33 Grat. 631,) "that this material was used in the construction of an independent branch road." See, also, Union Trust Co. v. Souther, 107 U. S. 591, (1882;) S. C. 2 Sup. Ct. Rep. 295; Taylor v. Railroad Co. 7 Fed. Rep. 377, (1880.)

[9] Brown v. Railroad Co. 19 How. Pr. 84, (1860.)

1875, for which third persons had become liable, it was held, in a foreclosure suit instituted in 1876, that the debt was not entitled to any preference.[1] And in another case it has been held that a receiver is not bound to comply with contracts for the transportation of freight entered into by the company before his appointment.[2]

In *Turner* v. *I., B. & W. Ry. Co.*[3] the court adopted by analogy the rule of the state statutes in relation to liens on railroads for work done, and supplies and materials furnished.

Assigned and unassigned claims stand upon an equal footing.[4]

POWERS OF COURTS OF EQUITY IN THE MANAGEMENT OF RAILROAD PROPERTY. A receiver has no authority to incur any expenses on account of property in his hands beyond what is absolutely essential to its preservation and use, as contemplated by his appointment, unless authorized by an order of court.[5] Nor can he charge the *corpus* of the mortgaged property with the payment of any debts which he may make.[6] But he may, by an express order, be authorized to go much farther. It is difficult, indeed, to name a limit beyond which the courts will not go when they deem it expedient.

A court of equity, which has taken possession of a railroad in a foreclosure suit, not only has all the power possessed by the company before the institution of the suit,[7] but much more, for it may authorize its receiver "to raise money necessary for the preservation and management of the property, and make the same a (first) lien thereon for its repayment."[8] It may even authorize the building of bridges, and the completion of the road, if unfinished, and its completion appears to the court to be for the benefit of all concerned, and may authorize its receiver to raise the necessary funds by issuing certificates of indebtedness which shall be a first lien on the mortgaged property payable before the first mortgage bonds.[9]

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[1] Duncan v. Railroad Co. 2 Woods, 542, (1876.)

[2] Ellis v. Railroad Co. 107 Mass. 1, (1871.) It will be observed that the decision in this case was prior to that of the United States supreme court in Burnham v. Bowen, and, in view of the latter case, a different conclusion might now be arrived at.

[3] 8 Biss. C. C. 315.

[4] Union Trust Co. v. Walker, 107 U. S. 596, (1882;) S. C. 2 Sup. Ct. Rep. 299.

[5] Cowdrey v. Railroad Co. 93 U. S. 354, (1876.) Damages suffered by a party who has been injured through the negligence of the receiver's employes are considered part of the current expenses, and are chargeable upon the income. Barton v. Barbour, 104 U. S. 126, (1881.)

[6] Hand v. Railroad Co. 17 S. C. 219, (1881;) Vermont & C. R. Co. v. Vermont Cent. R. Co. 50 Vt. 500, (1877.)

[7] Miltenberger v. Logansport Ry. Co. 106 U. S. 286, (1882;) S. C. 1 Sup. Ct. Rep. 140; Gibert v. Railroad Co. 33 Grat. 586, (1880.)

[8] Wallace v. Loomis, 97 U. S. 146, (1877;) Miltenberger v. Logansport Ry. Co. 106 U. S. 286; S. C. 1 Sup. Ct. Rep. 140; Langdon v. Railroad Co. 54 Vt. 593, (1882.)

[9] Wallace v. Loomis, 97 U. S. 146; Miltenberger v. Logansport Ry. Co. 106 U. S. 286; S. C. 1 Sup. Ct. Rep. 140; Kennedy v. Railroad Co. 2 Dill. 448, (1873;) Gibert v. Railroad Co. 33 Grat. 586, (1880.)