

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

BENJ. F. REX.

St. Louis, Mo.

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.)

LOUISVILLE & N. R. Co. v. BATE and others, Board of Examiners,
etc., and PICKARD, Comptroller, etc.

EAST TENNESSEE, V. & G. R. Co. v. SAME.

(Circuit Court, M. D. Tennessee. October, 1884.)

TAXATION—ASSESSMENT OF RAILROAD PROPERTY—INJUNCTION—CERTIORARI.

The board of examiners organized and acting under the Tennessee statute will not be enjoined from certifying the record of the assessment of railroad property for taxation, and delivering the same to the comptroller, nor will the comptroller be enjoined from receiving said record and certifying said assessments to the counties and towns of the state, and from taking steps to collect any taxes claimed by the state upon said assessments in excess of amount admitted to be due, as such assessments may be reviewed by the writ of *certiorari* and *supersedeas* in the state court, as decided in *Louisville & N. R. Co. v. Bate*, 12 Lea, 573.

In Equity.

Ed. Baxter, J. M. Dickinson, and Andrew Allison, for Louisville & Nashville Railway Company.

W. M. Baxter, for East Tennessee, Virginia & Georgia Railroad Company.

Vertrees & Brother and Champion & Head, for defendants.

MATTHEWS, Justice. Motions for injunctions *pendente lite* heard at chambers in Cincinnati, September 17 and 18, 1884. The complainant in the first of these cases, the Louisville & Nashville Railroad Company, is a corporation of Kentucky, and a citizen of that state, and invokes the jurisdiction of this court on that ground. It alleges that the wrongs charged against the defendants are in violation of its rights, as secured by the constitution of Tennessee and by that of the United States, and are remediable in equity. The East Tennessee, Virginia & Georgia Railroad Company is a corporation organized under the laws of Tennessee, and is a citizen of that state. It predicates its right to the relief prayed for solely on the ground that the case made in the bill is one which arises under the constitution of the United States. The defendants Bate, Thomas, and Nunn are officers of the state of Tennessee, comprising a board of examiners of railway tax assessments for the years 1883 and 1884. They have before them, for their consideration and action under the laws of Tennessee, the record of the proceedings and action of the state board of railroad tax assessors, which embodies the findings of the latter in valuing, for purposes of taxation, the property of the complainants claimed to be subject to taxation in Tennessee. When the defendants the board of examiners have acted on the record of these findings, either approving and confirming or lessening or increasing the values reported to them by the board of assessors, they are required to certify the result to the defendant Pickard, the comptroller, who ascertains the amount due to the state thereupon, according

to the rate fixed by law, and is required to collect the same, and certifies to the counties and municipal bodies the several amounts due to them respectively for taxes thereon, to be collected by them on their own account in the mode specified by law.

The board of assessors appointed by the governor are charged, under the revenue laws of the state, with the duty of valuing all railroad property; and moreover, for purposes of taxation, in making their valuation they are required to look to the capital stock, the corporate property, the franchises of each company, as well as the gross receipts, and the individual stock of each shareholder. Knowledge in these particulars is derived from a schedule required to be furnished to them by each railroad company, and by their own personal inspection, and by any other proof they may deem necessary; but all proof taken by them must be reduced to writing, and must be under oath and subscribed by the witnesses, with notice to the company interested, and the right and opportunity to appear, cross-examine, and be heard. Having ascertained the character and total value of all the property, wherever situated, of any railroad company, excluding what is known as localized property, taxable in the county and municipality where it is situated, the board of assessors are required to divide the same by the number of miles in the entire length of the road, and the result is the value per mile of the property of such company for the purpose of taxation. The value per mile thus ascertained shall be multiplied by the number of miles in the state, and the product thereof shall be the sum to be taxed to the railroad company for state purposes; and the value per mile as thus ascertained shall be multiplied by the number of miles in each county, and the product shall be the sum to be taxed for county purposes; and the value per mile so ascertained shall be multiplied by the number of miles, or fractions thereof, in any incorporated town, and the product shall be the sum to be taxed for municipal purposes; and these several sums to be taxed, thus ascertained, they shall certify to the comptroller, together with the facts and all evidence taken by them. This record the comptroller is required to submit at once to the governor, treasurer, and secretary of state, who are constituted a board of examiners. They are to examine the questions of assessment and valuation, as upon an appeal upon the record made up by the railroad tax assessors, as a matter of course, whether the taxpayer except or not, and they may change it in any particular, and to any extent they see fit, so as to fix the real value of any railroad. The law provides for no time nor place of meeting of the board of examiners, for no notice to the tax-payer or the public, and for no hearing before them. They take no additional proofs, but act exclusively upon the record of the board of assessors, and their action in fixing the taxable value of every railroad is declared to be final and conclusive; and until they act the findings of the board of assessors have no legal effect as assessments.