upon the taking of testimony under a stipulation, and to abandon the examination for any reason. Such a course of procedure is not only irritating, but exceedingly expensive. On the other hand, they will be permitted to abandon, if, upon motion to compel the reproduction of the witness for examination, such abandonment is shown to have been required by the necessities of the occasion. In this case, I do not think that the defendant's counsel had adequate reason for his dissatisfaction; but this is the first question of the kind which has arisen under the new practice, and, as counsel acted under both lack of knowledge and impatience, I am not disposed to be rigorous, but, announcing what will be the course in the future, permit an additional cross-examination of the witness Treat, in accordance with the original agreement, especially as he is employed in New York city, and can manifestly be produced without trouble or much expense.

FINANCE CO. OF PENNSYLVANIA *et al. v.* CHARLESTON, C. & C. R. CO., (SHAND *et al.*, Interveners.)

(*Circuit Court, D. South Carolina.* October 28, 1892.)

1. RAILROAD COMPANIES — FORECLOSURE OF MORTGAGE — PRIORITY OF LIENS — LEGAL SERVICES.
   Legal services rendered to a railroad company in maintaining before the courts the validity of municipal aid bonds are not of a character to take precedence of the company's mortgage bonds, within the doctrine of *Fosdick* v. *Schall*, 99 U. S. 235, and equity has no authority to give them such precedence, especially when the services were rendered two years before the appointment of the receiver.
2. SAME.
   The fact that such services resulted in benefit to the bondholders will not justify displacing the latters' lien, when they were not parties to the contract of employment.

In Equity. Suit by the Finance Company of Pennsylvania and others against the Charleston, Cincinnati & Chicago Railroad Company to foreclose a mortgage. Heard on the separate intervening petitions of Robert W. Shand and the firm of Sheppard & Bro., asserting claims for legal services, and asking payment prior to the satisfaction of the mortgage bonds. Petitions dismissed.

For prior opinions delivered in the course of this litigation, see 45 Fed. Rep. 436, 48 Fed. Rep. 45, 188, and 49 Fed. Rep. 693.

Mitchell & Smith, for petitioners.

Samuel Lord and *A. T. Smythe*, for respondents.

SIMONTON, District Judge. These two petitions were heard together. Several townships in South Carolina had subscribed to the capital stock of the Charleston, Cincinnati & Chicago Railroad Company, the subscription payable in coupon township bonds. The townships were created corporations and given the power to subscribe in this way by the

act chartering the railroad company. This railroad company had contracted with the Massachusetts & Southern Construction Company to build and equip their road. The township bonds were to be used in paying for such construction. In 1888, in a cause entitled *Floyd* v. *Perrin*, 30 S. C. 2, 8 S. E. Rep. 14, the supreme court of South Carolina pronounced invalid the provisions of a railroad charter similar to that of the Charleston, Cincinnati & Chicago Railroad Company, and declared township bonds issued thereunder invalid. This question being of grave importance both to the railroad company and to the construction company, R. A. Johnson, who was the general manager of both companies, engaged the professional services of these petitioners, who are both excellent lawyers, to devise and take such steps as would lead to the validation of the township bonds subscribed in aid of the railroad company. Although nothing clearly definite appears in the correspondence and conferences with Johnson, both of these gentlemen believed that they were retained by and for the railroad company and by the construction company. They rendered important, valuable, and successful service. The township bonds were validated by an act of the legislature, in the passage of which they were largely instrumental. The supreme court sustained the constitutionality of the act in a cause brought and argued by them. *State* v. *Neely*, 30 S. C. 598, 9 S. E. Rep. 664. The result is that the township bonds have been given value, and, as petitioners contend, have been largely used in the construction of the road. They now present their claim for services,—$6,000, each,—and ask that it be allowed and paid in priority to the mortgage lien. The counsel for the the receiver and for the mortgage bondholders deny that these gentlemen were retained for the railroad company, or that their service benefited the railroad company. They insist that the retainer was for and on behalf of the construction company, to whom all these township bonds had been assigned. Be this as it may, and assuming, for the purposes of this case, that the facts are as stated by the petitioners, can we displace in their behalf the vested lien of the mortgage? *Fosdick* v. *Schall*, 99 U. S. 235, led the way to the displacement of the mortgage lien, permitting certain favored claims to be paid before the mortgage debt, either out of the income or out of the proceeds of sale. But the courts have carefully guarded themselves from extending these claims, which were for materials, supplies, and labor necessary for keeping the railroad a going concern, and have expressly refused to consider any claim originating more than six months before the appointment of the receiver. The services in this case were rendered nearly, if not quite, two years before the appointment of a receiver. Indeed, the supreme court of the United States, in *Kneeland* v. *Loan & T. Co.*, 136 U. S. 97, 10 Sup. Ct. Rep. 950, have felt the necessity of warning the profession against erroneous views as to the effect of *Fosdick* v. *Schall:*

"No one is bound to sell to a railroad company, or to work for it, and whoever has dealings with a company whose property is mortgaged must be assumed to have dealt with it on the faith of its personal responsibility, and not *in* expectation of subsequently displacing the priority of the mortgage liens.

It is the exception, and not the rule, that such priority of liens can be displaced. We emphasize this fact of the sacredness of contract liens for the reason that there seems to be growing an idea that the chancellor, in the exercise of his equitable powers, has unlimited discretion in this matter of the displacement of vested liens."

Counsel for the petitioners urge upon the court the consideration of the value of these services in securing the means for constructing the road. But the services rendered by the petitioners are not within that favored class protected in *Fosdick* v. *Schall*. Indeed, if they had obtained and supplied the money used in constructing the road, this would not have helped them. *Wood* v. *Trust, etc., Co.*, 128 U. S. 416, 9 Sup. Ct. Rep. 131; *Cowdrey* v. *Railroad Co.*, 93 U. S. 352; *Dunham* v. *Railway Co.*, 1 Wall. 267; *Railroad Co.* v. *Wilson*, 138 U. S. 501, 11 Sup. Ct. Rep. 405.

Nor does it affect the question that their services incidentally benefited the mortgage creditors, and added to the value of the property covered by the mortgage. There were no contract relations with these creditors. In *Hand* v. *Railroad Co.*, 21 S. C. 162, the law is clearly stated:

"No one can legally claim compensation for voluntary services to another, however beneficial they may be, nor for incidental benefits and advantages to one flowing to him on account of services rendered to another by whom he may have been employed. Before a legal charge can be sustained, there must be a contract of employment, either expressly made or superinduced by the law or the facts."

See *Bound* v. *Railway Co.*, 51 Fed. Rep. 60.

The petitions are dismissed.

GOULD *v.* LITTLE ROCK, M. R. & T. RY. CO. *et al.*

(*Circuit Court, E. D. Arkansas.* October 28, 1892.)

No. 951.

1. CORPORATIONS—INSOLVENCY—PREFERENCE OF CREDITORS.
   Under the decisions of Arkansas and at common law, an insolvent corporation may make preferences among its creditors in good faith, so long as its right to do so is not restrained by statute. *Ex parte Conway*, 4 Ark. 302, and *Ringo* v. *Biscoe*, 13 Ark. 563, followed. *Rouse* v. *Bank*, 22 N. E. Rep. 293, 46 Ohio St. 493, questioned.

2. SAME—LOANS BY DIRECTORS.
   Advances made in good faith by certain directors of a railroad, and used for legitimate corporate purposes, their inducement being to protect and give value to their own large interests as creditors and stockholders, but all other stockholders and creditors being equally protected thereby, constitute a valid debt, enforceable by suit; and a deed of trust on certain lands thereafter executed by the direction of the stockholders and board of directors to secure it is as valid as if given to any other creditors.

3. SAME—DIRECTORS AS TRUSTEES.
   Treating the directors as trustees, the payment of the debt is an essential prerequisite to the avoidance of the deed of trust given to secure it, whether the debt was a present or precedent one.