

plaintiff. He was not its servant; it was not his master. It had nothing to do with selecting his coemployés whose negligence caused the injury. The court of equity, by its officers, the receivers, had possession of the road; and the plaintiff, instead of hiring himself elsewhere to a railroad company or corporation, voluntarily hired himself to these ministers of the law. We think the letter of the situation is the law of it; and as he was not, in fact, in the employment of the railroad company, he is not to be considered in such employment by construction."

So that at common law there should be no liability on the part of the receivers in this case, and when we go to the law of the state we find that the statutes which must be invoked, as construed by the highest court of the state, give no greater right than would exist at common law.

The intervener contends that an act of the legislature "To define the duties and fix the liability of receivers appointed for railroad companies in certain cases," etc., approved February 28, 1876, establishes a different rule from that announced by the supreme court of Georgia in the decisions referred to. The effect of these statutes on these decisions, as well as the decisions themselves, has been before this court in the case of *Central Trust Co. of New York v. East Tennessee, V. & G. Ry. Co.* (Feb., 1888) 69 Fed. 353. The opinion appears not to have been published, but is of file in the clerk's office. The court in that case decided adversely to the intervener the same questions that are raised in this case, and a repetition of the reasons there given is unnecessary. None of the decisions cited by counsel for the intervener are directly in point, and nothing has been offered to change the view entertained by the court when this question was elaborately discussed in the case referred to.

It is evident, from the facts set out in the intervening petition, that this case must stand or fall on the negligence of the engineer. It is clearly the proximate cause of the injury. That the engineer was the fellow servant of the brakeman is well settled by the authorities. Unless the receivers are liable, therefore, for the negligence of the coemployé of the intervening petitioner, they are not liable in this case. The demurrer to the petition must be sustained.

BALTIMORE TRUST & GUARANTY CO. v. ATLANTA TRACTION CO.
(BENNETT, Intervener).

(Circuit Court, N. D. Georgia. June 6, 1895.)

No. 766.

1. RAILROAD RECEIVERS—LIABILITY FOR INJURIES TO EMPLOYEES—COEMPLOYEES.

The Georgia statutes (Code, §§ 2083, 3036, and Act Feb. 28, 1876) do not give to the employés of a railroad receiver a right of action for injuries caused by the negligence of coemployés. *Central Trust Co. of New York v. East Tennessee, V. & G. Ry. Co.*, 69 Fed. 353, 357, followed.

2. FELLOW SERVANTS.

The conductors of two electric railway cars on the same road are fellow servants, and the common employer is not liable for an injury to one of them, resulting from a collision caused by the negligence of the other.

This was a petition of intervention filed by Smith Bennett in the case of the Baltimore Trust & Guaranty Company against the Atlanta Traction Company to recover from the receiver of the latter company damages for personal injuries sustained while in the receiver's employment.

Marshall J. Clark and T. J. Ripley, for intervener.
Rosser & Carter and King & Anderson, for defendant.

NEWMAN, District Judge. The question in this case is as to the liability of a receiver of a court operating a railroad to an employé injured by the negligence of a coemployé. I must determine, as I have heretofore done, that there is no such liability. It is unnecessary that the reasons should be given again, as they have been fully set forth in the opinions of the court in the cases of Central Trust Co. of New York v. East Tennessee, V. & G. Ry. Co., 69 Fed. 353, 357.

It is further insisted that the question of fellow service is not in this case. The injury was to the conductor of one electric car, who was injured, as is assumed in the argument, by the negligence of a conductor of an opposing electric car, he being responsible for a collision which occurred and which was the accident causing the injury. The question is raised as to whether the two conductors are fellow servants, as applicable to the question of employer's liability. My opinion is that they are. I think they are such under the general law and under the decisions of the supreme court of the United States. Any other conclusion cannot be reached from the later decisions of the supreme court. Much more clearly would they be fellow servants in the case of conductors on the same line of street and suburban cars of a city than on a long line of steam railroads running from city to city. The intimacy of their relations is greater, and they come more closely in contact, in the one case than in the other, and the fact of fellow service for the purpose of applying it to the case at bar is more apparent.

SOUTHERN RY. CO. v. CITY OF ASHEVILLE.

(Circuit Court, W. D. North Carolina. August 24, 1895.)

1. INJUNCTION—JURISDICTION—RESTRAINING LEVY OF TAX.

Injunction will lie to restrain the levy of a tax, where the complainant is a common carrier, and the tax is made a lien on its real estate, though its personal property is first to be resorted to by the tax collector, and the remedy at law, by payment and action to recover back, is not as efficient as the remedy by injunction.

2. INTERSTATE COMMERCE—RAILROAD COMPANIES—LICENSE TAX.

Act N. C. March 13, 1895, § 42, subd. 6, authorizing a city to levy, on every railroad company doing business or having an office in the city, a license tax, not to exceed 1 per cent. of the gross receipts of its business, is invalid, in the case of a railroad whose business extends to points out of the state, as a regulation of interstate commerce, and therefore a tax levied under it is invalid, though it is limited to business of the railroad done within the state.

Bill by the Southern Railway Company against the city of Asheville to enjoin levy of a license tax. Decree for complainant.