

matter. There is no reason why the company could not have contracted honestly and in good faith with Mr. Patterson for the discharge of the duties of the position which Mr. Brown filled. The special master, after considering the matter and all the evidence on the subject, has found that it was such a transaction. It appears very clearly that, as to the original employment, there was no effort whatever to evade any such matter as this garnishment, or to avoid the payment of debts. It seems very clear that Patterson was offered the appointment originally, and that he desired to give it to Mr. Brown; that the company refused to give it to Mr. Brown, but stated that, if Mr. Patterson thought proper, he might allow Mr. Brown to do the work. There is more doubt about the change back from Brown to Patterson, after Brown's name had appeared for one month on the pay roll of the company; but as to this also the special master finds against McLendon. It appears that the jury in the state court found the same way on a trial there, although the verdict was subsequently set aside. This is a doubtful matter, at most. The special master having heard this evidence, the examinations, cross-examinations, etc., I am not disposed to disturb his decision except in one particular. It appears that \$80 was held by the company for the month during which Mr. Brown's name was on the pay roll of the company, and pending garnishment. This amount must have gone into the hands of the receivers, and I think McLendon may well interpose an equitable claim to that amount. An order may be taken directing the receiver to pay J. S. McLendon this amount, and, with this modification, the report of the special master is confirmed, and the exceptions overruled.

TATUM v. RAY.

(Circuit Court, N. D. Georgia. May 3, 1895.)

MORTGAGES—INTEREST COUPONS—PRESENTATION FOR PAYMENT.

Interest coupons attached to a note were by their terms payable at a bank in Richmond, Ind. The debtor resided in Atlanta, Ga., and had no funds in the Indiana bank. A coupon, without being first sent to the Indiana bank, was left with a bank in Atlanta for collection, and due notice was promptly given to the debtor, who had paid a previous coupon in Atlanta without objection. *Held*, that the failure to present the coupon for payment at the place specified was no defense to a foreclosure of the mortgage for the interest.

This was a bill by Eleanor Tatum against Lavender R. Ray to foreclose a mortgage.

Rosser & Carter, for plaintiff.

L. R. Ray, pro se.

NEWMAN, District Judge. On the demurrer filed in this case, the court disposed of the question of the right to foreclose the instrument as a mortgage, and the only question left to be determined is as to the matter of the payment of the interest, and especially as to the place of paying the same. By the terms of the

coupons attached to the note, the coupons are made payable at the Second National Bank, Richmond, Ind. The proof shows that the coupon for default in payment of which the foreclosure is asked was not left for collection at the bank in Richmond, Ind. And it also shows that the defendant had no funds on deposit there to meet the same, and that the officers of the bank knew of no effort on his part to pay it then. It further shows that the defendant resides in Atlanta, and the coupon was left for collection at a bank in Atlanta, and that defendant was notified of the same; and that, after his failure to pay the same there, it went for collection to the counsel for complainant in this case (who had also been agent to negotiate the loan to the defendant), and that he was fully notified more than once that the coupon was in their hands for collection, and was given the amplest opportunity to pay the same before any proceedings were commenced. The evidence also shows that a coupon maturing prior to the one in question had been paid by the defendant in Atlanta without question. The fact seems to be, indeed, that the presentation of the coupons in Atlanta was an accommodation and benefit to the defendant, and there is no reason perceived why he should be allowed to make that defense to this foreclosure suit. The complainant is entitled to a decree.

CENTRAL TRUST CO. OF NEW YORK v. SAVANNAH & W. R. CO. (MILLER & SON, Interveners).

(Circuit Court, N. D. Georgia. June 13, 1895.)

No. 504.

CARRIERS—DELAY IN DELIVERY—BILL OF LADING—PAROL EVIDENCE—DAMAGES.

While a bill of lading which is silent as to the time of delivery is held to contain an implied obligation to deliver in a reasonable time, and this obligation cannot be varied by parol evidence, yet, for the purpose of affecting the measure of damages, it is competent to show by parol that notice was brought home to the carrier that unusual loss would result from delay in making the delivery.

This was a petition of intervention filed by G. H. Miller & Son against the receivers of the Savannah & Western Railroad Company to recover damages alleged to have resulted from delay in delivering a shipment of fruit trees.

Dean & Dean, for interveners.
H. B. Tompkins, for defendant.

NEWMAN, District Judge. Fruit trees were received by the defendant receivers from the interveners at Rome, Ga., for shipment to certain points in Texas and the Indian Territory. The trees were not delivered until after the time when the purchasers from interveners could be compelled, under their contract of purchase, to receive them. The petition of interveners claiming damages for this delay was referred to a special master, who reports in favor of the interveners for the full amount of the value of the trees so