

In *Thomas v. Car Co.*, *supra* (page 112, 149 U. S., page 824, 13 Sup. Ct.), Mr. Justice Shiras, speaking for the court, observed:

"The case of a corporation for the manufacture and sale of cars, dealing with a railroad company whose road is subject to a mortgage securing outstanding bonds, is very different from that of workmen and employes, or those who furnish from day to day supplies necessary for the maintenance of the railroad."

There is no allegation in this petition of a diversion of current income for the benefit of the mortgagees, and therefore this claim, as now presented, does not come within the principle of diversion laid down in *Fosdick v. Schall*, *supra*; *Burnham v. Bowen*, *supra*; and *St. Louis, A. & T. H. R. Co. v. Cleveland, C., C. & I. Ry. Co.*, *supra*. It does appear, however, that the materials purchased were coupling links and pins and tank steel, furnished from time to time between September 22, and December 8, 1893; and the petition alleges "that said supplies were necessary to the operation, from day to day, of said railroad." I am of opinion that the petition states a case which brings this claim within that limited class of debts incurred for labor and supplies necessary to keep the road a going concern from day to day, and that it should be held to possess a superior equity over mortgage liens, upon the principle recognized in *Miltenberger v. Railway Co.*, *supra*; *Finance Co. of Pennsylvania v. Charleston, C. & C. R. Co.*, *supra*; *Bound v. Railway Co.*, *supra*; *Thomas v. Car Co.*, *supra*; *Hale v. Frost*, *supra*.

As to the objection that these supplies were not furnished during the period of time within which alone a priority can be given, it may be said that there is no fixed rule as to time, further than is expressed by the words "reasonable time." In some cases, by order of court, the time has been limited to three months; in other cases, to six months; and in *Burnham v. Bowen*, *supra*, it appears that the coal was furnished some time during the year previous to the receivership. See, also, *Hale v. Frost*, *supra*. These materials were furnished within four months of the time of the appointment of receivers in the Wood suit, and within a year of the time of the appointment of the same receivers in the Hart suit. The decree in the Wood suit provided that in their discretion the receivers might pay pre-existing supply accounts contracted within a period of four months, and the decree in the Hart suit merely declared that no payment of this kind should be made without a special order of court, and upon reasonable notice. Under these circumstances, I do not think the petitioner's claim is barred, as not coming within the time within which priority can be given. Demurrers overruled.

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MONTGOMERY v. PETERSBURG SAV. & INS. CO. et al.

(Circuit Court of Appeals, Fifth Circuit. November 19, 1895.)

No. 355.

RECEIVERS—COMPENSATION—COUNSEL FEES.

Five thousand dollars held a sufficient compensation, under all the circumstances of the case, to a receiver, for operating 13 miles of street rail-

road for about three years and a half; and \$2,500 held to be adequate counsel fees for services rendered to him during the same period.

**Appeal from the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.**

This was an appeal by J. A. Montgomery from a decree entered in the suits brought by Frank Delatorre and the Mercantile Trust & Deposit Company of Baltimore, trustees, against the Birmingham, Powderly & Bessemer Street-Railroad Company, by which the court below refused to confirm the report of the master awarding additional compensation to the receiver for his own services, and for the services of his attorneys. The property involved in the receivership consisted of a line of street railroad running from a point in the city of Birmingham, Ala., to the city of Bessemer, in the same state, a distance of about 13 miles, with the equipments thereof, and some unimproved outlying real estate several miles distant from Birmingham. The receiver was appointed on March 19, 1891, and has operated the road since that date. On September 29, 1892, a decree of foreclosure was entered, containing directions for a reference to a special master to ascertain and report upon various matters, including a reasonable compensation for the receiver and his counsel. The master reported that a reasonable compensation for the receiver would be \$5,000, and for his solicitors, \$2,500. On January 11, 1893, a decree was entered which contained this provision: "It is further ordered, adjudged, and decreed by the court that said receiver, J. A. Montgomery, be and he is hereby allowed the sum of \$5,000 for his services as such receiver, and that the sum of \$2,500 be allowed Messrs. Smith and Lowe for their professional services rendered as solicitors for said receiver." A sale attempted to be made through a special master failed for want of bidders, and the receiver continued to operate the road. On July 16, 1894, a decree was entered, which, among other things, referred the cause to a master to ascertain and report whether the receiver was "entitled to further, and what, compensation for himself and solicitors." The master reported that a reasonable compensation for his services as receiver would be \$150 per month from the date of the former allowance, to wit, \$2,400, and that a reasonable compensation to Smith & Lowe for their services as attorneys for the receiver during the same time would be \$1,500. Upon exceptions to this report the court, on November 9, 1894, held that the previous allowances, made by the decree of January 11, 1893, "were ample and sufficient, taking into consideration the services the receiver and said solicitors had rendered, and all the circumstances of the case, as shown by the evidence, to fully compensate them, and each of them, for all services rendered by them, and each of them, both before the date when said prior allowances were made, and since that date," and the additional allowances were accordingly refused.

J. W. Smith, for appellant.

John B. Tillman and Frank W. Christian, for appellees.

Before PARDEE and McCORMICK, Circuit Judges, and TOULMIN, District Judge.

TOULMIN, District Judge. This is an appeal by the receiver in the cause of Frank Dalatorre et al. against the Birmingham, Powderly & Bessemer Street-Railroad Company from the decree of the circuit court denying further or additional compensation to him and to his solicitors for services by them rendered to him as such receiver. We agree with the court in the opinion that the allowances theretofore made to the appellant for compensation to him as receiver in said cause, and as compensation to his solicitors for services by them rendered to him as such receiver, are ample and sufficient, taking into consideration the services rendered and all the circumstances of the case. The decree appealed from, so far as affected by this ap-

peal, is therefore affirmed. But, inasmuch as the appellant may have rendered services and incurred expenses as receiver in said cause since the decree appealed from, there should be and is reserved to him the right to apply for compensation for services actually rendered and expenses actually incurred after the date of such decree. Affirmed.

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UNITED STATES v. RAUERS.

(District Court, S. D. Georgia, E. D. November 14, 1895.)

1. EMINENT DOMAIN—LEGISLATIVE AUTHORITY.

Express legislative power is necessary to authorize the condemnation of private property for public use, and statutes claimed to confer such power must be strictly construed.

2. SAME—ACTS CONG. MARCH 2, 1889, AND MARCH 3, 1893.

Act Cong. March 2, 1889, authorizing the secretary of the treasury to establish a lighthouse on St. Catherine's Island, Ga., at a point to be selected by the lighthouse board; and Act Cong. March 3, 1893, appropriating \$20,000 for the establishment of a lighthouse near the entrance to St. Catherine's Sound,—do not authorize proceedings for the condemnation of private property, since neither act gives express power to take such property.

Proceedings for condemnation of land for the establishment of a light station on Saint Catherine's Island, Ga.

William T. Gary, U. S. Atty.

W. W. Gordon, Jr., and Denmark, Adams & Freeman, for respondent.

SPEER, District Judge. This is a question of much interest. On the one hand, we have what are unquestionably the beneficent purposes of the government to establish a light station, to advance the interests of navigation. On the other hand, we have to consider the right of the private citizen to the dominion of his land, which is very valuable intrinsically, and particularly valuable to the owner because of the facts set up in the answer.

A fundamental principle of law controlling all matters of this character is that every statute which undertakes to appropriate in any manner the property of private persons for public use, must be strictly construed. One of the great aims of government is to secure to each citizen the enjoyment of his estate. On the other hand, in cases of public necessity, the right of the individual must yield to the right and demand of the public; but, since that demand is in derogation of private right, it must be closely scrutinized, and the expression of legislative purpose in which it is conveyed, must be strictly construed.

"So high a prerogative as that of divesting one's estate against his will should only be exercised where the plain letter of the law permits it, and under a careful observance of the formalities prescribed for the owner's protection." Cooley, Const. Lim. p. 651.

The same eminent authority also declares:

"Express legislative power, moreover, is needed for these purposes. It will not follow that, because such things are convenient to the accomplish-