

should withdraw these lands from market. They had provided that way, and that way only, for their reservation. None of these lands had been so reserved when the act of 1866 was passed. Thereupon, excepting from the grant, not the lands which might be, or might have been, or ought to have been, reserved, but only those already reserved, they granted these lands to the state for the Hastings & Dakota Company. There seems to be no escape from the conclusion that they intended to reserve from this grant that part of the lands here in question which had been withdrawn from market, by the officer appointed, and in the manner designated, by the act of 1865 for their reservation, and that part only. As none of these lands had been so withdrawn or reserved, none of them were excepted from the grant. In *Railroad Co. v. Whitney*, 132 U. S. 357, 366, 10 Sup. Ct. 112, the supreme court said of the rulings of the officers of the land department:

"It is true that the decisions of the land department on matters of law are not binding upon this court, in any sense. But on questions similar to the one involved in this case they are entitled to great respect at the hands of any court. In *U. S. v. Moore*, 95 U. S. 760, 763, this court said: 'The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons. \* \* \* The officers concerned are usually able men and masters of the subject. Not unfrequently they are the draftsmen of the laws they are afterwards called upon to interpret.' See, also, *Brown v. U. S.*, 113 U. S. 568, 571, 5 Sup. Ct. 648, and cases there cited; *U. S. v. Burlington & M. R. R. Co.*, 98 U. S. 334, 341; *Kansas Pac. R. Co. v. Atchison, T. & S. F. R. Co.*, 112 U. S. 414, 418, 5 Sup. Ct. 208."

It is a gratifying fact that the officers of the land department, in their consideration of the questions involved in this suit, reached the same conclusion at which we have arrived. *Mattson v. Railway Co.*, 5 Land Dec. Dep. Int. 356, 699; *St. Paul, M. & M. Ry. Co. v. Hastings & D. Ry. Co.*, 13 Land Dec. Dep. Int. 440.

The conclusion we have reached upon the first question presented in this case renders the discussion of any other question unnecessary, since the decree below must be affirmed, with costs, whatever our opinion might be upon the other question presented. It is, accordingly, so ordered.

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#### NEW ENGLAND ENGINEERING CO. v. OAKWOOD ST. RY. CO.

(Circuit Court, S. D. Ohio, W. D. December 28, 1895.)

No. 4,844.

#### FORECLOSURE OF LIEN—PRELIMINARY INJUNCTION.

A bill filed to foreclose a lien for money due for machinery furnished to a street-railway company claimed a lien upon all the real estate, rolling stock, and track of the company. It appeared that the property was worth more than \$100,000, and that the building in which the machinery furnished was erected was worth more than \$24,000, and that it contained other machinery worth \$5,000. *Held*, that the court would not issue a preliminary injunction to restrain the company from removing the machinery from the building in which it was placed on the ground that this would lower the value of the property subject to the lien, so as to constitute waste.

This was a motion for a preliminary injunction.

Harmon, Colston, Goldsmith & Hoadley, for plaintiff.

McMahon & McMahon and Paxton, Warrington & Bontet, for defendant.

TAFT, Circuit Judge. The bill was filed by the plaintiff to foreclose a lien which, it is claimed, is secured to it under the statute of Ohio for the amount due on a contract for the erection of machinery to operate a street railway in the city of Dayton owned by the defendant, the Oakwood Street-Railway Company. The bill averred that the defendant, under a false claim that the machinery did not comply with the contract, was about to remove the machinery from the building in which it was placed, and thereby so to depreciate the value of the property upon which the lien was secured as to constitute waste. Upon the filing of the bill a preliminary restraining order was issued. Subsequently the motion for a preliminary injunction came on for hearing and decision. The bill asserts a lien upon all the real estate owned by the company, upon its rolling stock, and upon its track. It is in evidence and is undisputed that the value of this property far exceeds \$100,000. It is also in evidence, and undisputed, that the value of the particular house and lot in which this machinery is erected exceeds, without any machinery, \$24,000. The claim herein made is for \$20,000. There is evidence showing that there is machinery, not furnished under this contract, which will remain in the building, of the value of \$5,000, so that the plaintiff concedes that the value of the security far exceeds the claim. I do not think that under such circumstances the case is one for a preliminary injunction. Preliminary injunctions are granted upon a balance of convenience. If it be true, as the defendant asserts in the answer, that the machinery furnished is entirely inadequate for the purpose of the defendant in the operation of a street railway, then it will greatly inconvenience the defendant if, by an injunctive order of this court, it is required to permit the machinery there to remain. What the plaintiff has is a mere lien, and all that it is entitled to is a sufficient security to pay the debt. This it would seem to have in any event, whether it be entitled only to a lien on the house and lot in which the machinery is erected, or on the adjoining property of the company, or on its entire track and rolling stock. For these reasons the motion for a preliminary injunction will be refused, and the preliminary restraining order heretofore issued is dissolved.

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BOUND v. SOUTH CAROLINA RY. CO. et al.

Ex parte ROSEBOROUGH et al.

(Circuit Court, D. South Carolina. December 12, 1895.)

**SALE UNDER RAILROAD MORTGAGE—PURCHASE BY BONDHOLDERS' COMMITTEE.**

Upon a sale under a railroad mortgage, a committee representing a part of the bondholders purchased the property for cash. The commit-