

of trains by the receivers. Common sense and common fairness suggest that when a reasonable compensation is paid for a month's work, a fair and reasonable month's work should be performed. I do not find anything in the schedule or in the order of court in conflict with this rule as applied to this petition. The facts in regard to the service are sufficiently stated, and I am forced to the conclusion, from these facts, that the conductors on whose account the complaint is made are not required to perform any more than a fair and reasonable amount of work as monthly employés, nor any more work than it was contemplated that they might be called upon to perform under this schedule. A single illustration is sufficient: The complaint most insisted upon is the present operation of trains between Pocatello and Huntington. There were on this run four trains and seven crews. Two trains were taken off and also three crews. Afterwards the fourth crew was taken off. It was not shown that seven crews were necessary to operate the four trains, but, assuming that they were, it would be apparent that four crews would be more than was needed for two trains. If the work was lighter, as the evidence shows it was, it might be that three crews would be a more fair allotment than four crews. As the facts are, it does not appear that this run is at all burdensome. By choice, the men double the run with only one hour and 50 minutes rest, and then avail themselves of 49 hours rest."

I concur in the conclusion of the master and the reasons upon which he bases this conclusion, so well expressed in the above quotation.

The second exception is to the fact that the master does not, in his report, refer to the fact that the conductors on the divisions of the Union Pacific System involved in this controversy are required to perform much more service than is required of conductors on connecting and competing lines. No doubt the compensation received by employés upon competing lines, rendering similar service, may well be considered by the court in determining the service that ought to be required of the employés of this system. I have carefully read all the testimony presented to the master upon this subject, and am still unable to persuade myself that the receivers have required either unreasonable, unjust, or excessive service of any of the complainants in this case.

The third and the only other exception to the report of the master is to his statement that the complaint most insisted upon is the present operation of the trains between Pocatello and Huntington. It is, however, not material upon which complaint the most reliance is placed, if no one of them is well founded.

The exceptions must be overruled.

DILLON v. OREGON S. L. & U. N. RY. CO. et al.

(Circuit Court, D. Oregon. July 21, 1896.)

No. 2,154.

RAILROAD RECEIVERS—PAYMENT OF JUDGMENT.

A petition for payment, by the receivers of a railroad system, of a judgment against one of the subsidiary companies in preference to an antecedent mortgage, will not be allowed by a court other than that which appointed the receivers, it not appearing that any funds have come into the hands of the receivers from the operation of the subsidiary line.

Alfred S. Bennett, for petitioner.
J. N. Dolph, Zera Snow, and J. N. Davis, for complainant, receivers, and defendants.

GILBERT, Circuit Judge. The petitioner, Frank Tracy, intervening in this cause, applies for an order requiring the receivers to pay a judgment which was rendered in his favor in this court, based upon the negligence of the Oregon Short Line & Utah Northern Railway Company, occurring prior to the time when that road went into the hands of receivers. Upon the argument, counsel for petitioner seeks to distinguish the petition in this case from that of *L. W. Watts in Farmers' Loan & Trust Co. v. Northern Pac. R. Co.* (recently denied by this court) 74 Fed. 431, upon the ground that in this case it appears that there are funds in the hands of the receivers, arising out of the operation of the railroad prior to the time when receivers were appointed, and that such funds are applicable to the payment of claims such as the petitioner's, rather than to the payment of the mortgage liens which existed at the time of the negligent act out of which his claim arose. Without attempting to pass upon the question whether or not such funds would be applicable to the payment of a claim of this nature, it is sufficient for the disposition of this petition upon the demurrers which are interposed to refer to the fact that it does not appear from the petition, nor does it appear from the papers or reports of receivers on file in this cause, that any funds have come into the hands of the receivers from the operation of the Oregon Short Line & Utah Northern Railway Company, the judgment debtor in this case. The petition shows only that upon the appointment of receivers of the Union Pacific System, including the Oregon Short Line & Utah Northern Railway Company, there were in the hands of the officers and agents of said last-named corporation large sums of money, much in excess of the amount necessary to pay the petitioner's claim and all claims of a similar character, and all other operating expenses which were due and unpaid. There is no allegation that this money went into the hands of the present receivers. The petition, it is true, contains the further allegation that the receivers of the Union Pacific System received from the business of the Oregon Short Line & Utah Northern Railway Company, under their operation, an amount necessary to pay all the operating expenses of said road, including the petitioner's claim, and all other claims of a similar character; but if it were conceded that this court would have the right to take the earnings of the road under the first receivership, and before the commencement of the suit to foreclose the Dillon mortgage, and apply the same to claims of the character of that which is here presented, it is impossible, under any of the averments of the petition, to say that there are funds which may properly be thus diverted. The Union Pacific System, so operated by said receivers, consisted of other lines in addition to those of the judgment debtor in this case. Under such receivership, the Oregon Short Line & Utah Northern Railway was not operated as a separate or distinct line. This is not the court in which said receivers were first appointed, and it is not the court which has jurisdiction of their

final account. Under all the allegations of the petition, it does not appear that the petitioner's claim can be adjusted by this court, or by any court other than that which must pass upon and adjust the final account of the receivers. The demurrer must therefore be sustained

MUTUAL LIFE INS. CO. OF NEW YORK v. DOHERTY.

(Circuit Court, W. D. Pennsylvania. August 28, 1896.)

MORTGAGES—MISNOMER IN TITLE DEED—SUBSEQUENT CREDITORS.

A duly-recorded mortgage by George S. Doherty of land conveyed to him, by recorded deed, under the name George Doherty, binds the land, as against subsequent judgment creditors, though their judgments are obtained against George Doherty.

This was a suit by scire facias upon a mortgage, and was brought by the Mutual Life Insurance Company of New York against George S. Doherty. The case was heard upon exceptions to the marshal's return distributing the proceeds of the sale.

James W. Collins, for plaintiff.

Alex. Gilfillan and J. H. Beal, for exceptants.

ACHESON, Circuit Judge. On the 7th day of October, 1895, the defendant, George S. Doherty, executed and delivered to the plaintiff, the Mutual Life Insurance Company of New York, his mortgage upon a lot of land situate in Allegheny city, Allegheny county, Pa., to secure a debt of \$10,000. The mortgage is in the defendant's proper name, George S. Doherty, and is so signed and acknowledged. It was recorded in the recorder's office of Allegheny county on the 15th day of October, 1895. On May 21, 1896, suit by scire facias upon this mortgage was brought in this court, and on June 8, 1896, a judgment therein for the sum of \$10,878 was entered in favor of the plaintiff. A writ of levavi facias was issued upon the judgment, and by virtue thereof the marshal sold the mortgaged premises. In and by his special return the marshal appropriated out of the proceeds of sale to the plaintiff in the writ, the Mutual Life Insurance Company, the amount of the judgment on the mortgage, and interest. William Rogers and Thomas J. Rogers, each a subsequent judgment creditor of the defendant, have filed exceptions to the marshal's return, the grounds of the exceptions being stated thus:

"The marshal should not have distributed any portion of said fund to the plaintiff, because the plaintiff had no lien on said land by virtue of its said mortgage, and especially it had no lien upon said land as against the judgments of the exceptants; said mortgage being made and executed by George S. Doherty, and so recorded, while the legal title to the land described therein, and levied on under such execution, was at the time in George Doherty, as appears by the records of the recorder's office of Allegheny county, in Deed Book, vol. 825, p. 597; the judgments of said exceptants being against George Doherty, in whose name the legal title stood."

It will be perceived that this exception raises no question of personal identity. It is not asserted that George S. Doherty and