

## FRONT STREET CABLE RY. CO. v. DRAKE, U. S. Marshal.

(Circuit Court, D. Washington, N. D. October 29, 1897.)

## 1. RECEIVERSHIPS—JUDGMENTS—PREFERRED CLAIMS—DISCRETION OF COURT.

The court has no discretion to allow, as a preferred claim against a mortgaged street railway, a judgment for damages rendered prior to the appointment of the receiver. *Farmers' Loan & Trust Co. v. Northern Pac. R. Co.*, 24 C. C. A. 511, 79 Fed. 227, and *Farmers' Loan & Trust Co. v. Nestelle*, 25 C. C. A. 194, 79 Fed. 748, followed.

## 2. MORTGAGE—EXTENSION OF MORTGAGED PREMISES.

An extension of a street railroad is covered by a mortgage on such railroad, executed prior to the building of such extension.

This cause was heard on the petition of Christopher B. Dudley to establish priority over the mortgage of a judgment in his favor given for damages on account of a personal injury caused by negligence in the operation of the Front Street Cable Railway, prior to the appointment of a receiver herein.

L. H. Wheeler, for petitioner.

E. C. Hughes, for receiver.

HANFORD, District Judge. Recent decisions of the circuit court of appeals for the Ninth circuit, reversing judgments of this court, which allowed claims for damages caused by negligence in the operation of mortgaged railroads to be paid as preferential claims, leave to this court no discretion. The claim to priority in every such case must be disallowed. *Farmers' Loan & Trust Co. v. Northern Pac. R. Co.*, 24 C. C. A. 511, 79 Fed. 227; *Farmers' Loan & Trust Co. v. Nestelle*, 25 C. C. A. 194, 79 Fed. 748.

The petitioner, however, has introduced evidence tending to prove that, after the date of the mortgage upon the property of the Front Street Cable-Railway Company, the turntable at the southern terminus of the railway, and the track originally placed in Front street between said turntable and Cherry street, were taken up, and a new track and cable railway was constructed from the foot of Cherry street through Commercial street to King street, and a new turntable constructed there, and it is claimed that the mortgage does not cover this extension. The mortgage, however, does cover all after-acquired equipments and the franchises of the company. It will be impossible to operate the railway if the extension should be severed from that part of it which was constructed and in use prior to the date of the mortgage, and it will be impossible to sell the extension separately from the rest of the Front Street Cable-Railway property, without impairing the value of both parts to such an extent as to destroy the security. I hold that the security of the mortgage bondholders cannot be impaired by additions to the mortgaged property. If the owner of a house or building should give a mortgage upon it, and afterwards build an addition to such house or building, or otherwise increase the value of the mortgaged premises by betterments which could not be severed from the property as it existed at the time of giving the mortgage, without destroying the security, certainly the mortgagee would be entitled to claim a lien upon the entire premises,

including the additions and betterments. The mortgage in this case had attached prior to the inception of any right of the petitioner. Therefore, according to the decisions of the circuit court of appeals for this circuit, he cannot claim priority over the mortgage.

---

**BREWER et al. v. CENTRAL OF GEORGIA RY. CO. et al.**

(Circuit Court, S. D. Georgia, E. D. January 8, 1898.)

**1. INTERSTATE COMMERCE LAW—LONG AND SHORT HAULS.**

It is not unlawful to charge more for a shorter than for a longer haul, when the circumstances and conditions are in fact substantially dissimilar, although the interstate commerce commission has made an order forbidding such charges in the particular case. *Interstate Commerce Com'n v. Alabama M. R. Co.*, 18 Sup. Ct. 45, followed.

**2. SAME—EFFECT OF COMPETITION.**

Competition between rival railroads, and not merely between rail and water carriers, is a factor to be considered in determining the substantial similarity or dissimilarity of circumstances and conditions under the fourth section of the interstate commerce law. *Interstate Commerce Com'n v. Alabama M. R. Co.*, 18 Sup. Ct. 45, followed.

**3. INTERSTATE COMMERCE—LONG AND SHORT HAUL—DISCRIMINATION—SIMILARITY OF CONDITIONS.**

The charging of a greater rate for a shorter than for a longer haul is not a violation of the fourth section of the interstate commerce law, when the rate charged for the shorter distance is not in itself unreasonable, and the more distant point is a commercial center and large distributing point, where there exists strong competition, both by land and water, none of which conditions are present at the other point, as such difference creates a dissimilarity of "circumstances and conditions" within the meaning of the act.

**In Equity.**

**W. E. H. Searcey, Jr., and L. A. Shafer, for complainants.**

**Ed Baxter, for defendants.**

**SPEER, District Judge.** This suit in equity is brought by *Brewer & Hanleiter*, wholesale and retail grocers of Griffin, Ga., to compel compliance by the *Central of Georgia Railway Company* with an order of the interstate commerce commission. It appears from the record that *Brewer & Hanleiter* complained to the interstate commerce commission that freight rates to Griffin by the defendant company and its connections from Western points, such as Cincinnati, Ohio, and Louisville, were materially greater than rates on like traffic carried a greater distance of 60 miles through Griffin to Macon. The commission, on the 29th of June, 1897, announced its conclusions in favor of the complainants, and directed that the *Central of Georgia Railway Company*, with its connecting lines, should wholly cease and desist from enforcing rates and practices found and declared in the opinion of the commission to be unlawful, and that the defendants, including the *Central of Georgia Railway Company*, should wholly cease and desist from giving undue preference or advantage to the city of Macon, Ga., and merchants and dealers therein, and from "subjecting the city of Griffin, and complainants or other merchants or