

of Receiver Young, and in due time make his report thereon to the court; that after the discharge of Receiver Young this special master made application to the court to be allowed compensation for his services, which application was referred to John E. Hartridge, Esq., as special master, to examine into the matter, and to report thereon, in obedience to which reference Master Hartridge made report on April 7, 1896, finding that the sum of \$1,600, exclusive of salary to his clerk, would be a reasonable compensation for Special Master King for the period for which he served, and recommending that he be paid that amount. This report was excepted to by the parties, and it, with the exceptions thereto, came on to be heard July 1, 1897, when the exceptions were overruled, and the report confirmed. The practice in this circuit, until the adoption of our recent rule in the circuit courts in reference to reports of receivers in charge of and operating railroad corporations and properties pending foreclosure proceedings, authorized, if it did not require, the current discharge of such services as Special Master King performed. The item of \$500 adjudged in favor of J. R. Parrott figures in Master Adams' report, in the stockholders' suit, as compensation of counsel for Receiver Young, not allowed as an independent intervention, but approved as an allowance to the receiver for unpaid balance on compensation of J. R. Parrott as his counsel. It has been, and still is, customary, and we think necessary, to allow such receivers to employ counsel; and Receiver Young having been discharged, and the property and the balance of funds remaining in his hands having been ordered to be surrendered to the owners, it was not improper to adjudge this unpaid balance due the attorney as a charge in his favor against the property prior in rank to the second mortgage. It appears from the report of Master Adams that, under orders of the court, large sums of money, exclusive of the proceeds from the sale of receivers' certificates, have been expended by the receivers in the payment of interest on the bonded indebtedness, and for additions, betterments, and permanent improvements to the mortgaged properties, and that the amounts thus appropriated greatly exceed the amount remaining unpaid of the operating expenses and charges adjudged in the decree to have a lien on the corpus of the mortgaged property. We deem these suggestions sufficient to support our conclusion that the assigned errors embraced in our third grouping are not well taken.

Having carefully examined the record touching all the matters affected by the assignments of error not withdrawn on the hearing of this appeal, we find no ground for reversing the decree of the circuit court, and it is therefore affirmed.

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STRANG v. RICHMOND, P. & C. R. CO. et al.

(Circuit Court, E. D. Virginia. March 22, 1899.)

**1. SPECIFIC PERFORMANCE—RAILROAD CONSTRUCTION CONTRACT.**

A court of equity will not decree specific performance of a contract to build a railroad, though the object of the suit is but to allow complainant to complete a construction contract, and to restrain the company from

- making other conflicting contracts, and disposing of securities pledged to him for the work contracted for.
2. **EQUITY—JURISDICTION — INADEQUATE LEGAL REMEDY—DEFENDANT'S INSOLVENCY.**  
Equitable jurisdiction on the ground of inadequate legal remedy cannot be sustained on the mere allegation of defendant's insolvency.
  3. **SAME—DAMAGES AT LAW—RECOVERY.**  
Equity will not take jurisdiction of a suit to restrain a railroad company from making contracts for the building of its road, in contravention of a contract made with complainant, and from disposing of collaterals pledged to him to secure payment of the work, where it does not appear that damages commensurate with the injury cannot be recovered at law.
  4. **SAME—CONTRACTS—UNCERTAINTY.**  
Where a railroad construction contract was uncertain and inadequate in many particulars, and subjects were left open upon which irreconcilable differences between the parties might arise, specific performance thereof cannot be decreed in equity.

This is an application for an injunction, on a bill filed in the circuit court of the United States for the Eastern district of Virginia.

The case set forth is substantially this: That the defendant railroad company, under a charter acquired under the laws of the states of Virginia and North Carolina, was engaged in constructing a line of railway near Richmond, in the state of Virginia, to a point near Ridgeway, in the state of North Carolina; that on or about the 11th of September, 1897, it mortgaged its line of railway to the defendant the Mercantile Trust Company to secure \$2,300,000 worth of bonds, for the purpose of building its railroad, the acquiring of terminal facilities, rights of way, depots, etc., along its route, and particularly in the cities of Richmond, Manchester, and Petersburg; that after the said railroad company had constructed about 20 miles of its railroad south of the city of Petersburg, on or about the 18th day of October, 1898, it entered into a verbal agreement with the complainant, whereby said complainant agreed to construct, furnish, equip, and build a road from a point on the Raleigh & Gaston Railroad near Ridgeway, N. C., and the Hermitage road, on the line of the Richmond, Fredericksburg & Potomac Railroad, near Richmond, Va., a distance of about 103 miles, including the 20 miles built as aforesaid, together with the necessary depots, water stations, section houses, buildings, and terminals, in consideration of an amount of the mortgage bonds aforesaid from which would be realized a sum not less than \$1,800,000, or that sum in cash, and that the said road was to be turned over to the said complainant, including that already built, together with the right to issue bonds secured by said mortgage, as therein provided, and complainant was to reimburse the defendant railroad company the sum of \$460,000 expended by it in the construction of the 20 miles of road theretofore built by it, and in the acquisition of rights of way, terminals, etc., evidenced by proper vouchers therefor, and further to pay to the Colonial Construction Company the sum of \$100,000; that the said complainant was to have full control of the engineering for the said railroad, the construction thereof, and the right to purchase all lands necessary therefor, as well as materials and supplies of all kinds used in its construction, and that defendant railroad company was to furnish all necessary plans, specifications, drawings, engineers' reports, surveys, and data then in its possession; that, upon making said contract, complainant entered in and upon the line of the said railroad as aforesaid, and is in possession thereof, and is and has been engaged in preliminary work and construction thereof; that defendant railroad company refused to deliver to complainant the plans, specifications, etc., referred to, whereby he was greatly inconvenienced, and prevented from proceeding with the work; that the defendants said railroad company and De Witt Smith were about to cancel the mortgage above referred to, and the bonds secured thereby, upon which complainant relied as security for the payment of the construction of said road; and that they were about to enter into a contract with some other person to construct the same. And complainant asked that the said defendants and the defendant the Mercantile Trust Company be enjoined and restrained from canceling the said bonds or the mortgage, or any