

have been better to have offered this report before the master, but I do not think it was necessary, as it is a part of the record, and within the judicial knowledge of the court. At all events, if the case required it, I should deem it my duty to recommit the matter to the master, so that it might be offered. As to the amount of compensation, the sum allowed is not excessive, as the evidence shows that the injury to Winbourn was severe, disabling, and permanent.

Let the exceptions to the master's report be overruled, and the report confirmed.

NOTE.

RECEIVER—ACTION AGAINST. Whether or not an action for a railway injury can be maintained against the receiver of the company in whose employment it occurred, was questioned in *Smith v. Potter*, (Mich.) 9 N. W. Rep. 273. But, under the provisions of the Iowa Code, an action may be maintained against the receiver of a railroad appointed by a circuit court of the United States, by an employe of such railroad who has been injured by reason of the negligence of a co-employe thereof; and where the property of the railroad is, by order of the court, transferred to the receiver, subject to all "claims, debts, and liabilities," such property in his hands is liable for the payment of such claims for damages. *Central Trust Co. v. Sloan*, (Iowa,) 22 N. W. Rep. 916; *Sloan v. Central Iowa Ry. Co.*, (Iowa,) 16 N. W. Rep. 331. Where a demand against a receiver does not involve the administration of the trust committed to him, but arises from his having taken unlawful possession of property not included in the trust, a suit will lie against him personally as for a trespass, even though he took possession of such property under an order of court. *Curran v. Craig*, 22 Fed. Rep. 101.

The railroad company is not liable for injuries committed while the road was in the hands of the receiver, as it was out of the possession of the property, and had no control over it. *Davis v. Duncan*, 19 Fed. Rep. 477. But in *Illinois* it was held that the fencing act authorizes an action for the failure to fence against either the owner of such road or the person actually operating it. An action will therefore lie against the company owning an unfenced road, although it is in the hands of a federal receiver. *Ohio & M. R. Co. v. Russell*, 3 N. E. Rep. 561.

A receiver, as such, is not personally liable for the torts of his employes. The proceeding against him is in the nature of a proceeding *in rem*, and renders the property in his hands, as such, liable for compensation for such torts. *Davis v. Duncan*, 19 Fed. Rep. 477. But a judgment against a receiver for personal injuries, recovered after the receiver had settled his accounts, although the action was commenced pending the receivership, was held to create no lien against the property which could be enforced against the purchaser. *White v. Keokuk & D. M. Ry. Co.*, (Iowa,) 2 N. W. Rep. 1018.

See, also, *Lehigh, C. & N. Co. v. Central R. Co.*, (N. J.) 8 Atl. Rep. —.

POPE'S CASE.¹

MISSOURI PAC. RY. CO. v. TEXAS PAC. RY. CO.

(Circuit Court, E. D. Louisiana. December 29, 1886.)

RAILROADS—LIABILITY OF RECEIVERS—PERSONAL INJURIES.

Winbourn's Case, ante, 187, followed.

In Chancery. In the matter of Mrs. C. C. Pope, praying compensation for injuries. On exceptions to master's report.

Henry A. Fowlkes, for Pope.

W. W. Howe, for Receivers.

¹ Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

PARDEE, J. The petitioner was seriously injured while a passenger on the Rio Grande division of the Texas & Pacific Railway, by the derailment of the car in which she was traveling, on the twenty-fifth of January, 1886. The derailment was caused by the breaking of a rail about four feet from one end. The master has reported that the accident was the result of the known insecurity and bad condition of the track; that the receivers are liable; and that the petitioner ought to receive \$2,000 as compensation. The receivers have excepted on the grounds that the evidence does not show the negligence of the receivers or their employes, and that the allowance is extravagant, because the evidence does not show that the injuries are permanent.

1. At the time of the accident the railway property had just come to the hands of the receivers. The Rio Grande division was known to them to be in bad condition as to rails and ties. In February following the accident they reported to the court that said division requires extensive repairs, especially on that part between Fort Worth and Baird, in replacement of rails, new ties, and widening cuts and embankments, not only as a "matter of safety in the transportation of freight and passengers, but also in development and increase of business." It was between Fort Worth and Baird that the petitioner was injured. The evidence taken before the master is to the effect that the rail broken was as good as the average rails, but there is no evidence to show that the broken rail was properly laid, or sufficiently supported by good ties. I have no doubt that this is a sufficient showing to warrant the presumption of negligence against the Texas & Pacific Railway Company, had that company been in possession of and operating its own property. The receivers operating the railway property should be held to the same responsibility, (see High, Rec. § 395,) although, as officers of the court, they may not be liable for punitive or exemplary damages.

2. On the question of damages, I have examined the evidence, and it supports the master's finding, to-wit:

"Temporary bruises upon her back and hips, and protrusion of part of the abdominal viscera through the *umbilicus*, to cure which an operation would be difficult and dangerous in a woman as obese and old as the claimant, and would entail a cost to which her slender means are unequal; that said hernia is to her a permanent injury, that impairs her general health, disables her, as a seamstress, from earning support for herself and four children, constrains her often to remain in bed for several days, and wholly to forego housework, and is accompanied with constant pain in some degree, and with a running from the navel."

The allowance is not excessive. Let an order be entered overruling the exceptions, and confirming the master's report.

See *Wimbourn's Case*, ante, 167.

COOPER, Jr., v. BANK OF BRITISH NORTH AMERICA.

(*Circuit Court, S. D. New York. March 9, 1887.*)

CARRIERS—CONSIGNOR KNOWN TO BE OWNER OF GOODS CARRIED—RIGHTS OF CONSIGNOR.

Plaintiff, desiring to pay a draft which he had drawn on A. at Glasgow, Scotland, made an arrangement with the defendant bank by which it agreed to cable the money to London, and to forward it in the form of a check, through their London agent, from London to Glasgow, to A. Instead of doing this, defendant, without plaintiff's knowledge, paid the money over to a bank in London, to the credit of A., who failed and closed his doors the next day, being indebted to the London bank where the deposit was made. Had defendant forwarded the money by check to A., as it agreed to do, he would have used it to pay plaintiff's draft. *Held*, plaintiff is entitled to recover the amount from defendant. Where a consignor is known to the carrier to be the owner, the carrier must be understood to contract with him only, for his interest, and upon the terms he dictates in regard to the delivery, and the consignees are to be regarded simply as agents selected to receive the money.

At Law. Motion for a new trial.

This action is by William B. Cooper, Jr., to recover of the defendants the sum of £5,000, with interest, amounting in the aggregate to \$28,502.56. At the time of the transaction in question, in the spring of 1884, the plaintiff was a commission merchant in the city of New York. The defendants were engaged in the business of banking in the city of London, with a branch office in New York. During the same period, Martin, Turner & Co., of Glasgow, Scotland, were in the East Indian trade, having a branch office in London. Their banking business was transacted at the Bank of Scotland, which also had a branch office in London. On the fourteenth of December, 1883, the plaintiff having a letter of credit permitting him so to do, drew a draft upon the Glasgow firm of Martin, Turner & Co. for £5,000, payable in London to the order of himself. This draft was due February 29, 1884. It was the plaintiff's duty to take it up at maturity. On the twenty-sixth of February he went to the office for the defendants, in New York, and purchased a cable exchange for £5,000, which was sent by them to London, reaching there the next day, February 27th. The money was on that day deposited in the Bank of Scotland, London, to the credit of Martin, Turner & Co. At the same time a dispatch was sent by the defendants, in London, to Martin, Turner & Co., at Glasgow, announcing that at that moment they were paying to their credit at the Bank of Scotland the sum aforesaid. On the same day they wrote to the Glasgow firm that the amount had been paid to their credit. The letter reached Glasgow on the morning of the 28th. It is undisputed that if a draft had been inclosed, that also would have reached there at the same time. The payment to the Bank of Scotland was made pursuant to written instructions received by the defendants, at London, from Martin, Turner & Co. Upon the 28th, Martin, Turner & Co. having received advices from their East Indian correspondents, became convinced that it was idle for them to continue longer in business, and upon the morning of the 29th they closed their