foreclosure may be maintained. It does not follow because the administrator is the proper party to collect the debts due a decedent, and pay creditors, and for that purpose bring suits, that under no circumstances can the heirs at law maintain a suit to collect a debt which has not been collected by the personal representative. Having paid all creditors, and all expenses of administration, the administrators delivered the notes and mortgages to the complainants, the only persons entitled to them in equity; and there is no reason why their possession should now be disturbed.

The demurrer is overruled.

MISSOURI PAC. RY. CO. *v.* TEXAS & P. RY. CO.[1]

(*Circuit Court, E. D. Louisiana.* June 21, 1887.)

1. RECEIVERS—ADVICE OF COURT.

   Receivers can have general advice and instructions, and, in particular cases, particular advice and instructions on application to the court. If there are parties in interest, and they have their day in court, the advice may be decisive; but, if the matter is *ex parte*, such advice is binding only on the receivers, for the judge may change his mind on hearing full argument.

2. INTERSTATE COMMERCE ACT—SECTION 4.

   Under section 4 of the interstate commerce law, relating to the charges for the long and short haul, it seems that where the circumstances and conditions are dissimilar there is no prohibition; where the circumstances and conditions are similar the prohibition attaches; and that where it is difficult to point out clearly the circumstance or condition which produces dissimilarity, the doubt should go in favor of the object of the law, and the circumstances and conditions should be taken as substantially similar. Where the circumstances and conditions are similar, or substantially similar, and the result to the carrier is injurious, relief can be had only through the commission.

In the Matter of the Petition of Receivers for advice in relation to the construction of the fourth section of the interstate commerce act.

W. W. Howe, for receivers.

PARDEE, J. The petition of the receivers of May 23d, the evidence and report of the special master, and the arguments have been carefully considered. The nature of the matters presented precludes anything beyond *ex parte* consideration. The receivers of the Texas & Pacific Railway, operating its lines of railway under the general direction of the court, can have general advice and instructions, and, in particular cases, particular advice and instructions on application to the court. The value of such advice depends: If there are parties in interest, and they have their day in court, the advice may be decisive. But, if the matter is *ex parte*, the value of the advice depends largely upon the information and ability of the judge, and is probably binding only on the receivers, for the judge may change his mind on hearing full argument.

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

Under section 4 of the interstate commerce law, relating to the charges for the long and short haul, it seems that where the circumstances and conditions are dissimilar there is no prohibition; where the circumstances and conditions are similar the prohibition attaches; and that where it is difficult to point out clearly the circumstance or condition which produces dissimilarity, the doubt should go in favor of the object of the law, and the circumstances and conditions should be taken as substantially similar. Where the circumstances and conditions are similar, or substantially similar, and the result to the carrier is injurious, relief can be had only through the commission.

The bulk of the petition presented, of the evidence, and of the master's report, is an argument against the interstate commerce act, and a rather vivid showing of the disastrous effects of an enforcement of the act with the popular construction given to the long and short haul clause, so far as the lines of the Texas & Pacific Railway are concerned; and if any specific question is presented for the answer of the court, it is whether competition between carriers is a circumstance or condition of the carriage in the sense in which those words are used in the fourth section of said law.

The effect of the enforcement of the law upon the particular property in the hands of the receivers need not be considered, when the whole question is one of how to comply with the law. That competition, the life of trade, cuts an important figure in the conditions and circumstances attendant upon transportation of property and passengers, cannot well be overlooked nor denied. Nor can it well be denied that, as between the short and long haul, competition may exist to that extent that what would otherwise be similar circumstances and conditions will be dissimilar circumstances and conditions. Whether in any particular case there is that competition on the long haul that will justify a lower charge for the long haul than as charged for the short haul, under otherwise similar circumstances and conditions, must be determined on the facts of the particular case; keeping in mind that, where the matter is not clear, the object and the policy of the law should prevail.

As to competition and its effects, and generally as to the questions under the said interstate commerce act, the receivers are referred to the late decision of the commission upon the petition of the Louisville & Nashville and other railroads, rendered June 16th instant. This decision is elaborate and well considered, and answers all the points made by receivers' petition herein as specifically as their general nature will permit.

The lights furnished by the commission, with a disposition to enforce the law, (giving the same an enlightened and liberal construction, to the end that the mischiefs at which the law is aimed may be prevented without unnecessary injury to any species of property,) ought to be sufficient to guide any railroad traffic manager, and to enable him to protect himself and his company against any serious complaint of unjust discrimination or unlawful conduct.

MISSOURI PAC. RY. CO. *v.* TEXAS & P. RY. CO.[1]

In re DAVIS.

(*Circuit Court, E. D. Louisiana.* May 28, 1887.)

CONTRACT—COMPLETION OF—CARRIERS.

A shipper's order calling for a specific number of cars for a specified day will not, unaccepted by the carriers, constitute a contract binding on either.

On report of Master on Petition of I. T. Davis, Claiming Damages.

Sexton & Smith and *I. H. Kennard, Jr.*, for petitioner.

W. W. Howe, for receivers.

PARDEE, J. This matter has been heard on exceptions to the master's report recommending a dismissal of the claim. The master's report fairly and fully sets forth the facts as shown by the evidence, and his legal conclusions on the facts are supported at every step by the authority of adjudged cases. As the case seems to me, the claimant has failed to establish the basis of his claim for damages, to-wit, a contract with the receivers to furnish him a specified number of cattle cars on a specified day. It may be taken as granted that the receiver's station agent had authority, from the general scope of his agency, to bind the receivers in a contract to furnish cars, but it does not appear that he made any contract to that effect. A shipper's order calling for a specific number of cars for a specified day will not, unaccepted by the carriers, constitute a contract binding on either. A contract of the kind referred to will bind the carrier to furnish the cars, and the shipper to furnish the goods to load the cars.

Under the evidence it is apparent that the claimant did not intend to bind himself to furnish any certain number of cattle for shipment. In fact, he did not know, at the time of the alleged first contract, how many cattle he would have to ship, or when he would be ready to ship them; and, when he sent his order for cars, he ordered 75, when he had cattle for only 43; and at the time of the second alleged contract he again makes application for 75 cars for himself and Beal, but fixes no particular day for shipment, and when he brings the cattle in has enough only for about 40 cars.

It is therefore ordered that the exceptions to the master's report be overruled; that the said report be in all respects confirmed; and that the said intervention be dismissed.

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