keep it a going concern. After this application only can the bondholders lay any claim to them. If earnings have been diverted from this primary purpose, and used for the advantage of the bondholders, either in payment of interest or in permanent improvements which tend to enhance the value of the property, the sums thus diverted must be restored. This restoration may be from the income. If this fail, then the diversion must be met out of the proceeds of sale. There was in this case a diversion of some $2,300. This the bondholders must restore. They have, in fact, restored it by consenting to the displacement of their lien by the issue of receiver's certificates to the amount of $30.-000. These must be paid out of the proceeds of sale. The money they furnish has been applied to claims of the same rank as those held by the petitioners, and this exonerates the bondholders from any further assessment. It thus appears that the petitioners have no equity which can displace the vested lien of the bondholders. The prayer for preference from the proceeds of sale is refused.

FINANCE CO. OF PENNSYLVANIA *et al.* *v.* CHARLESTON, C. & C. R. CO. *et al.*, (MOON, Intervener.)

(Circuit Court, D. South Carolina. November 8, 1892.)

1. RAILROAD COMPANIES—RECEIVERS—LABOR AND SUPPLY CLAIMS—PRIORITIES.
   A lawyer, employed by a railroad company at a fixed salary in a state where the road is in course of construction, but not yet in operation, is not entitled, on the appointment of a receiver in foreclosure proceedings, to receive payment out of the proceeds of the sale, prior to the satisfaction of the mortgage bonds, even though earnings of the road have been improperly diverted from current expenses for the benefit of bondholders; for the equity to a return of diverted earnings applies only in favor of those who have helped to keep the road a going concern. *Fosdick* v. *Schall*, 99 U. S. 235, distinguished.
2. RECEIVERS—ORDER FOR PAYMENT OF EMPLOYES—SALARIED LAWYER.
   An order appointing a receiver authorized him to pay out of income, besides the current expenses and charges, all wages due to employes at the date of the order for services within 90 days theretofore. *Held*, that a lawyer employed at a fixed salary per month came within the terms of the order.
3. ATTORNEY'S LIEN.
   A lawyer who renders legal services to a railroad company at a fixed salary, and who advances money for the company's purposes, is entitled to a lien for the retention of papers for the whole amount of his claim.

In Equity. Bill by the Finance Company of Pennsylvania and others against the Charleston, Cincinnati & Chicago Railroad Company and others. A receiver was appointed. 45 Fed. Rep. 436. Heard on the intervening petition of John B. Moon. Decree for intervener.

B. A. Hagood, for petitioner.

Samuel Lord and *A. T. Smythe*, for respondents.

SIMONTON, District Judge. This case comes up on the report of the special master. The petitioner, a member of the bar of Virginia, of

reputation, was the regular counsel of the railroad company in that state, engaged at a salary of $200 per month. He rendered services of great value to the railroad company in nearly every department of professional duty. He also advanced money for its purposes from time to time. He has in his possession muniments of title and other papers of value. On these he claims a lien for his account proved in these proceedings. The master reports as vouched before him for salary, expenses, and money advanced by the petitioner to the railroad company the sum of $3,296.81. Of this sum, during the 90 days preceding the appointment of a receiver, there is due for salary $600, for expenses $222.30. The order appointing the permanent receiver in this case authorized him, out of the tolls, income, revenue, and issues of the railroad company, in addition to the current expenses and charges, to pay all the wages due to the employes at the date of the order appointing the temporary receiver herein, for labor and services within 90 days before the same. The petitioner was in the employment of the railroad company under a fixed salary. The order of Judge BOND appointing the receiver provided for all employes without qualification, meaning regular employes, employed generally, and not for a particular act. *Railroad Co.* v. *Wilson*, 138 U. S. 505, 11 Sup. Ct. Rep. 405. The petitioner comes within this class, and is also within the protection of the order. He should get his pay and necessary expenses for the 90 days preceding the appointment of the temporary receiver out of the income made by the receiver; but in no event can he come upon the proceeds of sale either for the total amount of his bill or for this preferred part of it. The railroad has never been built in Virginia. It was, at the best, in the course of construction. So, even were there any diversion of income for the benefit of the bondholders, of which there is no evidence,—see *Finance Co.* v. *Railroad Co.*, 52 Fed. Rep. 524, (decided at this term,)—the equity established in *Fosdick* v. *Schall*, 99 U. S. 235, goes only to claims against a railroad as a going concern, and does not exist in favor of those aiding in constructing a railroad,—*Wood* v. *Guarantee Trust Co.*, 128 U. S. 416, 9 Sup. Ct. Rep. 131;—and if, perchance, the income should fail, this will not of itself give a right to go against the *corpus* or the proceeds of sale,—*Railroad Co.* v. *Cleveland*, 125 U. S. 658, 8 Sup. Ct. Rep. 1011. Let an order be taken conforming to this opinion. The petitioner may, if he desires, take judgment against the railroad company for so much of his claim as is not preferred. His lien for the retention of papers is recognized and allowed as to the whole claim.

BELLOWS *v.* SOWLES *et al.*

(Circuit Court, D. Vermont. October 25, 1892.)

EQUITY—PARTIES—BILL TO RECOVER LEGACY.

A legatee under a will brought a bill against the executor and against the receiver of a bank to reach property of the testator held by the bank, and moved that other legatees of the same amount be made parties. *Held*, that there was no ground for compelling the other legatees to become parties to the suit, for, though they claimed in the same right, they did not claim the same trust property, but merely their separate shares in the avails of it, if any, after the assets had been collected and distributed in some way by decree of the probate court.

In Equity. Suit by Frederick Bellows against Edward A. Sowles, as executor of the wills of Hiram and Susan Bellows, and against Chester W. Witters, as receiver of the First National Bank of St. Albans. Motion by complainant for an order of court making Charles Bellows and Bert Bellows parties to the suit. Denied.

Chester W. Witters, pro se.

WHEELER, District Judge. The orator and his brothers, Charles and Bert, are alleged to be legatees of $2,000 each in the wills of Hiram and Susan Bellows, of which the defendant Sowles is executor. He has brought this suit in behalf of himself and all others in like interest who will join him in it, to reach real and personal estate which was of the testators acquired by the First National Bank of St. Albans, of which the defendant Witters is receiver. They have not joined in the suit, and this defendant moves that they be made parties, as claimants of the same property, by order of court. But these legatees are not claimants of the same property. Each claims a separate legacy of $2,000 in money. In this state, jurisdiction of distribution of estates of deceased persons is vested exclusively in the probate courts. The equity jurisdiction of this court cannot be restrained by statutes of the state. *Wayman* v. *Southard*, 10 Wheat. 1; *Beers* v. *Haughton*, 9 Pet. 329. But the rights of the parties are to be ascertained by the laws of the state. The legacies are not made chargeable upon any of the property, and neither of the legatees is entitled to a decree against the receiver merely because the legacies are unpaid, and he has assets of the estates. The assets must be got together, and be distributed by decree under the will in some way, before either will be entitled to them. *Boyden* v. *Ward*, 38 Vt. 628. The legatees claim in the same right, but that is not enough to warrant forcing either to become a party to a suit of the other. They do not claim the same trust property in litigation before the court, but merely their separate shares in the avails of it, if any. No ground appears for compelling them to become parties to another's suit. Motion denied.