

The language of the sixth section of the two acts being in substance, and almost literally, the same, the language of the supreme court above quoted is equally applicable to the act in question here. If, as there held, the law itself withdraws from sale or pre-emption the odd sections to the extent of 40 miles on each side of the road represented by the map of general route, manifestly it withdraws from sale or pre-emption the odd sections within the limits named in the grant on each side of the line of road as fixed by the map of definite location. Such being the true construction of the statute itself, as thus declared by the supreme court, it would seem to result necessarily that all of the odd sections within the indemnity, as well as the primary, limits of the grant contained in the act of July 27, 1866, were withdrawn from sale or pre-emption, without regard to the order of withdrawal promulgated by the secretary of the interior, through the commissioner of the general land office, and consequently they were not open to entry or settlement at the time of the defendant's entry and settlement thereon; for, as has been seen, the court declares that the law itself worked that result. "The object of the law," said the court, "in this particular, is plain,—it is to preserve the land for the company to which, in aid of the construction of the road, it is granted. Although the act does not require the officers of the land department to give notice to the local land office of the withdrawal of the odd sections from sale or pre-emption, it has been the practice of the department in such cases to formally withdraw them. It cannot be otherwise than the exercise of a wise precaution by the department to give such information to the local land officers as may serve to guide aright those seeking a settlement on the public lands, and thus prevent a settlement and expenditures connected with them which would afterwards prove to be useless." This decision was quoted with approval in the very recent case of *U. S. v. Southern Pac. R. Co.*, 146 U. S. 599, 600, 13 Sup. Ct. Rep. 152.

For the reasons given, the demurrer is overruled, with leave to the defendant to answer within the usual time.

McMULLEN et al. v. RITCHIE et al.

(Circuit Court, N. D. Ohio, E. D. June 14, 1893.)

No. 4,927.

1. CREDITORS' BILL—PLEADING.

In an equity suit by a judgment creditor to subject certain collateral securities held by creditors of the judgment debtor to the payment of the judgment after satisfaction of the collateral holder's claims, the judgment debtor has no right to compel a corporation, some of whose stock is included in such collateral, to show its books, on the ground that the collateral holders are mismanaging the corporation, and depressing the value of its stock as security.

2. SAME—PARTIES—WIFE OF RESPONDENT.

The wife of a judgment debtor is not entitled to be made a party defendant with him to a creditors' bill to subject collateral securities deposited by him with certain of his creditors to the payment of the judg-

ment, after the satisfaction of the collateral holder's claims, merely because she has also deposited other collateral, not sought to be subjected to the payment of the judgment, with the same holders.

In Equity. Bill by James B. McMullen and George W. McMullen against Samuel J. Ritchie, Stevenson Burke, Henry B. Payne, and the executors of the Cornell estate, to subject certain collateral securities deposited by respondent Ritchie with his correspondents, after the payment of their claims, to the payment of a judgment in favor of complainants. Heard on motion of respondent Ritchie for an order on the Canadian Copper Company to produce its books and papers, and on motion by Sophronia J. Ritchie to be made a party respondent. Both motions denied.

Williamson & Cushing, for complainants.

Burke & Ingersoll, for defendants Burke, Payne, etc.

W. S. Kernish and Green, Grant & Seiber, for defendant Ritchie and for Mrs. Ritchie.

RICKS, District Judge. This case is now before the court upon two motions: First, upon the application of the defendant Samuel J. Ritchie for an order upon the Canadian Copper Company to produce its books, records, and papers for the inspection of said defendant, and to make such parts of it as he may desire to offer testimony in this case; and, second, upon the application of Sophronia J. Ritchie to be allowed to become a party defendant in this case.

As to the first motion: This is a bill filed by the complainants, as judgment creditors, against the defendant Samuel J. Ritchie, as judgment debtor, and Stevenson Burke, Henry B. Payne, and the executors of the Cornell estate, as creditors of the judgment debtor, to subject certain stocks and credits which said creditors and codefendants hold as collateral security for the indebtedness due to them from the judgment debtor. The answers of the defendants Burke, Payne, and the Cornell executors admit that there is a large indebtedness due to them from the judgment debtor, Samuel J. Ritchie. They admit that from time to time said Ritchie has deposited with them, as security for the payment of said indebtedness, a large amount of stocks in various corporations, among which is a large amount of stock issued by the Canadian Copper Company, in which said judgment debtor and his codefendants are all stockholders. To the answer filed by the executors of the Cornell estate, the defendant Samuel J. Ritchie filed what he terms a cross bill, in which he alleges that his codefendants are so managing the affairs and business of the Canadian Copper Company as to depreciate the value of its stock, and make it valueless as security for the payment of their indebtedness, and for the purpose of injuring said Ritchie. He asks for the privilege of examining the books of said copper company, and the right to inquire into the affairs and management of said corporation. I cannot find any authority for such a proceeding in a suit of this character. The complainants file their bill as judgment creditors, as aforesaid, and have rights

which must be respected in the conduct of the case. All they seek is their right to subject whatever surplus there may be after the satisfaction of the indebtedness due Burke, Payne, and the Cornell estate to the extinguishment of the judgment which they hold against Ritchie. In determining the amount of this surplus, and in what way it shall be applied to the satisfaction of complainants' judgment, the judgment debtor, Ritchie, has no right, upon any principle of equity pleading or practice, to bring into this action any controversy he may have with the Canadian Copper Company or with his codefendants as to the corporate management of said company. That is a controversy in which the complainants have no interest. If he could bring into this suit a controversy as to the management of the Canadian Copper Company, he might likewise bring into the suit a controversy as to the management of every other corporation, the stock of which is held by his codefendants as similar security. We would thus have injected into this suit several controversies involving the management of several different corporations. In this way, this controversy might be indefinitely prolonged, and the rights of the complainants indefinitely postponed. The defendant has no right, therefore, to bring such controversy into this suit, to delay the final determination of this cause, to the great expense and vexation of the complainants. If Ritchie has any equitable relief, as against his codefendants, for the improper management of the business of the Canadian Copper Company, his remedy is by an original suit. In such a proceeding, he would be the complainant, and would have a right, if proper grounds for relief are shown, to investigate the books of that concern, and inquire into its management. But he cannot bring into this action such a controversy, which is entirely foreign to the issue properly made between the complainants and the defendants.

The motion of said Ritchie is therefore denied.

As to the application of Sophronia J. Ritchie to become a party defendant in this case:

The collateral securities deposited with the defendants Burke, Payne, and the Cornell executors, referred to in the complainants' bill, and the surplus of which they seek to have applied to the satisfaction of their judgment, are the securities deposited with said defendants by the defendant Samuel J. Ritchie. These securities are set up in the answers filed by his codefendants. They are the only securities involved in this suit, and they are the only securities in the surplus of which the complainants are interested. In the application of Mrs. Ritchie to become a party defendant, she avers that after her husband deposited with the codefendants named the securities referred to in the complainants' bill, and in the answers of said defendants, she deposited with the said defendants other and additional securities, with her husband's consent, and at his request. It is for the protection of these securities that she now asks to be made a defendant in this case. But, as before stated, these securities are not involved in this litigation. The complainants do not seek to have any surplus that may arise from the sale

of such securities applied to the extinguishment of their debt. I therefore see no ground upon which Mrs. Ritchie can bring into this controversy any right she may have in those securities. The securities deposited by her husband will be first exhausted and applied to the extinguishment of the complainants' debt. Should they seek by this or any other proceeding to reach the additional securities deposited by Mrs. Ritchie, it will be time enough then to make her a party, and give her the opportunity to defend the same. But, until the complainants do ask for some relief or remedy as against Mrs. Ritchie and her securities, there is no issue upon which she can properly be made a defendant in this case.

Her motion is therefore denied.

MCCORMICK et al. v. FALLS CITY BANK OF LOUISVILLE.

(Circuit Court of Appeals, Seventh Circuit. October 17, 1892.)

No. 1.

REVIEW ON APPEAL—WAIVER OF OBJECTIONS.

Where a defendant files an amended answer after a demurrer to his answer has been sustained, and, waiving a jury, submits the cause to the court for trial, without objecting to the introduction of any of the evidence, or submitting any propositions of law to the court, he cannot question on appeal the validity of a judgment against him, since the record does not show any errors.

In Error to the Circuit Court of the United States for the District of Indiana.

Action by the Falls City Bank of Louisville, Ky., against Patrick H. McCormick, Samuel Hege, A. C. White, and Joseph I. Irwin, upon a promissory note. Demurrers to defendants' answers were sustained, whereupon they filed amended answers, to which a reply was filed, and the cause was submitted for trial to the court without a jury, the trial resulting in a judgment for the plaintiff. No objections were made to the introduction of evidence, and no propositions of law were submitted to the court. Defendants bring error. Affirmed.

Lamb & Hill, for plaintiffs in error.

John T. Dye and Humphrey & Davie, for defendant in error.

Before GRESHAM, Circuit Judge, and BLODGETT and JENKINS, District Judges.

PER CURIAM. The record discloses no error, and the judgment is affirmed, with costs and interest.

MCCORMICK et al. v. FALLS CITY BANK OF LOUISVILLE et al.

(Circuit Court, D. Indiana. July 24, 1893.)

No. 8,843.

1. NOTES—STIPULATION FOR ATTORNEYS' FEES—CONSTRUCTION—FEES IN APPELLATE COURT.

A note for a given sum, with interest and "attorneys' fees," includes only the attorneys' fees incurred in the trial court, and not those in-