

sponsibility of the principal. He becomes such surety voluntarily, and if he neither asks nor receives indemnity, on what ground can he be permitted to invoke an equitable lien, and be entitled to preference over a prior mortgage? If the surety had loaned the money to pay off the judgment, and thus have saved the property covered by the mortgage, he could not have acquired a prior lien for the money so advanced. By signing the bond he simply agrees to pay off the judgment at a later day, if the judgment should be affirmed. Why should one who has bound himself contingently to pay the judgment occupy a more favorable situation than he who pays it in the first instance? No case warrants such a preference of a surety unless other equitable circumstances exist which create an equitable right of priority. In the present case there are no equitable circumstances existing in favor of the surety. Indeed, he is a debtor of the railroad company to an amount largely in excess of the petitioner's claim, and is insolvent, and is not asking the court for protection.

The demurrer to the answers of the receivers is overruled, at the petitioner's costs.

MERCANTILE TRUST CO. v. BALTIMORE & O. R. CO.

(Circuit Court, E. D. Pennsylvania. March 6, 1897.)

1. RAILROAD RECEIVERS—SETTLEMENT OF CLAIMS.

The authority given to railroad receivers "to compromise, adjust, and settle, in their best discretion," claims against the railroad company, vested no right in judgment creditors to have their respective claims paid in full.

2. SAME.

A judgment creditor will not, in general, be allowed to enforce his judgment by sale of property in the hands of a receiver.

3. SAME—ANCILLARY DECREE.

Even if a circuit court had acted improvidently in including all the property of a railroad company in a receivership, the circuit court of another district will not, by its ancillary decree, except a portion of the property in that district from its operation.

Sur Petition of William Friel and Others.

R. C. Dale and Samuel Dickson, for petitioners.

Wm. H. Addicks, for Railroad Co.

DALLAS, Circuit Judge. The authority given to the receivers "to compromise, adjust, and settle, in their best discretion," claims against the railroad company, vested no right in the petitioners to have their respective claims paid in full. A judgment creditor will not, in general, be allowed to enforce his judgment by sale of property in the hands of a receiver, and nothing is here alleged to distinguish the case of these petitioners from that of any other person who, upon a cause of action previously accrued, recovers judgment after appointment of receivers. I cannot agree that the relief asked by the petitioners should be granted upon the ground that a mistake was made in including all the property of the defendant company in this receivership. Whether such action should

have been taken on the original bill it is not, I think, necessary for me to consider. It is, in my opinion, enough to say, upon the present application and at this time, that such scope having, in fact, been given to the receivership by the circuit court for the district of Maryland, the ancillary decree of this court should not, in effect, be so modified as to except a portion of the property in this district from its operation. These petitioners have no right to immediate payment superior to that of other creditors of the same class, nor to insist that the subsisting order of this court shall be reformed or partially annulled for their benefit. It is important for the interest of creditors generally that between the primary decree, which was made for the benefit of all creditors alike, and that of this court, there should be no material variance, and I have not been convinced that the harmony which now exists should, at this time, be disturbed for the special advantage of particular claimants. The prayer of the petition of William Friel and others is denied.

WARD v. ROBERT J. BOYD PAVING & CONTRACTING CO. et al.

(Circuit Court, W. D. Missouri, W. D. January 4, 1897.)

CONSTITUTIONAL LAW—CLASSIFICATION OF CITIES AND TOWNS—SPECIAL LEGISLATION.

The Missouri statute of March 18, 1893, concerning sewers and drains "for cities in the state having a special charter which now or hereafter contains more than 2,000 and less than 30,000 inhabitants," and for such cities of the third and fourth class as may by a vote of the people adopt the act, violates section 7, art. 9, Const. Mo., which provides for the division of the towns and cities of the state into four classes, and declares that the powers of each class shall be defined by general laws.

Wash Adams and Hugh C. Ward, for complainant.
Karnes, Holmes & Krauthoff, for defendants.

PHILIPS, District Judge. This is a bill in equity to enjoin the collection of certain tax bills issued by the city of Westport, in Jackson county, Mo., as a special tax assessed against complainant's property for the construction of a district sewer. The city of Westport is alleged to be a city of the fourth class, organized under the statutes of the state. The construction of the sewer in question was directed by an ordinance of the city, duly adopted, and the imposition of the special tax for the payment thereof was also authorized by ordinance of the city. This tax is claimed, by the holder of the certificates therefor, to be a special lien on a large amount of real estate in the hands of the complainant, as receiver of the Mastin estate, which it is alleged the respondents are threatening to enforce, and which constitutes a cloud upon the title to said property. It is further alleged in the bill that the basis of the action taken by said city in having said work done and said tax certificates issued is an act of the general assembly of the state of Missouri, entitled "An act concerning sewers and drains for cities in the state having a special charter which now or hereafter contains more than 2,000 and less than 30,000 inhabit-