

selves a personal advantage, to the damage of the general creditors, but will see to it that the assets shall be distributed ratably among them all. This right of all the creditors to an equal distribution of the corporate assets is the underlying principle actuating the courts in setting aside preferences obtained by those whose position of trust required that they should not "convert their powers of management, and their intimate knowledge of corporate affairs, into means of self-protection, to the harm of the other creditors." Equal distribution of assets among all the creditors is the result sought to be accomplished in all the cases, whether it be *Rickerson Rolling-Mill Co. v. Farrell Foundry & Mach. Co.*, 23 C. C. A. 302, 75 Fed. 554, where the right of the directors to prefer their own debt is recognized, but where, under the circumstances of the case, the deed was set aside for fraud, or whether it be *Consolidated Tank-Line Co. v. Kansas City Varnish Co.*, 45 Fed. 7, where the right to give preference was denied, and in which, on a bill filed in behalf of all the creditors, the decree directed that a deed of trust, which had been executed for the benefit of creditors who had been acting in a fiduciary capacity, be set aside, and the proceeds of the property paid a receiver, in order that they might be distributed ratably among all creditors. The case at bar does not embody this principle of equal distribution among all the creditors. The bill is filed for the benefit of the complainant alone, and not on behalf of the general creditors of the company. They can derive no benefit therefrom. All of the corporate property covered by defendants' mortgage has been sold by the receiver, and the proceeds distributed. The receiver took title subject to all the equities which rested upon the property in the hands of the debtor (*Kane v. Lodor* [N. J. Ch.] 38 Atl. 966), and sold only the interest he had in it (*Beach*, Rec. § 783); and while, as the representative of the general creditors, he might have applied to a court of equity to declare the Haliday mortgage invalid as against those whom he represented, he did not do so, and the lien of the mortgage was not divested by the receiver's sale. By this sale, made expressly subject to the Haliday mortgage, the general creditors of the corporation, for whose benefit alone the courts could be called upon to interfere, were deprived of their right to receive that equal distribution of the property of the corporation which would follow the setting aside of the preferential mortgage. The value of the property offered for sale, expressly subject to the lien of the mortgage, was depreciated by the amount of the same. Intending purchasers were deterred from bidding at the sale, and, in consequence, the property realized a less sum to the receiver. Then, too, the purchaser, the complainant herein, bought expressly subject to the defendants' mortgage. He acquired no better title to the property than the corporation itself possessed, and is therefore no more entitled to set aside the mortgage than the company itself would be. In buying subject to the mortgage, the complainant got the property for so much less that he would have been obliged to pay had it been sold freed from the incumbrance; and, for the same reason, the receiver of the corporation obtained a smaller sum for distribution among the creditors. If this mortgage be now

set aside, it is obvious that the purchaser will be allowed to violate one of the accepted conditions of the sale, in order that he may retain money which does not of right belong to him, and for which he has given no consideration. In my opinion, such an unfair position cannot be successfully maintained in a court of equity. It is urged, on behalf of the complainant, that he is entitled to be subrogated to the rights of the banks who obtained, as has been stated, judgments against the corporation. This may well be doubted, under the circumstances; but, if so, what rights against Haliday, have the plaintiffs in such suits at this time? What advantage can accrue to them by setting aside the Haliday mortgage? Before the sale of the company's assets, they might have interposed, for their own benefit, and that of all the creditors of the company, to have declared invalid the preference given to Haliday. This, however, they did not do. They stood idly by, and permitted the sale to be made expressly subject to the mortgage lien, whereby the price was greatly lessened. There is now nothing to be done by them to remedy this error, and enhance the value of the assets for the benefit either of themselves or the general creditor. To set aside, at this time, the defendants' mortgage, would not add one penny to the company's distributable assets, nor to that extent advantage a single one of the company's creditors. On the contrary, it would but swell the amount of unsecured claims, and render smaller the dividend which each creditor would be entitled to get from the receiver. The rights of these judgment creditors have been allowed to slip away, and none remain to which the complainant, for the purposes of this suit, can be subrogated. Neither as purchaser at the receiver's sale, nor as successor to the rights of a portion of the judgment creditors, is the complainant entitled to the relief for which he prays. Having come to the conclusion that the complainant has no equitable ground of relief against the defendant Haliday, it follows, of course, that he can have none against Haliday's assignees. The bill will be dismissed, with costs.

COLUMBIA AVE. SAVING-FUND, SAFE-DEPOSIT, TITLE & TRUST CO.
OF PHILADELPHIA v. PRISON COMMISSION OF GEORGIA et al.

(Circuit Court, W. D. Georgia. February 28, 1899.)

1. NUISANCE—POLLUTION OF WATERS OF A STREAM—RIGHT TO INJUNCTION.

To entitle a water company, using water from a stream to supply the inhabitants of a city, to an injunction to restrain another riparian owner above from a contemplated use of his property, otherwise legitimate, on the ground that it will create a nuisance, by pollution of the waters of the stream, it must be made to appear with practical certainty that such result will follow, and will cause substantial injury to the plaintiff, or detriment to the public using the water.

2. SAME—EVIDENCE CONSIDERED—ENJOINING ERECTION OF PUBLIC BUILDINGS.

Defendants, the prison commissioners of the state of Georgia, contemplated the erection of prison buildings and a hospital for state prisoners on a farm situated on Fishing creek, from which stream, lower down, the complainant obtained the water which it supplied to the inhabitants of the city of Milledgeville. None of the contemplated buildings were to be nearer to the stream than one-eighth of a mile, and the intervening land