

over those who loaned money three or four years or more ago and then took a mortgage. All the exceptions in this case of Norton's will be overruled.

BLAIR, Trustee, v. ST. LOUIS, H. & K. R. Co. and others. (NORTON, Intervenor.¹)

(Circuit Court, E. D. Missouri. March 19, 1885.)

RECEIVERS—ANTE-RECEIVERSHIP DEBTS—SURETY ON APPEAL-BOND.

Where a judgment is recovered against a railroad company in an inferior court upon a claim not entitled to priority, and an appeal is taken, and the company's attorney goes on the appeal bond, and a receiver of the road is thereafter appointed, and after his appointment a judgment is recovered in the appellate court against the company and the attorney, and the latter pays it, his claim is entitled to no priority over that of mortgage bondholders.

In Equity. Exceptions to master's report.

It appears that the intervenor paid the judgment referred to in the opinion of the court.

Theo. G. Case, for complainant.

John O'Grady, for receiver.

James Carr, for intervenor.

BREWER, J., (*orally*.) The other case of Norton against *The Same Road* presents a different state of facts.² There, the same gentleman, who was attorney for the road, at the instance of the president, went surety on appeal-bonds. Cases were pending before a justice of the peace in the latter part of 1873, a few months before the appointment of the receiver, and after judgment there the company appealed, and he signed the appeal-bonds. The cases went to the circuit court of the state, and on trial there, after the receiver's appointment, judgments were rendered against the company, and against him.

Well, not one of the claims sued on before the justice would be entitled to priority. They date back two or three years before the appointment of the receiver, and it would be strange if, when the claims in the first instance were not of a character entitled to priority over a secured and registered indebtedness, that an attorney of the road could, by simply giving his services as surety on appeal-bonds, indirectly secure the payment of those claims in priority to the mortgage debts. We think the ruling of the master in that was correct, and the exception will be overruled.

¹Reported by Benj. F. Rex, Esq., of the St. Louis bar.

²See other case of same title, which was decided immediately before this one.

BLAIR, Trustee, v. St. Louis, H. & K. R. Co. and others. (GREENE, Intervenor.¹)

(Circuit Court, E. D. Missouri. March 19, 1885.)

MORTGAGES—SURRENDER OF BONDS UNDER SCALING ARRANGEMENT—LIEN FOR PORTION OF REDUCED INDEBTEDNESS, FOR WHICH NEW BONDS WERE NOT ISSUED.

The indebtedness of a railroad was scaled down,—old mortgage bonds were surrendered, and new issued. A creditor surrendered his bonds, and received new ones for all, except a small portion, of the reduced indebtedness to him. No bond was issued for it, because no bond was issued for so small a sum. *Held*, that said creditor is entitled to a lien, equal to that of other mortgage creditors, for the whole amount due him.

Exceptions to Master's Report.

Theo. G. Case, for complainant.

John O'Grady, for receiver.

Fogg & Hatch and James Carr, for intervenor.

BREWER, J., (orally.) In the case of *Greene* against *The Railroad* this state of facts is presented: It appears that this gentleman held at one time, I think, \$20,000 of bonds. (I may not have the figures correctly.) The indebtedness was scaled down, and new bonds were issued. He surrendered his old bonds, and received new bonds for a portion of that amount; but there was a fraction over, \$500 or \$600, and no bonds apparently issuing for that limited sum, he holds that claim unadjusted, or rather unsecured by a bond. The master has allowed this as a claim against the company, but holds that it is inferior to the mortgage,—this new mortgage that was created at the time the debt was scaled down. In that, we think he is mistaken; that as Mr. Greene held the amount of the original indebtedness—\$20,000—as a prior and secured debt, and surrendered it for the mere purpose of having the indebtedness scaled down, he is entitled for all of the reduced obligation to come in with the present bondholders on the same standing; that although he has an amount here of \$500,—not enough to make a full bond,—yet his debt in equity stands on the same footing as that of those who have received bonds. So in that respect the exception will be sustained, and the debt will be held to be of equal lien with the mortgage debt, and paid out of the proceeds of the sale, the same as the other mortgage obligations.

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.