ue. But the *Radford* case is not authority where the technical right of the junior class to foreclose is worthless because a forced sale would leave nothing for it, even though there may be value behind the junior claims on a going concern basis. The application of clause (c) here would seem not to violate the due process clause because cash is given in exchange for the valueless technical right to foreclose.

It was probably intended that the application of § 77B (b) (5) be restricted to reorganizations by senior creditors. However, junior classes of creditors and stockholders have, as in the instant case, attempted unsuccessfully to employ the section to force a plan upon non-assenting senior classes. *In re Murel Holding Co.*, 75 F. (2d) 941 (C.C.A. 2d 1935); *In re Preble Corp.*, 12 F. Supp. 1002 (Me. 1935); *Francisco Bldg. Corp., Ltd. v. Battson*, C.C.H. Bankr. Serv., par. 3925 (C.C.A. 9th, Mar. 17, 1936). Here again the constitutionality of clauses (a) and (b) is probably beyond question. But the junior classes would seem to be taking an inconsistent position by invoking clause (c). An appraisal of the value of the senior classes' interest at less than 100 per cent amounts to an admission that the value of the property reorganized is not sufficient to cover those primary claims. Thus it leaves the junior classes with no interest or equity to reorganize. *In re Continental Cigar Co.*, C.C.H. Bankr. Serv., par. 3652 (D.C. Pa., Oct. 30, 1935); *In re William Penn Garage*, C.C.H. Bankr. Serv., par. 3649 (D.C. Pa., Oct. 7, 1935); *In re Consolidation Coal Co.*, 11 F. Supp. 594 (D.C. Md. 1935). And if the junior classes claim an equity or interest over and above senior claims, a fair plan "to adequately protect" the senior claims should allow them full payment in cash. *In re Murel Holding Co.*, 75 F. (2d) 941 (C.C.A. 2d 1935); *In re Preble Corp.*, 12 F. Supp. 1002 (Me. 1935); *Francisco Bldg. Corp., Ltd. v. Battson*, C.C.H. Bankr. Serv., par. 3925 (C.C.A. 9th, Mar. 17, 1936). The probable expense of doing so would prohibit such reorganizations. And if a plan were considered fair which provided for appraisal and payment of less than the full amount of the senior claims, clause (c) of subsection (b) (5), as so applied, would clearly be unconstitutional. *Cf. Louisville Land Bank v. Radford*, 295 U.S. 555 (1935).

Since clauses (a), (b), and (c) provide methods for cutting out dissenting classes entirely and paying them off, or allowing them to maintain their position, a plan such as that proposed in the present case which seeks to force a class to come into the plan and accept new securities even though more than one-third of the class have rejected the plan, must fall if anywhere within clause (d). If any scaling down of the senior claims is provided by a plan presented by junior groups under clause (d), then that clause would, *a fortiori*, be unconstitutional as being more drastic in effect than payment in cash under clause (c). See *In re Murel Holding Co.*, 75 F. (2d) 941 (C.C.A. 2d 1935); *Francisco Bldg. Corp., Ltd. v. Battson*, C.C.H. Bankr. Serv., par. 3925 (C.C.A. 9th, Mar. 17, 1936). And even if no scaling is attempted, clause (d) would, perhaps, be unconstitutional in the light of that part of the *Radford* opinion which criticized the delay of the right to foreclose in the absence of emergencies. *Louisville Land Bank v. Radford*, 295 U.S. 555, 598 (1935). Section 77B is permanent rather than emergency legislation. See 15 B. U. L. Rev. 818 (1935).

Corporate Reorganization—Suit against a Solvent Surety when the Principal Is Being Reorganized under § 77B—[Federal].—The dissenting bondholders of a corporation in reorganization under § 77B of the Bankruptcy Act (48 Stat. 912 (1934), 11

U.S.C.A. § 207 (supp. 1935)) moved to vacate an injunction which prevented suit by the trustee for the bondholders against the surety on the debtor's obligations. Under the plan of adjustment accepted by more than the required two-thirds of the bondholders, the maturity date of each of the bonds was extended five years and the guaranteed minimum interest cut to less than half, although the surety was still bound to pay the full principal amount at a later date. The surety was solvent and fully able to pay the entire amount immediately. *Held*, motion granted. *In re Nine North Church Street, Inc.*, 82 F. (2d) 186 (C.C.A. 2d, 1936), rev'g 12 F. Supp. 768 (N.Y. 1935).

The power of the court under § 77B (c) (10) to enjoin a collateral suit is limited to enjoining or staying "the commencement or continuation of suits against the debtor .... or .... to enforce any lien upon the estate." 48 Stat. 917 (1934), 11 U.S.C.A. § 207 (c) (10) (supp. 1935). Collateral suits by creditors against persons other than the debtor have not been stayed, even though they might impede reorganization of the debtor. Thus, a court has refused to enjoin a suit by bondholders against the trustee house of issue on the mortgage for misrepresentation in selling the notes and for mismanagement of the trust *res*. *In re 1775 Broadway Corp.*, 79 F. (2d) 108 (C.C.A. 2d 1935); see *In re Prudence Bonds Corp.*, 75 F. (2d) 262 (C.C.A. 2d 1935). Until the plan is confirmed, then, the bondholders are in the same relation to the surety as if no petition under § 77B had been filed. Thus, if the usual acceleration clause is present, the bondholders may sue and collect from the surety immediately upon the debtor's default. However, after confirmation of the plan, assenting bondholders may collect from the surety only if the plan to which they assented did not too greatly alter the obligation. Of course a surety is not released by a discharge of the principal debtor in ordinary bankruptcy proceedings. Bankruptcy Act § 16, 30 Stat. 550 (1898), 11 U.S.C.A. § 34 (1927); Arant, Suretyship § 53 (1931). Nor does the majority rule release a surety from liability to creditors who have entered a composition with the debtor if the creditors' action is reasonable. Arant, Suretyship § 54 (1931). Despite the affirmative vote of creditors necessary to effect a composition, the surety is not hurt because presumably the creditors in a composition get as much in cash as they could have obtained by putting the debtor through bankruptcy. Thus, the obligation continues and the creditors can proceed against the surety for the balance of their claims. Alteration of obligations in reorganization under § 77B, however, is quite different from composition with a debtor. Instead of getting cash, the creditors receive new securities of the debtor which are of uncertain value. If the terms of the new securities constitute a new obligation of the debtor corporation to the creditor, the surety is discharged (unless he has assented), as in the case of any extension of time granted to the principal. Arant, Suretyship § 67 (1931). Moreover, in many cases a new debtor, in form at least, is substituted for the old. If the surety were not released, it would be difficult to determine the amount of his remaining liability because of the uncertain value of the securities. It is unlikely that the surety can be forced to pay the assenting creditors in full and take the new securities.

Dissenting bondholders, however, make no new agreement with the debtor and therefore retain their rights against the surety. Although § 77B forces dissenters to come under the plan as to their rights against the principal (§ 77B (g) (3), 48 Stat. 920 (1934), 11 U.S.C.A. § 207 (g) (3) (supp. 1935)), nothing is said concerning their rights against the surety. But to allow dissenters to keep these rights is to give them a material advantage over assenting creditors who lose their claims against the surety if

the reorganization plan materially alters the obligation. Again, general knowledge of the superior position of dissenters would make it difficult to obtain acceptance of a plan for the reorganization of a guaranteed issue.

One possible solution would be to make the surety a party to the principal's reorganization and work out a modification of his liability also. Section 76 of the Bankruptcy Act (48 Stat. 925 (1934), 11 U.S.C.A. § 204 (supp. 1935)) expressly provides that those secondarily liable can thus be dealt with in cases in which debts of individuals are extended under § 74 (47 Stat. 1467 (1933), 11 U.S.C.A. § 202 (1933)). The natural implication from a failure to include a similar provision in § 77B is that no jurisdiction of the court over sureties was intended. Furthermore any attempt to permit the modification of dissenting creditors' rights against a solvent surety raises a serious constitutional question as to the scope of the bankruptcy power. If it is recognized that, in many cases, reorganization of the principal may be effected only by these means, an amendment of § 77B incorporating provisions such as those of § 76 may perhaps be sustained over the objections of a minority creditor. If the surety is insolvent, however, the constitutional problem is less serious. See *In re Central Funding Corp.*, 75 F. (2d) 256 (C.C.A. 2d 1935).

Corporate Reorganization—Tentative Approval of a Plan under § 77B of the Bankruptcy Act—[Federal].—In a reorganization proceeding under § 77B of the Bankruptcy Act (28 Stat. 912 (1893), 11 U.S.C.A. § 207 (supp. 1935)) proponents of two plans of reorganization petitioned the court for tentative approval of one of them to determine which should be submitted to creditors and stockholders for their acceptance. *Held*, the "debtor plan" is tentatively approved and is ordered to have prior submission. But "it is with full reservation on my part to modify the plan which I am now approving, or to disapprove it entirely, if objections thereto appear persuasive on final hearing." *In re Pressed Steel Car Co. of N.J.*, C.C.H. Bankr. Service, par. 3760 (D.C. Pa. Jan. 1936).

In another recent reorganization, one plan was submitted for tentative approval of the court prior to submission of the plan to creditors and stockholders for their acceptance. Opponents objected on the ground that a plan must be accepted by two-thirds of the affected creditors and a majority of stockholders before a court can confirm the plan. *Held*, objection overruled. § 77B(f) (48 Stat. 912 (1934), 11 U.S.C.A. § 207(f) (supp. (1935)), which provides for final approval of a plan as fair and feasible, does not prohibit preliminary consideration of a plan. Tentative approval will aid creditors and stockholders in deciding which, if any, plan to accept and resubmissions of modified plans will be avoided. "If two-thirds of each class of creditors and a majority of the stockholders approve this plan, it will be confirmed." *In re Long-Bell Lumber Co.*, C.C.H. Bankr. Service, par. 3607 (D.C. Mo. July 8, 1935).

Most courts refrain from approving any plan until it has been duly accepted by the required parties. See *Downtown Investment Ass'n v. Boston Metropolitan Bldg. Inc.*, C.C.H. Bankr. Service, par. 3807 (C.C.A. 1st, Jan. 14, 1936). It is questionable whether the language of the court in the *Long-Bell* case can be reconciled with § 77B (e)(1) which provides that "A plan of reorganization shall not be confirmed until it has been accepted in writing . . . . by or on behalf of creditors . . . . and . . . . stockholders." 48 Stat. 918 (1934), 11 U.S.C.A. § 207(e)(1)(supp. 1935). If the court