

NEW JERSEY COURT of ERRORS AND APPEALS.

Between	}	On Bill for Re-	
Harry L. Campbell, et al.,			ceiver,
Complainants,			On Appeal, June
and			Term, 1902.
John W. Taylor Manufactur-	}	Appellant's Brief.	
ing Company,			
Defendant.			

In the matter of the claim and petition of William Hurt, trading under the name and style of S. C. Hurt & Son, ¹⁰ against the John W. Taylor Manufacturing Company; on appeal from the receiver's decision.

This claim was filed by William Hurt, trading under the name and style of S. C. Hurt & Son, to recover seven hundred (\$700.00) dollars, loaned by him to the John W. Taylor Manufacturing Company. It is contended by Mr. Hurt that he is a preferred creditor and is entitled to be subrogated to the place and stead of the workmen and employees and other persons in regular employ of the Company for wages due to them within the time ²⁰ which under the statute they are entitled to be preferred creditors.

The testimony shows that Hurt was a very large creditor, a heavy endorser and also a stockholder and director in the Company, and that the money was advanced for the express purpose of paying the wages due to the employees of the Company at that time, and that the money was so used. The testimony also shows that Mr. Hurt advanced this money not simply as an act of friendship toward the company but because he believed that if he did so, and the money was used for the purpose intended, he
10 would become a preferred creditor and be entitled to a lien on the assets of the Company in place of the employees whose claims would be satisfied and extinguished.

The only matter now to be decided is a purely legal question, viz: It being the law that the workmen, employees and persons doing labor or services of some character in the regular employ of the Company were entitled to a first and prior lien on the assets of the Company for the payment of the amount due them, is Mr. Hurt by reason of his having satisfied and extinguished the
20 claims of the said employees, entitled to be subrogated in their place and stead as a preferred creditor? The claimant contends that he is undoubtedly entitled to be so subrogated. The Corporation Law of New Jersey with regard to the lien of employees and workmen is as follows:

“Laborers and workmen to have first lien on assets—
In case of the insolvency of any corporation the laborers and workmen and all persons doing labor or services of whatever character, in the regular employ of the said
30 corporation, shall have a first and prior lien upon the assets thereof for the amount of wages due to them, respectively, for all labor done, work and services done, performed or rendered within two months next preceding the date

when proceedings in insolvency shall be actually instituted and begun against such insolvent corporation.”

Dill on Corporations, page 90.

This being the Law it is certain that had the laborers and workmen, etc., remained unpaid, they would have been preferred creditors because the amount due to them was for services within the statutory time, (see testimony of Mr. Campbell, page 11.)

Mr. Hurt, by his loan to the Company, caused the workmen and employees to be paid the amount so due them and thus relieved the Company of this liability. 10
“Subrogation as a matter of right, as it exists in the Civil Law, from which the term has been borrowed and adopted in our own, is never applied in aid of a mere volunteer.” (Mr. Hurt was not a volunteer; he was a large creditor, endorser, stock holder and director in the Company, and advanced the money at the request of the active executive officer of the Company. (See his testimony commencing on page 5). “Legal substitution unto the rights of the creditor, for the benefit of a third person, takes place only for his benefit, who, himself being a creditor, satisfies the lien of a prior creditor.” 20
(It was necessary for Mr. Hurt to satisfy the employees’ claims in order to protect his own interests, and the interests of the other creditors). Or for the benefit of a purchaser, who extinguishes the encumbrances upon his estate, or a co-obligator or surety who discharges the debts, or an heir who pays the debts of a succession.

“It is only in cases where the person advances money to pay the debt of a third person stands in the situation of a surety or is compelled to pay it to protect his own rights, that a Court of Equity substitutes him in the place 30

of the creditor as a matter of course without any agreement to that effect.”

14 N. J. Equity, page 235.

“Directors of a corporation who have become its sureties for creditors will, on insolvency, be subrogated to the rights of the creditor.” (Mr. Hurt was a director and also a surety or endorser on the Company’s notes to a large amount; the notes were just about to mature.)

Gray vs. Taylor, New Jersey Court E. & A.
Atlantic Reporter, 44, page 668.

10

“To entitle a party who pays the debts of another, to the rights of a creditor by subrogation, the debt must be paid at the instance of the debtor, or the person paying it must be liable as surety or otherwise.

Wilson vs. Brown, 13 N. J. Equity, page 277.

“Privity of contract is not necessary to support subrogation; it exists on mere principles of equity and benevolence.”

Cited in Mosier’s Appeal, 56 Penna., page 80.

20

Gans vs. Theime, 93 New York, page 232.

Cottoll’s Appeal, 23 Penn., page 94.

Hurt, this claimant, as well as other creditors, would have been bound for this amount because it would have been deducted from the assets of the corporation before the payment of any of the other claims. The rights of the creditors would have been greatly prejudiced had this amount not been paid to the employees. There were a number of contracts to be completed, and the employees

had stopped work. (See the testimony of Mr. Hurt, commencing on page 6.)

The fact that the claimant was a director and also President of the Company is not without importance. He held fiduciary relations to the Company, and, also, under the circumstances, to the employees. At least he was not a stranger.

"A guardian who, having no funds of his ward, pays the debt of the latter, would be entitled to subrogation on other obvious grounds." 10

See *Coe vs. New Jersey Midland Railway Company*, 4th Stewart, pages 136 and 137, citing *Dixon* on subrogation.

Mr. Hurt was in no sense a volunteer; he was requested by the Company, through its vice-president and general manager, who was the active executive official in the Company to make the payment exactly as he did. (See Mr. Hurt's testimony, commencing on page 4.)

"The real question is, whether the payment by the stranger was a loan to the debtor through a mere desire 20 to aid him, or whether it was made with the expectation of being substituted in the place of the creditor. If the former, he is not entitled to subrogation. If the latter, he is.

By the substitution no harm is done to any creditor. "Equity should not permit the just expectation of the lender to be disappointed, where the debtor is a corporation, merely because the agreement for substitution was not put into such shape as to be legally binding on the borrower." 30

4th Stewart, page 136.

Mr. Hurt, the claimant, did expect to be substituted as a creditor in the place of the workmen and employees who were paid what was due them with his money. (See his testimony, commencing on page 6.)

It being true that the doctrine of subrogation exists on principles of mere equity and benevolence, Mr. Hurt's claim is, we believe, entitled to allowance, because it is in every way just and equitable. No creditor is injured, but all stand upon the same footing, and all will receive the
10 same dividend as though no advancement had been made by Mr. Hurt, and the Court should not allow the claimant's just expectation to be disappointed.

Should this claim be not allowed, creditors, other than this claimant, profit to the extent of seven hundred dollars and this claimant is a loser of that sum.

It is contended that at the time the employees were paid with Mr. Hurt's money, they, the employees, were not preferred creditors; that they did not become preferred creditors until the time of the filing of the bill in
20 the Court of Chancery praying for the appointment of a Receiver.

While it is undoubtedly true that the employees, etc., are not in a position to enforce their preference until a Receiver is actually appointed, yet still it is not the mere appointment of the Receiver that makes them preferred creditors, but the statute has simply used the time of the Receiver's appointment as a fixed period from which to reckon the period for which the employees shall be preferred creditors and shall have a first and prior lien upon
30 the assets of the insolvent corporation for their wages.

In equity after the appointment of the Receiver the time of the employees acquirement of a preference is antedated so that from the equitable point of view they were

preferred creditors to the amount of wages due them at any time within two months before the actual filing of the bill praying for the appointment of the Receiver.

Under the doctrine of subrogation the Court must consider Mr. Hurt, this claimant', as still being in the place and stead of the laborers and workmen and all persons doing labor or services of whatever character in the regular employ of The John W. Taylor Manufacturing Company, who were paid, with Mr. Hurt's money the amount of wages due to them for all labor done, work and ser- 10
vices done, performed or rendered within two months next preceeding the date when proceedings in insolvency were actually instituted against The John W. Taylor Manufacturing Company.

Now Mr. Hurt being considered as still being in the place and stead of the said workmen, laborers and employees, must also be considered as being unpaid and being so unpaid for wages due for labor done, &c., within two months next preceding the date of the filing of the bill in this cause. He certainly is within the statute and 20
is entitled to have a first and prior lien upon the assets of the said Company to the amount so due for wages, which amount is seven hundred (\$700.00) dollars; this amount not being questioned.

After diligent search we have been unable to find any doctrine of equity which would exclude this claimant from the benefit of the preference to which we claim he is entitled.

It is true that in *Mingin vs. Alva Glass Manufacturing Company et al.*, reported in 37th Atlantic Reporter, page 30
450, it is held," (1 The right to a preference in payment of their wages given to workmen of an insolvent corporation is wholly statutory, and does not vest until

the happening of the statutory requirements. (2) It is created only when insolvency proceedings are begun, and then arises in favor of those persons, and for such amounts and under such conditions as the legislation on the subject, then in force may prescribe." It must be remembered that the opinion in the above case was written by the same learned Vice Chancellor whose opinion is now before the Court in this case.

10 While the employees acquired their right of preference by statute, and such right is wholly statutory, yet still having such right there is no reason why the doctrine of subrogation should not exist under proper conditions. Subrogation being entirely a creation of equity is to be liberally enforced, and we respectfully submit that the Court will violate no principle of either law or equity by making use of that doctrine in the case now before it.

In Sheldon on Subrogation in defining the word subrogation it is stated on page two ".
20 more broadly it is the substitution of one person in the place of another, whether as creditor or as the possessor of any rightful claim. The substitute is put in all respects in the place of the party to whose rights he is subrogated." If this is the true doctrine it would make no difference whether the workmen and employees acquired their preference before the filing of the bill for a Receiver or did not acquire it until that time, because Mr. Hurt, being the substitute, was put in all respects in the place of the workmen and employees who were paid by him, so that when the bill for Receiver was filed in this
30 cause he acquired his preference and lien whether he was entitled to it before that time or not.

In speaking of the history of Subrogation, Sheldon on page three says "in this country, under the initial guid-

ance of Chancellor Kent, its principles have been more widely developed and its doctrines more generally applied than in England. It is treated as the creature of equity and is so administered as to secure real and essential justice without regard to form, independently of any contractual relations between the parties to be effected by it." (Citing numerous authorities.) "The principle is one of equity merely, and will be carried out in the exercise of a proper equitable discretion."

We cite one case which is so exactly in point that we 10 deem it unnecessary to quote any further authorities, viz: "A person who pays the wages may be subrogated to the rank of the seaman." "A part owner may have such subrogation as against the mortgagees of the share of another part owner." "When a vessel is unfortunately incumbered with liens and hypothecations of various kinds beyond her full value, the wages of the last voyage have precedence over all earlier charges, such as a bottomry bond given at the beginning of the voyage; and in such cases one who pays the wages is often subrogated to the 20 rank of the seaman, on the ground that he has saved expense, and has given the seamen their money promptly, and only arrived at the result the Court would have reached. The owner or part owner is not excluded from the right of subrogation when the justice of the case is with him."

2d Lowell (U. S.) 464, opinion by Judge Lowell.

Respectfully submitted,

SIMS & DARNELL,

Solicitors for Appellant.

JOHN C. SIMS, 30

Of Counsel.

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wholly developed and its doctrines more generally ap-
plied than in England. It is treated as the creature of
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sential justice without regard to form, independently of
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of subrogation when the justice of the case is with him."
2d Lowell (U. S.) for opinion by Judge Lowell.

Respectfully submitted,
Sims & Darnell,
Solicitors for Applicant.
JOHN C. SIMS,
Of Counsel.

New Jersey
Court of Errors and Appeals.

Between
Harry L. Campbell, et als.,
Complainants,
and
The John W. Taylor
Manufacturing Company,
Defendant.

On Bill For
Receiver.

In the matter of the appeal of the Prentiss Tool and Supply Company, a preferred creditor of said Defendant Company from the determination of the Receiver of said Company allowing the claim of William Hurt as a preferred claim against said Defendant Company.

**BRIEF FOR THE PRENTISS TOOL AND
SUPPLY COMPANY.**

ON APPEAL.

CHARLES K. CHAMBERS,
JOHN M. PERRY,
(of New York Bar,)

Counsel for the Prentiss Tool and Supply Company.

The sole question is whether or not the Hurt claim is entitled to a preference.

If it is, the dividend of the Prentiss Company will be reduced. It therefore opposes it.

The insolvency proceeding was instituted and the receiver appointed January 28, 1901.

The facts on which the claim for a preference is based, as they appear in the testimony taken before the
10 Receiver, are as follows :

On December 8th, 1900, the Vice President of the Taylor Co. telephoned from Mount Holly to Hurt, who was in Lynchburg, Va., and asked him to advance seven hundred dollars to pay the pay roll. He did so. At the time he was a stockholder in and director of the Company and also a large creditor, and he believed that if the pay roll was not honored the laborers would have stopped work, which would prejudice his right as a
20 creditor.

At the time he made this "loan" (page 6, Printed Case) he believed he would be substituted in the place of the employes as a creditor, and he also believed that if he had requested it the board of directors would have passed a resolution substituting him in place of the employes.

We have stated Hurt's testimony in its most favorable light without commenting on the form of the questions by which it was elicited and we submit that it is
30 not sufficient to sustain the claim for a preference.

The statute on which the claim is based, reads as follows :

"In case of the insolvency of any corporation the "laborers and workmen, and all persons doing labor or

“service of whatever character, in the regular employ of
 “such corporation, shall have a first and prior lien upon
 “the assets thereof for the amount of wages due to them
 “respectively for all such labor, work and services done,
 “performed or rendered within two months next pre-
 “ceding the date when proceedings in insolvency shall
 “be actually instituted and begun against such insolvent
 “corporation.”

1 Gen. St. of N. J. p. 990, and P. L. 1896,—p. 303
 § 83. 10

The “insolvency” referred to in the statute refers to the institution of the insolvent proceeding.

In *Mingin vs. Alva Glass Co.*, 37 Atl. Rep. 450, your Honor said :

“The workman acquires no lien on the assets of an
 “insolvent corporation until the court has assumed jur-
 “isdiction to administer those assets * * * his pre-
 “ferential privilege is therefore created by the statute
 “which authorizes the insolvent suit, and is wholly de-
 “pendent upon the institution of insolvency proceed- 20
 “ings.”

As the insolvency proceeding in the case at bar was not instituted until January, 1901, and as the workmen were paid in December, the irresistible conclusion is that the workmen never had a lien for there were no wages due them when the insolvency occurred. This was explicitly decided in *D. L. & W. R. R. v. Oxford Iron Co.*, 6 Stew. 192, where the Court said :

(p. 196) “The second question propounded is, Does
 “this lien arise in favor of an assignee of a claim for 30
 “wages, who acquired his right prior to the date of in-
 “solventy fixed by the decree? The wages to be within
 “the protection of the statute, must be due to a person
 “in the employ of the corporation at the time when it
 “becomes insolvent. If prior to that time they are as-

“signed, so that when insolvency occurs they are not
 “due to an employe, no lien arises. Such I think is the
 “plain direction of the statute. * * * It is un-
 “doubtedly true that the assignment of the debt carries
 “with it any security which the assignor holds. But
 “when these assignments were made the assignors had
 “no security or lien. The right of lien arose subse-
 “quently, and though the assignors may still have been
 “in the employ of the corporation when it became in-
 10 “solvent, the wages previously assigned were not due to
 “them, but to persons not entitled to the character of
 “employes.”

The workmen having no lien, Hurt who certainly stood in no better position than they did, has none.

We understand that the learned counsel for Hurt claims that by forwarding the money to the Company to enable it to pay the workmen, Hurt became an equitable assignee of the workmen's claim and subrogated to their right of lien.

20 There are several answers to this position :

1st. As we have already shown, at the time the wages were paid the workmen, they had no lien and consequently there was no lien for Hurt to be subrogated to.

2nd. Even if the workmen had a lien, *it was personal to the workmen and not assignable* and if they had actually assigned their claims to Hurt, (which they did not do) he still would have no right to enforce their lien.

D. L. & W. R. R. v. Oxford Iron Co. (supra.)

30 *In Lehigh Coal Co. vs. Central R. R.* 29 N. J. Eq. 252, the Court said :

“The considerations against a latitudinarian or even
 “liberal construction, are decisive. The preference given
 “is in derogation of the common right of equality. The
 “statute confers a special or exceptional right ; it makes

"a distinction among persons having, according to the
 "principles of natural justice, equal rights, and takes from
 "all classes of creditors, secured and unsecured, except
 "one, that that particular class may be paid in full.
 "When a statute produces such a result, those who claim
 "under it have a right to take what is clearly given by
 "plain words, but nothing more. Looking at the mani-
 "fest purpose of this statute, as well as at its words. I
 "think it is quite obvious that the right conferred is strictly
 "personal, inhering alone in the person who actually per- 10
 "forms the labor or service. * * * I think it very
 "plain that the legislature did not intend to give a lien
 "or preference for wages due for vicarious labor or ser-
 "vice * * * * . Such a preference would have
 "been expressed by giving preference to the debt, as that
 "all debts due for labor or service should be a lien, and not
 "to the creditor, as it now stands."

Lehigh Coal and Navigation Co. vs. Central R. R.
of N. J. 29 N. J. 252.

In *in re North River Construction Company*, 11 20
 Stewart, Chancellor Runyon said :

"The object of the legislature was to secure to a
 "very meritorious class of persons the payment of the
 "wages of their toil, and to that end *to give them person-*
 "*ally* a paramount lien on the assets of the employer. It
 "did not contemplate giving to creditors from whom the
 "company might borrow money on its own credit with
 "which to pay its workmen, such a lien on the assets for
 "their reimbursement."

Similar statutes in other states have also been 30
 construed to confer a personal and unassignable right
 upon the workmen.

In *Rollin v. Cross*, 45 N. Y. 771, the Court said :

"The lien under statutes of this character is, in gen-
 "eral, a personal right given to the mechanic, material

“man and laborer, for his own protection and the right
 “to create it cannot be assigned or transferred to another.”

Such a lien was also held to be non-assignable in *People v. Remington*, 45 Hun, 329, the opinion in which was adopted by the New York Court of Appeals in 109 N. Y. p. 631.

3rd. Hurt was not in a position to invoke the equity of subrogation.

10 Hurt was not liable for the payment of this payroll. The fact that he was a director, stockholder and creditor did not make him so liable. The fact that he thought it was best for his own interest created no equity in his favor. The fact that he thought he would be entitled to the lien of the workmen was not sufficient to entitle him to subrogation.

“The right of subrogation is an auxiliary equity,
 “called into existence for the purpose of enabling a party
 “secondarily liable, but who has paid the debt, to reap
 20 “the benefit of any securities which the creditor may
 “hold against the principal debtor.”

Bispham on Equity, p. 42.

It is impossible to spell out any secondary liability on Hurt's part, and consequently, there is nothing in the relation of the parties that makes a discussion of the doctrine of subrogation pertinent.

Even if there were, the situation presented by the evidence is not such as to help the claimant here for he shows no contract with either the workmen or the corporation, but merely asserts that in his own mind he
 30 thought he would get a preference by making this advance. He does not appear to have communicated this idea to anyone at the time. Almost the identical question now under discussion was presented to the Court of Appeals in *Receiver of New Jersey Midland v. Wort-*

dyke, 27 N. J. Eq. 658, where that Court said :

“The case as here presented, does not entitle the petitioners to a decree of subrogation. They do not in their petition claim to stand as guarantors on the contract, or that they were in any way held or bound for its performance. They only allege that they made the advances with the understanding that they should be subrogated to the right of the owners of the rolling stock, to the extent of such advancements. I have been unable to find either in the petition or the evidence, anything to show an agreement with the original debtor or creditor, that these parties should be entitled to subrogation, or to stand in the place of the vendors of the stock. *It is not sufficient that a person paying the debt of another should do so merely with the understanding on his part that he should be subrogated to the rights of the creditor, conventional subrogation can only result from an express agreement either with the debtor or the creditor.*”

Nor can the fact that Hurt was himself a creditor of 20 the company and made the loan with the idea of protecting his own rights, create an equity in his favor.

The doctrine of subrogation is equitable, and the courts will never invoke it against the interests of third parties where the very transaction for which the right is claimed mislead such third parties to their injury. By loaning money to the Taylor Company, Hurt enabled it to assume a false front—to appear before the world as a solvent, going concern, whereas in reality it was not so. Relying on the apparent prosperity of the 30 Company, which had been created in part by the loan of Hurt (with the mental reservation of security,) the Prentiss Tool and Supply Company sold the machines from which the present claim arises, to the Taylor Company. Will equity come to the aid of such a man and allow him to

snatch away the crutches from him whom he has already crippled?

We respectfully submit that the claim of Hurt to a preference should be disallowed and that the receiver should be directed to pay the claim of the said Company in full.

CHARLES K. CHAMBERS,
JOHN M. PERRY, (of New York Bar,
Of Counsel for the Prentiss Co.

Dated June 17, 1902.

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TESTIMONY.

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EXHIBIT NO. 2.

IN CHANCERY OF NEW JERSEY.

Between

Harry L. Campbell, et als.,
Complainant,

and

The John W. Taylor Manufactur-
ing Company,
Defendants.

On Bill, &c.

To,

John B. Davis,

10

The petition of William Hurt, trading under the name and style of S. C. Hurt & Son, of the City of Lynchburg, in the State of Virginia, respectfully shows:

That The John W. Taylor Manufacturing Company is indebted to him in the sum of seven hundred dollars for cash loaned by the said William Hurt to the said The John W. Taylor Manufacturing Company; that said sum of seven hundred dollars was loaned by your petitioner to the said The John W. Taylor Manufacturing Company on the eighth day of December 1900 for the ex-
press purpose of paying the wages then due by the said

Company to its laborers and workmen and other persons doing labor or service in the regular employ of the said company.

That under and by virtue of "An Act concerning Corporations," approved April 21st, A. D., 1896, the said sum of seven hundred dollars so loaned as aforesaid by your petitioner constitutes a first and prior lien upon the assets of the said company in favor of your petitioner.

And your petitioner therefore prays that you will recognize and allow the said sum of seven hundred dollars with interest from the eighth day of December, 1900, as a preferred claim and a first and prior lien upon the assets of the said The John W. Taylor Manufacturing Company.

WILLIAM HURT.

State of Virginia,
City of Lynchburg, ss:

William Hurt, of full age, being duly sworn on his oath, says: that there is justly due and owing to him from The John W. Taylor Manufacturing Company the sum of seven hundred dollars; that he loaned the said sum of seven hundred dollars in cash to the said Company on the eighth day of December, 1900; that the said sum of seven hundred dollars was loaned to the said company for the express purpose of paying the wages ¹⁰ due by it to its laborers and workmen and that it was actually expended by the said company for that purpose, and that no part of the said sum of seven hundred dollars has been repaid to this deponent.

Sworn and subscribed this
26th day of March, A. D.,
1901, before me,

WILLIAM HURT.

Notary Public.

In the matter of the claim and
petition of William Hurt, trading
under the name and style of S.
C. Hurt & Son,

vs.

The John W. Taylor Manufactur-
ing Company.

On Hearing
Receiver.
Before

Hearing in the above matter held at the law offices of
10 Eckard P. Budd, No. 106 Main street, Mount Holly,
New Jersey, before John B. Davis, receiver of The John
W. Taylor Manufacturing Company, on Monday, April
22nd, 1901.

By agreement testimony taken stenographically and
signatures of witnesses waived.

APPEARANCES:

William Hurt, trading as S. C. Hurt & Son, John
C. Sims, John B. Davis, Receiver, Eckard P. Budd, and
Walter A. Barrows.

20 William Hurt, being duly sworn, upon his oath, says:

BY MR. SIMS—

Q. On December 8th last you were in Lynchburg,
were you called up on the long distance phone by John
W. Taylor, vice-president of The John W. Taylor Manu-
facturing Company, on December 8th?

A. I do not remember the date, but about that time.

Q. How do you fix the date first, was it the same day Mr. Taylor drew this draft upon you?

A. Yes.

Q. This draft was drawn December 8th?

A. Yes.

Q. What did Mr. Taylor ask you over the phone?

A. He asked me to advance him one hundred dollars to pay the pay roll.

Q. What did you respond?

A. I agreed to do it. 10

Q. Did he ask you to telegraph the Farmers' National Bank?

A. Yes.

Q. Did you do so?

A. I did.

Q. Did you honor this \$700 draft?

A. Yes.

Q. You paid \$700 thereon?

A. Yes, \$700.

Q. And has this \$700, or any part, ever been repaid 20 you?

A. Never has.

Q. Now before you promised to honor this draft, what were you told by Mr. Taylor as to the purpose for which this money was to be used?

A. For the pay roll.

Q. That is, to pay the employees of the Company?

A. Yes.

Q. For the week or two weeks previous to that time?

A. Yes. 30

Q. At that time, the time you honored this draft, were you a large creditor of the Company, and did you believe that should the works be closed because of the

non-payment of the employees your right as a large creditor would be greatly prejudiced, as well as the rights of all the other creditors?

A. Yes, I was a large creditor and the damage would have been great if they had not been paid.

Q. If the employees had not been paid they would have stopped work?

A. The position was they did.

Q. By your conversation with Mr. Taylor?

10 A. Yes.

Q. Now at the time you made this \$700 loan, did you believe you would be substituted in the place of the employees as a creditor?

A. Yes.

Q. And did this, and the fact that you were already a large creditor and endorser for the Company, and wanted to guard your rights, induce you to make this loan?

A. Yes.

20 Q. At the time of making this loan were you a director of the Company?

A. Yes.

Q. And were you also a stock holder?

A. Yes, a stock holder and director.

Q. And did you believe that had you so requested, the Board of Directors would have passed a resolution substituting you in the place of the employes whose wages were due at that time as a creditor of the corporation?

30 A. I have every reason to believe they would have done so.

Q. Now at the time you made this loan were you an endorser or surety for the John W. Taylor Manu-

facturing Company to a large amount?

A. Yes.

Q. And was some of that paper, commercial paper, on which you were endorser, almost due?

A. Yes.

Q. And did you believe if you advanced this money to pay the employees the Company would be greatly benefited financially?

A. Yes, able to go on.

Q. At the time did the Company have a number of 10 contracts in process of being filled?

A. Yes, some very large ones.

(Mr. Sims wishes to state this claim is made in the name of William Hurt, trading as S. C. Hurt & Son, as a matter of convenience, as the draft was drawn in the name of S. C. Hurt & Son.)

Q. You are the only member of the firm of S. C. Hurt & Son?

A. Yes, I represent the whole business.

Q. Have you been furnished with a copy of the pay 20 roll which you thus paid?

A. No.

Mr. Sims offers the draft in evidence, marked "Exhibit A."

\$700. (Stamp.) Mt. Holly, N. J., 12-8-1900.
At Sight.

Pay to the order of John W. Taylor Mfg. Co
Seven Hundred and no-100 dollars
For value received and charge same to account of
JOHN W. TAYLOR MFG. CO. 30
To S. C. Hurt & Son, H. L. Campbell, Treas.
Lynchburg,
Va.

Mr. Sims offers the telegram in evidence, marked
"Exhibit B."

Dec. 8, 1900.

Dated Lynchburg, Va.
To Farmers National Bank,
Will honor Taylor Mfg. Co. draft seven hundred dol-
lars. S. C. HURT SON.

BY MR. BUDD—

Q. Mr. Hurt, did you ever take any legal advice as
10 to the rights employees had for their wages.

A. I knew the rights of employees, I do not know
that I took any particular legal advice, I am a large em-
ployer myself.

Q. And when you say you knew the law of that,
you mean you know the law of the State of New Jer-
sey?

A. I do not know I did.

Q. Had you ever read the statute of New Jersey
relative to the rights of employees of manufacturing
20 places?

A. I do not recall I ever did.

Q. Had any lawyer ever told you what their rights
were?

A. I do not remember consulting a lawyer in regard
to it.

Q. When you spoke in answer to the question asked
you by Mr. Sims relative to substituting yourself in the
place of the employees, if I understand you, that was
from your general knowledge as an employer, and not
30 any specific knowledge you had of the laws of New
Jersey as applicable to the subject?

A. Yes, sir. I had had a similar experience of this

in the case of the company I was interested in, where we got something similar to this, where the claim was allowed.

Q. What was that?

A. In Lynchburg, Va. I suppose the New Jersey laws are very similar to those of Virginia.

BY MR. SIMS—

Q. You knew that under the laws of New Jersey employees of a corporation were allowed only for their wages for a certain time, did you not? 10

A. Yes.

Q. And you believed this \$700 you were about to advance was to pay the employees for their labor within that statutory time?

A. Yes.

Q. Previous to this, in employing laborers in Virginia, upon one occasion did you not advance money for the purpose of paying employees and were you not substituted in their place as a creditor?

A. Yes. 20

Q. And you believed that same thing would be done in this case?

A. Yes.

BY MR. BUDD—

Q. For what period of time under the New Jersey laws would labor have the preferred claim?

A. I do not remember the time exactly.

Q. Have you ever read it in the statute?

A. No.

BY MR. SIMS—

Q. But you did know they had a lien for a certain time?

A. Yes, a reasonable time.

Q. And you believed this money was to pay the employees within that statutory time?

A. Yes, this conversation occurred over the phone and I had to act quickly.

Harry L. Campbell, being duly sworn according to
10 law, upon his oath, says:

BY MR. SIMS—

Q. Were you secretary and treasurer of the Taylor Manufacturing Company on the 8th day of December last past?

A. I was.

Q. On that day, did the John W. Taylor Mfg. Co., by you as treasurer, draw this draft on S. C. Hurt, of Lynchburg, Va.?

(Marked "Exhibit A.")

20 A. Yes.

Q. Was this draft honored by S. C. Hurt & Son?

A. Yes.

Q. And did the John W. Taylor Mfg. Co. receive \$700 thereon?

A. Yes.

Q. And has that \$700 or any part thereof ever been repaid to Mr. Hurt?

A. No.

Q. How was this \$700 received.

30 A. The draft was drawn.

Q. Through what bank?

A. The Farmers National Bank. Mr. Taylor had

a conversation with Mr. Hurt over the phone and he told me Mr. Hurt would honor the draft; Mr. Davis did not get the telegram within banking hours, Mr. Davis asked me if I was positive it was all right.

Q. Was this draft drawn on the Farmers' National Bank?

A. No, it was drawn through the Farmers' National Bank and deposited in there to the credit of The John W. Taylor Mfg. Co.

Q. Will you refer to your check book and tell me 10 for what purpose this \$700 was used?

A. The greater portion was used for paying labor, the pay roll as it was in the time book, was \$650.16. Andrew Schulze \$20.00, John W. Taylor \$5.00 and H. W. Fulmer \$20.00, making a total of \$695.16.

Q. That \$650 was to pay the pay roll of the John W. Taylor Mfg. Co. for what period of time before the 8th of December?

A. For the week ending Wednesday prior to the 8th, which was the 5th.

Q. This \$650 was to pay the pay roll of The John W. Taylor Mfg. Co. for the week ending the 5th of December? 20

A. Exactly.

Q. Who were on this pay roll, any but the ordinary employees of the concern?

A. No.

Q. On the pay roll there were only the laborers and mechanics?

A. Yes.

Q. In what capacity was Schulze employed? 30

A. Draughtsman.

Q. Was he an officer of the Company?

A. No.

Q. An employee?

A. Yes.

Q. In what capacity was Fulmer employed?

A. Stenographer.

Q. Was he an officer of the Company?

A. An employee.

Q. For what period of time previous to December 8th was this \$20.00 to pay Schulze?

10 A. I do not know, it was either for the month prior, on account of the month of November, I think for the month of November.

Q. And was the \$20.00 paid Fulmer balance for the month of November also?

A. Yes.

Q. John W. Taylor was an officer of the Company, was he not?

A. Yes.

20 Q. Then the total amount of \$690 was used to pay the employees of the Company for wages then due them and due them for the periods you have stated?

A. Yes.

BY MR. BUDD—

Q. Messrs. Schulze and Fulmer were persons doing labor or services of some character in the regular employ of The John W. Taylor Mfg. Co.?

A. I should say yes, one was draughtsman and one stenographer.

30 Q. Do I understand the \$650 that was paid to the laborers and workmen was for the pay roll for the week preceding December 8th?

A. It was for the week ending December 5th, we paid from Wednesday to Wednesday.

Q. And the bill of Mr. Schulze was for what period of time.

A. On account of his November salary, his salary was not due until the last of November, November 30th or December 1st.

Q. How much would have been due to him at that time?

A. He got a salary of \$100 per month, I do not know just how his account stood, but it was paid on account of his salary, the same way with Fulmer.

Q. And it was not due until the last day of November or the first day of December?

A. No, that was the custom, you know.

Q. And the \$20.00 paid Fulmer, what was that paid for?

A. That was paid for services rendered during November.

Q. And was he paid by the week or month? 20

A. By the month.

Q. Was paid by the month?

A. Yes.

Q. What was his salary?

A. His salary was, I think, for the month of November, he got \$35.00, I think that was his salary in November?

Q. Was his salary due the last day of November or first day of December?

A. His salary was paid by the month, any time during the month I had sufficient funds and he wanted money we let him have it. 30

BY MR. BUDD—

Q. Mr. Taylor's \$5.00 was on account of what?

A. Charged to salary account, but at that time his salary was overdrawn.

BY MR. SIMS—

Q. This \$5.00 paid Mr. Taylor was on account of his salary in January, 1901?

A. Yes, he put it that way, his account was overdrawn at the time he got it, as I remember.

10 BY MR. BUDD—

Q. As far as Mr. Taylor was concerned there was nothing owing to him on account of salary?

A. No.

Counsel for Mr. Hurt says that they claim under the petition filed for them, \$690.16 as a preferred claim, instead of \$700, for which their petition was filed, and waive the balance \$9.84 as a preferred claim and ask for allowance in the hands of Receiver as a claim of a common creditor for the amount of \$9.84.

20 BY MR. SLAUGHTER—

H. L. Campbell.

Q. Was this five dollars paid to Mr. Taylor his salary as vice-president or as general manager?

A. He had one salary as vice-president and general manager.

EXHIBIT NO. 3.

Mount Holly, N. J., July 8th, 1901.

To William Hurt, trading under the name and style of
S. C. Hurt & Son.

With reference to the claim and petition presented by
you, in writing and under oath, and filed with me as
receiver of The John W. Taylor Manufacturing Com-
pany on the tenth day of April, 1901, and concerning
which claim and petition a hearing and examination was
held before me at Mount Holly, New Jersey, I hereby 10
notify you that I have passed upon the same, and also
of the determination arrived at by me as receiver relative
to said claim and petition as follows, namely:—

I allow the claim of seven hundred dollars, together
with lawful interest from the eighth day of December,
1900, for money loaned by you to The John W. Taylor
Manufacturing Company on said day for the express
purpose of paying the wages then due by the said Com-
pany to its laborers and workmen and other persons do-
ing labor or service in the regular employ of the said 20
Company, as a preferred claim, and a first and prior lien
upon the assets of the said The John W. Taylor Manu-
facturing Company.

JOHN B. DAVIS,
Receiver.

IN CHANCERY OF NEW JERSEY.

Harry L. Campbell, et als.,	Complainants,	} On Bill for Re-
and		
The John W. Taylor Manufactur-	} On Appeal.	
ing Company,		
Defendants.		

10 Appeal of the Prentice Tool & Supply Company, a preferred creditor of said defendant Company, from the determination of the Receiver of said Company allowing the claim of William Hurt as a preferred claim against said defendant Company.

The petition of the Prentice Tool & Supply Company, a corporation of the State of New York, and duly authorized to transact business in the State of New Jersey, respectfully shows that in the month of December, A. D., 1900, said Company sold and delivered to the said John W. Taylor Manufacturing Company, a corporation

of the State of New Jersey, then doing business at Mount Holly, New Jersey, certain machinery of the value of four thousand eight hundred and twelve dollars (\$4,812.00).

And your petitioner further shows that on the twenty-second day of January, A. D., nineteen hundred and one it caused to be filed in the Clerk's Office of Burlington County, its claim for the payment of said sum of four thousand eight hundred and twelve dollars against the buildings of the said Taylor plant and the land whereon 10 said buildings stand, including the lot or curtilage whereon the same is erected, pursuant to the Mechanic's Lien Laws of this State.

And your petitioner further shows that afterwards, to wit; On January 28th, 1901, by virtue of a bill filed in this Court in the above entitled matter, the said John W. Taylor Manufacturing Company was decreed to be insolvent, and John B. Davis was appointed Receiver thereof; and that the said John B. Davis duly qualified as such Receiver, and took upon himself the burden of 30 such Receivership.

And your petitioner further shows that on March seventh, A. D., 1901, it presented its claim to the said John B. Davis, Receiver as aforesaid, for allowance, and petitioned the said receiver to allow said claim as a preferred one; that the said Receiver, after hearing testimony in said matter, and the arguments of counsel, declined to allow said claim as a preferred one; and that whereupon your petitioner appealed from the determination of said Re- 30 ceiver to this Court, and that this Court sustained and affirmed the decision of such Receiver in said matter, declining to allow said petitioner's claim as a preferred

one; that whereupon your petitioner appealed to the Court of Errors and Appeals of this State from the determination of the Chancellor, and that on the third day of March, A. D., 1902, a decree was entered in the office of the Court of Errors and Appeals of this State, reversing the decree of the Chancellor, and allowing your petitioner's claim as a preferred one against the above mentioned defendant Company; that a copy of said decree marked Exhibit 1, is annexed hereto and forms a

10 part of this petition.

And your petitioner further shows that by virtue of an order entered in this Court, the Receiver of said defendant Company was ordered to sell the plant of the said The John W. Taylor Manufacturing Company, free and clear of liens and encumbrances, and was further ordered to pay the money arising from the sale of said plant into this Court, there to be subject to the same liens and equities of all parties in interest as was the property of said defendant Company before said sale.

20 And you petitioner further shows that said property was so sold by said Receiver, and that by virtue of the decree above referred to, entered in the Court of Errors and Appeals, your petitioner has a preference on said funds so paid into this Court together with certain other preferred creditors, over and above the common creditors of the said The John W. Taylor Manufacturing Company.

30 And your petitioner further shows that one William Hurt, trading under the name and style of S. C. Hurt & Son, in the City of Lynchburg, State of Virginia, filed a claim for seven hundred dollars (\$700) with the said John B. Davis, receiver as aforesaid, and praying the said receiver to allow said claim as a preferred one on the

ground that said seven hundred dollars (\$700) had been loaned by the said William Hurt for the express purpose of paying the wages due to the laborers and workmen of the above-mentioned defendant Company, which were due on the eighth day of December, A. D., 1900, a copy of which said claim marked Exhibit No. 2, is annexed hereto and forms a part of this petition.

And your petitioner further shows that the said receiver, after taking testimoney, in said matter, and after hearing counsel for the said William Hurt, allowed said claim as a preferred one; that a copy of said receiver's determination allowing said claim as a preferred one is annexed hereto, marked Exhibit No. 3 and is made a part of this petition. 10

And your petitioner further shows, that since it has established its claim as a preferred one as per the decree in the Court of Errors and Appeals above referred to, by its counsel has requested the said John B. Davis, receiver as aforesaid, to pay and satisfy its claim together with interest and costs incurred, amounting to five thousand three hundred and fifty dollars (\$5,350). 20

And your petitioner further shows that said receiver declines to pay said money to it, stating that the only cash which he has in hand in his control at this time, is six thousand two hundred and ninety-seven dollars and forty-two cents (\$6,297.42), and that he is fearful that he will not have sufficient money to pay the expenses of the receivership and the claims of your petitioner and the other preferred claims which have been allowed, including the claim of the said William Hurt, above referred to. 30

And your petitioner conceives and insists that the claim of the said William Hurt above referred to should not

have been allowed by the said receiver as a preferred claim, and that if the same is allowed and paid by the said receiver to the said William Hurt as a preferred claim, your petitioner may be greatly injured thereby; and that if said Hurt's claim be not paid your petitioner's claim will be paid in full.

10 And your petitioner therefore respectfully appeals from said determination of said receiver allowing the claim of the said William Hurt to the extent of seven hundred dollars (\$700) to be a preferred claim as above set forth, to this Honorable Court, and prays the the said determination of the said receiver may be reversed, and such order made in the premises as shall be agreeable to equity and good conscience.

And you petitioner will ever pray, &c.,

CHAS. K. CHAMBERS,

Solicitor for Prentice Tool & Supply Company.

DECREE.

IN CHANCERY OF NEW JERSEY.

Between
Harry L. Campbell, et als.,
Complainants,,
and
The John W. Taylor Manufacturing Company,
Defendants.

} On Bill for Receiver.
} On Appeal.

Appeal of the Prentiss Tool and Supply Company, a 10 preferred creditor of said defendant Company, from the determination of the Receiver of said Company allowing the claim of William Hurt as a preferred claim against said defendant Company.

ORDER SUSTAINING APPEAL.

This matter coming on to be heard in the presence of Charles K. Chambers, of counsel with the appellant, The Prentiss Tool & Supply Company, and John C. Sims, of counsel with William Hurt, upon petition of appeal and proofs relating to the claim of the said William Hurt for 20

the sum of seven hundred dollars (\$700), wherein the said Hurt claimed to have a preference for said sum by reason of having advanced said money to the said The John W. Taylor Manufacturing Company to pay the workmen of said Company.

Thereupon the Court, having read the pleadings and proofs and having heard the arguments of the respective counsel therein, and being of the opinion that the said William Hurt is not entitled to have a preference on the
10 funds in the hands of the Receiver appointed in the above entitled matter for the said seven hundred (\$700) advanced and loaned to the said The John W. Taylor Manufacturing Company on December eighth, nineteen hundred, and that the adjudication thereon by the Receiver, of the said insolvent corporation should not be sustained,

It is, therefore, on this second day of May, A. D., 1902, on motion of Charles K. Chambers, of counsel with the appellant, The Prentiss Tool & Supply Company, ordered, adjudged and decreed, that the appeal of The
20 Prentiss Tool & Supply Company, appellant, be and the same is hereby sustained and the adjudication of the Receiver thereby appealed from, be and the same is hereby dismissed.

W. J. MAGIE,
C.

Respectfully advised,
M. P. GREY,
V. C.

EXHIBIT NO. 1.

NEW JERSEY COURT of ERRORS AND APPEALS

November Term, 1901.

Between	}	On appeal of Pren-	
Harry L. Campbell, et als.,			tiss Tool and
Complainants,		Supply Company.	
and	}	On appeal from	
The John W. Taylor Manufac-			Chancery.
turing Company,			Decree of Reversal.
Defendants,			

This cause coming on to be heard at the November 10 term, one thousand nine hundred and one, in the presence of the respective parties, and the case having been read, and the argument of counsel, as well as the record and proceedings duly considered upon the appeal set forth and specified in the petition of appeal, &c.

It is thereupon on this third day of March in the year of our Lord one thousand nine hundred and two, ordered, adjudged and decreed, that the decree of the Chancellor be wholly reversed, set aside, and for nothing holden; and that the costs of said 20 appellant, both in this Court and in the Court of Chancery, be paid by the receiver of defendant Company and that the records and proceedings be remitted to the Court of Chancery, to be therein proceeded on according to law and the practice of said Court.

On motion of

CHARLES K. CHAMBERS,
Solr. and of Counsel with Appellant.

IN CHANCERY OF NEW JERSEY.

Between
Harry L. Campbell, et als.,
Complainants, } On Appeal.
and } Answer to Petition
The John W. Taylor Manufac- } of Appeal.
turing Company,
Defendant.

10 The answer of William Hurt, trading, &c., as S. C.
Hurt and Son, respondent, to the petition of Appeal
of the Prentiss Tool and Supply Company, a preferred
creditor, of said defendant company, from the determi-
nation of the Receiver of said Company, allowing the
claim of William Hurt as a preferred claim against said
defendant Company.

This respondent not acknowledging all or any of the
matters which in the said petition of appeal are contained
to be true for answer thereto, nevertheless, says and
20 admits that the said appellant The Prentiss Tool and
Supply Company has established its claim against the
said defendant Company, as a preferred claim as in their
said petition of appeal is alleged.

This defendant further admits that an order was made

on the eighth day of July, A. D., nineteen hundred and one, by John B. Davis, Receiver, allowing the claim of William Hurt, trading, &c., as S. C. Hurt and Son, as a preferred claim and a first and prior lien upon the assets of the said The John W. Taylor Manufacturing Company, but as to the form thereof, this respondent prays to refer thereto when the same shall be produced, and this respondent is advised and believes that the said order is agreeable to equity, and he prays that the same may be affirmed with costs to be adjudged to this respondent. 10

SIMS & DARNELL,

Solicitors for and of Counsel with Respondent.

Dated April 1, 1902.

DECREE.

IN CHANCERY OF NEW JERSEY.

Between
Harry L. Campbell, et als.,
Complainants,
and
The John W. Taylor Manufacturing Company,
Defendant.

} On Bill for Receiver.
} Petition of Appeal.

10 In the matter of the Prentiss Tool and Supply Company, a preferred creditor of said defendant Company from the determination of the Receiver of said Company allowing the claim of William Hurt as a preferred claim against said defendant Company.

To the Honorable the Court of Errors and Appeals in the last resort in all causes.

The petition of William Hurt, trading under the name and style of S. C. Hurt and Son, respondent in the above stated cause, respectfully shows that the petitioner finds
20 himself aggrieved by final decree made in the Court of

Chancery, by his Honor, William J. Magie, Chancellor of New Jersey, bearing date the second day of May, A. D., 1902, wherein the said Prentiss Tool and Supply Company was petitioner and William Hurt, trading, &c., was respondent, in this respect, to wit: that the said decree adjudges that the said William Hurt, trading, &c., is not entitled to a preferred claim, and a first and prior lien upon the assets of the said defendant Company, and reverses and sets aside the determination of the said Receiver of the defendant Company allowing the claim 10 of the said William Hurt as a preferred claim and a first and prior lien upon the assets of the said defendant Company.

And your petitioner humbly appeals from said decree and every part thereof on the ground that the same is erroneous.

Petitioner therefore prays that the said decree of the said Chancellor may be in all respects reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable 20 Court shall seem meet.

SIMS & DARNELL,
Solicitors of Appellant.
JOHN C. SIMS,
Of Counsel with Appellant.

NEW JERSEY COURT of ERRORS AND APPEALS

Between
Harry L. Campbell, et als.,
Complainants,
and
The John W. Taylor Manufactur-
ing Company,
Defendant.

} On Appeal.
} Answer to Petition
} of Appeal.

10 In the matter of the Prentiss Tool and Supply Com-
pany, a preferred creditor of said defendant Company,
from the determination of the Receiver of said Company
allowing the claim of William Hurt as a preferred claim
against said defendant Company.

The answer of Prentiss Tool and Supply Company, re-
spondent to the petition of appeal of William Hurt, Ap-
pellant.

20 This respondent not acknowledging all or any of the
matters which in the said petition of appeal contained to
be true for answer thereto, nevertheless, says and admits

that a decree was on the second day of May, last past, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced, and this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed with costs to be adjudged to this respondent.

CHARLES K. CHAMBERS, IO

Solicitor for Respondent.

CHARLES K. CHAMBERS,
Of Counsel with Respondent.

IN CHANCERY OF NEW JERSEY.

Between
Harry L. Campbell, et als.,
Complainants,
and
The John W. Taylor Manufacturing Company,
Defendant.

On Bill, &c.
On Appeal from
Receiver's Allowance of a
Preference.

10

Trenton, N. J., April 9, 1902.

The appeal of the Prentiss Tool and Supply Company, a preferred creditor, from the determination of the Receiver allowing the claim of William Hurt, trading as S. C. Hurt & Son as a preferred creditor.

Mr. Charles K. Chambers and John M. Perry for the Prentiss Tool and Supply Company.

Mr. John C. Sims for William Hurt, trading as S. C. Hurt & Sons.

20 It is stipulated between counsel that the testimony taken before the Receiver in this matter shall be used in this hearing; and it is further admitted that on December 8, 1900, the John W. Taylor Mfg. Company made an entry in their Journal to this effect: "S. C. Hurt &

Son, draft \$700." And that was transferred to the ledger account, giving S. C. Hurt & Son credit for \$700. That the \$700 so acquired by the Company was used to pay the pay-roll for wages due laborers, employees and other persons in the general employ of the Company, within two months prior to the date of the filing of the bill for the appointment of a Receiver.

(The case was then argued.)

Grey, V. C. (Orally.)

The preferred claimant, Mr. Hurt, is shown to have 10 advanced \$700 to the insolvent Company. He had an understanding that it was to be used to pay the wages of the Company's laborers. It was so used. When the insolvency of the Company was declared, he proved this \$700 advance as a preferred claim under Sec. 83 of the general corporation act, (P. L. 1896, p. 303), allowing a preference for the amount of wages due to laborers, &c., in the regular employ of the corporation for labor done within two months before the proceedings in insolvency. The Receiver has allowed this preference to Mr. Hurt, 20 and upon this allowance the appeal now being heard has been taken. The appellant is a preferred creditor whose dividend will be effected by the preference allowed to Mr. Hurt.

Mr. Hurt does not claim to have been in the employ of the insolvent corporation. The practice in this Court in allowing these statutory preferences has been to limit them to persons who were within the class named in the statute. Consolidated Coal Co. vs. Keystone Chemical Co. 9 Dick. 310. The terms used in the act expressly 30 prescribe that the preference is given to laborers and

workmen, and persons doing labor in the regular employ of the company at the time of the insolvency. It is a purely statutory right, and it was probably created for the purpose of preventing a general exodus of the workmen employed by corporations, in anticipation of the failure of the Company. It is intended to induce employees to remain at their work even if financial disaster be threatened, by assuring them that they shall not lose their wages. A company which has a large number of
10 employees may be in some financial straits, and may yet if it can continue its business, regain its prosperity. But if its employees anticipating that their wages will not be paid, leave its employ in a panic, absolute disorganization and destruction of the business may follow. The statute here intervenes and assures them that they at all events shall be paid. It refers by its very words to laborers, workmen and employees only, giving them a preference. There is neither provision for nor recognition of any power in the employees to assign their rights;
20 nor any right in any one who may have loaned the Company money with which to pay wages to have any equitable subrogation to the privileges of the company's employees.

In the present case, the testimony does not even indicate that there was any contract, that the money loaned should be used to pay wages of laborers. The proof is that it was advanced by the claimant upon "an understanding" that it would be so used. There was no contractual undertaking between the company and Mr. Hurt,
30 that the advances made by him should be used to pay laborers, and that for the sums so advanced he should stand in the place of the laborer. It does not appear that the Company had any right by its agreement with

Mr. Hurt, to confer upon him a preference which the statute by its terms gives only to laborers, in the regular employ of the corporation. There is no pretense that there was any agreement between the laborers who had the right and Mr. Hurt that his advances of the money which paid their wages should be secured by a transfer of their right to collect their wages by preference against the company.

There is no attitude in which this claim of Mr. Hurt can be presented which will enable him to stand in the place of the laborers, and receive for the money which he loaned to the company, the preferential consideration which the statute gives to the company's employees for their wages. 10

The Receiver's allowance of a preference to Mr. Hurt for the moneys advanced by him to the Company should be set aside. I will advise such an order.

THE STATE OF NEW JERSEY

NEW JERSEY

Stress and Sprains

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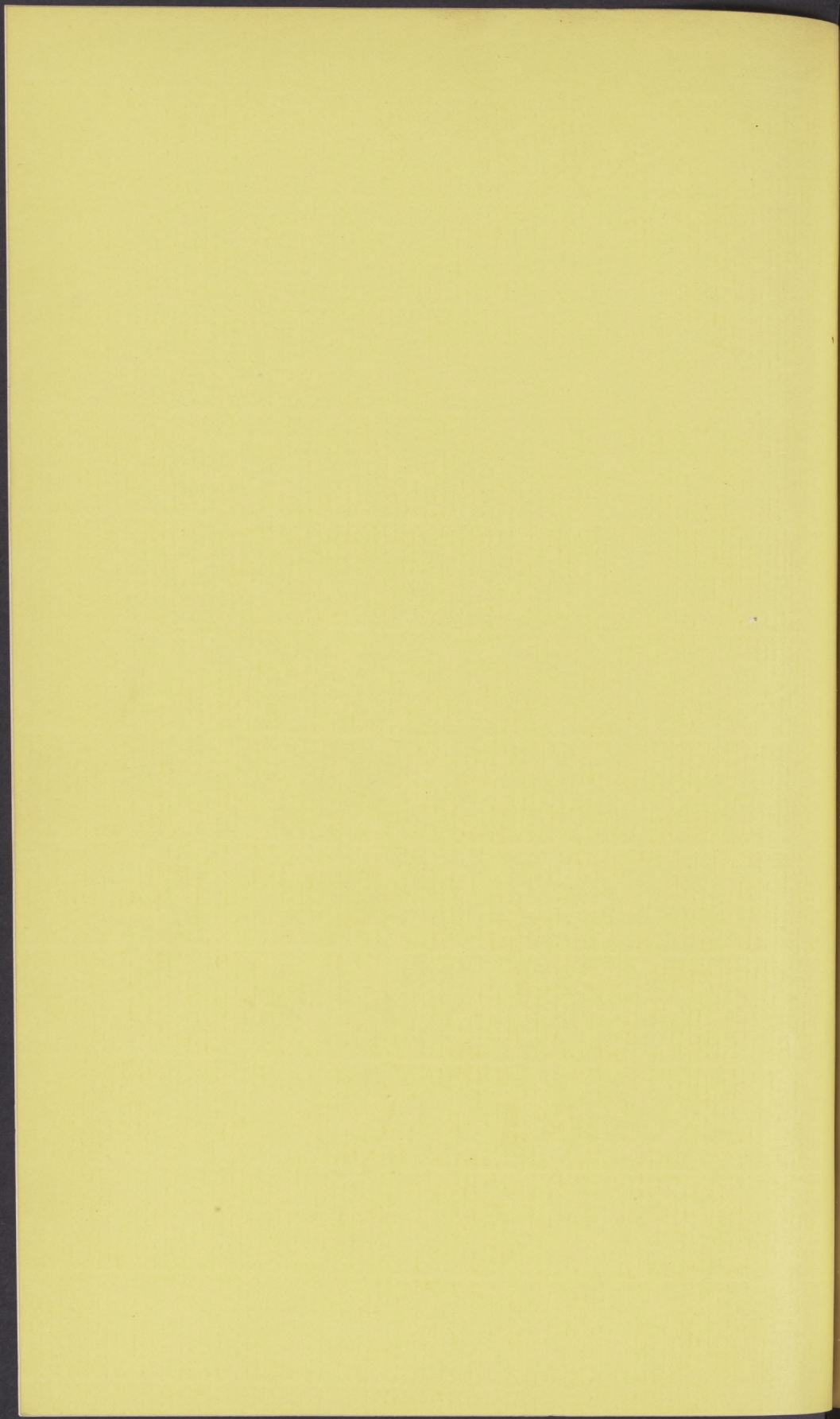
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