

NEW JERSEY

Court of Errors and Appeals

FRANK GROVER AND CLARENCE
GROVER, PARTNERS, TRADING
AS GROVER BROS.,
Complainants-Respondents,
AND
EDWARD S. WOODWARD,
Defendant-Appellant.

The question in this case is this—whether or not equity should enjoin Edward S. Woodward, a citizen of the State of New Jersey, from prosecuting a writ of attachment in Philadelphia, against Grover Bros., also citizens of New Jersey, and has attached a debt due and owing to the Grover Bros. from Peter S. Scott, also a citizen of this State, when the subject matter of the controversy was an alleged breach of contract which was made in New Jersey and was to be performed within this State.

The complainants are men of worth, doing business at Hightstown, New Jersey, and on the 15th day of August, 1919, sold two carloads of potatoes A-No. 1 grade to Edward S. Woodward, the defendant, to be delivered on board the cars at Hightstown. These complainants, on that day, delivered potatoes of the kind and character to the defendant. Four days afterward he paid the complainants for them. He had given subsequently orders that they were to be shipped to Detroit, Michigan, consigned to the defendant. The

usual time for arrival of potatoes from Hightstown in Detroit is seven days. These potatoes arrived on August 25, 1919. In the meantime, there had been a great slump in the prices of potatoes.

The defendant claimed that these cars of potatoes on arrival in Detroit were somewhat rotten and were not of A-No. 1 grade. Mr. William Dennison, a citizen of this State, happened to be in Detroit at that time, and at the request of the complainants he examined one of the cars, which had then arrived, and found the potatoes in all respects first class. He did not examine the other car because it had not then arrived. He says that the person to whom one of the cars had been sold told him that they declined to receive it on account of the misrouting of the car, which misrouting was entirely the fault of the defendant. The complainants clearly prove the grade of the potatoes and condition in Hightstown.

The only testimony that in any way militates against this state of facts is the affidavits of two gentlemen from Detroit who say that there was some rot and some scab in the potatoes at the time they were examined in Detroit, which was August 25th or 26th.

The complainants claim that under their contract when they had delivered these potatoes in good condition on board the cars at Hightstown, N. J., they had fulfilled their contract, and that whatever alteration which subsequently occurred, if any, was to be borne by the buyer, Woodward.

We claim that the evidence fully warrants the conviction that the market slump was the real cause of the criticism of the quality of these potatoes.

The defendant lives at Moorestown, New Jersey, and has his place of business in Philadelphia, Pa. Peter S. Scott, the garnishee in this case, has his place of business near that of the defendant in Philadelphia, and in October, 1919, bought potatoes from these complainants. In some way, which is not explained, Wood-

ward knew of this purchase of potatoes by the garnishee. He attached the debt due from the garnishee to the complainants, alleging that he was entitled to recover the difference in price between what he bought the potatoes for and what he sold them for, together with his expenses. This attachment was issued without the order of any court, without any affidavit filed in Philadelphia in anywise verifying his claim, but issued on a mere precipe filed by Woodward's attorney in the Court of Philadelphia, and thereupon the debt was attached.

As these potatoes were grown in Hightstown, the witnesses to this transaction were all residents of that vicinity, but as there was no question of the financial responsibility of these complainants, the defendant, Woodward, in issuing his attachment in Philadelphia, was manifestly not moved through any apprehension of the inability of the complainants to respond to any verdict which he could recover in New Jersey on his claim.

The complainants filed their bill, alleging the facts substantially above set forth, that Woodward had no claim against these complainants; that his objection to the quality of the potatoes was only a pretense; that he knew the complainants had performed their contract when they delivered the potatoes, as the affidavits show they did on board the cars at Hightstown, and that there was collusion between the garnishee and Woodward so that the garnishee's debt to the complainants should be created and attached.

In the ordinary course of legal procedure in New Jersey the complainants living in Mercer County and the defendant in Burlington County, the trial would necessarily take place either at Trenton or at Mount Holly. Furthermore, this contract was necessarily subject to the Sales Act of this State, and, therefore, the statute law of this State was involved, and we insist that the Courts of New Jersey are the ones to determine whether or not the complainants performed their contract when they delivered these potatoes on the cars as stated,

PRINCIPLES OF LAW INVOLVED.

I. The duty of the State of New Jersey to administer justice to her citizens through her courts is obvious. The public policy of New Jersey is binding upon her citizens and forbids the issuance of attachments and seizure of property of a defendant before the claim against him has been adjudicated in favor of the attaching creditor. In *Branson v. Shinn*, 13 N. J. L. 250, at 252, Mr. Justice Ford said: "Speaking of attachments, unless the Court can superintend and control the writ by keeping it within the design and intent of the act it may become an engine of great oppression and abuse. There are few persons who do not some time in their lives who do not go out of the State of New Jersey, and fewer still among the wealthiest, as well as the poorest, who do not owe small sums of money. It is evident that a man, instigated by malice, revenge or hope of undue advantages might make an affidavit of his belief that such person absconded from his creditors and seize the occasion to put a stop to his business, wound his credit and embarrass the estate of an unsuspecting citizen; but the power and duty of the Court to inquire into the misuse and abuse of its process rests on the most ancient and established principles, and not as applicable to its attachment as many other processes, and the Court added, the plaintiff need not have avowed that it was his aim to take advantage; it was plainly inferable without the confession." And Chief Justice Ewing, in *City Bank v. Merrit*, 13 N. J. L. 131, at 134, said: "An attachment is an extraordinary, not an ordinary writ; to use it when the debtor is within the reach of ordinary process is wholly inconsistent with the spirit and design of this mode of procedure."

In *Hilton v. Guyot*, 159 U. S. 113, at p. 204, the Supreme Court of the United States was discussing how a person who casually happened to be in a foreign country would be under duress if his goods were seized

in such foreign country as justifying an exception in international law in the rule respecting the evidential value of a judgment recovered under those circumstances in a foreign country.

It is submitted that the facts in this case reasonably justify the judgment that Woodward issued this attachment against these complainants in Philadelphia for the purpose of harassing these complainants into a settlement by the species of duress recognized in international dealings.

In the case of *Kerr v. Willetts*, 48 N. J. L. 78, Mr. Justice VanSyckel said: "That duty to its citizens forbids that a State shall send the suitor out of his own jurisdiction and constrain him to seek justice elsewhere." Again, the public policy in New Jersey as contained in her statutes, and which we insist the citizens of this State are bound to observe, is that a writ of attachment shall not issue in the first instance, except where a process cannot be served upon the defendant, and except where he has been guilty of fraud or of such action as justifies his arrest under a writ of *capias ad respondendum*. (See *C. S.*, *Sec. 84*, *p. 4076*, on the Subject of Attachments.)

This case therefore lacks every circumstance or element which would justify any citizen of New Jersey in seizing the property of another citizen before his claim had been reduced to judgment. Inasmuch as the garnishee lives in New Jersey, Woodward, the defendant, if he recovered a judgment and this debt happened to be unpaid, could levy on it by the provisions of our late statutes. He has not, therefore, the justification which might morally excuse his resort to this drastic writ, if he had fear of his inability to collect this debt in New Jersey by ordinary writ of execution.

In the case of *Miller v. Gittings*, 85 Md. 601 (also 37 *Atl. Reporter* 372), is a leading case in this country as to the duty of a State to protect its citizens against the abuse of the public policy of this State by one citizen to the injury of another. And many of the circum-

stances are similar to those in the case *sub judice*. Gittings was a citizen and resident of Maryland, and he alleged that he had been arrested in a civil proceeding in the State of New York, while he was casually there by the procurement of Miller on affidavits which had been filed with a Supreme Court judge who made an order for Gittings' arrest. The suit grew out of transactions which were supposed to be void under the laws of the State of Maryland. Miller was also a citizen of Maryland. The Court there said: "The important inquiry concerns the powers of the Court of Equity to protect the citizens of the State in their rights when the processes of legal tribunals are inadequate to the purpose. As long as a citizen belongs to a State he owes it obedience; and, as between States, that State in which he is domiciled has jurisdiction over his person and his personal relations to other citizens of the State. The power of the State to compel its citizens to respect its laws, even beyond its own territorial limits, is supported, we think, by a great preponderance of precedent and authority." It also said that the jurisdiction to prevent by injunction suits in other States was not founded "upon any right to interfere with or control the proceedings of other tribunals in other States, but on the clear authority vested in the courts of equity over persons within their jurisdiction, and amenable to process to restrain them from doing acts which will work wrong and injury to others, and are contrary to equity and good conscience." The authority shows that equity will enjoin suits in other States where there is fraud, oppression, vexation, injustice or unconscientious advantage, and most especially where there is an attempt to evade or defeat the operation of the laws of the State where both parties to the suit reside. The parties to this controversy are all citizens and residents of Baltimore. The evidence would naturally be there and readily obtainable, and courts are established there to the jurisdiction competent to determine the rights of

the parties according to the laws of Maryland of which they have judicial knowledge.

The complainant is subjected to prosecution before a tribunal in another State which must ascertain the law through imperfect methods of proof, where there must be much difficulty and expense in obtaining the evidence of the witnesses and where the legal processes have features of severity and harshness from which citizens of Maryland are protected by the Constitution of this State. Arrest of the person has been forbidden in the prosecution of civil actions.

Collection of a debt cannot be coerced either by imprisonment or by threats of imprisonment. In the present case the complainant was arrested and presented with the alternative of going to prison or giving bail which bound him at all times to render himself amenable to any mandate in New York.

We submit that in the case *sub judice* the Pennsylvania law has features of harshness which are absent from the New Jersey statutes. No affidavit was filed before the writ of attachment was issued in Pennsylvania. There was no judicial order made which adjudicated that Woodward had even a *prima facie* case against the complainants.

We respectfully submit that the proofs contained in the affidavits are insufficient to establish even a *prima facie* case against the complainants. In *Cole v. Cunningham*, 133 U. S. 107, the Supreme Court of the United States adjudged that a decree of the Massachusetts Supreme Court restraining citizens of that commonwealth from prosecuting attachment suits in New York against other citizens of Massachusetts was not void as violating the Constitution of the United States, and that a Massachusetts complainant could enjoin a Massachusetts defendant from prosecuting an attachment suit in New York in violation of her public laws.

In *Solis v. Blank*, 199 Pa. St. 600, at 606, it was said in respect to an attachment issued in Pennsylvania

by a New York creditor against a New York corporation:

“While our rule requires us to protect our citizens, we ought not to stand between another State and its citizens so as to enable the latter to defy the Government to which they owe allegiance.”

An injunction was issued in Pennsylvania against the attachment.

See, also, *Disconto v. Umbreit*, 208 U. S. 570.

In *Moore v. Bonnell*, 31 N. J. L., at 90, it was held that a resident of New York State could not question an assignment made by another resident of that State in the courts of New Jersey on the ground that the assignment, although an assignment of property in New Jersey, was incompatible with our State laws.

These cases all clearly manifest the doctrine of Mr. Justice VanSyckel in *Willetts v. Kerr*, above quoted, that our State is reluctant to send our citizens to other jurisdictions to seek justice. This is the doctrine of international jurisprudence as expounded in *Hilton v. Guyot*, above quoted.

II.

There is nothing before the Court to show that Woodward had any lawful authority to issue this attachment.

It was issued for damages arising from an alleged breach of contract.

The common law did not authorize an attachment except for debt. The presumption is that the common law prevails in sisters until it is otherwise proved.

III.

The jurisprudence of this State as revealed in the decisions of our Courts establish that fraud, vexation, oppression justify relief in equity, and that equity will enforce the public policy of this State by injunction.

Vice Chancellor Reed, in *Margerum v. Moore*, 63 Eq. 586, held that an attachment in another State would be enjoined where the parties concerned were citizens and residents of New Jersey, and its effect would be to disregard our public policy.

In *Standard Roller Bearing Co. v. Crucible Steel Co.*, 71 Eq. 61, an injunction was issued for fraud and oppression against the further prosecution of an attachment suit.

These two cases are attachment cases. Other cases recognize how parties can be oppressed by seizure of property in foreign or sister States.

In *Kempson v. Kempson*, 58 Eq. 94, V. C. Pitney said: "She is entitled to the aid of this court. She must either (1) go to the trouble and expense of appearing in the Dakota court, or (2) she must appear specially for the purpose of contesting jurisdiction. Either of these defenses involves great labor and expense on her part."

These considerations induced the granting of an injunction.

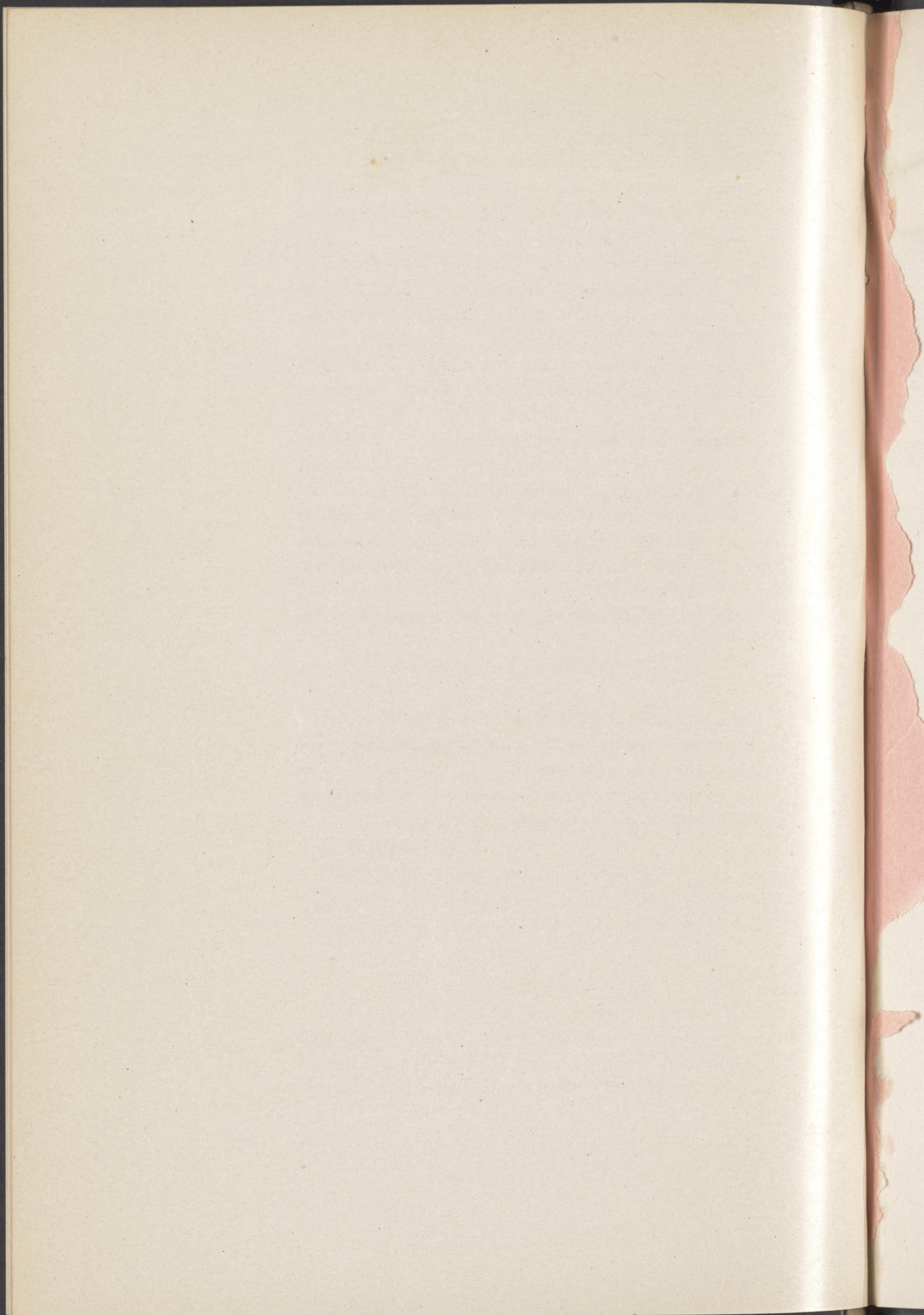
See, also, *von Bernuth v. von Bernuth*, 76 Eq.

177.

There are other cases in which the elements of duress by attachment and fraud and oppression are absent and in which comity plays a part.

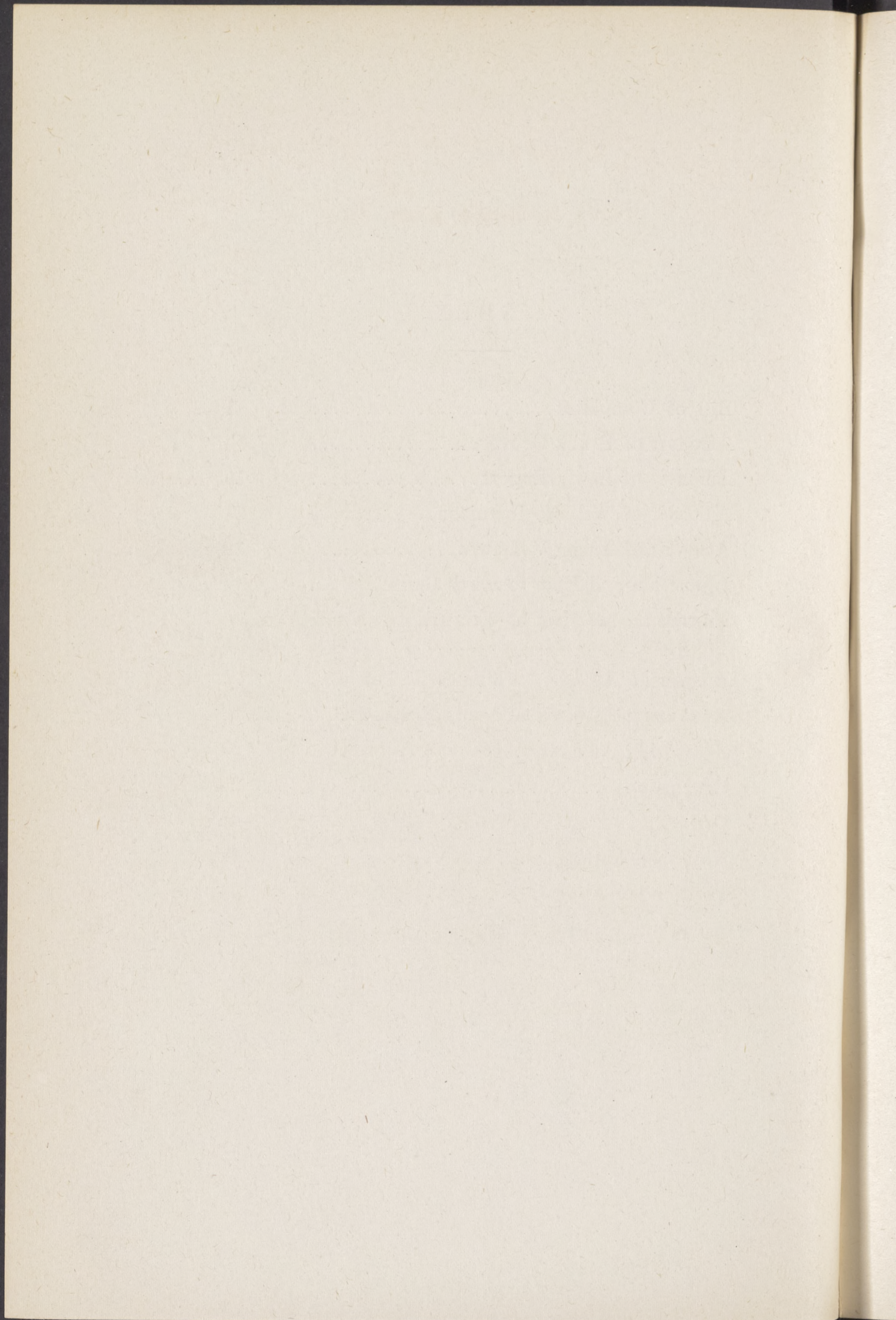
We submit that the Vice Chancellor decided this case correctly and should be upheld.

A. V. DAWES,
Of Counsel with.



INDEX.

	PAGE
Bill of Complaint.....	1
Affidavit of Frank Grover.....	7, 13
Affidavit of Lewis Rogers.....	10
Affidavit of William Dennison.....	11
Affidavit of Aaron V. Dawes.....	12
Injunction and Rule to Show Cause.....	14
Answering Affidavit of Edward S. Woodward	16
Answering Affidavit of James R. Tuttle...	20
Answering Affidavit of Louis E. Read.....	21, 22
Answering Affidavit of Peter S. Scott.....	23
Conclusions	25
Order	40
Notice of Appeal.....	42
Petition of Appeal.....	44
Answer to Petition of Appeal.....	46



BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

*To His Honor, Edwin Robert Walker, Chancellor of
the State of New Jersey:*

The complainants, FRANK GROVER and CLARENCE S. GROVER, of the Borough of Hightstown, in the County of Mercer and State of New Jersey, partners trading as Grover Bros. & Co., respectfully show:

1. That they are residents and citizens of the Borough of Hightstown, in the County of Mercer and State of New Jersey, and are now carrying on the business in Hightstown of wholesale dealers in potatoes and other farm products.

2. That on the 15th day of August, 1919, at Hightstown, New Jersey, the complainants sold to the defendant, who is also a resident of the County of Burlington and a citizen of the State of New Jersey, carloads of potatoes as follows:

One carload of Giant potatoes for the sum of \$1313, to be delivered to the defendant on board the cars at Hightstown, New Jersey, and to be shipped direct to the defendant at Detroit, Michigan, routed as follows:

Another car of Giant potatoes to be delivered to the defendant at Hightstown, New Jersey, for \$1262.50, and to be shipped to Detroit, Michigan, to the order of the defendant, and routed over the DT2 Railroad.

3. That the said potatoes were, on the 15th day of August, 1919, duly delivered to the defendant on the cars at Hightstown, New Jersey, in accordance with the contract, and the defendant duly notified.

4. That the said defendant, on the 19th day of August, 1919, paid complainants the sum of \$2575.50 in full satisfaction of the amount due on the said two cars so shipped as aforesaid.

10 5. Complainants delivered the bills of lading to the defendant as directed.

20 6. On August 23, 1919, the defendant notified the complainants that one of the cars, which was numbered 17651, had been rejected on its arrival in Detroit, on account of its being below standard grade, but the real reason was that there was a slump at that time in the market price of potatoes, so that the same were worth much less in the market than the purchase price by the defendant.

7. On August 27, 1919, defendant notified complainants that the defendant refused car No. 19348, on account of grub and rot of the potatoes, but the same condition as to a slump in the market existed as on the 23rd day of August.

30 8. The said potatoes at the time of the sale and delivery on board the cars at Hightstown, New Jersey, were in good condition and were in all respects of the quality required by the terms of their contract, and that if there was any deterioration in the said potatoes during transit, the complainants were not answerable therefor, as they had in all respects delivered good quality potatoes, of the grade required, on the 15th day of August as aforesaid.

9. On October 15, 1919, the said defendant, who was a resident of the State of New Jersey and a citizen of the said State, and residing at Moorestown, caused to be issued out of the Court of Common Pleas No. 2 of the County of Philadelphia, in the State of Pennsylvania, a writ of foreign attachment against these complainants, directed to the Sheriff of the County of Philadelphia, directing him to levy and attach a certain debt due the complainants by one P. S. Scott & Co., of Philadelphia, amounting to the sum of \$2100.00. 10

10. That in obedience to the said writ of attachment, the Sheriff attached the debt of \$2100 due and owing from the said P. S. Scott & Co., of Philadelphia, and thereupon the attorneys of the said defendant herein, Edward S. Woodward, immediately upon the service of the attachment, wrote to the complainants, demanding that they forward a check of \$1273.84, together with the costs of suit of attachment, or otherwise the said attachment suit would be proceeded with. 20

11. That said demand for \$1273.84 is most unconscionable and oppressive claim on the part of the said defendant, and the said writ of attachment was issued by the Court of Common Pleas No. 2 of the County of Philadelphia without any affidavit or other proof of any breach of contract, debt or obligation due from these complainants to the said defendant. 30

12. That the debt attached is largely in excess of the claim of the said defendant, and the action of the said defendant is vexatious and oppressive, because both the parties reside in the State of New

Jersey, and the contract was made in the State of New Jersey; that the potatoes which formed the basis of the contract were grown in the County of Mercer, in this State, and the witnesses who could give any evidence as to the quality of the said potatoes, at the time of their delivery to the defendant on board the cars, all live in the vicinity of Hightstown, New Jersey.

10 13. That the issuing of a writ of attachment under these circumstances, attaching a debt of over \$2100 imperils the collection of this debt by reason of the delay incident to the prosecution of the attachment suit, and that the courts of Philadelphia are congested, and large delay necessarily ensues in the prosecution of suits in Philadelphia.

20 14. Said defendant has no just or valid cause of action against these complainants, and if he had, the same should be determined by the Courts of New Jersey and by the laws of New Jersey, as both parties owe allegiance to the State of New Jersey, and the statute laws of New Jersey contain the rules which must determine the rights of the parties, and the Courts of New Jersey upon the question of performance of this contract under the statute laws of New Jersey are better able to determine the question than the Courts of Philadelphia, which must receive the knowledge of the laws of New Jersey and the decisions of New Jersey by means of evi-
30 dence.

15. That the witnesses who know the condition of the potatoes are several, and the expenses necessarily incident to a trial in Philadelphia would be much larger than those of a trial here in the Mercer

County Circuit Court or in the Burlington County Circuit Court, in one of which counties the case would necessarily be tried if brought in the State of New Jersey.

16. Said defendant went out of the jurisdiction where both the parties lived for the purpose of compelling the complainants to yield to their unjust demands, in violation of the public policy of this State which does not allow debts due to debtors to be attached by their creditors without due and legal proof of the validity of the claim upon which the attachment issues, and not for any proper purpose; that these complainants are owners of property, and freeholders, and financially responsible and amply able to pay any judgment which could be obtained against them by this defendant, and that it was a violation of the policy of the laws of the State of New Jersey to attach their property unless a *prima facie* case of fraud were shown to the satisfaction of a Justice of the Supreme Court or a Supreme Court Commissioner.

10

20

17. That these complainants are willing to accept service in the State of New Jersey, and have the matter tried, with all convenient dispatch, as to any cause of action which the said defendant has or could have against them and are willing to give ample security to respond to any judgment which can be obtained against them.

30

Complainants are without adequate remedy in the courts of law and therefore pray:

1. That the said Edward S. Woodward, who is the defendant to this suit, may answer this bill of

complaint, without oath, and each statement therein made.

2. That injunction may issue against the said defendant, Edward S. Woodward, strictly enjoining him from prosecuting his writ of attachment against them in the Court of Common Pleas No. 2 of Philadelphia.

10 3. That the complainant may have such further and other relief as may be agreeable to equity and good conscience.

4. That a writ of supoena may issue commanding the said defendant to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

A. V. DAWES,
*Solicitor and of Counsel
with Complainants.*

20

30

AFFIDAVITS.

IN CHANCERY OF NEW JERSEY.

Between		
FRANK GROVER and CLAR- ENCE S. GROVER, Part- ners, Trading as Grover Brothers & Co.,	}	10
<i>Complainants,</i>		On Bill for Injunc- tion. Affidavits.
and		
EDWARD S. WOODWARD, <i>Defendant.</i>		

STATE OF NEW JERSEY,	}	ss.:	20
COUNTY OF MERCER,			

FRANK GROVER, being duly sworn according to law, on his oath deposes and says:

I am one of the complainants in the above-entitled cause, and the firm with which I am connected is composed of Clarence S. Grover and myself, as partners trading under the firm name of Grover Bros. & Co., and we conduct a hay press business, buying and selling rye, potatoes and other farm products. 30

On the 15th day of August, 1919, while I was at Hightstown, New Jersey, a message was received by me from the defendant's place of business in

Philadelphia, the defendant trading as E. S. Woodward & Co., and having his place of business at No. 122 Dock Street, Philadelphia, Pa., asking whether we had any potatoes and I said "yes," and I sold him two cars, respectively, of Giant potatoes, at the price of \$1,313 and \$1,262.50, respectively, to be delivered to the defendant on the cars at Hightstown, New Jersey, and I then received shipping directions as follows: Ship to E. S. Woodward & Co., Detroit,
10 Michigan.

Subsequently, and on the 19th day of August, 1919, I received a check in full payment of said two cars of potatoes.

Said carloads of potatoes were destined for Detroit, Michigan, and the time allowed in our business for transportation from Jersey points to Detroit is seven days. The two cars were loaded by us and were in all respects in compliance with the terms and requirements of the contract, to wit, No.
20 1 grade Giant potatoes.

As to car No. 19348 P. R. R. I myself loaded the car and know from putting up the potatoes that it was strictly No. 1 grade goods. Car No. 17651 P. R. R. was loaded by Lewis Rogers, a farmer of Hightstown, New Jersey, and the potatoes, according to the best of my information, were properly sorted in accordance with the rules and requirements of the United States Government.

On August 23d, 1919, the market had dropped
30 very materially in the price of potatoes and there was a slump in price on the market at that time; on that day said Woodward sent a copy of a telegram received by him saying that car No. 17651 was not No. 1 grade. I at once wired Mr. William Denison to look into the matter and he reported to me that that car had not then arrived, and that Broom-

garden & Son were objecting to it on account of misrouting over D. C. I. road instead of the Michigan Central. Mr. Dennison subsequently reported to me that the said car had arrived in Detroit in good shape and that the quality of the potatoes was just as I had said they were, all right. Each car was separately rejected by the defendant, Woodward, and without cause.

On the 15th day of October, 1919, the said Woodward caused to be issued out of the Court of Common Pleas No. 2, County of Philadelphia, a writ of attachment to the sheriff of said County of Philadelphia, to attach over \$2,100.00 of moneys due us from P. S. Scott, who had just bought potatoes from us to that amount, and whose place of business is near to Woodward's place of business in Philadelphia. (1)

The contract was made in Hightstown, over the 'phone, and we believe we have in all respects complied with our contract and the rules and regulations of the United States Government respecting the same. 20

We received a letter from Woodward's attorney, in Philadelphia, saying that this attachment suit would be discontinued only upon the payment of the sum of \$1,273.84 debt, together with costs of suit.

Edward S. Woodward trades as E. S. Woodward & Co.; he lives in Moorestown, Burlington County, New Jersey, and has lived there for many years. He knows from all our ratings and financial reports and our standing in the community at Hightstown, that we are financially responsible and good, without the slightest trouble could pay any judgment which he could obtain against us in any court in relation to these particular contracts. 30

We believe that it is a very great hardship for us

to litigate a question of this character so far from home, in a city court where the jury are unacquainted with quality of potatoes and where we can only take our witnesses at a very considerable expense. We have numerous witnesses who helped us in preparing these potatoes for sale, and we have no means of compelling them to go to Philadelphia. To take their testimony by commission would be unnecessarily burdensome to us and such a method of presenting evidence is less satisfactory to ascertain the truth than having the witnesses personally before the judge and jury. We believe said Woodward's only purpose in suing out this writ of attachment was to make it as burdensome, oppressive and vexatious to us as possible, so that we would be coerced into settling this claim.

FRANK GROVER.

Sworn and subscribed to before me this 13th day
20 of December, 1919.

JOHN L. HEBER,
Notary Public of N. J.

STATE OF NEW JERSEY, }
COUNTY OF MERCER, } ss.:

LEWIS ROGERS, being duly sworn according to law,
30 on his oath deposes and says:

I sold to Grover Bros. car No. 17651 P. R. R. of potatoes; I raised the potatoes. I had my men grade them and the potatoes when I loaded them on the 15th day of August, 1919, on the cars at Hightstown, New Jersey, were No. 1 grade, good condition,

and fully complied with the requirements of the Government regulations; they were not rotten and grubby, but were strictly first-class stock.

LEWIS B. ROGERS.

Sworn and subscribed to before me this 13th day of December, 1919.

JOHN L. HEBER,
Notary Public of N. J.

STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX, } ss.:

WILLIAM DENNISON, of the Village of Cranbury, in the County of Middlesex and State of New Jersey, being duly sworn on his oath, says:

I am a dealer in farm products at Prospect Plains, N. J., and I am in no way connected with the complainants, Grover Bros. I was in Detroit, Michigan, in the latter part of August, 1919, and at their request by telegram I examined car No. 19348. Bloomgarden, the buyer from Woodward, on August 29, 1919, refused to take the car of potatoes on account of misrouting over the D. T. I. road rather than the Michigan Central. This car was unloaded on the 30th day of August, 1919, and I very well examined the potatoes and they were a fine lot of potatoes, in splendid shape, and the party who got this car eventually said to me he had not had a finer lot of potatoes this season than they were. In my opinion, the potatoes conformed both as to quality and size to No. 1 grade, even at the late day when I made my inspection.

W. T. DENNISON.

Subscribed and sworn to before me this 13th day
of December, 1919.

(Seal)

WILTON T. APPLGATE,
Notary Public of N. J.

MERCER COUNTY, ss.:

10 AARON V. DAWES, being duly sworn according to
law, upon his oath, says:

I am the solicitor of the complainants. I have
searched the records of this attachment suit in Com-
mon Pleas No. 2, of Philadelphia County, and there
was no affidavit of any kind or character on file in
said court in said cause, nor any proof of the alleged
cause of action upon which this attachment was
issued.

20

A. V. DAWES.

Sworn and subscribed this thirteenth day of De-
cember, 1919.

STELLA S. APPLGATE,
Notary Public of New Jersey.

30

COPY OF AFFIDAVIT.

IN CHANCERY OF NEW JERSEY.

Between

FRANK GROVER, <i>et al.</i> , <i>Complainants,</i> and EDWARD S. WOODWARD, <i>Defendant.</i>	}	Copy of Affidavit.	10
----------------------------------------------------------------------------------------------------------	---	--------------------	----

MERCER COUNTY, ss.:

FRANK GROVER, being duly sworn according to law, upon his oath says: I have learned since our Chancery suit was begun that the garnisheed defendant, Peter S. Scott, on October 10, 1919, before and since then and now, was, had been and is a citizen and resident of New Jersey, living at Pitman, New Jersey. 20

The business with said Scott, whose place of business is 150 Dock Street, Philadelphia, near that of defendant, Woodward, arose in this way: On October , said Scott called us up at Hightstown, N. J., and was very anxious to buy from us a car of potatoes and the price he did not seem to be ordinarily interested in. He took the car at our figure without haggling. As soon as this car arrived in Philadelphia it was attached by Woodward. I believe that Woodward was back of Scott in buy- 30

ing this car of potatoes and without Woodward being back of him, Scott would not have ordered the car.

It is not true that my firm trades in Philadelphia just as Woodward does, for we have no place of business there. Whatever business we do with people is done at our place of business personally or over the telephone with our place of business at Hightstown, N. J.

10

FRANK GROVER.

INJUNCTION AND RULE TO SHOW CAUSE.

IN CHANCERY OF NEW JERSEY.

20

Between
FRANK GROVER and CLAR-
ENCE S. GROVER, Part-
ners, Trading as Grover
Bros. & Co.,
 Complainants,
and
EDWARD S. WOODWARD,
 Defendant.

} On Bill for Injunc-
tion, &c.
Injunction and Rule
to Show Cause.

30

Upon reading and filing the bill of complaint and the affidavits thereto annexed, in the above stated cause, it is, on this thirteenth day of December, A. D. 1919, on motion of Aaron V. Dawes, solicitor of complainant, by the Chancellor of the State of New Jersey,

Ordered, that the defendant, Edward S. Woodward, his agents and attorneys, do absolutely refrain from prosecuting his writ of attachment sued out of the Court of Common Pleas No. 2, of the County of Philadelphia, against Frank Grover and Clarence S. Grover, partners, &c., which writ was sued out on or about the 15th day of October, 1919, and from taking any further proceedings by way of prosecuting the said suit, and from entering judgment therein, until the further order of the Chancellor in the premises. 19

And it is further ordered that the said defendant, Edward S. Woodward, show cause before the Chancellor, at the State House, in the City of Trenton, New Jersey, on Tuesday, the twenty-third day of December, 1919, at 10.30 o'clock in the forenoon, why an injunction should not issue, in accordance with the prayer of the bill, enjoining and restraining the said Woodward from further prosecuting his writ of attachment, as aforesaid, and from entering judgment therein, and why the complainants should not have such further and other relief in the premises as may appear to be just and equitable. 20

It is further ordered that a true copy of this order and of the bill of complaint with accompanying affidavits, which need not be certified, be served on the said defendant within five days from the date of this order.

E. R. WALKER,
C. 30

MALCOLM G. BUCHANAN,
V. C.

ANSWERING AFFIDAVITS.**IN CHANCERY OF NEW JERSEY.**

	Between	
10	FRANK GROVER and CLARENCE S. GROVER, Partners, Trading as Grover Bros. & Co., <i>Complainants,</i> and EDWARD S. WOODWARD, <i>Defendant.</i>	}
		On Bill for Injunction. Answering Affidavits.

20	STATE OF NEW JERSEY. } COUNTY OF CAMDEN. }	ss.:
----	-----------------------------------------------	------

EDWARD S. WOODWARD, being duly sworn according to law, on his oath deposes and says:

30 "I am the defendant in the above-entitled cause, and have read the bill of complaint filed by Frank Grover and Clarence S. Grover against me, as well as the affidavit of Frank Grover. I admit that on or about the 15th day of August, A. D. 1919, I gave an order to the complainants for two carloads of U. S. grade No. 1 Giant potatoes, and agreed to pay therefor the prices stated by the complainants. I subsequently gave directions to ship same to E. S. Woodward & Co., Detroit, Michigan, and on or about August 19th, 1919, I paid the complainants for

said potatoes. I was advised that on or about August 25, 1919, the shipment of potatoes in car No. L & N 17651 was inspected by the food products inspector of the United States Department of Agriculture, Bureau of Markets at Detroit, and said inspector made the following note: 'Aside from slimy soft rot, noted above, this lot of potatoes fails to qualify as U. S. grade No. 1 by a total of 20% (by weight) of undersize and defective potatoes.'

Said report was in print, signed by A. L. Bloom, 10
inspector, and the original of which I forwarded to the complainants. A few days subsequent thereto, I received another inspector's report, signed by the same inspector, and issued through the same department of the United States Government, concerning the shipment of potatoes in car No. R. P. R. 19348, with the following notation: 'Aside from decay, this stock fails to qualify as U. S. grade No. 1, by 10 to 12% of undersize and defective potatoes.'

Immediately upon receipt of these reports, I notified the complainants. Subsequently I sold said potatoes in the open market in Detroit, and the loss on the sales were as follows: 20

On resale of Car L & N 17651	\$711.95
On resale of Car P. R. R. 19348	543.89

I forwarded to the Messrs. Grover a bill showing the actual loss on these lots of potatoes, which bills were forwarded on September 17, 1919. Subsequently and on the 19th day of September, 1919, I forwarded two drafts on said Grover Bros. through 30
the First National Bank of Philadelphia, for the said respective sums. These drafts were not honored. On October 6th, I wrote to the Messrs. Grover Bros. setting out in detail all the facts and circumstances, as shown by the United States inspector's certificates, and again requested the payment of the loss I sustained, amounting to \$1,255.89.

This request being denied, I did, on or about October 10, 1919, instruct my attorney, Charles H. Edmunds, of Philadelphia, to bring action against the Messrs. Grover for the aforesaid sum. The Messrs. Grover Bros. carried on business by the sale of potatoes through Philadelphia market, and my attorney having learned of certain obligations due them, issued a writ of attachment through the courts of Philadelphia, and he has informed me that

10) the issuance of said writ was proper and strictly in accordance with the practice of the laws of the State of Pennsylvania. Said writ was issued at my instance by reason of the fact that I have a valid and subsisting claim against the said Grover Bros. for their failure to live up to the contract aforesaid, specified in U. S. Special License Regulations No. 15, which set out particularly 'that the seller shall be responsible for and reimburse the buyer for any failure of the goods to conform to the grade, quality

20) or condition specified in the contract of sale, except that of sales made F. O. B. point of origin, shall be construed to mean that the buyer assumes all risks of damage in transit not caused by the shipper whether there is a bill of lading to the order of the seller or not.' Said regulations also specifies what shall constitute U. S. grade No. 1 potatoes, as follows:

30) 'This grade shall consist of sound potatoes of similar varietal characteristics, which are practically free (a) from dirt or other foreign matters, frost injury, sunburn, second growth, cuts, scabs, blight, dry rot, and damage caused by disease, insect or mechanical means. The minimum diameter (b) of potatoes of the round varieties shall be one and seven-eighths ($1\frac{7}{8}$) inches and of potatoes of the long varieties one and three-fourths ($1\frac{3}{4}$) inches, etc.'

I emphatically deny that I brought said action against said complainants because of any tendency to harass or annoy them by litigation, or to take advantage of the situation by bringing the action in the court of a foreign State, or because I wanted to put them to unnecessary expense in defending said action, but assert the truth to be that said action was brought in the City of Philadelphia because my business is located there and all my legal business is transacted through my attorney in that city, and because I knew that the said complainants traded in the City of Philadelphia just the same as I did. 10

I deny the contention of the complainants that the question involved as to the performance of the contract could not be as well litigated in the City of Philadelphia as in Hightstown, N. J., or Mercer County, as juries of the City of Philadelphia would be as fully competent to pass on the questions involved as would a jury in any part of the State of New Jersey, and the expense of taking witnesses to Philadelphia would be comparatively little more than taking witnesses from Burlington County to Mercer County or *vice versa*. 20

So far as the writ of attachment in this cause is concerned, I simply acted on the advice of my attorney, and I did not have said writ issued with any view of making this litigation burdensome, oppressive and vexatious to the complainants, but only for the purpose of having the merits of the controversy passed on by proper tribune." 30

EDWARD S. WOODWARD.

Sworn and subscribed before me this 29th day of December, A. D. 1919.

HATTIE SATINSKY,
Notary Public of N. J.

AFFIDAVIT.

STATE OF MICHIGAN, }
 COUNTY OF WAYNE, } ss.:

10 Mr. JAMES R. TUTTLE, employed as salesman for Edward Read & Son, being duly sworn, deposes and says, on or about August 26, 1919, he inspected car L & N 17651, containing potatoes in sacks. He states that a careful inspection revealed the fact the potatoes in the car were more or less affected by blight.

He also states there was a very large percentage of undersized potatoes in the car.

JAMES R. TUTTLE.

Subscribed and sworn to before me this 19th day of December, 1919.

20

JOSEPH T. KYTE,
Notary Public.

My commission expires April 3, 1922.

AFFIDAVIT.

STATE OF MICHIGAN, }
 COUNTY OF WAYNE, } ss.:

30 Mr. JAMES R. TUTTLE, employed as salesman by Edward Read & Son, being duly sworn, deposes and says, on or about August 26th, 1919, he carefully inspected car PRR 19348, containing potatoes in sacks.

He further states there were numerous sacks of

potatoes scattered throughout the car, the contents of which were very badly rotted.

He also states the potatoes showed more or less scabby throughout the car.

JAMES R. TUTTLE.

Subscribed and sworn to before me this 19th day of December, 1919.

JOSEPH T. KYTE,
Notary Public.

My commission expires April 3, 1922.

(1)

AFFIDAVIT.

STATE OF MICHIGAN, }
COUNTY OF WAYNE, } ss.:

MR. LOUIS E. READ, member of the firm of Edward Read & Son, being duly sworn, deposes and says, on or about August 26th, 1919, there was received by his firm car L & N 17651, containing potatoes in bags. 20

He states he carefully inspected the potatoes that were loaded in the car and found they were more or less affected by blight.

He also states the sacks contained quite a large percentage of very small undersized potatoes.

LOUIS E. READ.

30

Subscribed and sworn to before me this 19th day of December, 1919.

JOSEPH T. KYTE,
Notary Public.

My commission expires April 3, 1922.

AFFIDAVIT.

STATE OF MICHIGAN, }
 COUNTY OF WAYNE, } ss.:

10 MR. LOUIS E. READ, member of the firm of Edward Read & Son, being duly sworn, deposes and says, on or about August 26th, 1919, there was received by his firm car PRR 19348, containing potatoes in bags.

He further states he carefully inspected the potatoes in this car, and found there were a number of sacks scattered throughout the car, and contents of which were very badly rotted.

He also advises the stock showed more or less scabby throughout the car.

LOUIS E. READ.

20 Subscribed and sworn to before me this 19th day of December, 1919.

JOSEPH T. KYTE,
Notary Public.

My commission expires April 7, 1922.

ANSWERING AFFIDAVIT.

(Filed December 30, 1919)

IN CHANCERY OF NEW JERSEY.

<hr style="width: 10%; margin: 0 auto;"/> <p>Between</p> <p>FRANK GROVER, <i>et als.</i>,</p> <p style="padding-left: 40px;"><i>Complainants,</i></p> <p style="text-align: center;">and</p> <p>EDWARD S. WOODWARD,</p> <p style="padding-left: 40px;"><i>Defendant.</i></p>	}	<p>On Bill, etc.</p> <p>Answering Affidavit.</p>	10
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---	--------------------------------------------------	----

<hr style="width: 10%; margin: 0 auto;"/> <p>STATE OF NEW JERSEY, }</p> <p>COUNTY OF CAMDEN, }</p>	}	<p><i>ss.:</i></p>	20
----------------------------------------------------------------------------------------------------	---	--------------------	----

PETER S. SCOTT, being duly sworn according to law, on his oath deposes and says: "I have read a written statement, purporting to be a copy of an affidavit of Frank Grover, and which I am informed has been or is about to be filed in this cause. In answer to the allegations made therein, I state positively and emphatically that I did not order in potatoes from the Messrs. Grover for the purpose of having them involved in any litigation in the City of Philadelphia, or elsewhere, nor did I have any collusion or conference with Edward S. Woodward, the defendant in this cause, to the end that I should obtain any property belonging to the said Grovers, for the purpose of having said Grovers embarrassed

by litigation. The potatoes I ordered were for the purpose of my trade, and the order was no different from that of many orders I had previously given the Grovers for potatoes. At the time that I gave the order, I asked the price, and being informed what the price was, and knowing said price was market price, I placed the order. So far as my books, the order was placed on or about the 8th day of October, 1919. I am a resident of Pitman, in the State of New Jersey, and carry on my business at 150 Dock Street, Philadelphia, Pa., under the name of The P. S. Scott Co.

I am in no way related to the parties in this suit, and am in no way directly or indirectly obligated to any of said parties, and I have no interest whatever in the suit brought by the complainants against the defendant. The statement made by Frank Grover, that said potatoes were seized, is apparently erroneous, as I had no knowledge that said potatoes were attached since they were not attached in my hands, but the sum due for said potatoes was attached in my hands, and I have no interest in said fund whatever except to comply with the order made by any court concerning its disposition."

P. S. SCOTT.

Sworn and subscribed before me this 5th day of January, 1920.

HATTIE SATINSKY,
Notary Public of N. J.

CONCLUSIONS.

1. Where complainants seek to restrain defendant from suing them in a foreign jurisdiction, the restraint will be granted if—and only if—complainants clearly show that the prosecution of the foreign suit is against equity and good conscience.

2. Where complainants show that the prosecution of the foreign suit is oppressive and harassing to them, and was so intended by defendant; or that defendant thereby evades—and intended so to do—an established policy of the laws of this State, defendant will be restrained from prosecuting the same. 10

3. *Quaere*—Is any further proof requisite of actual intent by defendant to harass or evade, other than the intent which will be presumed of the natural and proximate effects of the acts done? 20

4. The residence and the location of their established places of business of the parties—and especially of the complainants, are elements in determining whether or not defendant's prosecution of the foreign suit is inequitable.

5. *Semle*—The prosecution of the suit in the foreign jurisdiction would rarely, if ever, be restrained by this Court, where both parties either resided or had their established places of business in such foreign jurisdiction. 30

CONCLUSIONS.

(Filed February 5, 1920)

IN CHANCERY OF NEW JERSEY.

10

Between
 FRANK GROVER and CLAR-
 ENCE GROVER, Partners,
 trading as Grover Bros.,
Complainants,
 and
 EDWARD S. WOODWARD,
Defendant.

On Order to Show
 Cause Why Re-
 straining Order
 Should Not Be
 Granted.
 Conclusions.

20

For the Complainants: MR. AARON V. DAWES;
 For the Defendant: MR. PATRICK H. HARDING.

BUCHANAN, V. C.

30 The bill in this cause is filed to enjoin the prose-
 cution of a suit brought in Pennsylvania by defend-
 ant against complainants. The present application
 is for interim restraint.

The circumstances as disclosed by the bill and
 affidavits on both sides, are as follows:

Both complainants and defendant are, and have
 been for many years, residents and citizens of New
 Jersey.

Defendant carries on his business at Philadelphia, Pa. August 15th, 1919, complainants sold and defendant purchased two carloads of Giant potatoes, Grade No. 1, for \$1,313.00 and \$1,262.50, respectively—the potatoes to be by complainants delivered to the railroad consigned to defendant at Detroit, Michigan (apparently being destined for a customer of defendant at that place). The sale, delivery and payment were immediately completed.

The cars arrived in Detroit August 25th, and defendant received notice that about 10% of the potatoes in one car, and about 20% in the other, did not qualify as Grade No. 1. This notice was forthwith transmitted by defendant to complainants. Defendant then sold the potatoes “in the open market in Detroit, and the loss on the sales were as follows:” On one car \$711.95, on the other \$543.89—total \$1,255.84. Notice to this effect was given complainants by defendant September 17th, 1919, and defendant demanded said sum from complainants, who refused payment thereof.

Shortly before the arrival of the potatoes in Detroit, the market price of potatoes dropped materially. Immediately on receipt of defendant’s notification that the potatoes had arrived in Detroit and were not up to grade, complainants investigated by telegraph and were informed that the potatoes had not yet in fact arrived, and that defendant’s Detroit customer was objecting because of delay and misrouting—and were later informed that the cars had arrived and the potatoes of perfect condition and grade.

All of the witnesses as to the loading and shipping of the potatoes are residents of New Jersey. Complainants’ affidavits set forth that the potatoes shipped complied with the contract of sale, not only

at the time of shipment, but also after their arrival and resale in Detroit—one of the complainants' affiants being a resident of New Jersey who happened to be in Detroit at that time.

Defendant, October 10th, caused a writ of foreign attachment to be issued out of the Court of Common Pleas in Philadelphia, and there was attached thereunder a debt of \$2,100.00, due to complainants from one Scott (a resident of New Jersey having his place of business in Philadelphia), for potatoes which Scott had then just purchased from complainants. Scott denies collusion with defendant.

No affidavit or proof of any kind of the alleged cause of action was filed in the Philadelphia court in the attachment suit. That court and all Philadelphia courts are congested and long delay will ensue in the prosecution and trial of the attachment suit in Philadelphia. Complainants are of undoubted and ample financial responsibility. Immediately after the attaching of the debt as aforesaid, defendant notified complainants, demanding payment of \$1,273.84, plus costs of the attachment, and saying that only upon that condition would the attachment suit be discontinued. It does not appear that any further steps have been taken by defendant, either toward reducing his claim to judgment or toward having the attached debt reduced to possession.

(It was contended by defendant on the argument that complainants also had a business location in Philadelphia. This point will be discussed later.)

No proof whatever is before this Court as to the provisions of the Pennsylvania statutes relative to attachment suits.

It has been established beyond question in this court, (a) that a suit to enjoin proceedings in another court (either of this State or of a foreign

jurisdiction), where the prosecution of such proceedings is alleged to be contrary to equity and good conscience, is cognizable in this court and within its general jurisdiction as a court of equity; (b) that in such a suit, this Court, if it have jurisdiction over the person of the person prosecuting the other proceedings (whether that person be a resident or citizen of New Jersey, or of a foreign State or country), has the power to enjoin him from further prosecuting the same; and (c) that in a proper case, it will exercise that power and grant the restraint sought. 10

Bigelow vs. Old Dominion Copper Co., 74 N. J. Eq. 457 (at 473), 71 Atl. 153;
vonBernuth vs. vonBernuth, 76 N. J. Eq. 177 (at 184 and 181, *et seq.*), 73 Atl. 1049.

Both of these opinions contain quite exhaustive reviews of the authorities. See also

Federal Trust Co. vs. Conklin, 87 N. J. Eq. 185 (at 187), 99 Atl. 109. 20

It is left, then, for this Court to determine in each case of this nature which comes before it, whether it is a proper case for the exercise of that power.

What are the principles which are to be considered in arriving at such determination in any given case?

Chancellor Magie says, in *Standard Roller Bearing Co. vs. Crucible Steel Co.*, 71 N. J. Eq. 61 (at 62): 30

“The right of one claiming to be a creditor to pursue his debtor in any court of competent jurisdiction selected by him ought not to be interfered with by an injunction, unless it is made to appear clearly that the alleged cred-

itor is using the process of the courts in an inequitable and unconscionable manner.”

Chancellor Pitney, in *Bigelow vs. Old Dominion, &c. Co., supra*, at page 473, uses the following language:

10 “But on general principles, equity will not interfere with the right of any person to bring an action for the redress of grievances—the right preservative of all rights—except for grave reasons, and on grounds of comity the power of one State to interfere with a litigant who is in due course pursuing his rights and remedies in the courts of another State ought to be sparingly exercised. The courts of New Jersey ought not to assume, directly or by in-
20 direction, any appellate jurisdiction over the courts of Massachusetts, nor proceed in giving judgment here upon the idea that the courts of that commonwealth are in the least degree incompetent or unwilling to do full and complete justice in all cases that are fairly within their jurisdiction.”

In *vonBernuth vs. vonBernuth, supra*, Vice-Chancellor Howell refers to Chancellor Pitney’s opinion in the Bigelow case above quoted, saying that in that case

30 “Chancellor Pitney declares that the power of this Court to restrain persons within the control of its process from prosecution of suits in other States is clear, but holds that upon grounds of comity it should be sparingly exercised.”

A cursory reading of the quoted portions of the

opinions above cited, might give rise to the impression—certainly counsel for defendant seems to have had such impression—that more stringent requirements are to be met by complainant in a case of this kind than in other cases where injunctive relief is sought. I do not so understand the language of these opinions (aside from the fact that in certain cases questions of comity must needs be considered), nor do I think such interpretation warranted.

Omitting the question of comity, the authorities cited simply declare that complainant must allege and prove circumstances clearly entitling him as a matter of equity, to the injunctive relief—circumstances clearly showing that the prosecution of the proceedings in the other forum is or will be contrary to equity and good conscience. Otherwise, as in any other case, his bill will be dismissed or the relief denied, for want of equity. And, as in any other case, injunctive relief will not be granted in doubtful circumstances. In other words, the Court will not interfere with the prosecution of a suit in another forum merely because the parties are residents or citizens of New Jersey and the case might have been brought in this court, or in a court of this State. No case for equitable relief is thereby made out. Complainant must, as has been said, set up circumstances clearly showing that equitable principles require the granting of the restraint sought.

Turning now to the question of comity—I think that the cases in which comity, as such, is actually involved, will be found to be quite rare. In most of the cases in which at first impression comity might appear to be a factor, the contrary will be found to be true, upon consideration. For instance, if complainant's bill show nothing more than a desire to have the controversy tried in this court instead of

a foreign court, or an attempt to have this Court review the judgment of a foreign court of competent jurisdiction, or the like, the relief will be denied, not upon grounds of comity, but because he fails to make out an equitable case.

10 So, too, in a case where this Court might hold that the prosecution of the foreign action was fraudulent or oppressive toward complainant, if defendant were a resident of New Jersey, the opposite conclusion might be reached if the defendant were a resident of the foreign State. The question of comity will not be involved. *Kempson vs. Kempson*, 58 N. J. Eq. 94, is illustrative of this. If the husband in that case had been a *bona fide* resident of Dakota, this Court would not have restrained his prosecution of the Dakota suit, because it could not have found anything inequitable in his so doing.

20 Circumstances showing a case for equitable relief obviously may fall under divers classes of equitable jurisdiction—many of which are enumerated by Chancellor Pitney in his opinion in the Bigelow case. In the case *sub judice* it is contended that defendant's action is inequitable in that he oppresses complainant by obtaining an unconscionable advantage in the foreign attachment suit, similar to the situation in *Standard Roller Bearing Co. vs. Crucible Steel Co.* (*supra*), and that there is further oppression in that he has brought the suit in Pennsylvania to evade the policy of this State in
30 regard to attachment suits—following the doctrine of *Margarum vs. Moon*, 63 N. J. Eq. 586, 53 Atl. 179.

Omitting for the present the question of the effect of the business location in Philadelphia of defendant or complainants—it clearly appears that complainants have a *bona fide* defense to defendant's claim, which they are entitled to have tried out; that

the witnesses are some in New Jersey and some in Michigan, but none in Pennsylvania; that the result of defendant's attachment in Pennsylvania is to tie up for an indefinitely long period moneys of complainants amounting to almost double the sum claimed by defendant.

The actual result of defendant bringing the litigation in Pennsylvania is of course oppressive to complainants, because it deprives them of the ability to compel the attendance of the New Jersey witnesses at the trial. The facts in this respect do not make out as strong a case of injustice as in *Standard Roller Bearing Co. vs. Crucible Steel Co.*, where the foreign attachments were three in number, in far distant States, and each in a different State—and bearing in mind that complainant had his place of business in the place where he brought this suit. It may be doubted if a case for equitable relief would be established in this behalf unless it appeared that defendant had the intent to oppress. Not every hardship is an oppression.

The actual result of defendant's suit being commenced by the attachment of the \$2,100.00 debt due to complainants is, of course, also a hardship to complainants and an advantage to defendant—but would not of itself justify intervention by this Court. In the present case, however, it was unnecessary for defendant to proceed by attachment. Complainants were residents of this State, as well as defendant, and could have been served with the ordinary process to compel appearance to respond to defendant's suit just as easily as by attachment in Pennsylvania. Indeed, except for collusion by the garnishee or chance knowledge by defendant, it would scarcely be expected that defendant could learn of a debt due complainants from a Philadel-

phia citizen and attach the same, as readily or speedily as he could serve complainants with summons in this State.

The writ of attachment is an extraordinary writ. *City Bank vs. Merrit*, 13 N. J. L. 131, at 134; *Leonard vs. Stout*, 36 N. J. L. 370, at 371. The classes of cases for which it is intended are two—first, to compel a non-resident or absconding debtor to appear and respond to suit; second, those cases where defendant may be held to bail. 1 Comp. Stat. 132, Sec. 1; 3 Comp. Stat. 4076, Sec. 84. It is not, of course, contended that defendant's alleged right of action falls within the second class. In a case such as that set up by defendant it is evident that the established policy of this State is that a defendant shall not be subjected to the hardships of this extraordinary writ, except where the defendant is a non-resident of this State, or being ordinarily a resident, absconds and becomes temporarily a non-resident—in other words, unless the use of this writ is necessary to compel response to plaintiff's demand—and furthermore that even in a case of such necessity, the writ shall not issue unless the damages claimed are liquidated (see *Heckscher vs. Trotter*, 48 N. J. L. 419; *Wynant vs. Nautical School*, 27 N. J. L. J. 202), and sworn proof of the existence of the debt, and the amount thereof, as well as of debtor's non-residence, be first filed by plaintiff. It is contrary to the policy of this State to permit a plaintiff, except under the circumstances and in the manner above mentioned, to obtain security for his claim, or to interfere with or encumber defendant's property or choses in action, prior to plaintiff's establishing his claim by judgment.

In the present case it appears that the writ was issued without the filing of any affidavit or proof of the facts required under the policy of this State.

Furthermore, it appears that the writ would not have been issuable under the policy of this State, for the damages to which defendant would be entitled if the right of action be established, are not liquidated but unliquidated.

It is true that defendant says his claim is for a sum certain—\$1,255.89—the alleged difference or loss on the resale of the potatoes. The sale, however, was made, was to be performed, and was performed, in this State, and the questions arising out of that contract and its performance are therefore to be decided under our Sales Act, 4 Comp. Stat. 4647. From a consideration of that statute it is apparent that the defendant's alleged right of action (he not having rejected the shipment as not being a delivery of the thing he purchased) is for breach of the warranty of quality. Section 69, paragraphs 6 and 7 of the statute provides:

“MEASURES OF DAMAGES FOR BREACH OF WARRANTY.—(6) The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty. 20

MEASURE OF DAMAGES FOR BREACH OF WARRANTY OF QUALITY.—(7) In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty. (P. L. 1907, p. 338.)” 30

Obviously, therefore, the sum, if any, which defendant is entitled to recover from complainants is

unliquidated, and is not, and will not be (except by mere chance coincidence) the sum claimed by defendant. For, while the value of grade 1 potatoes might be definitely fixed and ascertainable, yet it is impossible to see how the actual value of potatoes defective in accordance with defendant's claims, could be ascertainable without the intervention of a jury. It is not alleged even that the sale at Detroit was for the highest and best price obtainable, and if it were, the value at Detroit is not the value at Hightstown at the time of delivery.

It is evident, therefore, that in bringing his attachment suit defendant is, in fact, evading an "established policy of the jurisdiction where the parties are domiciled."

Many of the cases seem to indicate that defendant's intent or purpose to harass and oppress or to evade the established policy of the domicile, is a requisite factor in the establishment of complainants' case.

Whether the intent, which will be presumed, of the proximate and natural consequences of the acts performed, is or is not sufficient, I am not called upon to decide—for it is clear to me that the actual intent to gain an unfair advantage by harassing and oppressing the complainants, is shown in this case.

Defendant in his affidavit denies that he had any such intent, but a little later says that he had the writ of attachment issued on the advice of his attorney. That which defendant did through his attorney, he none the less did himself. His attorney's intent is chargeable to him. There is no affidavit by the attorney, and no denial that the attorney had such intent.

That the attorney did have such intent seems to me undoubted. He knew the congestion of the

Philadelphia courts, and the long delay that must precede a trial there—he knew that the natural place for the bringing of the suit was this State—he knew the effect which the tying up of complainants' funds by attachment and the other features attendant upon an attachment suit in Pennsylvania, would tend to have toward forcing complainants to pay or compromise the disputed claim. It is not denied that he wrote complainants immediately after the attachment, demanding payment of \$1,273.84 and costs, and saying that only upon such payment would the attachment be discontinued. To me this is most significant. Why should such a letter have been written at all, especially by the attorney? Defendant had attempted the collection of the claim by correspondence, and by draft upon complainants; complainants denied liability, under circumstances indicating a *bona fide* defense, and not a mere attempt to evade payment of an honest debt—and litigation had become the necessary and natural result in order to determine the issue. No explanation of the commencing of such litigation was required nor to be expected. It does not appear that any attempt was made to serve complainants with summons in Philadelphia, nor any request for the acknowledgment of service, or entry of an appearance. Under these circumstances the letter clearly indicates that it meant—and was intended to be so understood—“we have you foul. Pay our demand or take the consequences.” It necessarily follows that the intent or purpose of the acts which resulted in giving the defendant the unfair advantage, was precisely the obtaining of such advantage.

Remains to be considered the question of the location of the places of business of the parties in Phila-

delphia. If complainants were established in business there it does not seem to me that they could well complain that defendant was taking an unfair advantage, or doing an inequitable act in bringing suit against them there—any more than they could if they were residents of Pennsylvania.

10 I do not mean to be understood as being of the opinion that this Court would never entertain a bill of this nature where the defendant in the foreign suit was, or even where both parties to that suit were, residents of the foreign State. Cases might perhaps arise where this Court would exercise its undoubted power (if it had acquired personal jurisdiction over the parties)—but it is obvious that such cases would be rare indeed, if any.

20 The same considerations must prevail with almost, if not quite, equal force, where the defendant, or both parties, in the foreign suit, have an established place of business in the foreign State. Such a person is a *quasi*-resident—a “business resident,” so to speak—of the foreign State, and ought not to be heard to complain of being sued therein unless other strong circumstances exist to make up a case for equitable intervention.

30 In the instant case, it is set forth and not denied that the sale to defendant and the sale to the garnishee were made at Hightstown, N. J. Complainants’ affidavits say squarely that complainants have no place of business in Philadelphia, and that all their business is done at Hightstown, N. J. This is not met by the evasive or argumentative statements in defendants’ affidavits that complainants “carried on business by the sale of potatoes through the Philadelphia market,” and “I knew that the said complainants traded in the City of Philadelphia just the same as I did.” Every single customer of

complainants might be a resident of Philadelphia without complainants having any place of business in Philadelphia. Receiving orders by mail or telephone from Philadelphia is by no means equivalent to having a business establishment in that city.

I conclude, therefore, that complainants are entitled to the relief sought, and will advise an order for temporary restraint. Complainants will not be required at the present time to give security—the situation which may be developed upon final hearing may or may not lead to a different conclusion at that time. The issues involved in the main controversy between the parties are obviously cognizable at law and not in equity. The order will provide that complainants shall co-operate with defendant in the institution and prosecution, with all reasonable dispatch, of an action in a court of competent jurisdiction of this State, if defendant shall so elect to proceed before final hearing herein, and that upon failure in that behalf by complainants, application may be made for the discharge of the restraint.

ORDER.

(Filed March 15th, 1920)

IN CHANCERY OF NEW JERSEY.

10

Between
FRANK GROVER and CLAR-
ENCE GROVER, Partners,
Trading as Grover
Brothers,

Complainants,
and

EDWARD S. WOODWARD,
Defendant.

On Bill, &c.
Order.

20

30 An order to show cause having been heretofore allowed in the above entitled cause requiring the defendant, Edward S. Woodward, to show cause why an injunction should not issue in accordance with the prayer of the bill of complaint, and it coming on to be argued by Aaron V. Dawes, of counsel with the complainants, and Patrick H. Harding, for the defendant, Edward S. Woodward, upon the bill and the affidavits submitted by the complainants and the defendant; and it appearing to the Chancellor that the complainants are entitled to an injunction pending the litigation:

It Is Hereby, on this thirteenth day of March, nineteen hundred and twenty, Ordered that the de-

defendant, Edward S. Woodward, do absolutely desist and refrain from prosecuting his writ of attachment issued out of the Court of Common Pleas No. 2 of the County of Philadelphia, in the State of Pennsylvania, against the complainants, Frank Grover and Clarence Grover, and from taking any further proceedings therein until this Court shall make other order to the contrary.

And it is further ordered that in the event that the said defendant, Edward S. Woodward, elects to have the matters in controversy determined in an action at law in a court of competent jurisdiction of this State, before a final hearing of this cause, it shall be the duty of said complainants to co-operate with the defendant in having the issues involved in the main controversy set forth in the bill of complaint determined in the courts of this State in an action at law. 10

And it is further ordered that the defendant, Edward S. Woodward, have leave, if he elects to proceed in an action at law, to apply to this Court for such relief as may be necessary to have the issues tried with all convenient dispatch at law. 20

E. R. WALKER,
C.

Respectfully advised,
MALCOLM G. BUCHANAN,
V. C.

A true copy.

JESSE R. SALMON,
Clerk.

30

NOTICE OF APPEAL.

(Filed April 2, 1920)

IN CHANCERY OF NEW JERSEY.

10

Between
FRANK GROVER and CLAR-
ENCE GROVER, Partners,
Trading as Grover
Brothers,

Complainants,

and

EDWARD S. WOODWARD,

Defendant.

On Bill, &c.
Notice of Appeal.

20

The defendant hereby appeals from the interlocutory decree and every part thereof made in this court, in the above stated cause, as enjoins the defendant, Edward S. Woodward, from prosecuting his writ of attachment issued out of the Court of Common Pleas No. 2, Philadelphia, Pennsylvania, against the complainants, and from taking further proceedings thereon, to the Court of Errors and Appeals, in the last resort in all causes. Dated

30 March 15, 1920.

PATRICK H. HARDING,
Solicitor and of Counsel
with Defendant.

I conceive there is good cause for appeal in the above stated cause.

PATRICK H. HARDING,
Of Counsel with Defendant.

[ENDORSEMENT]

Service of the within acknowledged this
day of March, A. D. 1920.

A. V. Dawes,
Solr. for Complt.

10

20

30

PETITION OF APPEAL.

(Filed April 8, 1920)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

Between

EDWARD S. WOODWARD,
Appellant,

and

FRANK GROVER and CLAR-
ENCE GROVER, Partners,
Trading as Grover
Brothers,

20 *Respondent.*

} Petition of Appeal.

*To the Honorable, the Court of Errors and Appeals,
in the Last Resort in all Causes:*

30 The petition of Edward S. Woodward, the appel-
lant in the above stated cause, respectfully shows
that your petitioner finds himself aggrieved by an
order made in the Court of Chancery, by his Honor,
Edwin Robert Walker, Chancellor of the State of
New Jersey, bearing date the thirteenth day of
March nineteen hundred and twenty, wherein said
Frank Grover and Clarence Grover, partners, trad-
ing as Grover Brothers, were complainants and the
said Edward S. Woodward was defendant, in this

respect, to wit, that said order adjudges that the defendant, Edward S. Woodward, do absolutely desist and refrain from prosecuting his writ of attachment issued out of the Court of Common Pleas No. 2 of the County of Philadelphia, in the State of Pennsylvania, against the complainants, Frank Grover and Clarence Grover, partners, trading as Grover Brothers, and from taking any further proceedings therein until this Court shall make other order to the contrary.

And your petitioner humbly appeals from that part of the order of the Chancellor, which orders, as aforesaid, upon the ground that the same is erroneous for that said Edward S. Woodward, defendant, should be permitted to prosecute said writ of attachment by reason of the fact that he has been guilty of no unconscionable or inequitable conduct, as is alleged in complainant's bill.

Your petitioner therefore prays that the said order of the said Chancellor may be in the particulars aforesaid set aside and for nothing holden, and that your petitioner may have such relief as to this Honorable Court shall seem meet in the premises.

PATRICK H. HARDING,
*Solicitor of Appellant and
of Counsel with Appel-
lant.*

10

20

30

ANSWER TO PETITION OF APPEAL.

(Filed May 26, 1920)

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10

Between

FRANK GROVER and CLAR-
ENCE S. GROVER, Part-
ners, Trading as Grover
Brothers,*Complainants-
Respondents,*

20

and

EDWARD S. WOODWARD,
*Defendant-Appellant.*On Bill, &c.
Answer to Petition
of Appeal.

The answer of Frank Grover and Clarence S. Grover, the above-named respondents, to the petition of appeal of the above-named appellant.

30

These respondents say and admit that an order was, on the 13th day of March, 1920, made and entered into in the Court of Chancery of New Jersey in the cause for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof these respondents pray to refer

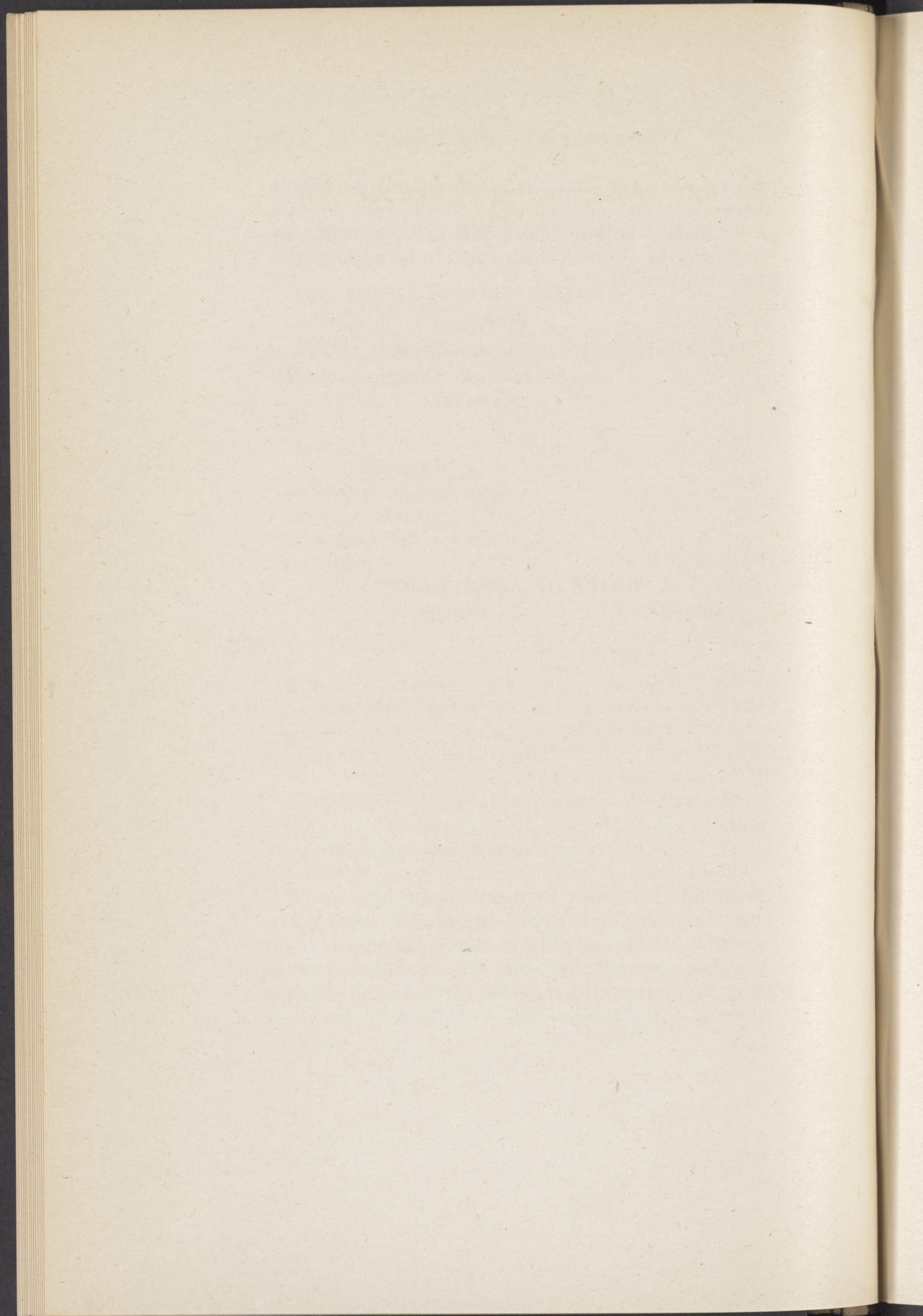
thereto when the same shall be produced. And these respondents are advised and believed that the said order is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents.

A. V. DAWES,
*Solicitor for and of Counsel
with Complainants-Res-*
pondents.

10

20

30



**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

Between

FRANK GROVER and CLARENCE S. GROVER, Partners,
Trading as GROVER BROS.,
Complainants-Respondents,

and

EDWARD S. WOODWARD,
Defendant-Appellant.

BRIEF OF APPELLANT.

The bill in this cause was filed in the Court of Chancery by complainants to restrain defendant from prosecuting an action at law in the Common Pleas Court of Philadelphia, Pa. After hearing on bill and answering affidavits, the Court of Chancery made an order enjoining the prosecution of said suit.

The suit was one in attachment, brought by defendant against complainants for a sum lost by defendant by reason of the shipment of some potatoes by complainants to defendant's customer at Detroit, Michigan, in a damaged condition.

When the writ was issued in Philadelphia, both complainants and defendant were residents of New Jersey.

The claim in the bill is that defendant, being without remedy by attachment in New Jersey, the action brought in Philadelphia, Pennsylvania, is vexatious, oppressive, unconscionable and inequitable.

The attachment suit was the primary action brought regarding the claim. No other action at law or in equity was brought in the courts of either this State or Pennsylvania, except the attachment suit and the equity suit brought by complainants to restrain defendant from prosecuting the attachment suit.

In the bill and affidavits attached thereto, no claim is made by complainants that substantial justice could not have been secured in the courts of Pennsylvania, nor was any claim made that defendant had brought said attachment suit from any wrongful or improper notice or for the purpose of depriving complainants of any statutory right they might be entitled to under the laws of the State of New Jersey; nor did the bill allege that the defendant had been guilty of any fraud in bringing said action in attachment.

Motive

There is no doubt but what a court of equity has jurisdiction in a proper cause to restrain a person within the jurisdiction from prosecuting an action in a foreign tribunal.

Our Courts, however, have held that the writ of injunction in such cases should be sparingly exercised, and should not be issued except where the grievance is clear and that the object of the action at law is to produce some inequitable, unconscionable or unfair advantage.

The mere fact, that a suitor may have a right of action different in the jurisdiction where the action is brought, from that of the jurisdiction where he resides, is no reason why the action should be re-

strained. It certainly could not be urged that the suitor's conduct in bringing such action is unconscionable, inequitable or unfair.

If the complainants in this case were entitled to any statutory exemption in the State of New Jersey, and the action brought in the State of Pennsylvania would have deprived them of that right, then it might be truly said that such action brought in Pennsylvania would be inequitable and unconscionable. Complainants assume that defendant's conduct in bringing the attachment suit in Pennsylvania was unconscionable and inequitable and unfair, because both complainants and defendant happened to be residents of New Jersey. There is no denial that both complainants and defendant carried on business in the potato market in Philadelphia. The defendant, Woodward's place of business being established in that city, while Grover Bros., whose farm is in Mercer County, did a large volume of their business through the Philadelphia market.

Woodward, in his affidavit, said that the action in attachment was brought at his instance by his Philadelphia attorney and that all his legal business was attended to by his attorney in that city, so that the attachment suit was no different from that of other legal matters pertaining to his business affairs.

Carry the logic of complainants to the limit, and it simply means that business men who reside in New Jersey, and who have their places of business in Philadelphia, would be obliged to bring all actions of a legal nature concerning their business in the courts of New Jersey, if the parties to the suit in each instance happened to be residents of New Jersey.

This would be equally as true of business men who lived in Jersey City or the Oranges, and whose places of business happened to be in New York City.

There is an intimation in the affidavits of complainants that the Courts and juries in Philadelphia would not be competent to pass on the quality of potatoes. In view of the volume of litigation in a large city of that kind, where cases involving everything under the sun are tried, it can hardly be considered seriously that a suit involving an amount claimed due for damage to potatoes would so upset those tribunals that they would be obliged to send the case to another jurisdiction.

The affidavits also indicate that it would be inconvenient to complainants to have the case tried in Philadelphia. The answer to this is that the decisions are absolutely harmonious, that mere inconvenience to a litigant is no ground for equitable interference with an action at law. There are some bald statements in the bill, not supported by anything in the affidavits that the action in Philadelphia was brought in the Court of Common Pleas No. 2 of Philadelphia, without any affidavit or other proof of breach of contract, debt or other obligation. No Court would seriously consider such a naked statement as having weight of evidence proper to find a foreign tribunal guilty of permitting the issuance of its process without proper proof therefor.

One of the leading cases of this State on the question involved is that of the *Standard Ball Bearing Co. vs. Crucible Steel Co.*, 71 N. J. Eq. 61; 63 Atl. page 546. In this case Chancellor Magee said: "The right of one claiming to be a creditor to pursue his debtor in any court of competent jurisdiction selected by him, ought not to be interfered with by injunction, unless it is made to appear clearly that the alleged debtor or creditor is using the process of

the courts in an inequitable and unconscionable manner.”

This doctrine was further enunciated by Chancellor Pitney in the case of *Bigelow vs. Old Dominion Copper Co.*, 74 N. J. Eq. 457; 71 Atl. 153.

In the case of *Federal Trust Co. vs. Conklin*, 99 Atl. 109, complainant, a trust company, of Newark, filed its bill against defendant, a resident of Paterson, to enjoin defendant, as assignee of one Conti, from prosecuting a suit in attachment in the State of New York. Vice-Chancellor Foster in dismissing the bill quoted the *Standard Roller Bearing* case and the case of *Title Guarantee & Trust Co. vs. Trenton Potteries Co.*, 56 N. J. Eq. 441, and the *Old Dominion Copper Co.* case, and concluded with “Under the circumstances of the case, there is nothing to show that defendant was acting unconscionable in prosecuting the attachment proceedings in New York, or that the complainant could not have full benefit of any defense in such proceedings.”

The case is almost identical with that at bar, except that the defendant, Conklin, was an assignee instead of the person primarily liable under the agreement made between the Federal Trust Co. and Conti.

The learned Vice-Chancellor who decided the case at bar refers in his conclusions to the case of *Kempson vs. Kempson*, 58 N. J. Eq. 94, and *Margarum vs. Moon*, 63 N. J. Eq. 586, 53 Atl. 179, but these cases have little, if any, bearing on the issue involved here. The *Kempson* case, from the evidence adduced, was a pure case of fraud attempted to be perpetrated by the husband on the wife by endeavoring to secure a divorce in the State of Dakota by establishing there a residence which was not in good faith.

The Margarum case was one wherein the defendant, Moon, by an assignment of a claim he had against Margarum, attempted to prosecute that claim through his attorney or assignee in the courts of West Virginia, by attaching the wages of Margarum in that State. The evident purpose of the attachment suit in this case was to deprive complainant of a statutory exemption he was entitled to in this State. The injunction, however, was refused not on the ground that the Court would not issue its writ in such case, but simply because it felt that the writ would be powerless inasmuch as the claim was under the control of a person in West Virginia and not under control of the defendant in the Chancery proceeding.

The case is easily distinguishable from the case at bar, for the reason that complainants, in the case at bar, are deprived of no statutory or common law right that they might be entitled to in the State of New Jersey. Every defense open to them could be made against the action brought in the Common Pleas Court of Pennsylvania. The mere fact that defendant prosecuted the suit in attachment, rather than an action for breach of contract by service of summons in the City of Philadelphia on complainants in the Chancery proceeding, shows that the remedy sought was one of procedure rather than of substance.

There is no doubt but what defendant could have sued complainants by service of summons in the City of Philadelphia for breach of the contract. The mere fact that he pursued the other method deprived complainants of no defense or equity that they would be entitled to in the other form of action.

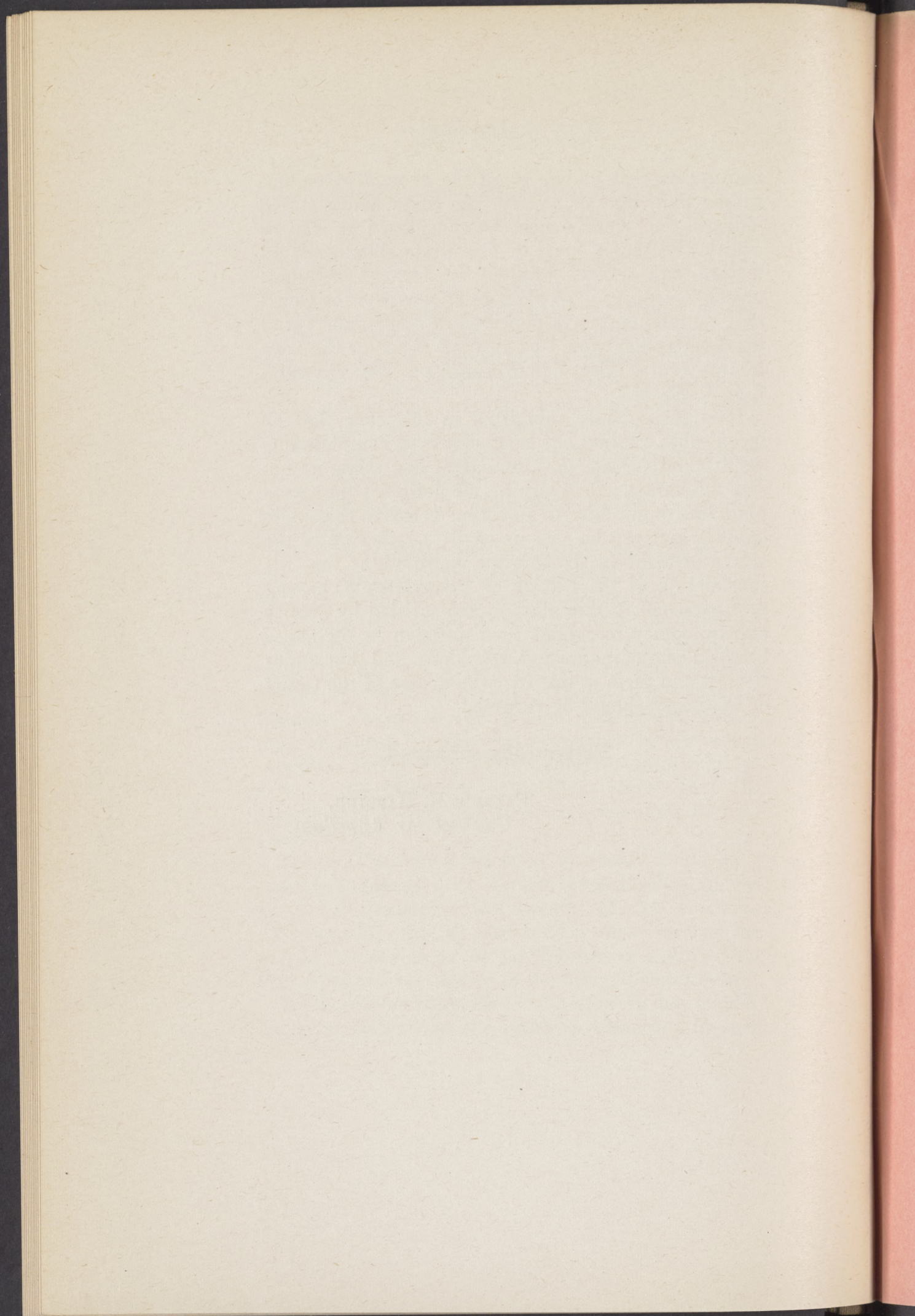
While the learned Vice-Chancellor in his conclusions intimates that the relief in Chancery in such

matters as that at bar is on the ground of equity, rather than that of comity, the cases above stated indicate that comity must be considered as well as equity and that Courts of this State should not interfere with actions brought in foreign tribunals unless the equity is so plain as to convince the Court that complainants are deprived of some substantial legal right they would be entitled to under the laws of this State. See *Von Bernuth vs. Von Bernuth*, 7 N. J. Eq. 177.

It is respectfully submitted in this case that no inequitable conduct has been shown by complainants against defendant; that defendant has taken no unfair advantage; that any or all defenses that complainants might have to an action at law in this State against him can be just as easily availed of in the action brought in the foreign jurisdiction; that the jurisdiction of the Courts of Pennsylvania, having first attached in this matter, are entitled by comity and by equity to render final decision in the cause between complainants and defendant, and that under the law and facts in this case the decree of the Court of Chancery should be reversed.

Respectfully submitted,

PATRICK H. HARDING,
Counsel for Appellant.



THE UNIVERSITY OF CHICAGO PRESS

Southern Bond