Petition of Heckscher
Certified Copy of 1st Attachment Proceedings 14 - 140
" " 2d " "
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Affidavit of Trotter
Opinion herein
Order appealed from

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"THE JERSEYMAN" LAW PRESS PRINT.

N. J. COURT OF ERRORS AND APPEALS.

TROTTER

v.

THE LEHIGH ZINC & IRON COMPANY, LIMITED.

On appeal from order of Chancellor made on a motion to impound monies to answer attachment issued at the suit of Heckscher.

H. C. PITNEY IN SUPPORT OF THE ORDER.

This was an application to the Court to recognize the binding force of a lien acquired by a process issued by a Court of co-ordinate jurisdiction, and aid in enforcing it.

The Court was asked simply to retain in its possession certain monies to answer to the process of a Court of law.

It is well settled that a Court of Equity, as well as Courts of law, will render such aid when consistent with justice and right and in accordance with proper procedure.

Hill vs. Beach, 1 Beas. 31, at p. 46.

The attachment in that case was served upon the Sheriff with a view to create a lien upon certain monies in his hands arising from the sale of lands under foreclosure. The defendant in attachment had no legal interest in the lands sold; but an equitable title only—the lands being held in trust for him and others. The Sheriff paid the money into this Court, and this

Court recognized and enforced the lien of the attachment upon a bill filed by a person claiming a prior lien upon the fund.

The Chancellor, after reviewing the authorities, including *Shinn vs. Zimmerman*, but overlooking *Crane vs. Freese*, uses this language:

"It is the policy of modern legislation to facilitate "the creditor in reaching the property of his debtor. "It is admitted that the language of the statute is "broad enough to embrace even money paid into "Court as the property of a plaintiff in a judgment. "The Courts have protected such property, not on the "ground that it was not embraced in the language and "meaning of the statute, but simply because in their "judgment such property should be protected from "the operation of the statute upon considerations of "public policy. I think this money may be attached "and that the Court should protect the lien which has "thus been acquired."

It will be found, upon examination, that the Chancellor in that part of his opinion above quoted which speaks of a restriction on grounds of public policy, had in mind a class of cases which have held that the very pieces of money in the hands of an officer could not be taken and carried away under an attachment, and that the sheriff, clerk or prothonotary in whose custody the money may be, could not be held liable as *garnishee* and proceeded against as such. (No doubt, also, the Chancellor felt embarrassed by some of the *dicta* of the Chief Justice in *Shinn vs. Zimmerman* which have since been explained and substantially overruled.)

This is the result of *Crane vs. Freese*, 1 Harr., 305.

That was a *scire facias* against a sheriff seeking to charge him as *garnishee* by reason of monies in his hands which he had raised by virtue of an execution in favor of the defendant in attachment. The *Aymars* were plaintiffs in execution and defendants in the attachment, and the attachment was handed to the sheriff for service while he had in his hands the money

raised under the execution. It was held (1) that the particular money could not be actually seized, nor (2) the sheriff held liable as garnishee in a proceeding by *scire facias*. And this ruling is supported by the great weight of authority.

See Drake on Attachments, Chapter XXII, Secs. 492 *et seq.*

But the Court, in *Crane vs. Freese*, recognized the lien of the attachment, and ordered that the sheriff should complete the execution of the *fi. fa.* by paying the money into Court in obedience to the command of the writ, and there the Court subjected it to the lien of the attachment, precisely as we now ask this Court to do.

And Justice Depue in the Court of Appeals, in *Conover vs. Ruckman*, says that the practice initiated in *Crane vs. Freese* has become the settled law and practice of this State.

So in *Davis vs. Mahany*, 9 Vroom, p. 108, it is declared that there can be no actual seizure and manucaption and removal of the money, nor any liability by garnishment fixed upon the officers of the Court, but that, nevertheless, the lien *does* attach and *will* be recognized and enforced by the Court when the money comes within its immediate power and custody.

At p. 108 of 9 Vroom the Court says:—

"The effect of the levy upon the credit in the hands "of the officer under execution, is to arrest the pay- "ment to the plaintiff in execution, in whose hands it "might be concealed and withdrawn from the cred- "itor, and to compel the officer to pay the proceeds of "the execution into Court, in strict conformity with "the command of his writ.

"I am at a loss to conceive how it can be maintained "that this stoppage of payment to the plaintiff, and "bringing the money into Court, according to the "terms of the writ of execution, *is taking goods and "chattels from the custody of the law*, by another op- "posing process. It is in furtherance of the law, and "for the protection of creditors.

"When the money is brought into the Court having "jurisdiction and control of the fund, it will be there "determined what shall be done with it. If the plain- "tiff in execution, or person having a claim paramount "to such plaintiff, or the creditors in attachment under "which the right or credit has been levied upon, shall "be entitled, the Court will order payment according "to the justice and right of the case. There will be no "case of conflicting suits and opposing jurisdictions, "but an honest and convenient appropriation of the "debtor's property to the payment of his debts, if he "be liable. If he be an absconding or non-resident "debtor, payment to him will be almost certain to de- "feat the claims of creditors. *And if we hold that the "proceeds of execution are not his, so that they can "be attached, until paid into his hands, then the "result is to hinder creditors, and not facilitate the "collection of just claims.*"

The doctrine of this case was fully approved by this Court in *Conover vs. Ruckman*, 6 Stew. 603, and must be considered the settled law in this State.

At p. 311 the Court says:

"The practice established in *Crane vs. Freese* has "been followed too long to be disturbed. It is a prac- "tice which is in furtherance of the policy of the at- "tachment act, which the legislature has declared "'shall be construed in all courts of judicature in the "'most liberal manner for the detection of fraud, the "'advancement of justice, and the benefit of creditors "(Rev. 55, S. 75), and effectually guards against em- "barrassments arising from conflicting or opposing "jurisdictions. The opinion of Mr. Justice Scudder "on this topic in *Davis vs. Mahany* is so full and ex- "haustive that it is only necessary to refer to it, and "to express our concurrence in his reasoning, and in "the conclusion he arrived at."

And at p. 311:

"Under the course of practice pursued in *Crane vs. "Freese* the money will be paid into the Court by vir-

Court seems to have been unknown in England and most of the United States.

The acquisition of this lien as distinguished from an actual caption or a right of garnishment against a debtor or quasi-debtor of the defendant in attachment, and the duty of the Court to recognize and enforce it upon the monies in the custody of its officer, was recognized and acted upon in the considered case of *Creamer vs. Lyon* in the Morris Circuit.

There Creamer sued Lyon in assumpsit; Lyon paid a sum of money into Court on account of the claim upon the usual terms laid down in the books (See 10 Vr. 413). Creamer was then entitled to have that money paid out to him. It was his money to all intents and purposes. But before he could withdraw it an attachment was issued against him and served upon the clerk of the Court precisely as was done here. The Court recognized the lien and enforced it by refusing Creamer's motion to have the money paid out to him.

In *Shinn vs. Zimmerman*, 3 Zab. 150, *Hoenes*, the defendant in attachment, had obtained a judgment in Pennsylvania against *Zimmerman* the garnishee and defendant in *scire facias*.

The attempt was to garnishee a judgment debtor in a State and Court different from that in which the judgment was recovered. The insuperable objection to that proceeding was that a judgment in *scire facias* against the garnishee and payment thereunder, would be no protection to the garnishee against the process of the Court in which the judgment had been recovered against him, and he might be compelled to pay it a second time.

So in the case of *Crane vs. Freese.* A judgment in *scire facias* against the sheriff and payment by him thereunder might be no protection or excuse against a motion to amerce for not bringing the money into Court in obedience to the command of the writ. And in that case—*Crane vs. Freese*—if the writ of attachment had been in the hands of a different person as of-

defendant in attachment, on the other hand, is clear and well defined in this State; and it arises very naturally out of the very comprehensive language of our attachment act, and the command that "it shall "be construed in all courts of judicature in the most "liberal manner, for the detection of fraud, the ad- "vancement of justice, and the benefit of creditors."

The words "rights and credits" in the first section of the act are those referred to by Chancellor Williamson in *Hill vs. Beach* as being broad enough to include money in Court. And he held in that case that the equitable interests of a *cesqui que trust* in the proceeds of a sale of land which was held by a third person in trust for him were attachable in the hands of the sheriff. And in *Ruckman vs. Conover* it was held that the proceeds of the sale of lands under foreclosure in favor of one person could be seized and attached and a lien acquired by a creditor of another person for whom that creditor claimed that the title to the mortgage foreclosed was held in trust by the mortgagee in fraud of creditors.

An attention to this distinction between the actual seizure and caption, or an attempt to fix the liability as garnishee upon an officer on the one hand, and the acquisition of a mere lien upon the fund on the other hand, will reconcile much that appears to be opposed to our rule in the older cases in England and other States in this country.

In England the question of the power to attach monies or credits was always settled upon the footing of either an actual caption and taking possession of the money itself, or charging the custodian of the money or the depository of the right or credit as a garnishee in a proceeding by *scire facias*.

If neither of those results could be accomplished the attachment failed.

The idea of acquiring a lien upon money in the custody of the law and enforcing it by an order of the

"*erty and estate is*," and there, &c. And the 17th section declares that the writ shall "*bind the rights* "*and credits, monies and effects, goods and chattels* "*of the defendant from the time of its execution.*"

Here is the source of the lien. And, as before remarked, it is one of *right*, and not of *favor*.

In the case in hand the service was made upon the clerk in his official capacity, and thereby notice was given in a respectful manner, and in the only mode known to the law, to the Court, of the issuing of the attachment and of the desire and demand of the plaintiff in attachment and of the Court issuing the same, that the money should be subjected to the lien thereof.

The cases cited treat the lien as one of right, which the Court is bound to respect and enforce.

The clerk of the Court is not only the representative of the Court in this respect, but he is the person to whom the money is actually paid in and by whom it is actually paid out, and who is, in contemplation of law, the actual custodian of it. The money is supposed to be in the actual presence of the Court in the hands of the clerk.

The statute (Sec. 102, Rev. 123—Corbin's Rules, p. 106) provides that the money paid into Court shall be deposited by the clerk, in his name as clerk, in one of the banks of this State, to the credit of the cause to which it belongs, &c.; and on the appointment of a new clerk, the money in bank shall be transferred to his account, and the Chancellor may make rules respecting deposits and investments. And the 34th rule requires the clerk to deposit all such monies in a particular bank to the credit of the Court of Chancery, and the money is to be drawn out by the check of the clerk, countersigned by the Chancellor.

The service then upon the clerk was a good service.

The distinction between the acquisition of a mere lien on the fund, on the one hand, and the actual caption and detention of the money or chattel, or the fix-

"only by the order or decree of that Court."

It will be observed that in all the cases above cited money was attached in the hands of the sheriff or constable, an officer of the Court, and it came into his hands by virtue of the process of the Court, in his hands to be executed.

It was in each case in the custody of the law, quite as much as it would be if in the possession of the Clerk of the Court. Each is the officer of the Court—one as much and no more so than the other. No distinction can be taken between a clerk and a sheriff in that respect.

The Court makes orders as to the disposition of goods and money in the hands of a sheriff quite as freely as it does when in the hands of its clerk, and, in the learning of the law, as to the effect of property being in *custodia legis*, no distinction is found in that respect between the custody of a sheriff and the cus tody of a clerk.

In neither of the cases above cited was the money actually taken away from the possession of the officer, nor was the process of the Court in which the money was found in anywise interfered with. And yet the Court in each case said, in general terms, that the money was attachable, was liable to attachment, and the like. All that was meant by this language was that by the execution of the writ of attachment in the manner pointed out by the statute, the plaintiff in attachment acquired a lien on the fund, as a right or credit of the defendant in attachment. And this lien the Court, whose officer had the fund in custody, would protect and enforce as a matter of right to the plaintiff in attachment, and not as a matter of favor—*ex debito justiciæ*, and not *ex gratia*.

By such service on the officer of the Court in whose custody and possession the money is, the directions of the 15th, 16th and 17th sections of the Attachment Act (Rev. p. 44) are thoroughly fulfilled. The 15th section directs that the officer shall "*go to the person in*

ficer and he had gone with it to the sheriff when he had before him on the table the identical money collected by execution in favor of the defendant in attachment, yet the officer having the attachment could not have seized that money by virtue of the writ for the reason that it was in the custody of the law, was not yet the money of the defendant in attachment, and must, by command of the writ, be paid into Court.

It is proper to say here that in most of the New England States all ordinary actions at law against residents may be, and frequently are, commenced by attachment, and no preliminary affidavit is required, so that the writ may be used for very improper purposes and with very harsh results, and on that ground, in one or two instances, the Courts there, for reasons peculiar to their practice, have refused to encourage the interception of the passage of money from the officer who has collected it to plaintiff in execution, who is entitled to it. But these reasons do not prevail here and have not been adopted by our Court.

In *Dunlop vs. Paterson Fire Ins. Co.*, 74 N. Y., 145, the Court of Appeals of New York held that money deposited with the clerk of a court in lieu of an undertaking on appeal, is liable to an attachment in an action by a third person against the depositor. Judge Folger, in an elaborate opinion, reviews all the authorities in the different States, including those of our own.

And in *Wehle vs. Conner*, 83 N. Y., 231, that Court went further and held that money collected by the sheriff, on execution, was attachable in the sheriff's hands at the suit of the defendant in execution against the plaintiff in execution.

The case of *Lodor vs. Baker*, 10 Vroom, 49, is not in conflict with the position of the petitioner herein. The attempt there was to attach monies in the hands of the State Treasurer due from the State to a contractor in the state prison who was the defendant in attachment. Clearly the Treasurer could not be held liable as garnishee in *scire facias; nor were the monies within the reach of the Court;* there was no means by which

the Court could apply the money to the payment of the judgment to be recovered in attachment. This last circumstance distinguishes that case from the earlier case of *Davis vs. Mahany* in the Supreme Court and the later one of *Conover vs. Ruckman* in this Court, and if *Loder vs. Baker* were in any wise inconsistent with those cases it must to that extent be considered as overruled.

Now to come to the case in hand. Here is money in the Court which belongs now, and always has belonged, to Trotter. It was not lodged in Court pending a controversy as to its ownership. It is not the proceeds of the sale of a chattel whose ownership is in dispute, nor did it have any such uncertain origin. There was, in fact, no controversy as to its ownership. It was paid in as the price in part or in whole for ore sold and delivered by Trotter to the Lehigh Zinc and Iron Company Limited. The object in paying it into Court and retaining it there was to ascertain whether it would not be equitable to subject it to an equitable lien in the nature of a set-off in favor of the corporation paying it. The corporation said: We owe this money to Trotter, but we ought not to pay it absolutely, because Trotter owes us, on account of a cross claim against Trotter for damages. To this position of the corporation the Court says in reply: Do you continue to pay this money as fast as it accrues, and we will retain it until we shall have time to examine and consider your cross-claim.

The whole proceeding, then, is founded on the idea that the money belonged all the time to Trotter and was retained in Court for the purpose of subjecting it to a supposed equitable lien in behalf of the Lehigh Zinc and Iron Company Limited. In this respect the case is much like *Hill v. Beach*, where the share of the surplus money which was attached was subject to a lien prior to the attachment in favor of the complainant.

The fund then was at all times subject to attachment at the suit of any creditor of Trotter, precisely

as Creamer's money in *Creamer vs. Lyon* was subject to attachment in the hands of the Clerk of Morris County.

The fact that the Lehigh Zinc and Iron Company, limited, was seeking a prior lien upon it, did not render it the less liable to attachment as the money of Trotter. The amount and extent of the lien claimed by the corporation was wholly undetermined and might or might not exhaust the fund. The fact that land, or a right or credit, or fund is already subject to a lien in favor of a third party, does not render it the less liable to attachment as the property of the owner.

Dunlop vs. Insurance Co., supra.

No harm can be done to any person by subjecting this fund to the lien of these writs.

No one will be affected by it but Trotter.

No liability is sought to be established against any person as garnishee. The Lehigh Zinc and Iron Company's claim has been adjudicated upon. They have had their day in Court, and they do not oppose this motion.

Trotter has no cause to complain. A resident of New York State he came voluntarily in this State and engaged in an enterprise and entered into obligations to be carried out and performed here. He thereby voluntarily subjected himself to the jurisdiction and laws of this State.

The attachment law affords him ample protection. He may give security and have the attachments dissolved.

The Act (Rev. p. 47, secs. 32–41) gives the defendant his choice of several modes of accomplishing this result. The 39th section provides that a judge may dissolve the attachment upon giving bond in *such amount and such condition* as he shall think right.

If, then, we have placed our claim in our affidavit at too high figures and have rendered it oppressively difficult for defendant to discharge the attachment, he has his remedy. He can show that to the Judge and

have the amount to which the bond was issued reduced to what is reasonable and just.

The fund here is drawing interest. The defendant can mortgage it while lying here.

Moreover, by prompt appearance, and the avoidance of dilatory proceedings, he can bring the issue to a speedy determination.

The first attachment was issued December eighteen hundred and eighty-four—fourteen months since; appearance was not entered until June or July 1885 and then no particular haste on the part of the defendant was shown; and, at last, a demurrer is interposed by the defendant to one of the plaintiff's replications, which replication shows facts which, in equity, if not at law, dispose of all show of meritorious defence to plaintiff's action.

The second attachment was issued in July—six months since and appearance has but just now been entered to it, a delay of six months.

No 10

THE W. S. SHARP PRINTING CO., 23 & 25 N. Warren St., Trenton, N. J.

COURT OF ERRORS AND APPEALS.

CHARLES W. TROTTER,
Appellant,
and
AUGUST HECKSCHER AND THE LEHIGH ZINC AND IRON CO., LIMITED,
Appellees.

On Appeal from the order of Chancery, advised by the Hon. Vice Chancellor Bird, impounding moneys in court to answer attachments by August Heckscher.

The moneys in question came into the Court of Chancery through its officer, a person appointed to manage the mine, the right to the possession of which, and to have the benefit of a certain contract respecting ore taken from the same, was litigated in a suit brought in said court by Trotter against Heckscher and the Zinc Company above named as defendants. The duty of this officer was (see order, page 2), to manage the mine, see that it was worked so as to perform the contract, and see that the defendants paid for the ore delivered. A subsequent order, dated April 14th, 1883, "made it the duty of the manager to see that the money to be paid by the defendants on the 15th day of each month, for ores furnished during the previous month, shall be paid to the clerk of this court, commencing with

the amount due for ore furnished in the month of March, and to continue until the hearing of this cause, then to abide the further order of this court.

"And in order that the said Trotter may not be embarrassed in his operations of mining for want of funds, it is ordered that upon the manager presenting his certificate monthly of the sum necessary for actual mining expenses, an order will be made directing the clerk to pay such amount to the manager, to be by him applied to the payment of the expenses of mining."

Under this order there was in court, at the date of the order from which Trotter appeals, $55,126.32. Case, page 81.

The petition sets forth three writs of attachment with the returns and appraisements thereto respectively annexed; alleges that by virtue of these writs he has by the law of the land obtained a lien upon the moneys above mentioned, and prays that the lien of the writs may be recognized and enforced by the Court of Chancery by continuing to retain the money there to answer to such judgments as Heckscher may obtain in his actions at law.

In his petition he states (page 12) that the moneys were retained in chancery for the purpose of subjecting them to a set-off for damages in favor of said zinc company and against Trotter, if the company should be able to establish an equitable right to said set-off. He further states that it had finally been determined by Chancery and by the Court of Appeals that said company was not entitled to such set-off.

The decree of chancery July 28th, 1884, (case, page 7) decreed that the zinc company pay Trotter $6272.31, and "that all other moneys now due to the complainant for ores delivered or hereafter to become due for ores delivered or to be delivered, over and above the sum of $3000, for the monthly shipments of each and every month, be paid into this court by said defendants, and that the said moneys, when so paid into this court, together with the amount now

on deposit in this court, shall there remain until the determination of the said action at law, or until the further order of this court in the premises."

By an order, August 7th, 1884, the manager was continued pending the appeal taken by Trotter from the above decree, and it was directed that "his expenses be paid provisionally out of the moneys ordered by said decree to be paid into court, if sufficient moneys be paid into court hereafter; if not, by said Trotter."

The Court of Appeals, having heard the case, made their decree January 18th, 1886, and decreed "that the defendant's claim for damages under the cross-bill should not be allowed in the present proceeding, and cannot be set off herein against the moneys due the complainant for ore delivered, and that the moneys paid into the Court of Chancery, the proceeds of the sale of ore delivered under the contract, should not be retained to answer said damages."

It will be apparent from the above recital, that Mr. Heckscher's claim, and the order from which appeal is taken, recognizing it, stand not upon any equitable rights of Mr. Heckscher, nor did he appeal at all to the equitable discretion of the Court of Chancery. He stands upon a strictly legal right, that, namely, derived through his writs of attachment and the alleged levies and appraisements returned with them.

December 18th, 1884, he sued out an attachment against Trotter as a non-resident debtor, and caused the sheriff of Mercer to attach and levy upon said moneys in this court belonging to the defendant, impounded and retained in it, under and by virtue of a certain order or orders made in the cause.

This procedure was repeated twice. The three returns are copied in the case: the first, at pages 14 and 15; the second, at page 43; the third, at pages 52 and 53.

The language of the returns in each case is the same. The sheriff says that he executed the writ by going to the

office of George S. Duryea, clerk in chancery, in whose custody or possession the property of the said defendant then was, and then and there, in presence of the said George S. Duryea, clerk as aforesaid, declaring that he attached the rights and credits, moneys and effects, goods and chattels, lands and tenements, of the said Charles W. Trotter, at the suit of August Heckscher, plaintiff.

Each return is accompanied in due form by an inventory, the language of which in each case is the same. They run thus:

"Inventory and appraisement of the property and estate of Charles W. Trotter, defendant, by me attached, &c., &c., viz.: the rights and credits of Charles W. Trotter in certain moneys in the Court of Chancery in a certain suit wherein Charles W. Trotter is complainant and Charles A. Heckscher and the Lehigh Zinc and Iron Company, Limited, are defendants, deposited in said court in pursuance of the order of said court, and appraised at $17,730, with interest."

The amount in the second cause is $32,140.38; that in the third cause is $45,171.32.

Now, it is insisted by the appellant that these levies were unlawful—that they created no lien whatever.

What were these moneys? When they reached the court, they had not been, legally, the moneys of the plaintiff. The court took all legal title. If they were paid in negotiable paper, that paper was the legal property of the clerk holding it for the court. If they came in coin or in legal tender notes, it is the same thing—the court, or its officer for it, owns the money. The right of Trotter is equitable merely. The court may choose to give it to him, and then, and not till then, does it become his. He cannot sue for it. Neither the clerk, nor the court is subject to an action for it. It is not the money of Trotter. It never was. It is not a right or credit of Trotter. He

can enforce no claim. Where, then, his right—his *legal* right? Whom shall he sue for it? How get it, save by petition, addressed to the discretion of the Court of Chancery?

Says Chief Justice Green, in Shinn *v.* Zimmerman, 3 Zab. 151: "A salary due to a public officer, in the hands of the state treasurer, is not liable to an attachment, because the state might thus be compelled to become a party defendant at the suit of a private individual."

I add, the salary being *due from the state*, and the party having *no right to sue for it*, it is not a right and credit within the attachment act.

The Chief Justice proceeds: "Nor can money paid into court, or to the sheriff, be attached while in the hands of the officer, upon considerations of public policy." Com. Dig., tit. "Attachment" D; Ross v. Clarke, 1 Dall. 354.

In Loder *v.* Baker, 10 Vr. 50, it was held (1876) that money (not salary) due from the state, in the hands of the treasurer, cannot be attached. And the reasoning governs this case. Says Van Syckel, Justice: "If the creditor may lawfully attach money due the debtor in the hands of the state's treasurer, so as to create any lien upon it by force of his writ, it must logically follow that he may resort to the means provided by the attachment act, *to compel the garnishee to appropriate the money attached to the payment of his claim*, otherwise it would be a nugatory and fruitless proceeding.

"The law cannot be guilty of the inconsistency of inviting the suitor to attach funds of this nature, and at the same time deny him every remedy to enforce his lien.

"The right to attach must necessarily involve the right to compel the state to appear as party defendant at the suit of a private individual."

This reasoning applies to money held in court. Can the

court be compelled to appear as party defendant at the suit of Mr. Heckscher?

In Drake on Attachment 251, this doctrine is declared; "Money paid into the hands of a clerk or prothonotary of a court on a judgment, or which is in his possession in virtue of his office, cannot be attached; so of money paid into court.

See Ross *v.* Clarke, 1 Dall. 354.
Allston *v.* Clay, 2 Hayw. (N. C.) 171.
Hunt *v.* Stevens, 3 Ired. 365.
Farmers Bank *v.* Beaston, 7 Gill & J. 421.
Paradise *v.* Farmers and Merchants Bank, 5 La. Ann.

In this case, many thousand dollars, part of the moneys alleged to be attached, have been paid over by the court to Mr. Trotter, since and notwithstanding the attachment.

How can the court justify this, except upon the ground that there was no lien acquired by the attachment, or the procedure under it upon these moneys?

And this suggests the great reason why moneys thus situated should *not* be attachable. How can the court exert its useful and necessary functions in relation to such matters, if every creditor may attach or take in execution?

Every railroad receiver has turned over to him large quantities of money and of property. He gets no title, either. Yet who ever heard of an attachment set up as entitling creditors to take this property and hold it, or compel its being held, to satisfy alleged liens?

The late case of Conover *v.* Ruckman, 6 Stew. 305, does not contravene this doctrine. The facts were these: Elisha Ruckman, a non-resident, had obtained a decree for foreclosure, execution upon which was in the sheriff's hands. The sheriff had levied and was about to sell. Ruckman owed Conover. The latter sued out an attachment, and levied on the right and credit of Ruckman to receive this

money from the sheriff, when raised. Evidently there was at the time *no* right or credit.

There was, therefore, one plain reason why the writ was never legally levied, why, to use the court's language, the service of the attachment was premature, and why the decision should have been as in the court below. Yet the court reversed Vice Chancellor Van Fleet's opinion, holding that moneys in a sheriff's hands collected by him by execution were rights and credits of the plaintiff in the execution within the meaning of the attachment act, and were subject to seizure as such by virtue of the writ. But they put the case distinctly (see page 308) on the ground that money received by an officer under process of execution may be collected of him by action at law at the suit of plaintiff in execution, and were therefore rights and credits. Sevill on Sheriffs 436; Dale *v.* Birch, 3 Campb. 34. And the practice approved was to order the sheriff to pay the moneys, when raised, into court, to be paid over to the creditors in attachment, if no paramount claim should appear."

The concluding paragraph of Judge Depue's opinion, reserves the question whether the attachment in that case took hold or not.

On review of the cases it is very respectfully submitted, therefore, that on principle and authority these writs of attachment were never levied upon any of the moneys in question, and cannot interfere with the right of Mr. Trotter to receive them. And Mr. Trotter, being now a citizen of New Jersey, has the right of every other citizen to receive his own.

The cases in New York cited by the learned Vice-Chancellor do not contravene the argument submitted. Dunlop *v.* Paterson Fire Ins. Co., 74 N. Y. 145, was a case where a debtor deposited money himself with the clerk of a court, in lieu of an undertaking on appeal. Plainly, when the appeal was decided, an action lay by the depositor against the clerk for money had and received. And Justice Folger,

in deciding the case (pages 151 to 153), admits the principle for which appellant contends.

Cremer *v.* Lyon, cited by respondents, is a case of money paid into court by a defendant for the plaintiff on a tender. It was thus *plaintiff's* money, and an attachment of that was regular. Could not this plaintiff, the defendant in attachment, sue the clerk for it? And, in the case, he was garnisheed. *No order* permitting the payment into court was taken. So it was not the court's, but the clerk's possession.

The bulk of the moneys involved in the present discussion has come in since the decree and under the order to pay into this court.

The argument made is based on these principles:

1. No merely equitable right can be the subject of attachment.

3. The right to be attached must be one which is the subject of garnishment.

4. Therefore, when these writs were levied, there was no right or credit in these moneys belonging to Mr. Trotter which could be by him enforced, or which could be seized. His right was an equity, to be met by the court in its discretion.

5. The moneys being then in the court's hands, public policy forbade its attachment, as much so, when a judicial officer holds it, as when an executive officer, a treasurer for instance, does so.

It is supposed that the only thing which can justify the order appealed from is the alleged legal lien of these attachments. But it may be urged that whether to recognize that lien or not was a matter of equitable discretion. Therefore, I proceed to say that such a discretion required that chancery should not hold these moneys to answer any claim that may be adjudicated in these attachments.

Under what circumstances has the court acquired possession of these moneys?

They came to it through its order creating a manager of this mine and, by means of its superintending power, procuring payment of its products according to the contract which was the subject of the suit. All the surplus, after paying expenses of the mine, would have gone at once to Mr. Trotter. But the defendants in the suit, alleging an equitable set-off against the claim of the plaintiff, and the court having doubt on the matter, the moneys were held, even when needed to make defence and pay counsel, to answer that claim. The right of equitable set-off in the suit was by decree denied, and the court would then have paid over the moneys, except for the appeal which has since been decided.

It is admitted that the action of the court in this respect was unusual, if not wholly unprecedented, and justified only by the peculiar circumstances of the case. The moneys became a trust, so to speak, with the court. It held them, either for the equitable set-off or for Mr. Trotter. This equitable set-off, being now denied, and the court not having the right, in law or equity, to keep these moneys longer, has Heckscher an equity to come into the court and sequestrate or procure the court to impound and keep these moneys? He asks it to do a thing contrary to the trust under which it took these moneys—to pay them over to him as a creditor, or worse, to keep them until it is determined whether he is such a creditor or not—to act like an auditor in attachment.

If Heckscher had established his rights as a creditor, and procured a judgment and execution, he could not ask the court, without Trotter's consent, voluntary, or through the intervention of judicial action, to pay over his moneys to that judgment. Nay, before he could file a creditor's bill and advance a claim to these moneys, he would have to exhaust his remedy at law, by sale of Mr. Trotter's real

and personal property. Now, in this case, Heckscher has seized upon the lease and all the mining machinery, besides large quantities of valuable ore and other property. He holds all this, and yet desires further to have this money impounded and held, although his own papers show that his demand is resisted, and that his action has been appeared in and defended.

Nor does he pretend, in his petition, that Mr. Trotter is unable to pay his debts. His simple ground is that he owes him, and that he has an attachment against him. He does not even say, in this petition, that he is a non-resident debtor, though in his affidavits filed for the suits, he does so say.

But Mr. Trotter is now a resident of New Jersey. He can, at any time, be sued or taken here. He has appeared and denied the indebtedness alleged, or any indebtedness.

Will it be said that the attachment is for the benefit of general creditors, and that one of them has come in? The fact is that this one never had a real claim, and that whatever he had is settled and out of the way, and notwithstanding the publication of this attachment so prejudicial to the credit of Mr. Trotter, no one else but Mr. West has appeared in the suit.

And the levy thus made binds property much more than sufficient to secure the claims of Mr. Heckscher.

What are his claims?

Attachment No. 1,	$35,000
No. 2,	15,000
No. 3,	10,000
In all,	$60,000

While the proof shows that the other property attached by the sheriff of the county of Sussex, in these writs, is worth much more than these alleged debts. So that this attempt is for suffocation.

This mine has *cost* Mr. Trotter, say $50,000. It has realized, according to the evidence supplied by the payments into court—

From April 16th to December 11th, including 1883, $21,769 76
From August 18th to December 16th, 1884, 13,394 04
From April 2d, 1885, to January 14th, 1886, 78,442 50

This indicates a property of value sufficient to secure all Mr. Heckscher's possible claim.

And besides this, is all the machinery and betterments —all levied upon—all a part of the security.

How plain all this makes the intent of Mr. Heckscher! It is to make it impossible for Mr. Trotter to defend himself against him. He would lock up this money—then refuse, in his capacity as zinc company, to pay for the zinc he takes, prosecute these attachments, and how is Mr. Trotter to get on? The object and the effort is strangulation.

Upon the same hypothesis, that this court may exercise a discretion on this subject—the rightfulness of which we deny, insisting that there is no legal attachment of it, and demanding the money which belongs to us—I proceed to show that these attachments have nothing wherewith to sustain themselves. There is actually no debt due from Mr. Trotter to Mr. Heckscher.

Mr. Heckscher, the contractor for Mr. Trotter's ore has bought out Mr. Curtis, from whom Mr. Trotter derives his right to mine upon this property.

The lease is dated April 10th, 1879. It reserves $1 a ton for the first three years, $2 after that; and Heckscher sues for two very different things: *first*, $2 a ton for six thousand tons mined, he alleges, between March 19th, 1883, and December 18th, 1884, making an alleged debt of $12-000; and *second*, *damages* for not mining seventeen thousand and five hundred.

And yet he swears that Trotter is justly indebted to him in $35,000 for rents and royalties accrued upon this lease up to October 10th, 1884.

Damages are not debt. Mr. Heckscher obtained this

writ in the amount of $35,000 by calling things by wrong names.

A writ of attachment can issue only for the recovery of a sum certain in the nature of a debt or liquidated damages. It lies only where the plaintiff would be entitled as of course to require special bail. It cannot be used for the recovery of unliquidated damages consequent upon the breach of covenant or other contract.

Jeffrey *v.* Woolley, 5 Halst. 123.
Barber *v.* Robeson, 3 Gr. 17.
Brown *v.* Hoy, 1 Harr. 157.
Cheddick *v.* Marsh, 1 Zab. 466; 9 Vr. 462.

But this action is without foundation in justice and right, and the plaintiff knew it.

For, at the same time, the same parties entered into an agreement under seal, which formed part of the one sued upon, whereby the latter was "modified, changed and controlled." It is attached to the pleas, a copy of which is appended to the petition of Mr. Heckscher, as the other part of the agreement is to the declaration. It provides that in case the New Jersey Zinc Company or any other party shall hinder and delay Mr. Trotter in entering and mining, the time lost shall be added to the six months given him to begin, and Mr. Trotter shall have six months after the termination of said hindrance to begin, instead of six months from the date of the lease—and $1 only a ton shall be required for three years, and ten thousand tons per year in each year after the termination of such hindrance. The expenses of litigation in asserting or defending his rights shall be taken by Mr. Trotter out of the royalties.

And the fact was that by reason of the opposition of the New Jersey Zinc Company first, and that of the New Jersey Zinc and Iron Company, no possession was obtained till May 27th, 1884, and some $30,000 was expended in suits at law or equity.

Therefore, under the agreements, or rather the agree-

ment, for the papers form only one, there was no right of action belonging to Mr. Heckscher when he commenced his suit in December, 1884. No right of action could occur for a year. And the expenditure mentioned barred all honest suit for any royalties whatever.

But pursuing the matter a little further on this question of equitable discretion.

The assignors of Heckscher brought a suit in this court seeking an account of the products of this mine, and involving the decision of every question raised by the attachment suits. This suit is still pending. This court thus has jurisdiction of the whole subject-matter. The jurisdiction existed when the attachments were brought. It is peculiarly within the scope of equity. Without disconuance, Mr. Heckscher carries the matter elsewhere.

We submit that he disentitles himself to the favorable action of this court.

To recapitulate:

1. The petitioner's right is founded only on his attachment. But this was never legally served upon this money.

2. The petition itself states that the Court of Appeals has decreed that the money, so far as regards the claim of the zinc company, is to be given to Mr. Trotter.

3. If the court think the attachment has any right to be considered, and that it has a discretion to hold this money, it will exert an equitable discretion, and, therefore,

4. It will not favor the complainant, because he has made unlawful use of the process of attachment. He seeks to collect damages. He has no debt. And if he has, he has abundant security otherwise for all possibly due him, and is owner and controller of a suit in chancery, still pending, involving all the subject-matter of these attachment claims.

5. The affidavit of Mr. Trotter (page 54) shows how abundant is Mr. Heckscher's security, and how unnecessary and unjust is his endeavor to attach these moneys.

$40,000 worth of ore lies on the banks of the mine. His mining rights are worth hundreds of thousands of dollars. How much security must Mr. Heckscher have?

It is submitted that the order appealed from should be reversed.

CORTLANDT PARKER.

New Jersey Court of Errors and Appeals.

Between
CHARLES W. TROTTER,
Appellant,

AND

CHARLES A. HECKSCHER (or AUGUST HECKSCHER) and THE LEHIGH ZINC AND IRON COMPANY, LIMITED,
Respondents.

On appeal from order of April 20, 1886, recognizing lien of attachment issued by August Heckscher on $55,126.32, moneys in Court of Chancery.

CORTLANDT & WAYNE PARKER, Solictitors and of Counsel with Appellant.

CHARLES D. THOMPSON, Solicitor of Respondent.

GEORGE NORTHRUP and HENRY C. PITNEY, of Counsel.

By consent of counsel, reference may be made to the record of this case on the appeal from the final decree as decided by this Court (13th Stewart, 612).

Charles W. Trotter filed his bill June 8th, 1882, under contract between him and Heckscher printed 13th Stew., 645, whereby he agreed to mine and deliver, and Heckscher to pay for, a thousand tons of ore a month.

The bill prays the strict performance of the contract as to the mode of assay and delivery of ore, and decree that Heckscher's assignees were not entitled to take

possession of the mine, and account of the amount due for ore delivered.

The respondents-defendants filed answer and cross-bill likewise praying specific performance of the contract, denying that they owed anything for ore delivered, averring loss by Trotter's failure to deliver ore, praying a decree for their damages by reason thereof, and possession of the mine.

Pending suit, the money in question was paid into Court under the following orders and decree :

Order Appointing Manager, &c.

[Filed August 12, 1882.]

This cause coming up before the Court in presence of Charles D. Thompson and George Northrup, counsel for said defendants, and Richard Wayne Parker, of counsel with Charles W. Trotter, on motion to dissolve the injunction granted in this cause.

And it appearing to the Court that it is for the benefit of all parties that the contract between them should be executed under the direction of the Court, and to that end it is necessary that a manager should be appointed to superintend the execution thereof :

It is, therefore, on this ninth day of August, one thousand eight hundred and eighty-two, ordered, by Theodore Runyon, Chancellor of New Jersey, that Francis C. Van Dyck, of Elizabeth, in the county of Union, be and is hereby appointed such manager, and he is hereby authorized to employ such subordinates as may be necessary to enable him to perform his duties under this order. And he is also hereby authorized, and it is hereby made his duty to see that the complainant, Charles W. Trotter, so operates and works his mine, mentioned and described in the said contrct, that at least nine hundred and ninety tons, of the weight of twenty-two hundred and forty pounds each, of franklinite ore, containing at least twenty-six per cent. of the oxide of zinc, shall be delivered monthly hereafter to the Lehigh Zinc and Iron Company, Limited, on

board the railroad cars at Franklin, Sussex county, New Jersey, provided that such mine by full, reasonable and fair working can be made to yield that quantity of ore, of the quality mentioned each month. And it is hereby made the further duty of the said manager to see that the defendants, the Lehigh Zinc and Iron Company, Limited, pay to the said complainant, for the ore so delivered in each month thereafter, the price or value thereof, as fixed by said contract, on the fifteenth day of the next succeeding month. And it is hereby made the further duty of the said manager to superintend and direct the sampling by the said defendants, the Lehigh Zinc and Iron Company, Limited, of the ores so delivered for the purpose of assay, and to see that the same is sampled and assayed in such manner that the quality of the ore is as fairly and accurately ascertained as it can be done; and for the purpose of providing a means of testing the correctness of the sampling and assaying by the defendants, the Lehigh Zinc and Iron Company, Limited, under the direction and superintendence of the manager, the manager shall sample the ore after it is loaded on the cars, at Franklin aforesaid, and safely secure such samples in some proper manner, to be used for a further assay in case a further assay shall become necessary in the judgment of the manager or the Court.

It is further ordered that both parties shall render accounts to the manager whenever he shall require the same.

It is further ordered that the expenses of the said manager shall be reported monthly, and be paid equally in the first instance by both parties, and finally as ordered by the Court.

And it is further ordered that either of the parties, or the manager, shall be at liberty to apply to the Court at any time hereafter for further aid or direction in the premises, if occasion shall require, the motion to dissolve being continued without day, the defendants having liberty to renew the same at any time hereafter on due notice to the complainant.

The contract herein referred to is dated the second

day of June, eighteen hundred and eighty-one between Charles W. Trotter and Charles A. Heckscher, and the mine therein referred to is the same leased to said Trotter by James L. Curtis, trustee, by deed dated the sixth day of March, eighteen hundred and seventy-seven.

THEODORE RUNYON, C.

Respectfully advised,

A. V. VAN FLEET, V. C.

Order to Pay Money into Court.

[Filed April 24, 1883.]

The rule to show cause granted in this cause on the day of March last, having been continued until the tenth day of April instant, and the same coming on to be heard, and the petition and affidavits of the defendants and the answer of the complainant having been read, and the arguments of counsel having been heard,

It is, on this fourteenth day of April, A. D. 1883, on motion of Charles D. Thompson and George Northrup, of counsel with the defendants, ordered that the order of this Court, made on the ninth day of August last, be and the same is so far modified as that it is hereby made the duty of the manager appointed in this cause to see that the money to be paid by the defendants, on the fifteenth day of each month, for ores furnished during the previous month, shall be paid to the Clerk of this Court, commencing with the amount due for ore furnished in the month of March, and to continue until the hearing of this cause, then to abide the further order of the Court.

And in order that the said Trotter may not be embarrassed in his operations of mining for want of funds, it is ordered that upon the manager presenting his certificate monthly of the sum necessary for actual mining

expenses, an order will be made directing the Clerk to pay such amount to the manager to be by him applied to the payment of the expenses of mining.

THEODORE RUNYON, C.

Respectfully advised.

JOHN T. BIRD, V. C.

Order Suspending Order for Payment of Money into Court.

[Filed July 13, 1883.]

This matter coming up before the Court on motion of the complainant to vacate the order herein filed on the twenty-fourth day of April last.

And it appearing that by said order it was ordered, as of the fourteenth day of April last, that the previous order of this Court, made on the ninth day of August last, should be so far modified as to make it the duty of the manager appointed in this cause to see that the money to be paid by the defendants on the fifteenth day of each month for ores furnished during the previous month, should be paid to the Clerk of this Court, commencing with the amount due for ores furnished during the month of March, and to continue until the hearing of the cause, then to abide the further order of this Court, and also that on presenting the certificate of the manager monthly of the sum necessary for actual mining expenses, order would be made directing the clerk to pay such amount to the manager, to be by him applied to the payment of such expenses of mining.

And it appearing that the hearing of this cause began on the first day of June last:

It is, on this thirteenth day of July, eighteen hundred and eighty-three, on motion of Cortlandt Parker, of counsel with the complainant, ordered by Theodore Runyon, Chancellor of the State of New Jersey, that the said modifying order be suspended, and the said

original order of August ninth last restored as to the next payment falling due according to the contract of the parties, and the said order appointing said manager dated the ninth day of August last; and further equity is reserved till further order herein.

THEODORE RUNYON, C.

Respectfully advised.

JOHN T. BIRD, V. C.

Order Rescinding Order to Pay Money into Court.

[Filed August 20, 1883.]

This matter being opened to the Court by the counsel of the complainant, in the presence of the counsel of defendants, and it appearing to the Court that the order of this Court, made and dated on the fourteenth day of April, last past, should be suspended:

It is, therefore, on this twentieth day of August, in the year of our Lord, eighteen hundred and eighty-three, ordered that the said order bearing date as aforesaid, directing the payment of the moneys therein named to the Clerk of this Court, be and the same is hereby suspended in its operation, and that all the moneys therein referred to, hereafter becoming due to the complainant from the defendants, be paid to the complainant in conformity to the order of this Court, bearing date the ninth day of August, A. D. eighteen hundred and eighty-two; and it is further ordered, that the moneys (being $7,026.42) deposited with the Clerk of this Court for the July ores, be and the same is hereby ordered to be paid by the Clerk of this Court to the said complainant, or to his solicitor, and that all further or other equity is reserved.

THEODORE RUNYON, C.

Respectfully advised,

JOHN T. BIRD, V. C.

Decree.

[Filed July 28, 1884.]

That Trotter is entitled to account and payment.

Was entitled to suspend delivery until such payment.

Is entitled to the balance of $4,952.51 remaining in Court of the value of ores delivered since suit commenced.

And it is further ordered and decreed that this Court has no jurisdiction to determine the claims for unliquidated damages, claimed by said cross-bill, and that if any such claims had existed, the defendants should be remitted therefor to any action at law which they shall desire to institute thereupon.

That the balance due for ore delivered before suit is $6,272.31.

And it is further ordered, adjudged and decreed that the said defendants do pay to the said complainant the said sum of six thousand two hundred and seventy-two dollars and thirty-one cents, with interest from the date of this decree; and it is further ordered, adjudged and decreed, that all other moneys now due to the complainant for ores delivered, or hereafter to become due for ores delivered or to be delivered, over and above the sum of three thousand dollars for the monthly shipments of each and every month, be paid into this Court by said defendants, and that the said moneys when so paid into this Court, together with the amount now on deposit in this Court, shall there remain until the determination of the said action at law, or until the further order of this Court in the premises.

And it is further ordered that the said manager be and he is hereby discharged from his duties as such manager under the said order of this Court, from and after ten days after a service of a copy of this decree upon him.

THEODORE RUNYON, C.

Respectfully advised.

JOHN T. BIRD, V. C.

Appeal was taken August 6, 1884.

Provisional Order on Appeal.

[Filed August 7, 1884.]

Charles W. Trotter, complainant in said first-mentioned bill, and a defendant in said cross-bill, having appealed from the decree made in these causes, among other things from so much thereof as relates to his right to have the sampling of the ores referred to in the contract between the parties done at Franklin, and denying such right, and from so much as relates to his right to the direction and aid of this Court in carrying out said contract, and it appearing that if said appeal be sustained and said right, as claimed by appellant, be established, the contrivance of the manager already appointed *pendente lite* may be necessary to a proper accounting in this cause :

It is now, on this seventh day of August, one thousand eight hundred and eighty-four, on motion of Cortlandt & Wayne Parker, solicitors for said appellant, ordered by the Court that said manager be continued in office, notwithstanding said decree, pending said appeal and till the further order of this Court, and that his expenses be paid provisionally out of the moneys ordered by said decree to be paid into Court, if sufficient moneys be paid into Court hereafter ; if not, by said Trotter, the final allowance of said expenses to abide the result of said appeal and such further order as shall be made by the said Court of Appeals in the premises.

Respectfully advised,

JOHN T. BIRD, V. C.

By the decree and remittitur of this Court January 18, 1886, the amount due complainant 15th May, 1882, was settled at $5,793.71, and it was further decreed " that the defendant's claim for damages under the cross-bill should not be allowed in the present proceeding, and cannot be set off herein against the moneys due the said complainant for ore delivered, and that the moneys paid into the Court of Chancery, the proceeds of the sale of ore delivered under the contract, should not be retained to answer said damages."

IN CHANCERY OF NEW JERSEY.

Between
CHARLES W. TROTTER,
Complainant,

AND

THE LEHIGH ZINC AND IRON COMPANY, LIMITED, and AUGUST HECKSCHER,
Defendants.

The petition of August Heckscher respectfully shows :

1. That on or about the eighteenth day of December, in the year eighteen hundred and eighty-four, he sued, out of the Supreme Court of the State of New Jersey, a certain writ of foreign attachment in covenant against the said Charles W. Trotter, directed and delivered to the Sheriff of the County of Mercer.

That the said writ of attachment was founded upon a certain affidavit made by your petitioner and filed with the Clerk of said Supreme Court, on or about the eighteenth day of December, a copy whereof is hereto annexed.

That the said Sheriff of said County of Mercer, by virtue of said writ of attachment, did attach and levy upon certain monies in this Court belonging to the said Charles W. Trotter and impounded and retained in this Court under and by virtue of a certain order or orders of this Court made in this cause.

That a copy of the said writ of attachment with the return and appraisement of the said Sheriff are hereto annexed.

That afterwards your petitioner prosecuted his said suit in the said Supreme Court by moving for and obtaining an order of publication therein, and an order for the appointment of an auditor, and for the recording of a default against the said defendant in accord-

ance with the rules and practice of said Court, copies of which orders are hereto annexed.

That afterwards, on or about the thirteenth day of March, A. D. 1885, one Samuel C. West, claiming to be a creditor of the said Charles W. Trotter, applied to said Supreme Court to be admitted as a creditor of said Trotter, and filed his claim against said Trotter, a copy whereof is hereto annexed.

That afterwards, on or about the eighteenth day of June, A. D. 1885, said Charles W. Trotter, by Courtlandt and R. Wayne Parker, his attorneys, appeared to said attachment according to the practice of said Supreme Court, without giving any bond or taking other proceedings to disturb or discharge the lien thereof upon the moneys and properties seized and levied upon by the said Sheriff.

That afterwards your petitioner filed his declaration in said suit, and defendant filed certain pleas thereto, and other pleadings were filed therein, copies of which pleadings are annexed hereto, and the said suit remains undetermined, no judgment having been rendered therein.

2. That afterwards, on or about the fourteenth day of July, eighteen hundred and eighty-five, your petitioner sued out of the said Supreme Court a second writ of foreign attachment in covenant against the said Charles W. Trotter, which writ of attachment was founded upon another and second affidavit made by your petitioner and filed in said Court, a copy whereof is hereto annexed.

That the said writ of attachment was directed and delivered to the said Sheriff of the County of Mercer, who afterwards executed the same by attaching and levying upon certain moneys in this Court belonging to the said Charles W. Trotter, which had been previously paid into and impounded in this Court by virtue of an order or orders made by this Court in this cause, the moneys so attached by virtue of said last-mentioned writ of attachment, being the same moneys so previously attached by virtue of the first attachment here-

inbefore mentioned, and also other moneys subsequently paid into this Court under said orders.

That a copy of said writ, together with the said Sheriff's appraisement and return thereto annexed, is hereto annexed.

That your petitioner duly prosecuted the said writ of attachment by moving for and obtaining an order of publication therein, and by an order for the appointment of an auditor therein, and for the recording of a default against the said defendant, in accordance with the rules and practice of said Court, copies whereof are hereto annexed.

That your petitioner also caused the issuing of said attachment to be duly published in the "Sussex Register," in pursuance of an order of said Court, and for the length of time thereby required, as appears by a copy of the affidavit of the publishers of said newspaper, hereto annexed.

That the lien of the said writ of attachment is still in full force and virtue.

That your petitioner has prosecuted the same as fast as the rules and practice of said Supreme Court will permit.

That afterwards, on or about the fourth day of January, A. D. 1886, the said Charles W. Trotter, by Courtlandt and R. Wayne Parker, his attorneys, appeared to said second attachment, according to the practice of said Supreme Court, without giving any bond or taking other proceedings to disturb or discharge the lien thereof upon the moneys and properties seized and levied upon by said Sheriff.

3. Your petioner further shows that afterwards, on or about the fifteenth day of January, eighteen hundred and eighty-six, he sued out of said Supreme Court, a third writ of foreign attachment upon contract against the said Charles W. Trotter, which writ of attachment was founded on a further and third affidavit made by your petitioner, duly filed in the office of the Clerk of said Supreme Court, a copy whereof is hereto annexed, and that said writ of attachment was directed and delivered to the Sheriff of the said County

of Mercer, who afterwards levied upon and attached by virtue thereof certain moneys in this Court belonging to the said Charles W. Trotter, paid into this Court and there impounded by virtue of a certain order or orders heretofore made in this cause, which moneys so attached by virtue of said last-mentioned writ of attachment included not only all the moneys so attached as aforesaid by virtue of said first-mentioned two several writs of attachment, but also certain moneys subsequently paid into the Court by virtue of said orders.

That a copy of the said writ of attachment, with the return and appraisement of the said Sheriff thereto annexed, is annexed hereto.

That no further proceedings have as yet been taken thereunder, no opportunity having been afforded to your petitioner to do so under the rules and practice of said Court.

That said moneys are a part of the price of certain ores sold and from time to time delivered by said Charles W. Trotter to the Lehigh Zinc and Iron Company, Limited, and paid into this Court, under the orders of this Court made herein, and were retained in this Court for the purpose of subjecting the same to a set-off for damages in favor of said Lehigh Zinc and Iron Company, Limited, and against said Trotter, if said company should be able to establish an equitable right to such set-off.

And your petitioner is informed that it has been finally determined and decided by this Court and by the Court of Errors and Appeals that said Lehigh Zinc and Iron Company, Limited, is not entitled to such set-off, and that said Charles W. Trotter will be entitled upon application to this Court to have said moneys paid to him.

Your petitioner further shows that by virtue of said several writs of attachment he has by the law of the land obtained a lien upon the said moneys of the said Charles W. Trotter so being in this Court, and that the same amount at this time to the sum of fifty-three thousand dollars, or thereabouts.

And your petitioner prays that the said lien of the said several writs of attachment may be recognized and enforced by this Court by continuing to retain the said money in this Court to answer to such judgment or judgments as your petitioner may recover against the said Charles W. Trotter in said actions at law.

CHAS. D. THOMPSON,
Solicitor of A. Heckscher.

IN CHANCERY OF NEW JERSEY.

Between
CHARLES W. TROTTER,
Complainant,

AND

THE LEHIGH ZINC AND IRON COMPANY, LIMITED, ET AL.,
Defendants.

} On Bill, &c.

STATE OF NEW JERSEY, County of Mercer, } ss.:

AUGUST HECKSCHER, the petitioner within named, being duly sworn on his oath, saith that the facts set forth in the within petition so far as they relate to his own acts are true, and so far as they relate to the acts of others he believes them to be true.

A. HECKSCHER.

Sworn and subscribed to before me this 26th day of January, A. D. 1886.

C. McH. CADWALADER,
Notary Public.

[Filed in Supreme Court Dec. 18th, 1884.]

State of New Jersey, } ss.:
County of Camden, }

August Heckscher, being duly sworn according to law on his oath, deposes and says, that Charles W. Trotter is not, to this deponent's knowledge or belief, resident at this time in the State of New Jersey, and that he is justly indebted to deponent in the sum of thirty-five thousand dollars for rents and royalties, accrued upon a certain indenture of lease, made and executed by and between James L. Curtis, as lessor, and Charles W. Trotter, as lessee, under their respective seals, bearing date the tenth day of April, eighteen hundred and seventy-nine, and covering certain lands and real estate then owned by said James L. Curtis, in the County of Sussex, in this State, which lands and real estate were afterwards by and through divers mesne conveyances granted and assigned to deponent, on the nineteenth day of March, eighteen hundred and eighty-three, and of which deponent then became and ever since hath been seized in fee simple, and upon which lease the said sum of money has accrued for rents and royalties reserved thereby, since the said nineteenth day of March, eighteen hundred and eighty-three, and up to the tenth day of October, eighteen hundred and eighty-four.

August Heckscher.

Subscribed and sworn to before me at Camden, this sixteenth day of December, A. D. 1884.

Howard H. Cooper,
H. C. C.

By virtue of the writ of attachment, hereto annexed, on Thursday, the eighteenth day of December, A. D. 1884, at 12.30 o'clock in the afternoon of that day, in the presence of Charles McM. Cadwallader, a credible person, I, Hiram R. Withington, Sheriff of the County of Mercer, by Robert G. Stevens, Deputy Sheriff, exe-

cuted the said writ of attachment, by giving to the office of George S. Duryea, Clerk in Chancery, in whose custody or possession the property of the said defendant then was, and then and there in the presence of the said George S. Duryea, Clerk, as aforesaid, and the said Charles McM. Cadwallader, I declared that I attached the rights and credits, moneys and effects, goods and chattels, lands and tenements of the said defendant, Charles W. Trotter, at the suit of August Heckscher, plaintiff.

HIRAM R. WITHINGTON,
Sheriff,
By ROBERT G. STEVENS,
Deputy Sheriff.

Inventory and appraisement of the property and estate of Charles W. Trotter, defendant, by me attached on Thursday, the eighteenth day of December, A. D. 1884, by virtue of the writ of attachment, hereto annexed, made the day and year aforesaid by Robert G. Stevens, Deputy Sheriff, with the assistance of Charles McM. Cadwallader, a discreet and impartial freeholder of the City of Trenton, in the said County of Mercer, viz., the rights and credits of Charles W. Trotter, in certain moneys in the Court of Chancery, in a certain suit wherein Charles W. Trotter is complainant and Charles A. Heckscher and The Lehigh Zinc and Iron Company, Limited, are defendants, deposited in said Court in pursuance of the order of said Court, and appraised at seventeen thousand seven hundred and thirty dollars ($17,730) with interest.

HIRAM R. WITHINGTON,
Sheriff,
By ROBERT G. STEVENS,
Deputy Sheriff,
C. McM. CADWALLADER,
Appraiser.

NEW JERSEY, ss.:

THE STATE OF NEW JERSEY TO OUR SHERIFF OF OUR COUNTY OF MERCER, GREETING:

We command you to attach the rights and credits, moneys and effects, goods and chattels, lands and tenements, of Charles W. Trotter wheresoever in your county the same may be found, so that the said Charles W. Trotter be and appear before the Supreme Court of the State of New Jersey, to be held at Trenton, in and for said State, on the 5th day of January next, to answer unto August Heckscher of a plea of breach of covenant to his damage, seventy thousand dollars as is said; and have you then and there this writ.

Witness, the Honorable Mercer Beasley, Chief Justice, at Trenton aforesaid, the eighteenth day of December, A. D. one thousand eight hundred and eighty-four.

BENJ. F. LEE,
Clerk.

CHARLES D. THOMPSON,
Atty.

NEW JERSEY SUPREME COURT,
MERCER COUNTY.

AUGUST HECKSCHER vs. CHARLES W. TROTTER.	In Covenant.

Writ of attachment returnable January 5th, 1885.

CHAS. D. THOMPSON,
Atty.

Affidavit for thirty-five thousand dollars filed before issuing this writ, Dec. 18, 1884.

BENJ. F. LEE,
Clerk.

Sheriff's fees, $3.12

NEW JERSEY SUPREME COURT.

August Heckscher vs. Charles W. Trotter.	In Covenant. On Attachment.

The writ of attachment in this case having been returned, served by the Sheriffs of the Counties of Mercer and Sussex, duly executed,

It is ordered, that the Clerk of this Court do cause notice of the issuing of said attachment, at whose suit, against whose estate, for what sum and where returned, to be published in "The Sussex Register," one of the newspapers in this State, for the space of ten weeks.

Dated Jany. 13th, 1885.

On motion of
Chas. D. Thompson,
Atty. of Pltff.

Let the above rule be entered in the minutes.

M. Beasley,
Ch. Jus.

NEW JERSEY SUPREME COURT.

SAMUEL C. WEST

AGAINST

CHARLES W. TROTTER.

STATE OF NEW JERSEY, Union County, } ss.:

SAMUEL C. WEST, being duly sworn according to law, upon his oath says that Charles W. Trotter is not, to his knowledge or belief, resident at this time in this State, and that he owes to this deponent the sum of twenty-four hundred dollars, as he, this deponent, verily believes, due from said Charles W. Trotter to Samuel C. West, for commissions upon the sale of certain Franklynite ore, due by certain and express agreement between said Trotter and said West, and founded upon valuable consideration.

SAMUEL C. WEST.

Sworn and subscribed before me February 5th, 1884.

EDWARD S. ATWATER,
Master in Chancery of New Jersey.

NEW JERSEY SUPREME COURT.

JUNE TERM, 1885.

AUGUST HECKSCHER vs. CHARLES W. TROTTER.	Attachment.

The defendant in this case having failed to appear at this present term and defend this action,

It is ordered that this, his second default, be entered against him.

And it is further ordered that Francis J. Swayze be appointed auditor to audit and adjust the claim of the plaintiff, and of such others, defendant's creditors, as may apply to him, or to the Court for that purpose.

Entered June 2d, 1885.

On motion of

CHAS. D. THOMPSON,
Attorney.

NEW JERSEY SUPREME COURT.

AUGUST HECKSCHER vs. CHARLES W. TROTTER.	In Covenant Attachment.

Appearance entered for defendant as against plaintiff and applying creditors June 18th, 1885.

C. & R. W. PARKER,
Attorneys.

Declaration.

New Jersey Supreme Court of the Term of November, in the year of our Lord one thousand eight hundred and eighty-four.

SUSSEX COUNTY, ss.:

August Heckscher complains of Charles W. Trotter, being attached to a plea of breach of covenant, and having duly appeared herein according to the form of the statute in such case made and provided:

For that whereas heretofore, to wit, on the tenth day of April, eighteen hundred and seventy-nine, at Newton, in the County of Sussex, aforesaid, one James L. Curtis was seized and possessed as of his demesne in fee of all the north half of the westerly vein of Franklinite ore, situate at Mine Hill, in the Township of Hardyston, in the County of Sussex and State of New Jersey, and being so seized and posessed, he, the said James L. Curtis, on the tenth day of April, eighteen hundred and seventy-nine aforesaid, by a certain indenture of lease then and there made between the said James L. Curtis of the one part, and the defendant of the other part, sealed with the several seals of the said James L. Curtis and the defendant (the counterpart of which indenture, sealed aforesaid, the said plaintiff now brings here into Court, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid, a copy whereof is hereto annexed and made part of this declaration) did demise and to farm let unto the said defendant, his heirs and assigns, all that part of the said westerly mine, vein, lode and bed of Franklinite ore, bounded and described as follows, to wit:

Commencing at a point five hundred feet northerly of the boundary line between the North and South Mine Hill, so-called; from thence running northerly along the line of the said Westerly vein or bed of Franklinite ore five hundred and seventy-four feet to the Hamburg road, be the same more or less; for and during the full term of fifteen years from the day and year last

above written, that is to say, until the tenth day of April, in the year eighteen hundred and ninety-four. The said James L. Curtis therein and thereby reserving to himself, his successors and assigns, the rent and royalty of one dollar for each and every ton of Franklinite ore mined and removed from said demised premises during the first three years, and two dollars for each and every ton of said ore mined and removed from said premises for the remainder of the said term.

And the said defendant did therein and thereby, for himself, his heirs and assigns, covenant and agree that he would, within six months from the date of said indenture, enter upon said demised premises and commence to mine and remove the said Franklinite ore therein contained, and so continue to mine and remove said ore at such rate that the amount of ore so removed should equal ten thousand tons in each and every year of said term.

And that he would keep full and accurate accounts of all ore so mined and removed, and at the end of each and every three months of each and every year of said term he would pay to the said James L. Curtis the sum of one dollar, money of the United States, for each and every ton of ore so mined and removed during the preceding three months for the first three years after the date of said indenture, and the sum of two dollars per ton for each and every ton removed during the remainder of said term. By virtue of which said demise, the said Charles W. Trotter afterwards, to wit, on the tenth day of April, eighteen hundred and seventy-nine, entered into and upon all and singular the said demised premises, with the appurtenances, and became and was possessed thereof for the said term so to him thereof granted as aforesaid.

And the said James L. Curtis being so seized afterwards, to wit, at Newton aforesaid, and during the continuance of said term, on or about the fifth day of March, in the year eighteen hundred and eighty-three, by a certain indenture between the said James L. Curtis of the one part and the Franklinite Steel and Zinc Company of the other part (the counterpart of which

said indenture, sealed with the seal of the said James L. Curtis, the said plaintiff now brings here into Court, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid), for a valuable consideration to him paid by the said The Franklinite Steel and Zinc Company, did grant, bargain, sell and convey unto the said The Franklinite Steel and Zinc Company the said demised premises, with the appurtenances, to have and to hold to the said The Franklinite Steel and Zinc Company, its successors and assigns forever, by virtue of which said last mentioned indenture the said The Franklinite Steel and Zinc Company then and there became and was seized of the reversion of the said demised premises with the appurtenances, as of fee. And the said The Franklinite Steel and Zinc Company being so seized afterwards, to wit, on or about the nineteenth day of March, in the year eighteen hundred and eighty-three, at Newton aforesaid, and during the continuance of said term, by a certain indenture of bargain and sale, between the said The Franklinite Steel and Zinc Company of the one part, and the plaintiff of the other part (the counterpart of which indenture, sealed with the seal of the said The Franklinite Steel and Zinc Company, the said plaintiff now brings here into Court, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid), for a valuable consideration to them paid by said plaintiff, did grant, bargain, sell and convey unto the said plaintiff the said demised premises, with the appurtenances, to have and to hold to the said plaintiff, his heirs and assigns forever, by virtue of which said last-mentioned indenture the said plaintiff became and was, and ever since hath been, and still is, seized of the reversion of the said demised premises with the appurtenances as of fee, and as such became and was entitled to the benefit of all the covenants contained in and all the rents reserved by said Indenture of Lease for and during the remainder of said term yet unexpired, to wit, the period of twelve years.

And the plaintiff saith that during the time that the

said plaintiff was so as aforesaid seized and possessed of the said reversion in said demised premises, that is to say between the said nineteenth day of March, in the year eighteen hundred and eighty-three, and the eighteenth day of December, in the year eighteen hundred and eighty-four, the day of the commencement of this suit, the said defendant did not mine and remove Franklinite ore from said demised premises at such a rate that the amount of said ore mined and removed should or did amount or be equal to ten thousand tons in each and every year of the said period, but on the contrary mined and removed from the said premises during the period last aforesaid a much smaller quantity of ore, that, to wit, of six thousand tons and no more.

And for further breach of said covenant the said plaintiff in fact further saith that after the said date of the said accrual of the said plaintiff's title to said reversion, and before the tenth day of October, in the year eighteen hundred and eighty-four, being the last quarter day under said lease before the commencement of this suit, the said defendant did mine and remove from said premises a large quantity of said Franklinite ore, to wit, six thousand tons thereof, whereby there became due to the said plaintiff under said indenture a large sum of money, to wit, the sum of twelve thousand dollars; and the said defendant, though often requested so to do, hath not paid to the said plaintiff the said sum of two dollars for each and every ton of said ore so mined and removed, amounting to the sum of twelve thousand dollars aforesaid, or any other sum of money whatever on account thereof, but hitherto had wholly neglected and refused so to do, contrary to the tenor and effect, true intent and meaning of the said indenture and of the said covenant of the said defendant, by him in that behalf made as aforesaid.

And so the plaintiff in fact saith that the said defendant (although often requested so to do) hath not kept the said covenant so by him made as aforesaid, but hath broken the same, and to keep the same hath

hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of the said plaintiff of forty thousand dollars, and therefore he brings his suit, &c.

CHARLES D. THOMPSON,
Attorney of Plaintiff.

Notice is hereby given that the following is a true copy of the Indenture of Lease referred to in the above declaration, and upon which this action is founded.

(Copy of Lease.)

This indenture made this tenth day of April in the year of our Lord, one thousand eight hundred and seventy-nine, between James L. Curtis of the city, county and State of New York as sole surviving Trustee of The Franklinite Mining Company, party of the first part, and Charles W. Trotter of said city, county and State of New York, party of the second part.

Witnesseth, That the said party of the first part for and in consideration of the sum of one dollar to him paid by said party of the second part at or before the ensealing and delivery of these pretents, the receipt whereof is hereby acknowledged, have granted, demised and to farm let unto said party of the second part, his heirs and assigns for the full term of fifteen years from the day and date first above written and to and until the tenth day of April, one thousand eighteen hundred and ninety-four.

All that certain Westerly mine, vein, lode and bed of Franklinite ore, together with all the spurs, offshoots, dips and angles thereof, and all the Franklinite ore therein contained, situate on the north part of the north half of Mine Hill at Franklin Furnace, in the township of Hardston, county of Sussex, State of New Jersey.

Bounded and described as follows, to wit: Commencing at a point five hundred feet northerly of the

boundary line between the north and south Mine Hill so-called, from thence running northerly along the line of the said Westerly vein or bed of Franklinite ore five hundred and seventy-four feet to the Hamburg road, be the same more or less. It being the intention of the party of the first part to grant, demise and to farm let unto the said party of the second part his heirs and assigns for the term of fifteen years as aforesaid the whole of the said Westerly vein, lode or bed of Franklinite and Franklinite ore therein contained commencing at the northerly line of that part of said Westerly vein heretofore demised to Charles W. Trotter, the party hereto of the second part, by indenture dated March 6th, 1877, and from thence to the said Hamburg road.

Together with all and singular the rights, privileges and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, claim and demand whatsoever of the said party of the first part either in law or equity, of, in and to the above demised premises for the term of fifteen years as aforesaid. The said party of the first part reserving to himself his successors and assigns the rent or royalty of one dollar for each and every ton of Franklinite ore mined and removed from said demised premises during the first three years: and two dollars for each and every ton of said ore mined and removed from said premises for the remainder of the term.

And the said party of the second part in consideration of the grant and demise as aforesaid and for himself, his heirs and assigns agrees:

First. That he will within six months from the date hereof enter upon the said demised premises and commence to mine and remove the said Franklinite ore therein contained and so continue to mine and remove said ore at such rate that the amount of said ore so removed shall equal ten thousand tons in each and every year of the said term.

Second. That he will keep full and accurate books of

account of each and every ton of ore so mined and removed as aforesaid, which said books shall at all times be open to the examination and inspection of the said party of the first part with the right to copy and make extracts therefrom, and at the end of each and every three months of each and every year of the said fifteen years the party of the second part will make a statement in writing of the whole number of tons of said Franklinite ore mined and removed from said demised premises, which said statement he will verify if required and deliver the same to the said party of the first part, and then and there pay or cause to be paid to said party of the first part the sum of one dollar lawful money for each and every ton of said ore so mined and removed during said preceding three months for the first three years after the date of this lease, and the sum of two dollars per ton for each and every ton mined and removed for the remainder of said term.

THIRD. It is understood that this grant and demise is made upon the conditions that said party of the second part shall, 1st, mine and remove at least ten thousand tons of said ore during each and every year of said term; 2d, that he shall keep full and accurate books of account of the whole number of tons mined and removed during each and every period of three months of said term, and will make said statement thereof as aforesaid and pay or cause to be paid the rent or royalty reserved to the party of the first part as aforesaid, and in case the said party of the second part, his heirs or assigns, shall fail in the performance of any or either of said conditions he will, at the request of said party of the first part, surrender this lease and deliver to said party of the first part the said demised premises.

It is further understood and agreed that all costs, expenses or liability of every kind created or incurred in mining and removing said ores shall be at the sole charge of the said party of the second part.

In witnese whereof, we have hereunto set our hands and seals the day and date first above written.

JAMES LANGDON CURTIS, [L. S.]
Trustee, &c., of the Franklinite Mining Co.
CHARLES W. TROTTER, [L. S.]

In presence of:
W. W. HEBBARD.

Acknowledged Ap. 16, 1879.
Certified Ap. 17, 1879.
Recorded Ap. 18, 1879, in Book D 7, p. 326, &c.

NEW JERSEY SUPREME COURT.

CHARLES W. TROTTER ads. AUGUST HECKSCHER.	In Covenant. Pleas. Filed August 18, 1885.

1. And the said defendant Charles W. Trotter, by Cortlandt and R. Wayne Parker, his attorneys, comes and defends the wrong and injury when, &c., and craves oyer of the said alleged indenture of lease in the plaintiff's declaration mentioned, and it is read to him in these words, to wit, in the words contained in the notice annexed to said declaration, and thereupon the defendant says that the said snpposed deed is not his deed in manner and form as the plaintiff hath in his declaration above alleged, and of this he puts himself upon the country.

2. And for a further plea in this behalf, leave of the Court for that purpose first being had and obtained according to the form of the statute in such case made and provided, the defendant says that the plaintiff ought not to have or maintain his action against him

because he says that on the day of making the said supposed indenture of lease the said James L. Curtis was not seized and possessed as of his demense in fee of the premises therein described and supposed to have been leased thereby, in manner and form as the plaintiff hath above complained against him, and of this he puts himself upon the country.

3. And for a further plea in this behalf by like leave of the Court, the defendant saith that the plaintiff ought not to have or maintain his aforesaid action against him, because he says that the said James L. Curtis did not grant, bargain, sell and convey unto the said Franklinite Steel and Zinc Company, the premises so aforesaid alleged to have been demised, with the appurtenances, in manner and form as the plaintiff hath above complained, and of this he puts himself upon the country.

4. And for a further plea in this behalf by like leave of the Court, the defendant says that the said plaintiff ought not to have or maintain his aforesaid action against him, because he says that said The Franklinite Steel and Zinc Company did not grant, bargain, sell and convey unto the plaintiff the premises so as aforesaid alleged to have been demised, with the appurtenances, in manner and form as the plaintiff hath above complained, and of this he puts himself upon the country.

5. And for a further plea in this behalf by like leave of the Court, the defendant saith that the plaintiff ought not to have or maintain his said action against him, because he says that he, the defendant, did not after the thirteenth day of March, eighteen hundred and eighty-three, being the date of the said alleged conveyance to the plaintiff, and before the first day of October, eighteen hundred and eighty-four, mine and remove from said premises six thousand tons of Franklinite ore, in manner and form as the plaintiff hath

above thereof complained, and of this he puts himself upon the country.

6. And for a further plea in this behalf by like leave of the Court, the defendant says that the said plaintiff ought not to have or maintain his said action against him, because he says that on the same day of the date of said alleged agreement of lease, the same was modified, altered, and controlled by a contemporaneous agreement between the same parties under their seals, one part whereof, sealed with the seal of the said James L. Curtis, the defendant now brings into Court, and whereof a copy is annexed hereto; and it was then and there covenanted and agreed as follows, to wit:

FIRST. That in case the New Jersey Zinc Company or any other party should hinder and delay the said defendant in entering upon the premises so as aforesaid alleged to have been demised, and in mining and removing the Franklinite ores contained therein, the time lost by such hindrance and delay should be added to the period of six months mentioned in said alleged indenture of lease, as within which said defendant should commence to mine and remove the said ores contained in said premises alleged as aforesaid to have been thereby demised; and the said defendant should have six months from and after the termination of said hindrance and delay in which to commence the mining and removal of Franklinite ore, instead of six months after the date of said alleged lease, and in case of the aforesaid hindrance and delay, the said defendant should be bound and required to pay royalty of only one dollar per ton for each and every ton of Franklinite ore mined and removed from said premises by said defendant during the three years next after the termination of said hindrance and delay, and should only be bound to mine ten thousand (10,000) tons in each year, after the termination of such hindrance and delay, anything in said alleged lease to the contrary notwithstanding.

SECOND. That in case the said defendant should incur costs, charges and expenses at law or equity in the prosecution of his rights, or to obtain and enjoy the right of mining under said alleged lease in said premises against the infringement thereof by the said The New Jersey Zinc Company, or any other party, the same should be paid by the party of the first part to said contemporaneous agreement, out of the rents and royalties reserved by him in and by said indenture of lease, as the same was thereby modified and changed but not otherwise, nor out of any other funds than said rents or royalties reserved as aforesrid.

And the defendant in fact says that the said The New Jersey Zinc Company until the month of October, eighteen hundred and eighty-two, and thereafter, The New Jersey Zinc and Iron Company until a certain time thereafter, to wit, the twenty-seventh day of May, eighteen hundred and eighty-four, did hinder and delay the defendant in taking possession of the said premises, entering thereon and removing the Franklinite ore therefrom, and he says that on the day last aforesaid he obtained peaceable possession of a small part, to wit, the southerly one hundred feet of said premises, but that the said The New Jersey Zinc and Iron Company have till this day wholly hindered and prevented him from entering upon and removing Franklinite ore from much the larger part of said premises, extending about five hundred feet to the Hamburg road, and he further says that he has incurred costs, charges and expenses at law and equity to a large sum, to wit, the sum of thirty thousand dollars, in the prosecution of his rights, and to obtain and enjoy the right of mining under said alleged lease in said premises and against the infringement thereof by The New Jersey Zinc Company and The New Jersey Zinc and Iron Company.

And the defendant further in fact says that all royalties claimed to be due for ore mined or to be mined under said alleged lease are payable to and have been retained by him on account of said costs and charges and expenses at law and in equity, and this the defendant is ready to verify.

Wherefore he prays judgment if the said plaintiff ought to have or maintain his said action against him.

7. And for a further plea in this behalf by like leave of the Court, the defendant says that the said plaintiff ought not by reason of the grievances above complained of to have or maintain his aforesaid action against him, because he says that on the same day of the date of said alleged agreement of lease the same was modified, altered and controlled by a contemporaneous agreement between the same parties under their seals, one part whereof, sealed with the seal of said James L. Curtis, the defendant now brings into Court, and whereof a copy is hereto annexed; and it was thereby then and there covenauted and agreed as follows, to wit, that in case The New Jersey Zinc Company, or any other party should hinder and delay the said defendant in entering upon the premises so as aforesaid alleged to have been demised, and in mining and removing the Franklinite ores contained therein, the tine lost by such hinderance and delay should be added to the period of six months mentioned in said alleged lease, as within which said defendant should commence to mine and remove the said ores contained in said premises alleged as aforesaid to have been thereby demised; and the said defendant should have six months from and after the termination of said hinderance and delay, in which to commence the mining and removal of Franklinite ore, instead of six months after the date of said alleged lease, and in case of the aforesaid hinderance and delay, the said defendant should be bound and required to pay royalty of only one dollar per ton for each and every ton of Franklinite ore mined and removed from said premises by said defendant during the three years next after the termination of said hinderance and delay, and should only be bound to mine ten thousand (10,000) tons in each year after the termination of such hinderance and delay, anything in said alleged lease to the contrary notwithstanding.

And the defendant, in fact, says that the New Jersey Zinc Company until the aforesaid month of October, A. D. eighteen hundred and eighty-two, and thereafter the New Jersey Zinc and Iron Company, for a long space of time, to wit, from thence hitherto, have hindered and delayed him in entering into the aforesaid premises and mining and removing ore therefrom; and this the defendant is ready to verify.

Wherefore he pays judgment if the plaintiff ought to have or maintain his aforesaid action against him.

CORTLANDT & WAYNE PARKER,
Attorneys of Defendant.

STATE OF NEW YORK, }
County of Kings, } ss.:

CHARLES W. TROTTER, being duly sworn, saith that he is the above-named defendant, that the above pleas are not intended for the purpose of delay, but that this affiant verily believes that he hath a just and legal defense to this action on the merits of the case.

CHARLES W. TROTTER.

Sworn and subscribed before me }
this 18th day of August, 1885, }
at Brooklyn, N. Y. }

J. D. H. BERGEN,
[L. S.] Notary Public,
Kings Co.

Notice is hereby given that the following is a true copy of the agreement mentioned and referred to in the foregoing pleas as contemporaneous with the alleged lease in the declaration mentioned:

THIS AGREEMENT between James L. Curtis, of the City of New York, as sole surviving Trustee of The Franklinite Mining Company, party of the first part, and

Charles W. Trotter, of the same place, party of the second part, made this tenth day of April, eighteen hundred and seventy-nine:

WITNESSETH, that the party of the first part, in consideration of the sum of one dollar and other good and valuable considerations received from the party of the second part, agrees that the Indenture of Lease made on the tenth day of April, 1879, between the parties hereto shall be made, and the same is hereby modified, changed and controlled as follows, to wit:

FIRST. That in case the New Jersey Zinc Company or any other party shall hinder and delay the said party of the second part in entering upon the demised premises mentioned in said Indenture of Lease, and in mining and removing the Franklinite ores contained therein, the time lost by such hinderance and delay shall be added to the prriod of six months mentioned in said Indenture of Lease, as within which the said party of the second part shall commence to mine and remove the said ores contained in said demised premises, and the party of the second part in said Indenture of Lease shall have six months from and after the termination of said hinderance and delay in which to commence the mining and removal of Franklinite ore, instead of six months after the date of said lease, and in case of the aforesaid hinderance and delay, the said party of the second part to the said lease shall be bound and required to pay royalty of only one dollar per ton for each and every ton of Franklinite ore mined and removed from the said leased premises by the said party of the second part during the three years next after the termination of said hinderance and delay, and shall only be bound to mine ten thousand (10,000) tons in each year after the termination of such hinderance and delay, anything in said lease contained to the contrary notwithstanding.

SECOND. That in case the said party of the second part shall incur costs, charges and expenses at law or

equity in the prosecution of his rights or to obtain and enjoy the right of mining under said lease in said demised premises against the infringement thereof by the said The New Jersey Zinc Company or any other party, the same shall be paid by the party of the first part out of the rents and royalties reserved by him in and by said Indenture of Lease, as the same is hereby modified and changed, but not otherwise, nor out of any other funds than said rents or royalties reserved as aforesaid.

THIRD. The said party of the second part may at his election, and on three months' written notice to the party of the first part, surrender the said Indenture of Lease, but the right to surrender said lease shall be confined to the party of the second part, and no other party or parties to whom he may assign said lease.

FOURTH. In case said party of the second part shall surrender said Indenture of Lease as aforesaid, he shall have the right to remove all his tools and machinery from said demised premises, and all ore mined therefrom, he paying the rents and royalties reserved.

FIFTH. It is further understood and agreed, that in case the said party of the first part shall cancel said lease by reason of default, failure or neglect of the said party of the said party of the second part, as in said lease provided, the said party of the second part shall have the right to remove all his tools and machinery from said demised premises, and all ores he may have mined on payment of the rents and royalties reserved in said lease.

In witness whereof, the parties hereto have set their hands and seals, the day and year first above written.

JAMES LANGDON CURTIS, [L. S.]
Trustee of the Franklinite Mining Co.
CHARLES W. TROTTER, [L. S.]
Witness in presence of
W. W. HEBBARD.

NEW JERSEY SUPREME COURT.

August Hecksher	In Covenant.
against	Replication.
Charles W. Trotter.	Filed Sep. 30, 1885.

And the said plaintiff as to the pleas of the said defendant by him firstly, secondly, thirdly, fourthly and fifthly above pleaded, and whereof he hath put himself upon the country, doth the like.

And the said plaintiff as to the said plea of the said defendant by him sixthly above pleaded, says that the said supposed sealed agreement, in said plea set forth, is not the deed of the said James L. Curtis in manner and form as the said defendant hath above in his said plea in that behalf alleged, and of this he puts himself upon the country.

And the said plaintiff for a further replication in this behalf as to the said plea of the said defendant sixthly above pleaded, saith that the said plaintiff, by reason of anything by the said defendant in his plea in that behalf alleged ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he saith that neither the New Jersey Zinc Company, nor The New Jersey Zinc and Iron Company, nor any other person, did, at any time, or in any degree, hinder, delay or prevent the defendant, therein the taking possession of the said premises, or in entering thereon and removing Franklinite ore therefrom, in manner and form as the said defendant hath above in his said plea in that behalf alleged, or otherwise whatever. And this the said plaintiff prays may be inquired of by the country, &c.

And the said plaintiff for a further replication in this behalf as to the said plea of the said defendant sixthly above pleaded, saith that the said plaintiff by reason of anything by the said defendant in that plea in that be-

half alleged ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he says that the said defendant has not at any time incurred costs, charges, or expenses either at law or in equity, to the amount of thirty thousand dollars ($30,000), or any other sum of money whatever, either in or about the prosecution of his rights in the premises, or to obtain and enjoy the rights of mining under said lease on said premises, or to prevent the infringement thereof by either the said New Jersey Zinc Company, or the New Jersey Zinc and Iron Company, or any other person whatever, in manner and form as the said defendant hath above in his said plea in that behalf alleged. And this he prays may be inquired of by the country, &c.

And the said plaintiff for a further replication in this behalf as to the said plea of the said defendant sixthly above pleaded, saith that the said plaintiff by reason of anything by the said defendant in that plea in that behalf alleged ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he says that heretofore, to wit, on or about the sixth day of April, in the year of Our Lord eighteen hundred and eighty-one, the said defendant recovered a judgment against the New Jersey Zinc Company in the Circuit Court of the United States, for the District of New Jersey, in an action of trespass *quare clausum fregit* for the sum of three thousand three hundred and twenty dollars ($3,320), of damages and seven hundred and fifty-two dollars and twenty-five ($752.25) costs of suit, for ores mined and removed by the said New Jersey Zinc Company, between the tenth day of April and the first day of May, in the year eighteen hundred and seventy-nine (1879), from a small section, to wit: fifty (50) feet in length, of said vein or lode of Franklinite ore; which judgment was afterwards, to wit, on the fourteenth day of August, in the year eighteen hundred and eighty-three (1883), duly paid and satisfied by the said The New Jersey Zinc Company to the defendant, and the amount thereof received by him; and afterwards, to wit,

on the twenty-fourth day of May, in the year eighteen hundred and eighty-four, the said New Jersey Zinc Company paid to the said defendant a further large sum of money, to wit, the sum of thirty thousand dollars ($30,000), for other ores mined and removed from said section of said vein or lode of Franklinite ore, between the first day of May, in the year eighteen hundred and seventy-nine (1879), and the first day of November, in the year eighteen hundred and eighty (1880), which sum of money was accepted and received by said defendant as payment and satisfaction for all said ores mined and carried away by said New Jersey Zinc Company from said premises. And he says that the said several sums of money so received by defendant from said New Jersey Zinc Company, to wit, the said sum of three thousand three hundred and twenty dollars ($3,320), and the said sum of thirty thousand dollars ($30,000), do, in the aggregate, far exceed any and all costs, charges and expenses of every kind whatever which the defendant has at any time incurred under said supposed agreement set forth in said plea, or otherwise whatever in the premises, in manner and form as the said defendant hath above in his said plea in that behalf alleged. And this the said plaintiff is ready to verify; wherefore he prays judgment and his damages by him sustained, by reason of the said breach of covenant first above assigned, to be adjudged to him, &c.

And the said plaintiff as to the said plea of the said defendant by him seventhly above pleaded, saith that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he saith that the said New Jersey Zinc Company, and the New Jersey Zinc and Iron Company, or either of them, or any other person whatever, have not at any time hindered or delayed the defendant from entering into the aforesaid premises and mining and removing ore therefrom, in manner and form as the said defendant hath above in his said last mentioned plea in that

behalf alleged, or otherwise whatever. And this he, the said plaintiff, prays may be inquired of by the country, &c.

Whereof he prays judgment, and his damages by him sustained, by reason of the said breach of covenant, to be assigned to him.

CHARLES D. THOMPSON,
Plaintiff's Attorney.

NEW JERSEY SUPREME COURT.

CHARLES W. TROTTER ADS. AUGUST HECKSCHER.	In Covenant. Rejoinder and Demurrer. Filed Dec. 16, 1885.

And the said defendant, as to the first, second and third replication of the said plaintiff to the sixth plea by the defendant above pleaded, and as to the replication of said plaintiff to the seventh plea of the defendant and which the said plaintiff hath prayed may be inquired of by the country, doth the like, etc.

And the said defendant saith that the said fourth replication of the said August Heckscher to the said sixth plea of him, the said Charles W. Trotter, and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said August Heckscher to have or maintain his aforesaid action thereof against him, the said Charles W. Trotter, and that he, the said Charles W. Trotter, is not bound by the law of the land to answer the same; and this he, the said Charles W. Trotter, is ready to verify; wherefore, for want of a sufficient replication in this behalf, he, the said Charles W. Trotter,

prays judgment if the said August Heckscher ought to have or maintain his aforesaid action thereof against him, etc.

CORTLANDT & WAYNE PARKER,
Attorneys of Charles W. Trotter and of Counsel.

NEW JERSEY SUPREME COURT.

AUGUST HECKSCHER vs. CHARLES W. TROTTER.	In Covenant. Further Replication by way of Amendment.

And for a further replication to said sixth plea by the defendant above pleaded, the said plaintiff says, that by reason of anything by the defendant in that plea alleged the said plaintiff ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he says that after the making of the said indenture of lease, and after the defendant had, by virtue thereof, taking possession of the said vein of Franklinite ore therein mentioned and demised, to wit, on the tenth (10th) day of April, in the year eighteen hundred and seventy-nine, the New Jersey Zinc Company, a corporation of the State of New Jersey, entered upon a small portion, to wit, fifty (50) feet in length of said vein of ore, and between that day and the thirtieth day of October, in the year eighteen hundred and eighty (1880), mined and removed therefrom a large quantity, to wit, fifty thousand (50,000) tons of said Franklinite ore of great value, to wit, of the value of two hundred and fifty thousand dollars ($250,000).

And the said defendant afterwards, to wit, on the

first day of May, in the year eighteen hundred and eighty-four (1884), demanded and received of and from said New Jersey Zinc Company a large sum of money, to wit, the sum of two hundred and fifty thousand dollars ($250,000), as compensation and payment for the value of said ores so by said New Jersey Zinc Company mined and removed from said section of said vein of ore.

And the plaintiff in fact further saith that the rents and royalties reserved by the terms of said indenture of lease upon said ores so mined and removed by said New Jersey Zinc Company amounted to a large sum of money, to wit, to the sum of one hundred thousand dollars ($100,000), and far exceeded in amount any and all costs, charges and expenses of every kind whatever which the said defendant has at any time incurred under said supposed agreement set forth in said plea or otherwise whatever in the premises in manner and form as the said defendant hath above in his said plea in that behalf alleged.

And this the said plaintiff is ready to verify. Wherefore, he prays judgment and his damages by him sustained by reason of the said breach of covenant first above assigned to be adjudged to him, &c.

CHAS. D. THOMPSON,
Attorney for Plaintiff.

[Filed Supreme Court, July 14, 1885.]

STATE OF NEW JERSEY, } ss.:
County of Camden, }

AUGUST HECKSCHER, being duly sworn according to law, on his oath deposes and says that Charles W. Trotter is not, to this deponent's knowledge or belief, resident at this time in the State of New Jersey, and that he is justly indebted to this deponent in the sum of fifteen thousand dollars for rents and royalties accrued upon a certain indenture of lease, made and executed

by and between one James L. Curtis, as lessor, and said Charles W. Trotter, as lessee, under their respective seals, bearing date April tenth, in the year eighteen hundred and seventy-nine, and covering certain lands and real estate then owned by said James L. Curtis, in the County of Sussex, in this State, which lands and real estate were afterwards, by and through divers mesne conveyances, granted and consigned to deponent on the nineteenth day of March, in the year eighteen hundred and eighty-three, and of which deponent then became and ever since hath been seized in fee simple, and upon which lease the said sum of money has accrued for rents and royalties reserved thereby since the tenth day of October, in the year eighteen hundred and eighty-four, and up to the tenth day of July, in the year eighteen hundred and eighty-five.

A. Heckscher.

Subscribed and sworn to this eleventh day of July, A. D. 1885, at Camden, N. J., before me.

C. A. Berger,
Master in Chancery.

Writ of Attachment.—Supreme Court.

New Jersey, ss.:

The State of New Jersey to our Sheriff of our County of Mercer, Greeting:

[L. S.] We command you to attach the rights and credits, moneys and effects, goods and chattels, lands and tenaments of Charles W. Trotter wheresoever in your county the same may be found, so that he be and appear before the Supreme Court of the State of New Jersey, to be held at Trenton, in and for said State, on the tenth day of August next, to answer unto August Heckscher in a plea of breach

of covenant to his damage thirty thousand dollars as is said, and have you then and there this writ.

Witness, the Honorable Mercer Beasley, Chief Justice, at Trenton aforesaid, the fourteenth day of July, A. D. one thousand eight hundred and eighty-five.

BENJ. F. LEE,
Clerk.

CHAS. D. THOMPSON,
Attorney.

NEW JERSEY SUPREME COURT,

MERCER COUNTY.

AUGUST HECKSCHER

vs.

CHARLES W. TROTTER.

In Covenant.

ATTACHMENT.

Returnable August 10th, 1885.

CHAS. D. THOMPSON,
Attorney.

Filed before sealing writ, July 14th, 1885.

BENJ. F. LEE,
Clerk.

I executed this writ on Tuesday, the 16th day of July, A. D. 1885, at 1.40 o'clock in the afternoon of that day, and the execution thereof appears in a certain schedule hereto annexed.

H. R. WITHINGTON,
Sheriff.

By ROBERT G. STEVENS,
Under-Sheriff.

By virtue of the writ of attachment hereto annexed, on Thursday, the sixteenth day of July, A. D. 1885, at 1.40 o'clock in the afternoon of that day, in the presence of Leslie C. Pierson, a credible person, I, Hiram R. Withington, Sheriff of the County of Mercer, by Robert G. Stevens, Deputy Sheriff, executed the said writ of attachment by giving to the office of George S. Duryee, Clerk in Chancery, in whose custody or possession the property of the said defendant then was, and then and there in the presence of said George S. Duryee, clerk as aforesaid, and the said Leslie C. Pierson, I declared that I attached the rights and credits, moneys and effects, goods and chattels, lands and tenements of the said defendant, Charles W. Trotter, at the suit of August Heckscher, plaintiff.

HIRAM R. WITHINGTON,
Sheriff.

By ROBERT G. STEVENS,
Under-Sheriff.

Inventory and appraisement of the property and estate of Charles W. Trotter, defendant, by me attached on Thursday, the sixteenth day of July, A. D. 1885, by virtue of the writ of attachment hereto annexed, made the day and year aforesaid by Robert G. Stevens, deputy sheriff, with the assistance of Leslie C. Pierson, a discreet and impartial freeholder of the City of Trenton, in the said County of Mercer, viz.: the rights and credits of Charles W. Trotter in certain moneys in the Court of Chancery, in a certain suit wherein Charles W. Trotter is complainant, and Charles A. Heckscher and The Lehigh Zinc and Iron Company, Limited, are defendants, deposited in said Court in pursuance of the order of said Court and appraised at thirty-two thousand one hundred and

forty dollars and thirty-eight cents, with interest ($32,140.38).

HIRAM R. WITHINGTON,
Sheriff.

By ROBERT G. STEVENS,
Under-Sheriff.

LESLIE C. PIERSON,
Appraiser.

NEW JERSEY SUPREME COURT.

AUGUST HECKSCHER vs. CHARLES W. TROTTER.	In Covenant. On Foreign Attachment.

It appearing to the Court that the writ of attachment in the above-stated cause was returned into Court on the tenth day of August last past, duly served by the Sheriffs of the Counties of Sussex and Mercer,

It is on this eighth day of September, eighteen hundred and eighty-five, on motion of Charles D. Thompson, attorney for the plaintiff, ordered that notice of the issuing of said attachment at the suit of August Heckscher, against the property of Charles W. Trotter, or the sum of thirty thousand dollars, and returned on the day aforesaid, shall be published by the Clerk of this Court, in the "Sussex Register," a newspaper printed and published at Newton, for the space of two months, and that a copy of said notice shall be mailed, within twenty days from the date of this order, to the said Charles W. Trotter, at his usual post-office address, in the City of Brooklyn, and State of New York.

Let this rule be entered.

Sept. 8th, 1885.

W. I. MAGIE,
Jus. Sup. Ct.

NEW JERSEY SUPREME COURT.

AUGUST HECKSCHER vs. CHARLES W. TROTTER.	In Covenant, on Attachment. Issued July 14, 1885.

STATE OF NEW JERSEY, }
County of Sussex, } ss.:

CHARLES D. THOMPSON, being duly sworn, on his oath saith that he is the attorney of the plaintiff; that he is credibly informed that the defendant Charles W. Trotter resides, and his post-office address is, 161 Warren street, Brooklyn, New York; and this deponent says that he did on the seventeenth day of September, eighteen hundred and eighty-five, place in the post-office of the Town of Newton a letter directed to the said Charles W. Trotter, at 161 Warren street, Brooklyn, New York, with the postage prepaid, containing a copy of the notice annexed.

CHAS. D. THOMPSON.

Subscribed and sworn to this 17th day of September, A. D. 1885, before me.

CHAS. H. WOODRUFF,
Master in Chancery of N. J.

Notice of Attachment.

IN NEW JERSEY SUPREME COURT.

August Heckscher vs. Charles W. Trotter.	In Covenant. Attachment.

Notice is hereby given that a writ of attachment, at the suit of August Heckscher, against the rights and credits, moneys and effects, goods and chattels, lands and tenements of Charles W. Trotter, a non-resident debtor, for the sum of thirty thousand dollars, issued out of the Supreme Court of Judicature of New Jersey, on the fourteenth day of July, A. D. 1885. Returnable and returned into Court, duly executed by the Sheriffs of the Counties of Sussex and Mercer, on the tenth day of August, A. D. 1885.

Benjamin F. Lee,
Clerk.

Chas. D. Thompson,
Attorney for Plaintiff.
Dated Sept. 8th, A. D. 1885.

69—2m.

NEW JERSEY SUPREME COURT,

NOVEMBER TERM, 1885.

AUGUST HECKSCHER vs. CHARLES W. TROTTER.	In Covenant. Attachment.

The writ in this cause having been returned duly served, and the defendant having failed to appear and defend this action,

It is ordered that this, his first default, be entered against him;

And it is further ordered, that Francis J. Swayze be appointed Auditor, to audit and adjust the claim of the plaintiff, and of such others, defendant's creditors, as may apply to him or to the Courts for that purpose.

Entered November 4th, 1885.

On motion of

CHAS. D. THOMPSON,
Attorney.

STATE OF NEW JERSEY, SS.:

ROBERT E. FOSTER, of full age, on his oath saith, that the notice hereto attached was printed and published in "The Sussex Register," a newspaper printed and published at Newton, the county seat of Sussex County, in the State aforesaid, for nine weeks successively, once a week, beginning September 16th, and ending November 11th, 1885.

ROBERT E. FOSTER.

Sworn and subscribed this 12th day of November, 1885, before me.

DAVID B. HETZEL,
Master in Chancery of New Jersey.

Notice of Attachment.

IN NEW JERSEY SUPREME COURT.

August Heckscher vs. Charles W. Trotter.	In Covenant. Attachment.

Notice is hereby given that a writ of attachment, at the suit of August Heckscher against the rights and credits, moneys and effects, goods and chattels, lands and tenements of Charles W. Trotter, a non-resident debtor, for the sum of thirty thousand dollars, issued out of the Supreme Court of Judicature of New Jersey, on the fourteenth day of July, A. D. 1885. Returnable and returned into Court duly executed by the Sheriffs of the Counties of Sussex and Mercer, on the tenth day of August, A. D. 1885.

Dated Sept. 8th, A. D. 1885.

Benjamin F. Lee,
Clerk.

Chas. D. Thompson,
Attorney for Plaintiff.

$5.70.

69-2 m.

NEW JERSEY SUPREME COURT.

August Heckscher

vs.

Charles W. Trotter.

In Covenant.
Attachment.

Notice is hereby given that writs of attachment, at the suit of August Heckscher against the rights and credits, moneys and effects, goods and chattels, lands and tenements of Charles W. Trotter, a non-resident debtor, for the sum of thirty thousand dollars, issued out of the Supreme Court of Judicature of New Jersey, on the fourteenth day of July, A. D. 1885. Returnable and returned into Court, duly executed by the Sheriffs of the Counties of Sussex and Mercer, on the tenth day of August, A. D. 1885.

Dated Sept. 8th, A. D. 1885.

Benj. F. Lee,
Clerk.

Chas. D. Thompson,
Attorney for Plaintiff.

State of New Jersey, } ss.:
County of Mercer, }

Edward H. Sweeney, being duly sworn according to law, on his oath saith that on the ninth day of September, instant, he posted a notice, of which the above is a true copy, in the office of the Clerk of the Supreme Court of New Jersey, in the City of Trenton.

E. H. Sweeney.

Sworn and subscribed to before me Sept. 21st, 1885.

A. Lawshe,
Dept. Clk.

(A true copy.)

Benj. F. Lee,
Clk.

NEW JERSEY SUPREME COURT.

AUGUST HECKSCHER vs. CHARLES W. TROTTER.	In Account. Attachment. C. & R. W. Parker, Attorneys.

1886, January 4, appearance entered for defendant.
[Filed Supreme Court, February 15, 1886.]

STATE OF NEW JERSEY, }
County of Camden, } ss.:

AUGUST HECKSCHER, being duly sworn according to law, on his oath deposes and says:

That Charles W. Trotter is not, to this deponent's knowledge or belief, resident at this time in the State of New Jersey, and that he is justly indebted to this deponent in the sum of ten thousand dollars ($10,000) for rents and royalties accrued upon a certain indenture of lease made and executed by and between one James L. Curtis, as lessor, and said Charles W. Trotter, as lessee, under their respective seals, bearing date April tenth, in the year eighteen hundred and seventy-nine, and covering certain lands and real estate then owned by said James L. Curtis, in the County of Sussex, in this State, which lands and real estate were afterwards by and through divers mesne conveyances granted and assigned to deponent on the nineteenth day of March, in the year eighteen hundred and eighty-three, and of which deponent then became and ever since hath been seized in fee simple, and upon which lease the said sum of money has accrued for rents and royalties reserved thereby since the tenth day of July, in the year eighteen hundred and eighty-

five, and up to the 10th day of January, in the year eighteen hundred and eighty-six.

A. Heckscher.

Subscribed and sworn to this thirteenth day of January, A. D. 1886, at Camden, before me, a Master in Chancery of New Jersey.

C. A. Bergen.

Writ of Attachment—Supreme Court.

New Jersey, ss.:

The State of New Jersey to our Sheriff of our County of Mercer—Greeting:

We command you to attach the rights and credits, moneys and effects, goods and chattels, lands and tenements of Charles W. Trotter [L. S.] wheresoever in your county the same may be found, so that the said Charles W. Trotter be and appear before the Supreme Court of the State of New Jersey, to be held at Trenton, in and for said State, on the tenth day of February next, to answer unto August Heckscher of an action upon contract to his damage twenty thousand dollars, as is said, and have you then and there this writ.

Witness, the Honorable Mercer Beasley, Chief Justice, at Trenton aforesaid, the fifteenth day of January, A. D. one thousand eight hundred and eighty-six.

Benj. F. Lee,
Clerk.

Chas. D. Thompson,
Attorney.

NEW JERSEY SUPREME COURT,

MERCER COUNTY.

AUGUST HECKSCHER vs. CHARLES W. TROTTER.	Upon Contract.

WRIT OF ATTACHMENT.

Returnable February 10, 1886.

CHAS. D. THOMPSON,
Attorney.

Affidavit for ten thousand dollars filed before issuing this writ, January 15, 1886.

As to the execution of this writ, see schedule annexed.

H. R. WITHINGTON,
Sheriff.

Per R. G. STEVENS,
Under Sheriff.

Sheriff's fees, $3.64.

By virtue of the writ of attachment hereto annexed on Saturday, the sixteenth day of January, A. D. 1886, at 3.30 o'clock in the afternoon of that day, in the presence of Charles McM. Cadwallader, a credible person, I, Hiram R. Withington, Sheriff of the County of Mercer, by Robert G. Stevens, Deputy Sheriff, executed the said writ of attachment by going to the office of George S. Duryea, Clerk in Chancery, in whose custody or possession the property of the said defendant then was, and then and there in the presence of S. Meredeth Dickinson, Chief Clerk in

the office of the said George S. Duryea, Clerk as aforesaid, and the said Charles McM. Cadwallader, I declared that I attached the rights and credits, money and effects, goods and chattels, lands and tenements of the said defendant Charles W. Trotter, at the suit of August Heckscher, plaintiff.

HIRAM R. WITHINGTON,
Sheriff.

By ROBERT G. STEVENS,
Under Sheriff.

Inventory and appraisement of the property and estate of Charles W. Trotter, defendant, by me attached on Saturday, the sixteenth day of January, A. D. 1886, by virtue of the writ of attachment hereto annexed, made the day and year aforesaid, by Robert G. Stevens, Deputy Sheriff, with the assistance of Charles McM. Cadwalader, a discreet and impartial freeholder of the City of Trenton, in the said County of Mercer, viz., the rights and credits of Charles W. Trotter in certain moneys in the Court of Chancery, in a certain suit wherein Charles W. Trotter is complainant and Charles A. Heckscher and The Lehigh Zinc and Iron Company, Limited, are defendants, in said Court, in pursuance of the order of said Court, and appraised at forty-five thousand one hundred and seventy-one dollars and thirty-two cents ($45,171.32).

H. R. WITHINGTON,
Sheriff.

By ROBERT G. STEVENS,
Under Sheriff.

C. McM. CADWALADER,
Appraiser.

IN CHANCERY OF NEW JERSEY.

Between
CHARLES W. TROTTER,
Complainant,

AND

CHARLES A. HECKSCHER and others,
Defendants.

Order to show cause why said petition should not be granted, dated January 26, 1886.

Affidavit of Charles W. Trotter.

ESSEX COUNTY, ss.:

CHARLES W. TROTTER, the complainant above named, being duly sworn, on his oath saith:

I was, until the twenty-eighth day of January last past, a resident of Brooklyn, in the County of Kings and State of New York. By advice of my counsel and in order better and more successfully to attend to my business interests—which lie almost wholly in the State of New Jersey—I that day changed my residence to the City of Newark, and became a resident and citizen of the State of New Jersey. I am living at number one hundred and eighteen Prospect street, Newark, with a relative of mine, there long resident. I came here with the intention of remaining and of making this city my residence. My health has unexpectedly improved since I came here, which is an additional reason for my remaining. I retain my resolution and intention to become a citizen of New Jersey. I caused notice to be given by my counsel to the counsel of the other side immediately after my said change of residence of the fact, and of my present residence in the City of Newark.

I am informed that question has been made in the litigation in this cause, and those causes which have been brought or arisen between myself, said Heckscher and said Zinc Company as to my solvency, and that it has one or more times been alleged in the discussions which have occurred that I am an insolvent man. I deny this charge in toto. It has been the offspring of misfortune or worse. I owe no debts except the current expenses of the mines in Sussex County, unless there be fifty dollars or so due for unpaid household expenses; and I likewise owe the expenses of this litigation. The current mine expenses are all paid up to and including January last, and those for February will be paid when due, when the January allowance shall be received. There was a claim made and filed in one of the attachment suits, as I am informed, by Samuel C. West against me for some twenty-four hundred dollars. West acted as broker in obtaining the contract with Mr. Heckscher, and I agreed verbally with him to pay him a percentage by way of commissions on all ore which I should deliver under it. The contract was a continuing one, to last during the existence of the Heckscher agreement. I did not owe him anything when he filed his claim. He was overpaid three or four hundred dollars. But on the 16th day of March, 1885, I paid him eleven hundred dollars to cancel and discharge this contract, and he gave me a writing releasing and discharging me from all claim then and thereafter, forever. I gave him part cash and my notes for the balance of this eleven hundred dollars, which notes I have paid.

I own a house and lot lately my residence, 161 Warren street, Brooklyn. It is free and clear of all incumbrance. I regard it as worth ten thousand dollars; it cost me seventy-five hundred dollars when I bought it, at a low period of real estate prices, and it has been kept and is in good order, and is in a neighborhood which has improved and is improving. My personal property (securities, &c.,) is worth twenty thousand dollars.

I regard my mining rights, under the agreements with which the Court and the counsel in the cause are familiar, as worth a great deal of money; I believe that improvements and betterments furnished by me for these mines exceed in value fifty thousand dollars. If I am established, as I hope to be, in the peaceable possession of the rights I claim in what is known as the old mines, and if, as I believe from all I hear, the yield of ore shall continue in quantity and quality what it is, and has been for at least a year past, my interest in that mine must secure me a net income of over twenty thousand dollars per annum, and therefore be worth to me, or to my heirs, over four hundred thousand dollars, it having twenty-one years to run, and The Lehigh Zinc and Iron Company, Limited, being my customer. Under like circumstances of peaceable possession, and probable yield of ore, my interest in what is called the "New Mine" should net me, during the period that interest is to continue, some sixty or seventy thousand dollars. Besides the above there is now mined, and the expense thereof paid for, lying upon the bank of the mine, ore worth, as I believe from information given me by the superintendent, forty thousand dollars.

I deny any indebtedness to said August Heckscher as my landlord or otherwise. I have defended myself, and shall defend against the attachment suits he has brought and the claims he seeks to enforce by them; and I ask that the moneys now in the hands of this Court, paid by its order by said Zinc Company, be, without further delay, paid over to me.

CHAS. W. TROTTER.

Sworn and subscribed this 26th February, A. D. 1886, before me.

CORTLANDT PARKER, JR.,
M. C. C. of N. J.

(A true copy.)

ABHM. MCDERMOTT,
Clerk.

Petition.

[Filed February 3d, 1885.]

To His Honor Theodore Runyon, Chancellor of the State of New Jersey:

The petition of Charles W. Trotter, the complainant in the above-entitled cause, respectfully showeth:

That under the orders of this Court and the orders of the manager appointed herein, the contract sued on in this cause has been performed up to the month of January of this present year on the part of your petitioner by mining and shipping Franklinite, as provided for in said contract and the orders of this Court appointing a manager.

That in particular, in December last, there was mined and shipped under such contract $832\frac{947}{1000}$ tons from the old mine, and $167\frac{937}{1000}$ tons from the new mine, in gross tons, of Franklinite ore, supposing it would be paid for according to said contract and the order of the Court.

But your petitioner shows that said defendants lately, in every way in their power, and especially by not paying for the ore delivered, have endeavored to interfere with the execution of said contract and the orders of this Court; that is to say:

On December 18th, 1884, said Charles A. Heckscher, under the name of August Heckscher, sued out of the Supreme Court of New Jersey a writ of attachment on affidavit filed that your petitioner owed him thirty-five thousand dollars, and delivered such writ to the Sheriff of Sussex County, with instructions to attach the goods and chattels of this petitioner. And he believes said Sheriff went to this petitioner's mine and took an inventory of the mine leases, tools and ore there (not taking anything into his possession) and returned said writ with said inventory.

And this deponent says that it is impossible to work his mine or perform said contract if the tools, gunpowder and appliances there used are taken out of

defendant's possession, as said August Heckscher, otherwise known as Charles A. Heckscher, well knows.

And your petitioner shows that said tools, appliances and mine are, in law, in the control of this Court, and that said attachment was a contempt of this Court.

And your petitioner shows that the solicitor of said Heckscher in this cause was present with the Sheriff at said alleged attachment.

And your petitioner annexes, as Schedule A, copy of said attachment and its return.

And your petitioner shows that on January 15th, 1885, the moneys due for said ores delivered in December last, under said order of this Court in this cause, became due and payable, amounting to about five thousand six hundred and twenty-four dollars, and payable three thousand dollars to this petitioner, and the rest into this Court for your petitioner's benefit, under orders heretofore made.

And your petitioner shows that the defendants have paid no part of said sums, but, on the contrary, have refused to pay the same. And your petitioner is informed that said Charles A. Heckscher, defendant, under the name of August Heckscher, has pretended to issue a writ of attachment in Pennsylvania for the same sum as said New Jersey attachment against your petitioner, and pretended to attach there the said moneys due and to become due under the orders of this Court in the hands of said defendant, the Lehigh Zinc and Iron Company, of which corporation said Heckscher is treasurer, and he believes that both said alleged attachments are founded on a claim of said Heckscher, which was sent to this petitioner on December 12th last past, for alleged royalty for mining on the vein where your petitioner is working said mine, of which claim a copy is annexed, marked Schedule B. And your orator shows that said claim is utterly unfounded, as hereafter set forth, and that he owes nothing whatever by way of royalty, having, on the contrary, advanced large sums on his leases ; that neither he nor said Heckscher have ever been able to have possession for mining of nearly all of the leased premises north of the 500 feet

of which royalty is claimed, and are enjoined by this Court from so taking such possession; that full relief as to any accounting would exist in this Court; and especially that said attachments and the withholding of the moneys due for ore are a contempt of this Court and interference with its management of the mine; that, on the one hand, this petitioner and this Court cannot work the mine and deliver ore therefrom without pay, nor can the work be abandoned without great loss in labor, pumping, watching, &c., and deterioration of work and materials, and to the mine and its value.

And your petitioner further shows that the issuing of said attachment is a willful breach of said contract between said Heckscher and this petitioner, and of the orders of this Court.

And your petitioner shows that the claims of said Heckscher that there is money due him for royalty is utterly unfounded, as will appear from the following brief statement of the facts of your petitioner's mining on Mine Hill, which statement is necessary to an understanding of the position of the parties, and the persistent attacks to which this petitioner has been exposed from persons who wish to drive him away from his work in mining at Mine Hill.

On the 6th day of March, 1877, James L. Curtis claimed to be owner of the west vein on the north part of Mine Hill, extending from the easterly and westerly line north about 1,172 feet to Hamburg Road.

The New Jersey Zinc Company owned all the zinc and other ores, except Franklinite, in that vein, and claimed that all the Franklinite was such zinc ore except the black ore known as Black Franklinite.

March 6th, 1877, by two agreements, contemporaneously executed, your petitioner obtained from James L. Curtis the right to mine Franklinite on said vein for five hundred feet north of the easterly and westerly line, paying one-half of the net profits of such mining, with deduction of certain commissions, and the provision that if he were hindered or delayed by any suits at law or in equity he should be relieved, and likewise with the provision that your petitioner's expenses in any

legal proceedings should be deducted from the landlord's share of the profits. And on the 26th day of June, 1878, by agreement between your petitioner and the said Curtis, your petitioner obtained the right to take out 25,000 tons from the share of said Curtis, under certain conditions to run through a period of ten years; under which agreements your petitioner has worked said 500 feet, which is the same premises mentioned in the agreement with Heckscher in controversy in this cause, and since said Heckscher hath claimed any interest in the premises, your petitioner hath, from time to time, gone over the accounts with him. Aud your petitioner shows, as matter of fact, that many thousand dollars have been advanced by your petitioner in carrying out said lease, and that no indebtedness of your petitioner to the said Heckscher in respect to the lease of said five hundred feet appears to be claimed.

Your petitioner further shows, that shortly after he took his first agreement as aforesaid, the New Jersey Zinc Company filed their bill of complaint against your petitioner in this Court, insisting that the whole vein was zinc ore, and that they had been working it as such from Hamburg Road southwardly over four hundred feet. A preliminary injunction was granted against your petitioner, but the suit was removed to the United States Circuit Court for the District of New Jersey, and there the injunction, in the month of February, 1878, was dissolved, and the prayer for injunction was, after considerable litigation, denied. About the year 1878, they began to work said vein north of the five hundred feet, taking out Franklinite in large quantities.

On April 10th, 1879, your petitioner made two other agreements with the said James L. Curtis, which were executed contemporaneously, and are hereto annexed as Schedules C and D, by which said Curtis gave this petitioner the right to mine Franklinite in said vein north of five hundred feet for fifteen years; reserving, as rent, one dollar a ton for the first three years, and two dollars a ton for the remainder of the term, with provisions for the mining of ten thousand tons annu-

ally after six months; but with the further provision that, if the New Jersey Zinc Company, or any other party, should hinder and delay your petitioner in entering and mining Franklinite, the time lost by such hindrance and delay should be added to the six months mentioned in said lease, and your petitioner should have six months after the termination of such hindrance; and that for three years thereafter only one dollar a ton should be paid, and that if he incurred any costs, charges or expenses at law or in equity in the protection of his rights, and obtaining the right of mining against infringement thereof by the New Jersey Zinc Company, the same should be paid out of the said rents and royalties.

Your petitioner shows that at that time the New Jersey Zinc Company were working the whole vein north of the five hundred feet, and taking Franklinite therefrom. That May 1st, following, your petitioner began an action of trespass against them in the United States Circuit Court for the District of New Jersey, to try title; that in the same month he filed a bill in the said Court against them for injunction and discovery and account; that the said action of trespass came to trial in February and March, 1881; that at that trial, and in their answers to said bill, the New Jersey Zinc Company set up not only that the vein was all zinc ore, but also that all the Franklinite in the vein north of the five hundred feet had been conveyed to them by deed, which was prior to that under which said Curtis claimed said Franklinite; that as to their claim of the Franklinite the question was, whether their deed could be located at all on the Mine Hill tract, and, if so, whether it covered all the New Jersey Zinc Company's workings. A verdict was thereupon rendered for this petitioner in said action of trespass. A motion for a new trial was made by the defendants therein, argued by both parties, and the rule therefor finally discharged; but about July 3d, 1882, the New Jersey Zinc Company sued a writ of error to the Supreme Court of the United States from the judgment on said verdict, which writ of error was finally dismissed only in May, 1883.

Meanwhile, in the spring of 1883, the said The New Jersey Zinc Company filed their bill against this petitioner in the Eastern District of New York to enjoin the collection of his judgment in trespass. That motion for injunction was argued and finally determined in your petitioner's favor.

Your petitioner further shows, that about the month of October, 1882, the New Jersey Zinc Company conveyed all their interest in said property to the New Jersey Zinc and Iron Company.

That meanwhile, about the 15th day of August, 1881, William H. McVicker and others, claiming to be stockholders of the Franklinite Steel and Zinc Company, had filed their bill in this Court against James L. Curtis and this petitioner and others, insisting that the said Curtis was a naked trustee for said company, praying, among other things, to set aside the leases and an accounting by this petitioner to the said Franklinite Steel and Zinc Company, which cause was not finally discontinued until the 18th of May, 1883, after much litigation.

That likewise, about the 15th day of September, 1882, the Franklinite Steel and Zinc Company filed their bill in this cause against James L. Curtis, this petitioner, Charles A. Heckscher, and the Lehigh Zinc and Iron Company, Limited, and others, praying, among other things, an accounting with reference to the said mining leases ; to which suit your petitioner filed an answer, and which suit is still pending.

That about the 8th day of November, 1882, the New Jersey Zinc and Iron Company filed their bill of complaint in this Court against this petitioner, James L. Curtis, and the Franklinite Mining Company, and the Franklinite Steel and Zinc Company, setting up their title to the zinc and Franklinite in said vein ; that their title for Franklinite covered the said vein north of said five hundred feet, and praying that this petitioner should be enjoined from mining on the north part of said vein.

Your petitioner further shows unto your Honor that the said Charles A. Heckscher and the defendants were

cognizant of all the foregoing litigation, and especially of the suit brought by the New Jersey Zinc and Iron Company, and of that brought by said McVicker and the Franklinite Steel and Zinc Company, and that the counsel of said Heckscher and the Lehigh Zinc and Iron Company were present from time to time at the examinations taken in said causes, or noticed so to be taken, and he is informed and believes that about the month of March, 1883, deeds were executed by the said James L. Curtis to the Franklinite Steel and Zinc Company, and by said The Franklinite Steel and Zinc Company to the said Heckscher of the reversion of said premises.

Your petitioner shows that, from time to time, since that time, conversations were had with the said Heckscher as to what should be done north of said five hundred feet, but that this petitioner was not requested to mine there. That your petitioner has mined north of said five hundred feet, but only to supply the deficiency that could not be produced at the old mine to fulfill this petitioner's contract with said Heckscher.

Your petitioner further shows unto your Honor that about the summer of 1883 the mines on the five hundred feet had almost run out for a time, and there was difficulty in supplying enough ore, and thereupon a petition was filed in this cause by the defendants, the hearing whereof was adjourned indefinitely on the arrangement made with the said Heckscher about the end of August, 1883, on behalf of the said defendants, that this petitioner would endeavor to supply the deficiency of ore from north of the five hundred feet, and would begin to mine for that purpose, and thereupon your petitioner did so begin to mine; but on the 18th of October your petitioner was served with a restraining order in Chancery in said suit brought by the New Jersey Zinc and Iron Company, restraining his mining on said premises, and to show cause for an injunction, which injunction was, after much argument, finally granted by this Court; and your petitioner shows that from the time of the service of said injunction and re-

straining order he was unable to mine at all north of said five hundred feet, except for a very short distance.

Your petitioner further shows unto your Honor, that thereupon propositions were made to him by the New Jersey Zinc Company that said company should waive all claims on their part of south of a certain line across said vein, running a little north of the first shaft, north of said five hundred feet, known as the Ding Dong Shaft, and to settle with this petitioner for their mining south of said line, leaving all questions with reference to the remainder of said vein north of said line to be settled as between said Heckscher and said New Jersey Zinc and Iron Company, meanwhile allowing your petitioner to mine south of said line; and your petitioner shows that, through his counsel, he submitted the question as to whether any such line should be established as matter of peace between your petitioner and said company, leaving said Heckscher to conduct said litigation if he so pleased; and that the said Heckscher answered your petitioner that it was the best thing that could be done, and otherwise substantially approving the policy of such arrangement, or not objecting thereto, but saying that he did not desire to become a party to it, because of the complication it might bring into his case; and your petitioner shows, that thereupon it was arranged between your petitioner and the New Jersey Zinc and Iron Company that your petitioner might mine south of a line drawn a short distance north of the Ding Dong Shaft, and including only a small part, but not the most accessible part, of the vein north of the five hundred feet; and your petitioner shows that, north of said line, and over the greater part of the property mentioned in his agreement with said Curtis, he has never come into possession, or been able to mine.

That thereafter a small quantity of ore every month was mined north of said five hundred feet and sent to the said defendants, who received the same, till about the beginning of December last, when they notified this petitioner that they would receive no more ore mined north of said five hundred feet; and your petitioner

shows, that meanwhile, during all this time and whenever your petitioner was in good enough health so to do, the said Heckscher has, from time to time, seen the books of account of your petitioner with reference to his mining, which books have been kept in the most careful manner, and he says that it is manifest that, during all these years of incessant litigation, there have been large expenses in litigation to be charged against both contracts, both north and south of the five hundred feet. That your petitioner has not received all the bills of such expenses, and that some question has arisen in your petitioner's own mind and been discussed between him and said Heckscher as to how certain expenses should be charged or apportioned, such as legal expenses, taxes, watching during the period that the mine could not be worked, guarding the same against invasion by the New Jersey Zinc Company and their successors, and various other expenses, all of which are shown in your petitioner's books, and would become a matter of cognizance in said suit for accounting brought by the Franklinite Steel and Zinc Company, to which said suit the said Charles A. Heckscher, as your petitioner is informed, has become successor in this Court, by deed of their interest to him, and which has never been discontinued to your petitioner's knowledge.

And your petitioner further shows that his law expenses in said litigation with the New Jersey Zinc and the New Jersey Zinc and Iron Company, with reference to the mine north of the five hundred feet, including printing and counsel fees, with repeated arguments in various courts, amount to more than the royalty payable therefrom ; and he shows that he has never been put into possession of the said mine north of the five hundred feet, but only a small part thereof, and the rent thereof has never been payable according to the lease, but must be equitably apportioned, and especially considering that the part in which he is in possession is too small to work by itself, it may become necessary, in such equitable apportionment, to arrange that your petitioner should hold that part and work it as one mine with the five hundred feet ; but your petitioner

shows that, in any event, no rent is recoverable at law, the matter being already pending in this Court, and such apportionment being manifestly the subject only of equitable jurisdiction.

And your petitioner shows and charges that, unless the mining be continued, great loss will occur to the said mine, but that the manager has refused to send forward ore until it is paid for, and has ordered that shipments be stopped, and he shows that he needs money in order to keep up the mining operations, and he shows that the sum of three thousand dollars a month, allowed by him by the Court as representing his expenses during the mining of the five hundred feet, does not cover his present expenses, the mine having become deeper, and it having become necessary to have more shafts, both on and off the five hundred feet.

And your petitioner prays that reference be had to said proceedings for greater certainty, and that the action of the defendants may be deemed to be an unlawful and unwarranted interference with this Court, and contempt thereof; that the said defendants may be ordered immediately to pay the moneys due for the December ore, and also for the January ores which have been forwarded up to within the last few days; that the said defendants and the said Charles A. Heckscher, or August Heckscher, may be enjoined from further prosecuting the suits of attachment; that he be decreed to be in contempt of this Court, and punished for such contempt; that the defendants may be decreed to have forfeited all right to the retention in this Court of the moneys due your petitioner, and that said moneys may be paid to your petitioner; that your petitioner may be advised whether, under the circumstances of the breach of said contract, and the orders of this Court by said defendants and said Heckscher, your petitioner is entitled to abrogate it; and your petitioner says that the action of the said Heckscher and the Lehigh Zinc and Iron Company in their petition, lately filed, to make deductions from the amount due them from the December ores, on account of al-

leged water in the samples, show an intention to defraud your petitioner in the sampling, and show that your petitioner can have no protection, save by sampling, taken at the place of delivery, under the control and management of this honorable Court, and he prays that the order made in this Court, without notice to him, for discontinuance of sampling at the mine may be reversed, and such samples ordered to be taken, and that such sampling shall rule the deliveries hereafter made to the said defendants.

And that your petitioner may have such other relief as may be agreeable to equity and good conscience.

CORTLANDT & WAYNE PARKER,
Solicitors and of Counsel with the Petitioner
Charles W. Trotter.
RICHARD WAYNE PARKER,
Of Counsel.

STATE OF NEW YORK, }
County of Kings, } ss.:

CHARLES W. TROTTER, being duly sworn according to law, on his oath, saith that he is the petitioner to the above cause; that, so far as the above petition refers to the records in this and other Courts, he prays that reference may be had thereto; that, so far as the same refers to his own acts and deeds, the same is true, and that the said petition is true, to the best of his knowledge, information and belief, in all respects.

And deponent further says that his accounts with both mines have been carefully and separately kept, and that they have been at all times open to the inspection of the said Heckscher, who has been to this deponent from time to time. That at such conversations there appeared to be very little difference between this deponent and said Heckscher as to said accounts, the only

questions being raised as to how said items of expense should be charged ; that the said Heckscher understood perfectly well that this deponent claimed to be largely in advance to the mine, and that there were no royalties due from him ; that the demand (Schedule B) made on the 12th day of December last, of which a copy is annexed, was an utter surprise to this deponent.

This deponent further says that he has never been able to take possession, except as far as the Ding Dong Shaft, as stated in the above petition, and that he was not able to have even such possession till May, 1884.

And this deponent further says that, as near as he can make out, he is over forty thousand dollars in advance to the five hundred feet, or old mine, but as to the new mine, the total number of tons forwarded from thence to the said Heckscher are shown in the manager's reports herein, and were all that could reasonably be produced ; and he says that any royalties which might be equitably allowed in respect to said new mine, on any account, are much more than eaten up by the expenses of the litigation with reference thereto ; and this deponent says that he is ill and unable to leave his house, and has been so for a long time last past ; that he is unnble to conduct various litigations in the various places, and so known to be by said Heckscher, and that he can only submit himself and his relations with the said defendants to this honorable Court, praying for its relief and control of the many complicated questions arising out of said contracts.

And this deponent further saith that the claim of said August Heckscher against this deponent for thirty-five thousand dollars is entirely false and unfounded ; that the agreement between deponent and James L. Curtis, dated April 10th, 1879, is recorded in the Sussex County Clerk's Office, and is and was at the time of the issuing of attachment by said Heckscher well known to him. That said Heckscher well knew of the injunctions and legal proceedings which have and do prevent this deponent from mining the new mine, and that no rents or royalties were due therefrom, either

under the lease or agreement of April 10th, 1879, to said Heckscher, or any other person.

CHARLES W. TROTTER.

Sworn and subscribed this 3d day of February, 1885, before me, at Brooklyn, N. Y.

CORTLAND PARKER, JR.,
M. C. C. of N. J.

Schedule A.

NEWTON, N. J., Dec. 27, 1884.

MR. R. WAYNE PARKER:

DEAR SIR—Inclosed find copy of attachment and return in case Heckscher vs. Trotter, as per request.

JNO. T. KAYS,
Sheriff,
By H. C. STOLL,
Under-Sheriff

[Fees, $1.00.]

NEWTON, N. J., Dec. 27, 1884.

MR. R. W. PARKER:

DEAR SIR—In the copy of the writ of attachment sent you in case Heckscher vs. Trotter, in describing the lease I think I put the first date March 6, 1867, when it should be March 6th, 1877.

Yours, &c.,
HENRY C. STOLL,
Under-Sheriff.

By virtue of the writ of attachment hereto annexed, on Friday, the nineteenth day of December, A. D. 1884, at eight o'clock in the forenoon of that day, in the

presence of John S. Howell, a credible person, I, John T. Kays, Sheriff, by Henry C. Stoll, Under-Sheriff of the County of Sussex, executed the said writ of attachment by going on the premises of the said defendant, near Franklin, in said County, and then and there in the presence of John S. Howell, I declared that I attached the rights and credits, moneys and effects, goods and chattels, lands and tenements of the said defendant Charles W. Trotter, at the suit of August Heckscher, plaintiff.

JOHN T. KAYS,
Sheriff,
By HENRY C. STOLL,
Under-Sheriff.

Inventory and appraisement of all the property and estate of Charles W. Trotter, defendant, by me attached and seized on Friday, the nineteenth day of December, A. D. 1884, by virtue of the writ of attachment hereto annexed, made the day and year aforesaid, by John T. Kays, Sheriff, with the assistance of John S. Howell, a discreet and impartial freeholder of said County of Sussex, viz., all the right, title and interest of said Charles W. Trotter in two leases made by James L. Curtis, one bearing date March 6th, 1867, the other bearing date April 10th, 1879, to the said Charles W. Trotter, on a certain mine known as the northerly half of the westerly vein of Mine Hill.

Appraised at	$1,000 00
3 engines and hoisters	4,500 00
3 boilers	300 00
Lot of wire rope, valued at	100 00
3 pumps	150 00
12 shovels, more or less	1 50
10 picks, more or less	50
5 crowbars	2 00
40 feet drills, more or less	40 00
1 mine car, $40; 2 dump cars, $25	65 00
4 tramway cars	50 00

3 engine houses	$75 00
1 blacksmith shop	5 00
1 oil house, $5; 2 change houses, $12	17 00
1 powder house	3 00
1,000 pound powder	150 00
500 tons lean ore, in heaps	1,000 00
1 tramway railway, irons and trestlework	300 00
100 tons fresh-mined ore, on bank	400 00
	$8,164 00

JOHN T. KAYS,
Sheriff,
By HENRY C. STOLL,
Under-Sheriff.

JOHN S. HOWELL,
Appraiser.

NEW JERSEY, ss.:

THE STATE OF NEW JERSEY TO OUR SHERIFF OF OUR COUNTY OF SUSSEX, GREETING:

[L. S.] We command you to attach the rights and credits, moneys, and effects, goods and chattels, lands and tenements of Charles W. Trotter, wheresoever in your County the same may be found, so that the said Charles W. Trotter be and appear before the Supreme Court of the State of New Jersey, to be held at Trenton, in and for said State, on the fifth day of January, next, to answer unto August Heckscher of a plea of breach of covenant, to his damage seventy thousand dollars; and have you then and there this writ.

Witness the honorable Mercer Beasley, Chief Justice, at Trenton, aforesaid, the eighteenth day of December, A. D. one thousand eight hundred and eighty-four.

BENJ. F. LEE,
Clerk.

CHARLES D. THOMPSON,
Att'y.

Affidavit for thirty-five thousand dollars, filed before issuing this writ.

BENJ. F. LEE,
Clerk.

Schedule B.

PHILADELPHIA, December 11th, 1884.

TO CHARLES W. TROTTER,
Brooklyn, N. Y.:

This is to inform you that I, August Heckscher, of Philadelphia, am the owner, by conveyance from the Franklinite Steel and Zinc Company by deed bearing date the nineteenth day of March, eighteen hundred and eighty-three, and recorded in Sussex County Clerk's Office, in Book Q 7 of Deeds, page fifty-six, etc., of all the north half of the westerly vein of Franklinite ore on Mine Hill, lying next south of the Hamburgh Road, being about eleven hundred feet in length on said vein, in the township of Hardyston, County of Sussex, and State of New Jorsey, and being covered by two several agreements in the nature of lease made to you by James L. Curtis, as sole surviving trustee of the Franklinite Mining Company, former owner thereof, one dated March 6th, 1877, and the other April 10th, 1879, and that, by virtue of said conveyance, I became and am entitled to all the rents, royalties and profits which have accrued and become due upon both the said leases since the said nineteenth day of March, 1883, and I claim that there are due to me in the premises all the payments which have accrued and have become due upon the last-named lease, viz.: that dated April 10th, 1879, between the said 19th day of March, 1883, and this date, which I claim to be seven quarterly payments at five thousand dollars per quarter, that is to say, a royalty of two dollars per ton on twenty-five hundred tons, quarterly, amounting, in the aggregate, to the sum of thirty-five thousand dollars,

besides interest; and I hereby demand payment of you of the last stated sum of money.

Respectfully,

A. Heckscher.

Schedule C.

James L. Curtis to Charles W. Trotter.

This indenture, made this tenth day of April, in the year of our Lord one thousand eight hundred and seventy-nine, between James L. Curtis, of the City, County and State of New York, as sole surviving trustee of the Franklinite Mining Company, party of the first part; and Charles W. Trotter, of said City, County and State of New York, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar, to him paid by said party of second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, demised and to farm let unto said party of the said part, his heirs and assigns, for the full term of fifteen years from the day and date first above written, and to and until the tenth day of April, one thousand eight hundred and ninety-four, all that certain westerly mine vein, lode and bed of Franklinite ore, together with all the spurs, offshoots, dips and angles thereof, and all the Franklinite ore therein contained, situate on the north part of the north half of Mine Hill, at Franklinite Furnace, in the township of Hardyston, County of Sussex and State of New Jersey.

Bounded and described as follows, to wit: Commencing at a point five hundred feet northerly of the boundary line, between the North and South Mine Hill, so called; from thence running northerly along the line of the said westerly vein or bed of Franklinite ore five hundred and seventy-four feet to the Hamburgh Road, be the same more or less.

It being the intention of the party of the first part to grant, demise and to farm let unto the said party of the second part, his heirs and assigns, for the term of fifteen years, as aforesaid, the whole of the said westerly vein, lode or bed of Franklinite ore therein contained, commencing at the northerly line of that part of said westerly vein heretofore demised to Charles W. Trotter, the party hereto of the second part, by indenture, dated March 6th, 1877, and from thence to the said Hamburgh Road.

Together with all and singular the rights, privileges and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title and interest, claim and demand whatsoever of the said party of the first part, either in law or equity, of, in and to the above demised premises, for the term of fifteen years, as aforesaid.

The said party of the first part reserving to himself, his successors and assigns, the rent or royalty of one dollar for each and every ton of Franklinite ore mined and removed from said demised premises during the first three years, and two dollars for each and every ton of said ore mined and removed from said premises for the remainder of the term.

And the said party of the second part, in consideration of the grant and demise, as aforesaid, and for himself, his heirs and assigns, agrees:

First. That he will, within six months from the date hereof, enter upon the said demised premises and commence to mine and remove the said Franklinite ore therein contained, and so continue to mine and remove said ore at such rate that the amount of said ore so removed shall equal ten thousand tons in each and every year of the said term.

Second. That he will keep full and accurate books of account of each and every ton of ore so mined and removed, as aforesaid, which said book shall at all times be open to the examination and inspection of the said party of the first part, with the right to copy and make extracts therefrom, and at the end of each and every three months of each and every year of the said fifteen

years, the party of the second part will make a statement in writing of the whole number of tons of said Franklinite ore mined and removed from said demised premises, which said statement he will verify if required, and deliver the same to the said party of the first part, and then and there pay or cause to be paid to the said party of the first part the sum of one dollar, lawful money, for each and every ton of said ore so mined and removed during said preceding three months for the first three years after the date of this lease, and the sum of two dollars per ton for each and every ton mined and removed for the remainder of said term.

THIRD. It is understood that this grant and demise is made upon the conditions that said party of the second part shall, 1st, mine and remove at least ten thousand tons of said ore during each and every year of said term. 2d, that he shall keep full and accurate books of account of the whole number of tons mined and removed during each and every period of three months of said term, and will make said statement thereof, as aforesaid, and pay or cause to be paid the rent or royalty reserved to the party of the first part, as aforesaid, and in case the said party of the second part, his heirs or assigns, shall fail in the performance of any or either of said conditions, he will, at the request of said party of the first part, surrender this lease and deliver to said party of the first part the said demised premises.

It is further understood and agreed that all costs, expenses or liability of every kind, created or incurred in mining and removing said ore, shall be at the sole charge of said party of the second part.

In witness whereof, we have hereunto set our hands and seals the day and date first above written.

JAMES LANGDON CURTIS, [L. S.]
Trustee, &c., of the Franklinite Mining Co.
CHARLES W. TROTTER. [L. S.]

In presence of
W. W. HEBBARD.

[Acknowledged April 16, 1879].

Received and recorded April 18th, 1879, 7, 326, by Geo. H. Neldenn, Clerk, of Sussex.

Schedule D.

JAMES L. CURTIS to CHARLES W. TROTTER.

This agreement, between James L. Curtis, of the City of New York, as sole surviving trustee of the Franklinite Mining Company, party of the first part, and Charles W. Trotter, of the same place, party of the second part, made this tenth day of April, eighteen hundred and seventy-nine,

Witnesseth, that the party of the first part, in consideration of the sum of one dollar, and other good and valuable considerations received from the party of the second part, agrees: that the indenture of lease made on the tenth day of April, 1879, between the parties hereto, shall be and the same is hereby modified, changed and controlled as follows, to wit:

FIRST. That in case the New Jersey Zinc Company or any other party shall hinder and delay the said party of the second part in entering upon the demised premises mentioned in said indenture of lease, and in mining and removing the Franklinite ores contained therein, the time lost by such hindrance and delay shall be added to the period of six months mentioned in said indenture of lease as within which the said party of the second part shall commence to mine and remove the said ores contained in said demised premises, and the party of the second part in said indenture of lease shall have six months from and after the termination of said hindrance and delay in which to commence the mining and removal of Franklinite ore, instead of six months after the date of said lease. And in case of the aforesaid hindrance and delay, the said party of the second part to said lease shall be bound and required to pay royalty of only one dollar per ton for each and every ton of Franklinite ore mined and removed from the said leased premises by the said party of the second part during the three years next after the termination of said hindrance and delay, and shall be only bound to mine ten thousand (10,000) tons in each year after the termination of such hindrance and delay, anything in said lease contained to the contrary notwithstanding.

SECOND. That in case the said party of the second part shall incur costs, charges and expenses at law or equity in the protection of his rights, or to obtain and enjoy the right of mining under said lease in said demised premises, against the infringement thereof by the said The New Jersey Zinc Company, or any other party, the same shall be paid by the party of the first part out of the rents and royalties reserved to him in and by said indenture of lease as the same is hereby modified and changed, but not otherwise, nor out of any other funds than said rents or royalties reserved as aforesaid.

THIRD. The said party of the second part may, at his election, and on three months' written notice to the party of the first part, surrender the said indenture of lease; but the right to surrender said lease shall be confined to the party of the second part, and no other party or parties to whom he may assign said lease.

FOURTH In case said party of the second part shall surrender said indenture of lease as aforesaid he shall have the right to remove all his tools and machinery from said demised premises, and all ore mined therefrom, he paying the rents or royalty reserved.

FIFTH. It is further understood and agreed, that in case the said party of the first part shall cancel said lease by reason of default, failure or neglect of the said party of the second part, as in said lease provided, the said party of the second part shall have the right to remove all his tools and machinery from said demised premises, and all ores he may have mined, on payment of the rents or royalties reserved in said lease.

In witness whereof, the parties hereto have set their hands and seals the day and year first above written.

JAMES LANGDON CURTIS, [L. S.]
Trustee of the Franklinite Mining Co.
CHAS. W. TROTTER. [L. S.]

Witness:
W. W. HEBBERD.

[Acknowledged April 16, 1879.]

Received and recorded June 16th, 1879, E, 7, 36, by
GEORGE H. NELDEN,
Clerk of Sussex.

Opinion.

[Filed March 18, 1886.]

CHARLES W. TROTTER

vs.

THE LEHIGH ZINC AND IRON CO., LIMITED, ET AL.

On Petition.

Money which became due to a party under a contract during the progress of a suit in this Court was ordered paid into Court to await the further order of the Court; the party in whose behalf such money was paid has such a right or interest therein as may be attached.

CHAS. W. TROTTER

vs.

THE LEHIGH ZINC AND IRON CO., LIMITED.

MR. C. D. THOMPSON and Mr. H. C. PITNEY, for petitioner.

MESSRS. C. & R. WAYNE PARKER, for respondents.

BIRD, V. C.:

There was a contract between the complainant and Heckscher which the latter assigned to the above-named company. By such contract Trotter agreed to mine and furnish ores containing a certain quantity

of the oxide of zinc at prices stipulated. The bill in this case was filed to determine the rights of the parties with respect to certain disputed points under the contract.

At the beginning of the controversy, a manager was appointed, under whose direction the mine has been wrought, and the ores shipped to the company. Under a claim for damages set up in the answer and cross-bill of the defendants, and upon the insistment that Trotter was a non-resident of the State, and also insolvent, the whole consideration money due for ores, delivered from time to time, less $3,000 (which was applied to the working of the mine), was ordered to be paid into Court as it became due, so that, in case the defendants should establish a right in this Court to set off any claim which they might have for damages, they could have this particular fund to satisfy such set off in case there should be any decree of a pecuniary nature in favor of the complainant. This Court decided that the defendant had not the right to make such set-off; but, as it was a matter of great importance to both parties, an order was made directing the retention of the moneys in this Court until the questions involved should be determined on appeal, in case an appeal should be taken to the Court of last resort. There was an appeal, and the appellate tribunal held that the defendants were not entitled to such set-off.

By this time the amount of money paid into Court exceeded $50,000. Heckscher, claiming to have a right of action against Trotter, and Trotter still residing out of this State, procured an attachment to be issued out of the Supreme Court of this State against Trotter, which was served by levying upon all the goods and chattels of Trotter, and also upon whatever rights and credits he might have in these moneys so deposited with the Clerk of this Court.

Now Heckscher comes, by his petition, and asks the aid of this Court in the premises. He states the case and prays that the moneys so attached may be retained in this Court to be applied to the satisfaction of

any judgment which he may obtain against Trotter under his proceedings in attachment.

Trotter resists, and insists that these moneys cannot be attached, nor any right or interest of his therein. This is placed upon the ground that the money is in the custody of the law, awaiting the execution of the law. The law upon this subject is well settled in New Jersey. There is no judgment to be enforced in this case. The money was paid into Court or to the Clerk as the money of Trotter; and that it has been retained there ever since as his money. This being so, I think there is no doubt but that the rights and interests of Trotter therein are subject to attachment. A reference to the authorities will suffice: Conover vs. Ruckman, 6 Stew. Eq., 303, in which all the cases in New Jersey are reviewed and commented upon by the Court of Errors and Appeals. See also further and apt illustrations of the doctrine pronounced in the above case, in the cases of *Wehle vs. Conner, 83 N. Y., 231, and Dunlop vs. Paterson Fire Insurance Company, 74 N. Y., 145.*

I will advise an order in accordance with the prayer of the petition; but subject, however, to the rights and equities of the parties to the original suit.

IN CHANCERY OF NEW JERSEY.

Between
CHARLES W. TROTTER,
Complainant,

AND

CHARLES A. HECKSCHER and THE LEHIGH ZINC AND IRON COMPANY, LIMITED,
Defendants.

On petition to impound money paid into Court, filed Jany. 26th 1886; and Rule to show Cause granted thereon.
Order.

The rule to show cause granted in the above matter on the twenty-sixth day of January last coming on to to be heard on the petition and documentary evidence thereto annexed, and the replying affidavit of Charles W. Trotter, copies of the levies upon the property in County of Sussex, and the petition, affidavits and exhibits thereto annexed, filed by said Trotter, praying the attachment of said Heckscher for contempt, and having been argued by Charles B. Thompson and Henry C. Pitney for the petitioner August Heckscher, and Courtlandt and Richard Wayne Parker for the said Charles W. Trotter, and the Court being of the opinion that the said petitioner is entitled to the relief prayed for in his said petition:

It is on this twentieth day of April, A. D. 1886, on motion of Charles D. Thompson, ordered, adjudged and decreed that the lien of the several writs of attachment mentioned and set forth in the said petition upon the moneys in this Court therein mentioned, be and the same is hereby recognized, and that the sum of fifty-five thousand one hundred and twenty-six dollars and thirty-two cents ($55,126.32), being the amount of money in the custody of the Clerk of this Court, on or about the sixteenth day of January last, and paid into Court in several different payments by the said The Lehigh Zinc and Iron Company, Limited, by virtue of several orders made in this cause, as and for the price of certain

ores sold and delivered by the said Charles W. Trotter to the said The Lehigh Zinc and Iron Company, Limited, together with the interest which had accrued on the same, be and the same is hereby ordered and directed to be retained in this Court, as the money of the said Charles W. Trotter, to answer unto such judgment or judgments as the said August Heckscher may recover against the said Charles W. Trotter in three several actions at law, lately commenced by the said August Heckscher against the said Charles W. Trotter, in the Supreme Court of this State, by writs of attachment issued thereout and directed to the Sheriff of the County of Mercer, and by him duly served on the Clerk of this Court; the first of said writs of attachment was issued and served on the eighteenth day of December, A. D. 1884, and alleged to be levied upon the sum of seventeen thousand seven hundred and thirty dollars ($17,730), besides interest, in the hands of the Clerk on that day; the second whereof was issued on the 14th day of July, A. D. 1885, and served on the sixteenth day of July, A. D. 1885, and alleged to be levied upon the sum of thirty-two thousand one hundred and forty dollars and thirty-eight cents ($32,140.38), besides interest, in the hands of the Clerk on that day, and including the amount so previously attached as aforesaid; and the third of said writ of attachments was issued on the fifteenth day of January, A. D. 1886, and was served on the sixteenth day of January, A. D. 1886, and alleged to be levied upon the sum of fifty-eight thousand one hundred and twenty-six dollars and thirty-two cents ($58,126.32), besides interest, in the hands of the Clerk on that day, and which included the sums so previously attached as aforesaid, and that the complainant, Charles W. Trotter, pay the costs of this application to be taxed.

And this order is to be so construed that neither of said writs of attachment, or any judgment recovered thereunder, shall be held to be a lien upon a greater sum of money than the amount actually in the hands of the Clerk of this Court at the time the same was so

served as aforesaid, with the interest which had accrued thereon.

And it is further ordered that this order is made subject to all the rights and equities of the parties to the original suit between the said Charles W. Trotter and the said Charles A. Hecksher and the Lehigh Zinc and Iron Company, Limited.

Respectfully advised,

THEODORE RUNYON,
C.

JOHN T. BIRD,
V.-C.

(A true copy.)
ALLAN MCDERMOTT,
Clk.

Notice of Appeal.

[Filed May 19, 1886.]

The complainant hereby appeals from so much of the order and decree made herein on the twentieth day of April, 1886, in the above-stated cause, as declares that the petitioner Charles A. Heckscher is entitled to the relief prayed for in his petition, therein mentioned, and so much thereof as decrees that the lien of the several writs of attachment in said petition mentioned, upon the moneys in this Court, therein mentioned, should be and was recognized by this Court, and from so much thereof as decrees that the money in custody of this Court, on or about the 16th day of January last, with the interest accrued on the same or any part thereof, should be retained in this Court as the money of Charles W. Trotter to answer unto such judgment or judgments as said August Heckscher might recover on three several actions at law, begun by said Heckscher, as therein mentioned, and from so much thereof as recognizes as valid the service of the writs of attachment respectively therein mentioned upon the Court of

Chancery, or the Clerk thereof, or moneys in the Court of Chancery, and from so much thereof as decrees that said attachments respectively, or proceedings thereon are a lien on moneys actually in Court, or in the hands of its Clerk at the time of the said alleged service of such attachments respectively, and from so much thereof as decrees that Charles W. Trotter pay the costs of said Heckscher's said application and petition unto the Court of Errors and Appeals, in the last resort in all causes.

Dated May 17th, A. D. 1886.

CORTLANDT & WAYNE PARKER,
Solicitors of Complainant, Appellant.

RICHARD WAYNE PARKER,
Of Counsel.

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

RICHARD WAYNE PARKER,
Of Counsel.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
CHARLES W. TROTTER,
Appellant,

AND

CHARLES A. (or AUGUST) HECKSHER and THE LEHIGH ZINC AND IRON COMPANY, LIMITED,
Respondents.

Petition of Appeal.

[Filed May 19, 1886.]

TO THE HONORABLE THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CASES:

The humble petition of Charles W. Trotter, apellant, in the above-stated cause respectfully shows that yaur petitioner finds himself aggrieved by an order and decree made in the Court of Chancery by the Chancellor of New Jersey, bearing date the twentieth day of April, 1886, in a cause wherein the appellant was complainant and said respondents were defendants in these respects, to wit, that the said decree adjudged that Charles A. Heckscher is entitled to the relief prayed for in his petition therein mentioned, and that the lien of the several writs of attachment in said petition mentioned upon moneys in the Court of Chancery therein mentioned should be and was by said order and decree recognized by the Court of Chancery, and that

the sum of $55,126.32 being the sum of money in custody of the Clerk in Chancery about January 16th, 1886, and paid into the Court of Chancery, on several different payments, by the Lehigh Zinc and Iron Company, Limited, by virtue of orders in said cause in Chancery, together with the interest which had accrued on the same, should be and was ordered and directed to be retained in said Court of Chancery as the money of Charles W. Trotter, to answer unto such judgment or judgments as said August Heckscher might hereafter recover in three several actions at law therein mentioned. And that said order and decree adjudges that writs of attachment therein mentioned were duly served by the Sheriff of Mercer County on the Clerk of the Court of Chancery, and recognizes as valid such service on said Clerk and said Court and the levy of such writs on the moneys in said Court at the time of such several alleged services.

And that said order and decree adjudges that said several writs of attachment shall be held to be severally a lien on the amount of money actually in the hands of the Clerk of said Court of Chancery at the time said writ was alleged to be served as aforesaid, with the interest accrued thereon, and that the said Charles W. Trotter should pay the costs of the said application and petition of August (or Charles A. Heckscher).

And your petitioner humbly appeals from so much of said order and decree as decrees and adjudges as aforesaid, on the ground that same is erroneous, for that the said petition and application should have been dismissed, with costs, and any pretended service of any attachment on said Court of Chancery, or the Clerk thereof, and any pretended levy by the Sheriff on moneys in Court, or pretended lien thereunder, should have been denied or set aside by said Court of Chancery.

Your petitioner therefore prays, that said decree and order of the Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden.

And that your petitioner may have such relief in the premises as to this Honorable Court may seem meet.

CORTLANDT & WAYNE PARKER,
Solicitors of Appellant.
RICHARD WAYNE PARKER,
Of Counsel with Appellant.