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Notice of Appeal

(Filed July 18th, 1928)

NEW JERSEY SUPREME COURT

NORMAN MELLOR, Prosecutor-Appellant, *vs.* EDWARD V. HARTFORD, INC., a corporation, Defendant-Respondent.	On Certiorari. Notice of Appeal from Judgment of Supreme Court.

To Arthur T. Vanderbilt, Attorney of defendant-in-error, or to whom it may concern:

Sir:

Please take notice that the plaintiffs below, the plaintiffs-in-error, appeal to the Court of Errors and Appeals from the whole of the judgment entered in the above stated cause.

PERKINS & DREWEN,
Attorneys for and of
Counsel with Appellant.

Grounds of Appeal

(Filed August 9th, 1928)

NEW JERSEY SUPREME COURT

NORMAN MELLOR, Prosecutor-Appellant, *vs.* EDWARD V. HARTFORD, INC., a corporation, Defendant-Respondent.	Grounds of Appeal. On Appeal to the New Jersey Court of Errors and Appeals.

To Arthur T. Vanderbilt, Esq., Attorney of Defendant-Respondent:

Sir:

Please take notice that the appeal of the plaintiff below, the prosecutor-appellant, is on the following ground:

Because the Supreme Court erred in giving judgment for the defendant-respondent instead of for the prosecutor-appellant.

PERKINS & DREWEN,
Attorneys for and of Counsel with Appellant.

Rule to Show Cause

NEW JERSEY SUPREME COURT

NORMAN MELLOR, trading as Arguto Oilless Bearing Company, Prosecutor, *vs.* EDWARD V. HARTFORD, INC., a corporation, Defendant.	On Certiorari.

Upon reading the petition and the affidavit annexed thereto in the above entitled cause,

It is, on this 3rd day of March, 1928, ordered, by the court that the said Edward V. Hartford, Inc., a corporation, and John J. McGovern, Clerk of the Hudson County Circuit Court, do show cause before me, at the Court House, in the City of Jersey City, on the 10th day of March, 1928, at ten o'clock in the forenoon of that day, why a writ of certiorari should not be issued out of, and under the seal of this Honorable Court, commanding the said John J. McGovern, Clerk of Hudson County Circuit Court, to certify and send to the Justices of the Supreme Court of judicature the full record of the proceedings had in a certain cause in the Hudson County Circuit Court, wherein Norman Mellor, trading as Arguto Oilless Bearing Company, is plaintiff, and Edward V. Hartford, Inc., a corporation, is defendant.

JAMES F. MINTURN,
Justice of the Supreme Court.

Affidavit of Service

NEW JERSEY SUPREME COURT

NORMAN MELLOR, trading as Arguto Oilless Bearing Company, Prosecutor, *vs.* EDWARD V. HARTFORD, INC., a corporation, Defendant.	On Certiorari.

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

John P. Nugent, of full age, being duly sworn according to law, upon his oath deposes and says:

I am an attorney-at-law of the State of New Jersey and associated in the general practice of the law with Perkins & Drewen, attorneys of the prosecutor, Norman Mellor.

On Monday, March 12, 1928, about 11:00 o'clock in the morning, I served upon Arthur T. Vanderbilt, attorney of the defendant, Edward V. Hartford, Inc., a true copy of the order to show cause made in this cause on March 10, 1928, by leaving a copy of said order to show cause with a young lady in charge of the office of the said attorney.

JOHN P. NUGENT.

Subscribed and sworn to before me this 14th day of March, 1928.

EDWARD CLAXTON,
Atty.-at-Law of New Jersey.

Writ

NEW JERSEY, TO WIT:

The State of New Jersey, to: John J. McGovern, Clerk, Hudson County Circuit Court, Greetings:

(L. S.) We, being willing for certain reasons to be certified of a certain order made by the Hudson County Circuit Court on February 6th, 1928, in a certain cause in the said Court, pending, wherein Norman Mellor, trading as Arguto Oilless Bearing Company, is plaintiff, and Edward V. Hartford, Inc., is defendant,

Do command you that said order and the records in said suit, as fully as they remain before you, or under your control, you certify and send to the Justices of the Supreme Court, at Trenton, on the 10th day of April, next, together with this writ, that we cause to be done touching the same what of right ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, this 21st day of March, 1928.

EDWARD J. KELLEHER,
Acting Clerk.

I allow the within writ. Let it be sealed. March 17th, 1928.

JAMES F. MINTURN,
Justice of Supreme Court.

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NEW JERSEY SUPREME COURT

NORMAN MELLOR, trading as Arguto Oilless Bearing Company,

Prosecutor,

vs.

EDWARD V. HARTFORD, INC., a corporation,

Defendant.

To the Honorable, the Justices of the Supreme Court of Judicature of New Jersey:

The answer of Frank L. Cleary, Esquire, Judge of the Circuit Court, holden in and for the County of Hudson, and John J. McGovern, Clerk of said County and within named, the record and proceedings of the plaint where mention is made with all things touching the same, we certify and send to the Justices of our Supreme Court of Judicature at Trenton, N. J., at the day and year within contained in a certain schedule to this writ annexed as within we are commanded.

FRANK L. CLEARY,
Judge.

JOHN J. MCGOVERN,
(Seal) Clerk.

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Affidavit for Attachment

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } SS:

George Link, Jr., of full age, being duly sworn according to law, on his oath deposes and says: I am the agent and attorney of Norman Mellor; that the said Norman Mellor is at the present time absent from the State of New Jersey; that the said Norman Mellor is engaged in business under the firm name and style of Arguto Oilless Bearing Compayn; that Edward V. Hartford, Inc., is a corporation not created or recognized as a corporation of New Jersey by the laws of the State of New Jersey, nor authorized to do business in the State of New Jersey; that the said Edward V. Hartford, Inc., owes to the said Norman Mellor, doing business under the firm name and style of Arguto Oilless Bearing Company, the sum of Fifteen Thousand Nine Hundred Dollars and Ninety-two ($15,900.92) Cents, as near as this deponent can specify.

GEORGE LINK, JR.

Subscribed and sworn to before me this 19th day of September, 1927, at Jersey City. }

RANDOLPH PERKINS,
Master in Chancery of New Jersey.

Return to Writ

Writ of Attachment

HUDSON COUNTY, SS.:

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

We command that you attach the rights and credits, moneys and effects, goods and chattels, lands and tenements of the Edward V. Hartford, Inc., wheresoever they may be found in your county, so that it be and appear before our Circuit Court to be holden at Jersey City, in and for our said County of Hudson on the fourth day of October, 1927, to answer Norman Mellor, doing business under the firm name and style of the Arguto Oilless Bearing Company, in an action upon contract, to the damage of the said Norman Mellor in the sum of $15,900.92, as is said.

And in what manner you shall execute this, our writ, make appear to us at the day and place aforesaid; and have you then and there this writ.

Witness Henry A. Ackerson, Esquire, Judge of our said Circuit Court, at Jersey City aforesaid, the 19th day of September, 1927.

JOHN J. MCGOVERN,
Clerk.

Attorney.
JOHN DREWEN,

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Petition for Leave to Enter Special Appearance and for Rule to Show Cause

HUDSON COUNTY CIRCUIT COURT

NORMAN MELLOR, Plaintiff, *vs.* EDWARD V. HARTFORD, INC., a corporation, Defendant.	In Attachment.

Petitioner, Edward V. Hartford, Inc., appearing solely for the purpose of obtaining leave of this Honorable Court to enter a special appearance, respectfully shows that:

1. Petitioner was incorporated under the laws of the State of New York as the Hartford Suspension Company on or about November 16th, 1904.

2. On or about October 29, 1908, Petitioner under the name of Hartford Suspension Company qualified to do business in the State of New Jersey as a non-resident corporation, in accordance with the provisions of the General Corporation Act of the State of New Jersey.

3. On or about February 3, 1916, said Hartford Suspension Company changed its name to Edward V. Hartford, Inc., and duly filed a certificate of such change of name with the Secretary of the

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Petition for Leave to Enter Special Appearance and for Rule to Show Cause

State of New York, in accordance with the provisions of the statute in such case made and provided.

4. Petitioner, Edward V. Hartford, Inc., is in all respects as to rights, duties, debts, obligations and otherwise the same as the Hartford Suspension Company, being the same corporate entity which qualified to do business in the State of New Jersey on or about October 29, 1908.

5. Petitioner, Edward V. Hartford, Inc., has for many years had its principal place of business at Carbon Place and West Side Avenue in the City of Jersey City, County of Hudson and State of New Jersey, at which place of business it has conducted, and was on September 19, 1927, conducting, its manufacturing and other operations.

6. Several of the officers of petitioning corporation were for some time prior to, and on September 19, 1927, residents of the State of New Jersey and amenable to the service of process either at Petitioner's place of business or at their residences.

7. On September 19, 1927, plaintiff, Norman Mellor, on an affidavit filed by his agent, George Lynch, Jr., stating that Petitioner, Edward V. Hartford, Inc., is a corporation not created or organized as a corporation of the State of New Jersey by the laws of the State of New Jersey, nor authorized to do business in the State of New Jer-

sey, and that Petitioner was indebted to plaintiff in the sum of $15,900.92, caused a writ of attachment to be issued out of this court. Levy under this writ was effected by the Sheriff of Hudson County on diverse property of Petitioner at 3:30 p. m. on September 19, 1927.

8. Petitioner respectfully alleges that said writ of attachment was improvidently issued on an affidavit misrepresenting the true facts, Petitioner being at the time of the service of said writ a corporation authorized to do business in this State, and Petitioner also being subject to the service of process at its offices at its aforementioned principal place of business or upon its officers resident in this State.

Wherefore, Petitioner respectfully prays that it be permitted to appear specially before this court for the purpose of moving to quash the above mentioned writ of attachment, and that an order to show cause be granted requiring plaintiff, Norman Mellor, to show cause before this Honorable Court why the writ of attachment in this cause should not be quashed.

ARTHUR T. VANDERBILT,
Attorney for Edward V. Hartford, Inc.,
appearing specially.

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Affidavit

HUDSON COUNTY CIRCUIT COURT.

NORMAN MELLOR,
Plaintiff,

vs.

EDWARD V. HARTFORD, INC., a corporation,
Defendant.

In Attachment.

STATE OF NEW YORK,
COUNTY OF NEW YORK } ss.:

P. A. Rose, being duly sworn on his oath according to law, deposes and says:

That he is the Vice-President of Edward V. Hartford, Inc., a New York corporation, and duly authorized to make this affidavit on its behalf; that the said Edward V. Hartford, Inc., was incorporated in the State of New York as the Hartford Suspension Company on or about the 16th day of November, 1904; that subsequently, on or about the 3rd day of February, 1916, the Hartford Suspension Company changed its name to Edward V. Hartford, Inc., and duly filed a certificate of such change of name with the Secretary of the State of New York at Albany, New York, in accordance with the provisions of the statute in such case made

and provided. Prior to its change of name as aforesaid, the Hartford Suspension Company, on or about the 29th day of October, 1908, qualified to do business in the State of New Jersey as a non-resident corporation in accordance with the provisions of the General Corporation Act of that State.

Edward V. Hartford, Inc., is in all respects as to rights, duties, debts, obligations and otherwise the same as the Hartford Suspension Company.

P. A. Rose.

Sworn and subscribed to before me this 22nd day of September, 1927.

Harold L. Carmany,
Notary Public, Bronx County.

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Affidavit

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } SS.:

G. E. Alden, being duly sworn according to law, upon his oath deposes and says:

I am the Assistant Treasurer of Edward V. Hartford, Inc. I have occupied this office for approximately four years and was an officer of Edward V. Hartford, Inc., on September 19, 1927, acting as Assistant Secretary.

Edward V. Hartford, Inc., has its principal place of business at Carbon Place and Westside Avenue, in the City of Jersey City. It is at the plant located at this address that the corporation carries on all of its manufacturing operations. My work as an officer of said corporation has required my presence at said plant almost daily.

On September 19, 1927, and for some time prior thereto, I resided at 25 East Stearns Street, Rahway, New Jersey. I have never refused, as an officer of said corporation, to accept service of process on behalf of said corporation.

G. E. ALDEN.

Subscribed and sworn to before me }
this 8th day of December, 1927. }

DAVID STOFFER,
An Atty.-at-Law of N. J.

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Order

HUDSON COUNTY CIRCUIT COURT

NORMAN MELLOR, Plaintiff, *vs.* EDWARD V. HARTFORD, INC., a corporation, Defendant.	In Attachment.

This matter being opened to the court by Arthur T. Vanderbilt, appearing specially for Edward V. Hartford, Inc., and it appearing to the court by the petition of said Edward V. Hartford, Inc., and the affidavits annexed thereto that the said Edward V. Hartford, Inc., at the time the writ of attachment in the above entitled cause was issued, was authorized to do business in the State of New Jersey, and had its principal place of business in this State and also had officers resident within this State; and good cause being shown therefor;

It is on this 8th day of December, 1927, ordered that said Edward V. Hartford, Inc., be and hereby is, granted leave to appear specially in this cause before this court for the purpose of presenting a motion that the writ of attachment issued in the above stated cause be quashed.

FRANK L. CLEARY,
C. C. J. 40

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Rule to Show Cause

HUDSON COUNTY CIRCUIT COURT.

NORMAN MELLOR, Plaintiff, *vs.* EDWARD V. HARTFORD, INC., a corporation, Defendant.		In Attachment.

This matter being opened to the Court by Arthur T. Vanderbilt, appearing specially for Edward V. Hartford, Inc., and it appearing to the Court by the petition of said Edward V. Hartford, Inc., and the affidavits annexed thereto, that the said Edward V. Hartford, Inc., at the time the writ of attachment in the above entitled cause was issued and served, was authorized to do business in the State of New Jersey and had its principal place of business in this State and also had officers resident within this State; and said Edward V. Hartford, Inc., having by order of the Court of even date been granted leave to appear specially for the purpose of moving that the aforementioned writ of attachment be quashed;

It is, on this 8th day of December, 1927, ordered that the plaintiff, Norman Mellor, show cause before this Court at the Hudson County Court House in the City of Jersey City, on the 16th day of December, 1927, at 2 o'clock in the afternoon, or as

soon thereafter as Counsel can be heard, why the writ of attachment in the above stated cause should not be quashed.

It is further ordered that either plaintiff or said Edward V. Hartford, Inc., appearing specially, or both, may take affidavit to be used in the argument.

It is further ordered that all proceedings in this attachment suit be stayed until further order of the Court.

FRANK L. CLEARY,
C. C. J.

Return to Writ

Stipulation

HUDSON COUNTY CIRCUIT COURT.

NORMAN MELLOR, Plaintiff, *vs.* EDWARD .V. HARTFORD, INC., a corporation, Defendant.		In Attachment.

It is hereby stipulated by and between Perkins & Drewen, attorneys of plaintiff, and Arthur T. Vanderbilt, attorney for the defendant, Edward V. Hartford, Inc., appearing specially, that;

1. Hartford Suspension Company has never filed with the Secretary of State of New Jersey an annual report as required by the forty-third section of the general corporation act of New Jersey.

2. That the letter of Joseph F. Fitzpatrick, Secretary of State, of the State of New Jersey, dated December 13, 1927, and the affidavit annexed thereto, be used as evidence in this matter.

PERKINS & DREWEN,
Attorneys for Plaintiff.

ARTHUR T. VANDERBILT,
Attorney for Edward V. Hartford, Inc.,
appearing specially.

Return to Writ
Affidavit

HUDSON COUNTY CIRCUIT COURT.

NORMAN MELLOR, Plaintiff, *vs.* EDWARD V. HARTFORD, INC., a corporation, Defendant.	In Attachment.

STATE OF NEW JERSEY, COUNTY OF HUDSON. } SS.:

Joseph F. S. Fitzpatrick, being duly sworn, according to law, upon his oath deposes and says:

I am the Secretary of State of the State of New Jersey. That the signature to the letter hereto annexed is my true signature and was signed thereto as Secretary of State of the State of New Jersey.

JOSEPH F. FITZPATRICK.

Subscribed and sworn to before me this 22nd day of December, 1927.

JOHN P. NUGENT,
Attorney-at-Law of New Jersey.

Return to Writ

Affidavit.

STATE OF NEW JERSEY,
DEPARTMENT OF STATE.

Trenton, December 13th, 1927.

Messrs. Perkins & Drewen,
Jersey City, N. J.

Gentlemen:

Your letter of the 12th instant has just been received. Upon examination of our records I find that a New York corporation bearing the title Hartford Suspension Company was licensed to transact business in this State October 29th, 1908, and so far as our records show said license is still in force and effect. Said Company never filed a certificate in this office changing its name to Edward V. Hartford, Inc.

The principal office of said Company in this State is located at 150 Bay Street, Jersey City, N. J., and Arthur G. Hoffman is the registered agent.

Very truly yours,

JOSEPH F. FITZPATRICK,
Secretary of State.

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Depositions

HUDSON COUNTY CIRCUIT COURT.

NORMAN MELLOR, Plaintiff, *vs.* EDWARD V. HARTFORD, INC., a corporation, Defendant.	In Attachment. On Rule to Show Cause.

Depositions in the above entitled cause, taken before me, Harry Schirmer, a Supreme Court Examiner of the State of New Jersey, at the office of Messrs. Perkins & Drewen, 921 Bergen Avenue, Jersey City, New Jersey, this twentieth day of December, 1927, at three o'clock in the afternoon, to be used at the argument of the rule to show cause granted in this matter on December 8th, 1927, pursuant to leave granted in said rule.

Appearances:

MESSRS. PERKINS & DREWEN (MR. NUGENT), Attorneys for Plaintiff;

ARTHUR T. VANDERBILT, ESQ. (MR. STOLPER), Attorneys for Edward V. Hartford, Inc., appearing specially, etc.

It is stipulated that the depositions be taken stenographically and the signatures of the witnesses waived.

Return to Writ.

Depositions.

It is stipulated and agreed by and between counsel for the respective parties that the Hartford Suspension Company was incorporated under the Laws of the State of New York on or about November 16th, 1904, and that on October 29, 1908, the said Hartford Suspension Company qualified to do business in the State of New Jersey as a non-resident corporation, in accordance with the provisions of the General Corporation Act of the State of New Jersey.

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

Paul A. Rose, being first duly sworn according to law, on his oath deposes and says:

Direct-examination—by Mr. Stolper:

Q. Mr. Rose, what is your position with Edward V. Hartford, Inc.? A. I am Vice-President.

Q. Have you with you the Minute Book of the Hartford Suspension Company and Edward V. Hartford, Inc.? A. I have the Minute Book up to a certain date, which hasn't the last Minutes since sort of a reorganization took place.

Q. From whom did you receive that Minute Book? A. This was handed to me originally by Arthur Waterman, who was Secretary of the Company.

Q. Can you tell us what those Minutes are, from date to what date? A. Here is the first meeting of incorporators on the 21st day of November, 1904.

Q. And what is the last date in that book? A. October 27th, 1920.

Mr. Stolper: I offer that Minute Book in evidence.

Mr. Nugent: I object to the admission of the Minute Book in evidence.

Subject to the objection the Minute Book was marked Exhibit D-1.

Q. Have you a resolution authorizing the change of name from Hartford Suspension Company to Edward V. Hartford, Inc.? A. Yes, sir.

Q. On what pages is that, Mr. Rose? A. It starts on page 61, continues on page 62, and part of page 63.

Q. Now, Mr. Rose, have you had any conversation with Mr. Mellor?

Mr. Nugent: I object to that.

Q. Have you had any conversations with Mr. Mellor pertaining to his business relationship with the Hartford Suspension Company and Edward V. Hartford, Inc.? A. Yes, sir.

Q. Will you tell us what those conversations were? A. My conversations, prior to July of this year, have been chiefly of a general nature, discussing the business from different angles.

Q. Did you have any conversations with Mr. Mellor concerning his early relationship with the Hartford Suspension Company? A. Many.

Q. And did he tell you whether or not he had steady business relationships with Hartford Suspension Company?

Mr. Nugent: I object to the form of the question. It is absolutely leading.

Q. Well, what were your conversations with Mr. Mellor, concerning his dealings with the Hartford Suspension Company? A. I recall very distinctly that he talked with me once about the Hartford Suspension Company having undertaken to manufacture its own discs or washers; he told me that they, like most other people that ever used his product, thought they could make it themselves, and they tried to make it themselves, and that they failed, and that he again furnished them with his product when they found that they were not successful in manufacturing it.

Q. During your association with Edward V. Hartford, Inc., has Mr. Mellor had business relationships with that Company? A. Yes, sir.

Q. Were you with the company at the time the change of name was effected, Mr. Rose? A. No, sir.

Q. Do you know whether Edward V. Hartford, Inc., is the same corporation as the Hartford Suspension Company, with the exception of the change of name? A. I know that by the records and by talks with everybody concerned with the company.

Mr. Nugent: I ask that the answer be stricken out as absolutely hearsay. He is not in a position to testify to that.

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Depositions.

Q. What records were you referring to, Mr. Rose? A. The Minute Book and financial statements that I found at the office dating back to the days of the Hartford Suspension Company, and many other papers that I don't specifically recall the nature of at the moment.

Mr. Nugent: I object to that.

Q. If you know, how long has Edward V. Hartford, Inc., had its place of business at Carbon Place, Jersey City? A. I can't answer that offhand; I would have to refer to the records.

Q. How long have you been associated with that Company? A. Since March, 1923.

Q. And has the company been at Carbon Place, Jersey City, during the entire period of your association with the company? A. It was there when I first began associations with them.

Q. Will you tell us what Edward V. Hartford, Inc., does at its place of business; I mean in general terms? A. Manufactures the Hartford Shock Absorber and some other products of a similar nature, and conducts its sales offices there.

Q. Has Edward V. Hartford, Inc., any other place of business? A. No other, unless it may have been in a mere attorney's office to qualify with the New York Laws; I am not sure.

Q. But its manufacturing work and sales operations are conducted at Carbon Place, in Jersey City, exclusively? A. Exclusively.

Q. Will you name the other officers of the company? A. Henrietta Hartford is President.

Return to Writ.

Depositions.

Q. Where does she live? A. She lives in New York City. And J. Herbert Semler.

Q. What is his position? A. He is Secretary and Treasurer. There is an assistant also. Do you want that?

Q. Yes. A. G. E. Alden is Assistant Treasurer; and Mr. Kolbert is Assistant Secretary and Superintendent.

No cross examination.

Taken and sworn before me this 20th day of December, 1927.

HARRY SCHIRMER,
Supreme Court Examiner.

Return to Writ.

Depositions.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } SS.:

George E. Alden, being first duly sworn according to law, on his oath deposes and says:

Direct-examination—by Mr. Stolper:

Q. Mr. Alden, what position do you occupy with the Edward V. Hartford, Inc.? A. Assistant Treasurer.

Q. Where do you live? A. 25 East Stearns Street, Rahway, New Jersey.

Q. How long have you been associated with Edward V. Hartford, Inc.? A. Since October, 1913.

Q. Have you been at the plant at Carbon Place, Jersey City, regularly since then? A. Yes, sir.

Q. On September 19, 1927, were you an officer of that company? A. Assistant Treasurer.

Q. And were you at that time a resident of the State of New Jersey? A. Yes, sir.

Q. Mr. Alden, have you ever refused to accept service of process on behalf of Edward V. Hartford, Inc.? A. No, I have not.

Cross-examination—by Mr. Nugent:

Q. Where were you residing on September 19th, 1927? A. 25 East Stearns Street, Rahway, New Jersey.

Q. How long previous to that date had you resided at that address? A. Four years.

Taken and sworn to before me this }
20 day of December, 1927. }

HARRY SCHIRMER,
Supreme Court Examiner.

Return to Writ.

Depositions.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } SS.:

Edward F. Weddle, being first duly sworn according to law, on his oath deposes and says:

Direct-examination—by Mr. Stolper:

Q. Mr. Weddle, what is your position with Edward V. Hartford, Inc.? A. Mechanical engineer.

Q. Were you associated with the Hartford Suspension Company? A. Yes, sir.

Q. In what capacity? A. Why, blue print boy.

Q. When did you become associated with the Hartford Suspension Company? A. In 1913.

Q. At that time, Mr. Weddle, do you know whether the Hartford Suspension Company made purchases of any product from Norman Mellor? A. Not at that time, in 1913.

Q. When did you know of purchases by the Hartford Suspension Company from Mr. Mellor? A. Why, I have seen washers marked with that trade mark.

Q. What trade mark? A. "Arguto".

Q. The trade mark you refer to is Mr. Mellor's trade mark? A. Yes, sir.

Q. During the subsequent period do you know that the Company used that product made by Mr. Mellor? A. Yes, sir.

Q. I show you these papers and ask you whether they refer to the product manufactured by Mr. Mellor, under the trade name of Arguto Oil-Less Bearing Company? A. Why, that washer was manufactured by the company and also by Mr. Mellor.

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Depositions.

Q. Where did these papers come from? A. The files in the Engineers Department.

Q. You were in charge of the files in that Department? A. I am in charge of the files.

Q. Are you in charge of the files now? A. Yes, sir.

Mr. Stolper: I offer these papers in evidence

Mr. Nugent: I object to them.

The tracings, marked D-611 and D-1041, were admitted, subject to the objection, and marked Exhibits D-2 and D-3, respectively.

Q. Do you know about when the company changed its name? A. Why, about 1916.

Q. At that time where was the company's plant located? A. Morgan Street.

Q. Do you know about when it moved to Carbon Place? A. They had two plants; they had one on Morgan Street and one on Bay Street.

Q. When did the company move into its present plant; about when, to the best of your recollection? A. About 1919.

Q. And the company has carried on its operations at the plant at the Carbon Place address since 1919? A. Yes, sir.

Q. Do you know whether the company, under its name of Edward V. Hartford, Inc., during this period, had any business relationships with Mr. Mellor? A. Yes, sir.

Q. They have had, you mean? A. They have had business relationships.

Cross-examination—by Mr. Nugent:

Q. In 1913, what was your position with the Hartford Suspension Company. A. Blue print boy.

Q. You say that "Arguto" is the trade name of Norman Mellor; is that right? A. Well, as far as I know, it is.

Q. Where did you get your information? A. From the trade name on the washers furnished by Mr. Mellor.

Q. Did anybody tell you that it was the trade name of Mr. Mellor? A. "Arguto" this is the trade name.

Q. "Arguto" is the trade name for Mr. Mellor? A. "Arguto" is the trade name for the company that furnishes the washers.

Q. How do know; how did you come into possession of this piece of knowledge? A. By the washers furnished by the Arguto Company, if that is the company.

Q. Then you don't know, as a matter of fact, that "Arguto" is the trade name for Norman Mellor; you have just seen it on the washers, and you assume that is it? A. I assume that is the trade name.

Q. You are in no position to say absolutely that it is his trade name; are you, or aren't you? A. No. I can't swear it, that that is his trade name; other than that is on the washers he furnishes and I assume that is his trade name.

Q. Where was the principal place of business in this State in 1913 of your company? A. Let me see; that was on First Street, between First and Bay Streets.

Q. Are you sure of that? A. It ran through from First to Bay, below Henderson Street.

Q. What number Bay Street, do you know? A. I am not sure; no.

Q. Have you ever seen the resolution, before it was submitted here, of course, authorizing the Hartford Suspension Company to change its name to Edward V. Hartford, Inc.? A. No.

Q. Have you ever seen any certificate from the Secretary of State of the State of New York about the change of name?

Mr. Stolper: I object to that as improper cross-examination.

A. No.

Q. Well then, how do you know that the Hartford Suspension Company is legally authorized to change its name?

Mr. Stolper: I object to that as not proper cross-examination.

A. I don't know.

Q. Didn't you testify on direct-examination, that the Hartford Suspension Company changed its name to Edward V. Hartford, Inc.? A. Why, to the best of my knowledge; I testified; the question was to the best of my knowledge; I know it from printed matter and from information that it was changed.

Q. But you don't know of your own knowledge whether they were authorized to change their

name? A. I said to the best of my knowledge they were authorized; I don't know.

Redirect-examination—by Mr. Stolper:

Q. Mr. Weddle, have you ever seen washers supplied by Mr. Mellor which did not bear the trade mark "Arguto" on them? A. No, I never did.

Q. Do you recall having seen any invoices or letterheads from Mr. Mellor to the Hartford Suspension Company and to Edward V. Hartford, Inc.? A. Any special year?

Q. Well, tell us about when; did you see them when you were associated with the company under the name of Hartford Suspension Company; did you see any invoices or letterheads? A. No.

Q. Since the company has been operating under the name of Edward V. Hartford, Inc., have you seen such invoices or letterheads? A. I have seen them.

Q. On those letterheads, do you know what trade mark appears? A. Why, in the center of it there is "Arguto Oil-Less Bearing Company" that is all.

Recross-examination—by Mr. Nugent:

Q. The same trade mark appears on these products that you received? A. Yes; he has got a ring around "Arguto".

Q. It is exactly the same? A. Yes.

Taken and sworn to before me
this 20th day of December, 1927

HARRY SCHIRMER,
Supreme Court Examiner.

Return to Writ.

Depositions.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } SS.:

Edward O. Kolbert, being first duly sworn according to law, on his oath deposes and says:

Direct-examination—by Mr. Stolper:

Q. Mr. Kolbert, where do you live? A. Irvington, New Jersey.

Q. What is your position with Edward V. Hartford, Inc.? A. Superintendent, and Assistant Secretary.

Q. How long have you been associated with Edward V. Hartford, Inc.? A. Three and a half years.

Q. I show you a summons and complaint entitled in the New Jersey Supreme Court, Hudson County, Norman Mellor, trading as Arguto Oil-Less Bearing Company, plaintiff, vs. Edward V. Hartford, Inc., a corporation, defendant, Perkins & Drewen, Attorneys for Plaintiff, 921 Bergen Avenue, Jersey City, New Jersey, and marked a true copy, John J. Coppinger, Sheriff, and ask you whether that summons and complaint was served upon you? A. Yes, sir.

Q. On what date? A. I can't just place the date but I should judge it is about a week ago.

Q. And you accepted service on behalf of Edward V. Hartford, Inc.? A. Yes, sir.

Mr. Stolper: I offer the summons and complaint in evidence.

Return to Writ.

Depositions.

Summons and complaint admitted, without objection, and marked Exhibit D-4.

No cross-examination.

Taken and sworn to before me this 20th day of December, 1927.

HARRY SCHIRMER,
Supreme Court Examiner

I, Harry Schirmer, a Supreme Court Examiner of the State of New Jersey, do certify that the foregoing is a true and accurate transcript of the depositions in the above-entitled cause, taken by and before me at the time and place hereinbefore mentioned; and I believe said transcript fairly and accurately states the testimony given.

HARRY SCHIRMER,
Supreme Court Examiner

No. 251 May Term, 1928.

NEW JERSEY SUPREME COURT

NORMAN MELLOR, *vs.* EDWARD V. HARTFORD, INC.	}	On Writ of Certiorari

ARGUED MAY TERM, 1928.
DECIDED MAY TERM, 1928.

PERKINS & DREWEN,
For Prosecutor.

ARTHUR T. VANDERBILT,
For Defendant.

Argued before MINTURN, BLACK and CAMPBELL, *J.J.*

PER CURIAM:—

This writ reviews an order made by the Judge of the Hudson Circuit Court, quashing a writ of attachment against the defendant.

The defendant was duly incorporated in the State of New York in 1904, under the name of the Hartford Suspension Company, and under such name it in 1908 filed a certificate in New Jersey to do business there. In 1916 the company filed a certificate in New York State changing its name to Edward V. Hartford, Inc., but omitted to register the change of name in New Jersey.

The prosecutor contends that under circumstances that Edward V. Hartford, Inc., is a corporation not created or recognized in New Jersey nor authorized to do business here, and that conse-

quently it comes within the fourth section of the Attachment Act, and is subject to attachment as a non-resident corporation.

The attachment act originally applied only to non-resident individuals; it was later extended to include corporations. This extension has been construed to the same effect as the original act, i. e. to include only non-resident corporations.

When the corporation, as in the instant case is admitted, has its plant and property in New Jersey, and has resident officers here upon whom process may be served, it is considered a resident de facto corporation and is therefore exempt from attachment. This conclusion leads to an affirmance of the judgment of the Circuit Court.

Return to Writ

Memorandum

HUDSON COUNTY CIRCUIT COURT.

NORMAN MELLOR,
Plaintiff,

vs.

EDWARD V. HARTFORD, INC.,
Defendant.

On Rule to Show Cause.

CLEARY, *J.*

A rule has been granted in this cause requiring the plaintiff to show cause why Writ of Attachment issued on the plaintiff's affidavit should not be dissolved and upon the return thereof the following facts were stipulated in the record:

The Hartford Suspension Company was incorporated under the laws of the State of New York on or about November 16th, 1904, and that on October 29th, 1908, the said Hartford Suspension Company qualified to do business in the State of New Jersey as a non-resident corporation, in accordance with the provisions of the General Corporation Act of the State of New Jersey.

The Hartford Suspension Company has never filed with the Secretary of the State of New Jersey an annual report as required by the 43rd Section of the General Corporation Act of New Jersey.

That the letter of Joseph F. Fitzpatrick, Secretary of the State of New Jersey, dated

Return to Writ.

Memorandum.

December 13th, 1927, and the affidavit therein, be issued as evidence in this matter.

It is further admitted that the Corporation has at all times had its place of business at which it carries on its manufacturing operations in the City of Jersey City. That for the past nine years the plant has been at Carbon Place, Jersey City, New Jersey, and the officers of this corporation have been at this plant daily. That two of the officers have been with the corporation for about four years, during which time they have resided in the State of New Jersey. They were officers of the Company and resided in the State of New Jersey on September 19th, 1927, when the plaintiff sued out his writ of attachment and caused a levy to be made thereunder.

The contention of the plaintiff is that on September 19th, 1927, the date of the issuance of the writ of attachment herein, that this defendant was not a corporation created or recognized as a corporation in this state by the laws of this state within the meaning of Section 4 of the Attachment Act of 1901, and that this being the case a writ of attachment would stand regardless of whether or not the defendant corporation was a resident or non-resident, or whether or not it could be served with a process.

The defendant in opposition to the motion claims:

First, that it is a corporation recognized by the laws of the State of New Jersey within the meaning of Section 4 of the Attachment Act of 1901.

Return to Writ.

Memorandum.

Secondly, that even if this is not so, that it had its place of business as well as officers residing in this state, and that such being the fact, a summons could have been served, and that it would not therefore be subject to a writ of attachment.

It is not necessary to pass upon the first question raised by the defendant, viz:—as to whether or not it was such a corporation as would come within the meaning of Section 4 of the Attachment Act of 1901, because the uncontradicted fact in the case is that at the time of the issuance of the writ of attachment, that the defendant had its offices and place of business in the City of Jersey City, in the State of New Jersey, and that two of its officers were residents of the State of New Jersey.

It was further proven that process could have been served at the place of residence of the officers in this state, and it is further emphasized by the fact that a summons and complaint was served on the said corporation for an action arising out of the same transaction as the one in which this writ of attachment issued.

This being the fact, the case comes within the rule enunciated in *Brand* v. *Auto Service,* and the cases theren cited, 75 N. J. L., 230, that a foreign corporation doing business in this state, and having its officers residing in this state upon whom process may be served is exempt from attachment.

This writ, therefore, will be quashed.

FRANK L. CLEARY.

(Filed Clerk's Office Jan. 27, 1928, Hudson County.)

Return to Writ
Rule to Quash Writ

HUDSON COUNTY CIRCUIT COURT.

NORMAN MELLOR, Plaintiff, *vs.* EDWARD V. HARTFORD, INC., a corporation, Defendant.	In Attachment.

Defendant having obtained a rule to show cause why the writ of attachment issued in this cause on plaintiff's application should not be quashed; and the Court having considered the oral and written arguments of counsel for the respective parties; and the Court having determined that said writ of attachment was improvidently issued;

It is on this 6th day of February, 1928, ordered by the Court that the writ of attachment issued in the above stated cause be quashed, set aside and for nothing holden, that the property attached be released from the lien of said attachment, and that the said plaintiff pay to the defendant its costs to be taxed.

Let the above order be entered in the minutes.

FRANK L. CLEARY,
C. C. J.

On motion of
ARTHUR T. VANDERBILT,
Attorney of Defendant,
Edward V. Hartford, Inc.,
appearing specially.

Reasons

NEW JERSEY SUPREME COURT.

	NORMAN MELLOR, trading as Arguto Oilless Bearing Company, Prosecutor, *vs.* EDWARD V. HARTFORD, INC., Defendant.	On Certiorari.

The said prosecutor, by his attorneys, comes and prays that the order of the Hudson County Circuit Court made on the 6th day of February, 1928, in an action therein pending, wherein Norman Mellor (designated in this action as prosecutor) is plaintiff and Edward V. Hartford, Inc., is defendant, quashing the writ of attachment issued out of the said Hudson County Circuit Court on the 19th day of September, 1927, at the suit of Norman Mellor against the rights and credits, moneys and effects, goods and chattels, lands and tenements, of Edward V. Hartford, Inc., may be set aside, reversed and for nothing holden, for the following reasons:

1. The defendant, Edward V. Hartford, Inc., was not, on September 19th, 1927, the date of the issuance of the writ of attachment against it at the suit of Norman Mellor, a corporation, either created or recognized as a corporation of this State by the laws of this State within the meaning of Section 4 of the act of the legislature of this State, entitled "An Act for the relief of creditors against

absent and absconding debtors," (P. L. 1901), and was and is therefore subject to process by attachment.

2. The said corporation was neither created by, nor recognized as a corporation of, this State by the laws of this State on September 19th, 1927, the date of the issuance of the writ of attachment, nor at any other time, and for that reason was subject to process by attachment; and the order of the Hudson County Circuit Court, quashing the writ of attachment issued at the suit of plaintiff (prosecutor) against defendant, was and is contrary to the law of this State.

3. The defendant corporation is not a corporation either created or recognized as a corporation of this State by the laws of this State, and the finding of the Hudson County Circuit Court, that as the said corporation had its officers and place of business in this state and officers resident herein upon whom service of summons and complaint could have been made, the said writ of attachment was illegal and improvidently issued, is error and contrary to the law of this State.

4. The Hudson County Circuit Court committed legal error in its finding that the defendant corporation had offices and a place of business in this State and officers resident herein; and in its conclusion that defendant was therefore not subject to process by attachment.

5. The Hudson County Circuit Court ordered the writ of attachment quashed without having found or determined that the defendant was a corporation either created or recognized as a corpora-

tion of this State, by the laws of this State; and such order of the Hudson County Circuit Court is therefore illegal and void.

6. The Hudson County Circuit Court committed legal error in ruling that as the defendant corporation had offices and a place of business in this State and officers resident herein, it was not subject to process by attachment; and in ruling that it was therefore not necessary to determine whether or not the defendant corporation was a corporation either created or recognized as a corporation of this State by the laws of this State.

7. The order of the Hudson County Circuit Court, made on the 6th day of February, 1928, in the cause therein pending, wherein this prosecutor was plaintiff, and the said Edward V. Hartford, Inc., was defendant, which order purports to quash the writ of attachment issued out of the said Court on the 19th day of September, 1927, was and is, in divers other respects, oppressive, erroneous and illegal, and should be reversed, set aside and for nothing holden.

PERKINS & DREWEN,
Attorneys for Prosecutor.

Stipulation

NEW JERSEY SUPREME COURT.

NORMAN MELLOR, trading as Arguto Oilless Bearing Company, Prosecutor, *vs.* EDWARD V. HARTFORD, INC., a corporation, Defendant.	On Certiorari.

It is hereby stipulated and agreed between Perkins & Drewen, Esquires, attorneys for the prosecutor, and Arthur T. Vanderbilt, Esquire, attorney for the defendant, that:

On or about February 3, 1916, the Hartford Suspension Company was duly authorized by the Secretary of State of the State of New York to change its name to Edward V. Hartford, Inc.

That the Hartford Suspension Company had not previous to, or on September 19th, 1927, filed a certificate of change of its name to Edward V. Hartford, Inc., with the Secretary of State of this State.

PERKINS & DREWEN,
Attorneys of Prosecutor.

ARTHUR T. VANDERBILT,
Attorney of Defendant.

New Jersey Court of Errors and Appeals

OCTOBER TERM, 1928.

NORMAN MELLOR, trading as Arguto Oilless Bearing Company, Prosecutor-Appellant, *vs.* EDWARD V. HARTFORD, INC., a corporation, Respondent-Appellee.	ON APPEAL FROM SUPREME COURT.

BRIEF FOR PROSECUTOR-APPELLANT.

In this case a writ of attachment was issued out of the Hudson Circuit Court at the suit of Norman Mellor, prosecutor, against Edward V. Hartford, Inc., a corporation (hereafter called the defendant).

The writ was sued out under Section 4 of the Attachment Act. And the affidavit upon which it was based (Case, page 7) sets forth that:

> "Edward V. Hartford, Inc. is a corporation not created or recognized as a corporation of New Jersey by the laws of the State of New Jersey."

The affidavit further sets forth that Edward V. Hartford, Inc., owes to the plaintiff the sum of $15,900.92.

Upon the issuance of the writ a levy was made upon property of the defendant corporation, located in Jersey City.

All the proceedings necessary to the entry of final judgment in attachment had been completed when, as judgment was about to be entered and after a lapse of some three months following the issuance of the writ, the defendant obtained a rule to show cause why the writ should not be quashed.

The rule was issued upon the defendant's representations that:

> Hartford Suspension Company was organized as a corporation under the laws of the State of New York in 1904;
>
> That Hartford Suspension Company became authorized, as a foreign corporation, to transact business in the State of New Jersey in 1908;
>
> That in 1916 the Hartford Suspension Company changed its name to *Edward V. Hartford, Inc.*, filing the certificate of such change with the Secretary of State at Albany;
>
> That Hartford Suspension Company and *Edward V. Hartford, Inc.* (the defendant in attachment) are and have always been one and the same corporate entity; its plant and property being located in the City of Jersey City, County of Hudson, and one or more of its officers being resident in this State.

Testimony under the rule was taken, and after argument the Circuit Court quashed the writ.

The decision of the Circuit Court was taken by certiorari to the Supreme Court and there affirmed.

From the decision of the Supreme Court this appeal is taken.

POINT I.

There is no legal proof of the identity of defendant with any other corporation. The statements of the initial affidavit as to non-creation and non-recognition of defendant by the laws of this State remain undenied. And though defendant may conduct business and own property in this State, it does so without legislative sanction; and therefore, under our law, it is subject to attachment.

It is of first importance that the issue here be clearly defined. If it were conceded that everything contained in the affidavit upon which the writ was issued is true, the validity of the writ itself could not be challenged.

Looking, therefore, to the affidavit we find the essential averment to be that:

> "Edward V. Hartford, Inc. is a corporation not created or recognized as a corporation of New Jersey by the laws of the State of New Jersey."

That the defendant was *created* by the laws of this State no one attempts to maintain. The point is confined to the recognition by the State of New Jersey of the defendant in attachment as a *corporation of New Jersey.*

Now, either the defendant's proof shows that the defendant is a corporation "recognized as a corporation of this State by the laws of this State", or it fails to do so. Before the defendant could properly quash the writ it had to show by adequate proof that the statements of the affidavit upon which the writ was issued were false in fact. And the vital statement in the affidavit is that concerning the non-recognition of the de-

fendant as a "corporation of this State by the laws of this State".

Now what proof does the defendant bring in its effort to establish that it *is* "recognized as a corporation of this State by the laws of this State"?

It seeks to show that a corporation, known as *Hartford Suspension Company* was created under the laws of the State of New York in 1904; that this corporation in 1908 obtained a license to do business in the State of New Jersey; that in 1916 the corporation changed its name to that borne by the defendant; that while *no certificate of change of name was ever filed in this State*, the defendant, nevertheless, is the same corporate entity as that which was licensed here in 1908.

It is respectfully submitted that after a reading of all the proof adduced by the defendant no one can say that it is established that Edward V. Hartford, Inc. is identical with any other corporate entity under any other name whatever.

It must not be overlooked that there is in this case a very reasonable and natural presumption. The presumption is that two corporate titles represent two corporations. Hartford Suspension Company is the title of a foreign corporation that was licensed to do business in this State twenty years ago. Edward V. Hartford, Inc. (the defendant) is a corporate title unknown in this State, and no corporation so designated has ever been licensed or recognized here as a corporation of New Jersey.

Even the ordinary case of establishing a positive fact, to say nothing of overcoming a presumption, requires valid legal evidence. No hearsay and nothing incompetent as legal proof will suffice. The burden of establishing its affirmative contention was and is on the defendant. And if its contention was based on actual fact, proof of

it must have been, in the nature of things, readily available. (The testimony appears in the printed case, pages 21-34). But what does the defendant show?

The witness Rose (Case, page 22) offers nothing but his hearsay—gossip in the company. He admits that he knows nothing of it himself. Corporate records which must be available, if they exist, to prove the fact in point were not produced. The minute book of the defendant is offered and reference is made to a resolution said to have appeared therein concerning a change of name. *But that the defendant is a corporation identical with the corporation that was licensed to do business in this State in 1908 is not shown.* This witness, upon being asked if he has with him "the minute book of the Hartford Suspension Company and Edward V. Hartford, Inc." produces a book and states that it "was handed to me originally by Arthur Waterman, who was Secretary of the Company". This book, called a minute book, was in no way authenticated as such—either by showing its use or its custody—; nor was it shown to be any official record of the defendant corporation or of Hartford Suspension Company. It was not so much as shown that the witness was its custodian. But, on the contrary, the witness stated that he got it from one "Waterman, Secretary of the Company". Even the source and custody of this so-called minute book is nothing more than hearsay. And this book, unauthenticated, a thing the witness had had handed to him by someone else, is the best that defendant has to rely upon for the establishment of the defendant corporation as a corporation identical with the Hartford Suspension Company. And to bolster up this testimony the defendant went so far with this witness Rose as to introduce evidence of conversations between him and the plaintiff in attachment relating to

the plaintiff's dealings with the Hartford Suspension Company, a circumstance which in no way could even suggest the identity of the Hartford Suspension Company and Edward V. Hartford, Inc., as one and the same corporation.

The next witness is Alden (Case, page 27). He gave no testimony whatever as to corporate identity.

The next witness is Weddle (Case, page 28), and his testimony is interesting and significant. Here was a man who had been, so he states, "associated with the Hartford Suspension Company". He was a "blue print boy" with that company, and at the time of his testimony he is "in charge of the files of Edward V. Hartford, Inc." (the defendant). He, too, refers to a change of name but admits that he does not know; that such testimony is given only "to the best of my knowledge * * * I know it from printed matter and from information that it was changed" (Case, page 31, lines 30-40). From this witness there came no legal testimony even in the simple matter of change of name, to say nothing of the establishment of corporate identity.

The only other witness (Kolbert) made no reference whatever to the identity of the corporation.

So we say that we have here no evidence to upset the affidavit, upon which the writ was issued, in its averment that the defendant company is not "recognized as a corporation of this State by the laws of this State".

But it is proper now to consider the theory of defendant's "proof". The defendant's point was to show that Edward V. Hartford, Inc. (the defendant) is a corporation "recognized as a corporation of this State by the laws of this State" by showing that it is the same corporate entity as the Hartford Suspension Company which was li-

censed in New Jersey as a foreign corporation in 1908. But since it is admitted that no credential relating to any change of corporate name has ever been filed in this State, in compliance with our statute, wherewith to establish here the identity of Edward V. Hartford, Inc., with any corporation licensed or recognized in this State (Case, page 41, lines 20-30), it should be observed that even though the defendant *had* established its identity with the Hartford Suspension Company (which is denied), we still have to deal with the effect upon defendant's corporate status in this State of this failure to comply with our statute.

The position of the Circuit Court, and approved by the Supreme Court, is this: Though the defendant is not a corporation created by this State nor recognized by the laws of this State, nevertheless, it has a plant and property here, officers resident here, and is, therefore, not subject to attachment. *It is respectfully submitted that such is contrary to the pronounced law of New Jersey.*

Research on this question has shown the problem to be, in examining precedents, one of detecting and excluding cases which are apparently but not really in point. Decisions dealing with valid service of process, corporate domicile and residence, jurisdiction over person and property, judgments *in rem* and *in personam* are very much confused, and cited and quoted indiscriminately as authorities on this question, which is precisely one having to do, not with the questions mentioned, but with the validity of attachment against a foreign corporation under the authority of our Attachment Act.

The question now before the Court has been dealt with precisely in but one case in New Jersey that has come to our notice, and that is the case of *Goldmark* vs. *Magnolia Metal Company* (discussed later).

The case relied on in the decision of the Circuit Court (*Brand* vs. *Auto Service Company,* 75 N. J. L. 230) has no bearing on the point whatever, and the precedents cited in the brief of defendant in the Supreme Court are not only not in point, but are entirely dicta. To clear the ground then, it is well to point out real distinctions in cases that are apparently similar, and which are quoted in the opinion of the Circuit Court and which appear in the brief of defendant in the Supreme Court, and will in all likelihood reappear here.

Chief Justice Beasley, in *Perrine* vs. *Evans,* 35 N. J. L. 221, deals exclusively with the problem of residence and not with the status of a corporation not recognized by the laws of this State.

Thorne vs. *Central Railroad Company,* 26 N. J. L. 121, deals with the laying of the venue in a suit against a railroad corporation where the principal office is located in one county and its operations extend into other counties.

In the case of *Groel* vs. *United Electric Company,* 69 N. J. Eq. 397, Vice-Chancellor Garrison deals—so far as the case is at all pertinent here—with the objection of a corporation to being subjected to the Court's jurisdiction by reason of service upon an agent formerly designated in this State. The scope and nature of the issue in that case can best be shown by the concluding paragraph of the Vice-Chancellor on the point:

> "I therefore conclude that the statute applies to the case at bar, and that, for this cause of action, which arose in New Jersey while the defendant corporation was transacting business here under a license obtained under the statute, the court can enforce its jurisdiction by process served upon the designated agent of the defendant corporation, whether the corporation is actually engaged in business here at the time of service or not."

The case has nothing to do with the present issue.

A case relied on by the defendant in the Supreme Court, apparently with confidence, is *Phillipsburg Bank* vs. *Lackawanna Railroad Company*, 27 N. J. L. 206. The opinion is quoted from at some length. But all that the case decides is

> "An attachment will not lie against a foreign corporation owning property in this State and transacting business here *under legislative authority.*"

And in that case the corporation had express legislative authority in which Chief Justice Green declared the State of New Jersey had shown its *recognition* of the corporation. Upon this finding was based the Court's conclusion in the case.

But the use that is made by the defendant of this Phillipsburg Bank case lies in the last paragraph of the opinion (Case, *supra*, page 208). This paragraph is as follows:

> "But admitting that the defendants are not a corporation recognized by the laws of this state, and are therefore liable to attachment as a foreign corporation, the writ of attachment was improvidently issued, because at the time of the issuing and serving of the writ the defendants had an office and a place of business within this state, and might have been sued by summons. It appears, by the evidence in the cause, that at the time of the service of the attachment the defendants owned property, and were carrying on business in this state *under the sanction of our laws;* that they had an office and place of business at Elizabeth; that the secretary of the company resided there; that the general superintendent also resided there, and that the president and treasurer of the company were frequently in the state attending to the business of the company. Under these cir-

> cumstances, there could have been no difficulty in effecting the actual service of process of summons upon the defendants.''

Now while this language is somewhat extensive in its implications it remains *dictum* just the same. And not only is it *dictum,* but the effect of it has been expressly and sharply constricted in the opinion of the same Court, in the Goldmark case (*supra*), pronounced 32 years later by Chief Justice Depue.

The Circuit Court relied on the case of *Brand* vs. *Auto Service Company* (*supra*). That case affords no authority whatever for the finding of the Court. The points are most unlike those here, and by no stretch of precedent can anything like an analogy be forced. In the Brand case the plaintiff made an affidavit for the purpose of obtaining a writ of attachment against the property of the corporation. But the contents of the affidavit did not deal with the defendant as a corporation but simply as a non-resident defendant. When the motion to quash came on the defendant sought to justify his affidavit even against a corporation by showing that the corporation was a non-resident corporation, and by drawing a parallel between a non-resident corporation and a non-resident natural person. Whatever value the Brand case has inures to the present plaintiff and not to the defendant, for the case holds that residence or non-residence is *not the test in the case of an attachment against a corporation.* But rather, that the test is whether or not the corporation falls within the provisions of Section 4 of the Attachment Act, that is, is it a corporation ''created or recognized as a corporation of this State by the laws of this State?'' The present defendant is trying to do what the plaintiff in the Brand case attempted. He is endeavoring to make the

question of a corporation's liability to attachment one of residence or non-residence rather than one of corporate status under the laws and authority of this State.

We have observed that in the defendant's brief in the Supreme Court dicta from various cases was freely used so that its effect was to obscure the limit and scope of the decisions themselves.

There is but one case in this State that squarely deals with this proposition, and it is the Goldmark case, above mentioned (65 N. J. L., page 341). The case was argued before the Chief Justice and Justices Ludlow, Gummere and Fort. There the Morris County Circuit Court certified to the Supreme Court a number of questions for an advisory opinion. One of the questions was this:

> "Will an attachment lie against a foreign corporation owning property in New Jersey and transacting business here, said business not being transacted under legislative authority of this State?

The answer to that question, given by the Supreme Court, was that a writ of attachment under such circumstances *would* lie against the corporation. And before arriving at this conclusion the Supreme Court, in the opinion of the Chief Justice, deals carefully with earlier pronouncements on the subject. Specifically the Court deals with the two cases of Perrine *vs.* Evans and Phillipsburg Bank *vs.* Lackawanna Railroad, and it pronounces upon their authority that

> "the true doctrine is to place a corporation not created or recognized by the laws of this State on the footing of a non-resident individual, exempt from writ of foreign attachment only when it does business in this State and has officers residing in this State upon whom process can be served at their homes."

And then the Court deals with the qualification to which "the foregoing principle is subject". A qualification that becomes on this appeal a thing precisely in point. The Court said:

> "The foregoing principle is subject to a qualification arising out of legislation which prohibits foreign corporations transacting business in this state except on compliance with certain conditions imposed. This legislation is comprised in sections 97, 98 and 100 of the General Corporation act. Pamph. L. 1896, p. 307; Dill. Mun. Corp. 97, 99; Delaware and Hudson Canal Co. *vs.* Mahlenbrock, 34 Vroom 281. That statute applies to all foreign corporations except banking, insurance, ferry and railroad corporations. * * * This legislation prescribes the conditions under which the foreign corporations comprised within the statute shall be allowed to transact business in this state. Such corporations not having complied with the statute are doing business within the state under a legislative interdict."

It is plain then that under this test of recognition, as defined by Chief Justice Depue, the defendant is not exempt from attachment, notwithstanding the fact that plant, property and business may be located here.

POINT II.

Even though the defendant had shown its corporate identity with the corporation that was licensed in 1908 to do business in New Jersey, there would still be the admitted failures to comply with the legislative requirements of this State and which would remove any immunity from attachment.

It is admitted in the case that the Hartford Suspension Company (the corporation licensed in New Jersey in 1908) *has never filed with the Secretary of State here an annual report as required by the 43rd Section of our General Corporation Act* (Case, page 36, line 32).

And it is also admitted that there was *never filed any certificate in New Jersey relating to any change of name of the corporation licensed in 1908* (Case, pages 20, 36-A, lines 40 &c.).

For the full appreciation of their effect, these two delinquencies should be considered together. Here we have a state of affairs in which a corporation filed credentials with the Secretary of State in 1908, for the purpose of obtaining a license to do business in New Jersey. At that time its office, as designated in the credentials filed, was at 150 Bay Street, Jersey City (Case, page 20).

Not once, during the whole period from the obtaining of the license in 1908 until the issuance of the writ of attachment in 1927, did the corporation thus licensed comply with the provisions of the 43rd Section of our Corporation Act.

This section requires the filing *annually,* within thirty days after the time appointed for holding the annual election of directors, a report authenticated by the signatures of the president and one other officer, or by any two directors of the com-

pany, stating particulars of the nature, extent and organization of the corporate business, which the legislature has prescribed in detail.

In the period covered by this delinquency—twenty years—it is fair to assume that many changes occurred in the makeup of the corporation, which, under the law, the corporation was required to make known to the designated official of the State of New Jersey. We know, for one thing, that the principal office of the company in this state was changed and also that there was a reorganization (Case, page 22, line 33). And when this uniform failure to comply with the statute in a vital particular applying to foreign corporations is taken together with the failure to file any credential in this state relating to the change of the corporate name, *how can it be said but that there is a complete evasion of those legislative requirements which are designed, as Chief Justice Depue says in the Goldmark case, for the protection of the creditors of foreign corporations?*

The result of these violations of our law is that we have here a foreign corporation doing business in New Jersey, the nature, extent and organization of which has never been recorded in New Jersey since the license to do business was obtained, *and the very name of which corporation is, so far as official cognizance of the corporate entity is concerned, altogether unknown.*

How can it be said that such a corporation is a corporation "recognized as a corporation of this state, by the laws of this state"? How can the laws of this state be said to recognize a foreign corporation *whose very violation of such laws has been so inveterate and of such character as to make it impossible for the appropriate officers of the state over a period of twenty years to know anything whatever of or concerning the corporation, not even its name?*

The logic of this situation requires us to forget what occurred in 1908, when the license to do business here was obtained, and that we consider the circumstances prevailing twenty years later, when the writ of attachment was issued. It was then that the habitual and continued violation of the laws of this state by a foreign corporation had resulted in a situation in which it had become impossible for creditors, for whose protection these laws were made, to know the character of the corporation with which they were dealing, or to be able even to identify it by its true corporate title.

The judgment of the Supreme Court, affirming the Hudson Circuit, should be reversed.

Respectfully submitted,

PERKINS & DREWEN,
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Pandick Press, Inc., 22 Thames St., New York, U. S. A.

(6357)

New Jersey Court of Errors and Appeal

NORMAN MELLOR, Prosecutor-Appellant, *vs.* EDWARD V. HARTFORD, INC., a corporation, Defendant-Appellee.	On Certiorari. On Appeal from Supreme Court.

BRIEF FOR DEFENDANT-APPELLANT.

Edward V. Hartford, Inc., was organized under the laws of the State of New York in 1904, under the name of Hartford Suspension Company. In 1908 this corporation, under the name of Hartford Suspension Company, was authorized to do business in the State of New Jersey (S. C., p. 20). In 1916 the Hartford Suspension Company by resolution of its board of directors changed its name to Edward V. Hartford, Inc., and duly filed a certificate of such change of name with the Secretary of State at Albany, New York (S. C., p. 41). The corporation remained the same in all other respects (S. C., p. 24, l. 32 to p. 25, l. 10).

From the very inception of the corporation, its principal place of business at which it has carried on its manufacturing operations has always been in the city of Jersey City (S. C., p. 29, ll. 20-30). For the past nine years the plant of the corporation has been at Carbon Place, Jersey City (S. C., p. 29, ll. 30-33), and officers of the company have been at this plant daily (S. C., p. 27 and p. 33). Two of the officers, Mr. Alden and Mr. Colbert

have been with the corporation for about four years, during which time they have resided within the State of New Jersey. They were officers of the company and residents of this State on September 19, 1927, when plaintiff sued out his writ of attachment and caused a levy to be made thereunder. These facts are proved without contradiction in the depositions taken pursuant to leave of the Court (S. C., p. 27 and p. 33).

These depositions also establish the fact that plaintiff in attachment dealt with the corporation under the name of Hartford Suspension Company and continued his business relations with the corporation after its name was changed to Edward V. Hartford, Inc. Mr. Rose, Vice-President of Edward V. Hartford, Inc., testified that Mr. Mellor in several conversations told him that the old Hartford Suspension Company had tried to make its own disks or washers and that it eventually returned to the use of his product; also that Mr. Mellor carried on business transactions with Edward V. Hartford, Inc., during the past four years of Mr. Rose's association with the Company (S. C., p. 23, l. 25 to p. 24, l. 30). Mr. Weddle testified that as early as 1913 he saw washers at the Hartford Suspension Company's plant in Jersey City bearing the Arguto trade mark used by Mr. Mellor, and also that he has seen invoices at the plant from Mr. Mellor, trading as Arguto Oilless Bearing Co., bearing his particular trade mark (S. C., p. 28, l. 10, to p. 29, l. 40).

ARGUMENT.

POINT I.

The decision of the Supreme Court is correct in holding that inasmuch as defendant had its plant in this state at the time of the levy of the writ of attachment, and had officers of the corporation at the plant daily, two of whom were residents of this State, upon whom process could be served, the property of the Corporation was not subject to attachment.

Both the Circuit and Supreme Courts found it unnecessary to decide whether defendant corporation was "recognized under the laws of this state", preferring to rest their decisions on the ground that attachment will not lie against the property of a foreign corporation readily amenable to service within this state. Defendant urges, for its first point, that irrespective of whether it was authorized to do business within this state and accordingly recognized under our law, the rulings of the Circuit and Supreme Courts, that under the facts of this case attachment was an improper mode of procedure, was correct. Appellant rests his contention that the action of the courts below was improper on the provision of the attachment act allowing attachment against "Corporations not created or recognized as corporations of this state by the laws of this state" (1 C. S. 136, section 4).

But in their construction of this provision the courts of New Jersey have been uniform in holding that attachement will not lie against the property of foreign corporations readily amenable to service of process. And viewed in the light of the history and purpose of the statute it is clear that

no other conclusion could reasonably have been reached.

At common law the proceeding of attachment was unknown. To overcome the evils accompanying a practice whereby a debtor could avoid process and flaunt his property in the face of creditors, attachment statutes were passed early both in England and in this state. But these statutes were limited to their purpose; the remedy extended no further than to cure the evil. As succintly stated by Mr. Justice Depue in *Baldwin* v. *Flagg, 43 N. J. L. 495, 497 (Sup. Ct., 1881)*:

> "Process of attachment for the collection of a debt is an extraordinary writ and not an ordinary writ. The attachment act authorizes resort to such a proceeding where the debtor resides out of this state. But the use of this writ when the debtor is within the reach of the court is wholly inconsistent with the spirit and design of the statute."

To the same effect see *City Bank* v. *Merritt, 13 N. J. L. 131 (Sup. Ct. 1832); Branson* v. *Shinn, 13 N. J. L. 250 (Sup. Ct. 1832)*.

Until 1839 the statute had no provision allowing attachment against corporations, although there was no reason why they should be differentiated from individuals. To cure this defect a statute was passed in 1839 providing that "a writ of attachment may be issued against * * * any corporation * * * not created or recognized by the laws of this state." (*P. L. 1839, p. 63*). This provision has been substantially re-enacted as section 4 of the attachment act of 1901 (*1 C. S., p. 136*). The purpose of the foregoing provision was obviously to provide a remedy in situations where there was no existing remedy, i. e. where the corporation was not subject to process within this state. Appellant in attempting to give a broader connota-

tion to the phrase "corporations not recognized as corporations of this state by the laws of this state", evidently ignores the title of the attachment act to which the foregoing provision is necessarily subject.

That this cannot be done is well settled in this state. This question has been ably covered by Chancellor Pitney speaking for the Court of Errors and Appeals in *Jordan* v. *Moore, 82 N. J. L. 552, 554 (E & A 1911)*:

> "The title of the act (as amended by *Pamph. L. 1903, p. 70*) is, 'An act for the relief of creditors against absent, fraudulent and absconding debtors'. In view of the provision of our constitution (Article 4, section 7, *placitum* 47), that 'Every law shall embrace but one object and that shall be expressed in the title', it is entirely well established that the title forms a limitation upon the enacting clauses, and any construction of the latter that would give them a scope beyond the object expressed in the title is for this reason to be rejected. *Hendrickson* v. *Fries, 16 Vroom 555, 563; Dobbins* v. *Northampton, 21 id. 496, 499; Cooper* v. *Springer 36 id. 594, 597.* The manifest purpose of the legislation respecting absent and absconding debtors is to enforce the obligations of defendants who are not within the reach of the ordinary process of our courts, by subjecting their property that is within the jurisdiction to the payment thereof."

Accordingly, it is well settled that a debtor who may be served personally and at his place of abode within this State is not "absent" within the meaning of the attachment act.

City Bank v. *Merritt, 13 N. J. L. 131 (Sup. Ct. 1832)*;
Stafford v. *Mills, 57 N. J. L. 570 (Sup. Ct. 1895)*.

Nor can a corporation be said to be "absent" if it may be served with process at its plant, or upon one of its officers, or at the home of an officer within this State. The lower Court correctly stated that the same test is to be applied in determining whether a defendant's property may be attached whether the defendant is a corporation or an individual. Appellant in his brief attempts to distinguish many cases holding in favor of defendant's contention upon the thought that those cases treated the question as one of "non-residence" as distinguished from "recognition".

But defendant has shown that in the light of the history and purpose of the act as clearly enunciated in its title the proper test is whether the corporation was absent or "non-resident" within the meaning of the adjudicated cases. And as stated by the Supreme Court in its determination of the case *sub judice* all the precedents in New Jersey support this view (Opinion, S. C., p. 36, ll. 8-20).

Phillipsburg Bank v. *Lackawanna Railroad Company, 27 N. J. L. 206 (Sup. Ct. 1858)*, is one of the earliest cases deciding when attachment will lie against the property of a foreign corporation. The defendant corporation in that case had been permitted by the legislature of New Jersey to own land in this State. Chief Justice Green refrained from deciding the case on the ground that such permission constituted a "recognition" of the corporation, but preferred to rest the Court's decision on the principle that where a writ of summons could be served the use of the writ of attachment was improper. At page 208, the Court said:

> "But admitting that the defendants are not a corporation recognized by the laws of this state, and are therefore liable to attachment as a foreign corporation, the writ of attach-

ment was *improvidently issued,* because at the time of the issuing and serving of the writ the defendants had an office and place of business within this state, and might have been sued by summons. It appears, by the evidence in the cause, that at the time of the service of the attachment the defendants owned property, and were carrying on business in this state under the sanction of our laws; that they had an office and place of business at Elizabeth; that the secretary of the company resided there; that the general superintendent also resided there, and that the president and treasurer of the company were frequently in the state attending to the business of the company. Under these circumstances, *there could have been no difficulty in effecting the actual service of process of summons upon the defendants. The use of the attachment was therefore illegal. Branson* v. *Shin, 1 Green 250; City Bank* v. *Merritt, 1 Green 131.*

"The attachment must be quashed."

In *Perrine* v. *Evans, 35 N. J. L. 221, 224 (Sup. Ct. 1871)*, Chief Justice Beasley, speaking of the Phillipsburg case said:—

> "It was adjudged in that case that this railroad company, although recognized to a certain extent by the laws of this state, was a foreign corporation, and therefore, in that respect liable to attachment as a non-resident. But it appearing that this company carried on business and had an office in this state and that the secretary and superintendent resided here, it was further held that these circumstances exempted them from liability to this process. This result was clearly correct on the rule as above stated. *A corporation that does business in this state, and whose officers, upon whom process can be served at their homes, reside here, may be reasonably said to be a resident of this state.* The situation of

such a foreign corporation is merely similar to a person having an established abode in this state, whose legal domicil is elsewhere. In the case reported process could at any time be served at the abode of the officers of the corporation resident here. The case goes no further than to lay down the correct doctrine that when a summons can be served at the dwelling house a foreign attachment cannot be sanctioned. This is precisely the same ground on which all the other cases rest.''

From the foregoing, it is evident that the Chief Justice approved the test laid down in the Phillipsburg case, i. e., whether service could have been made personally and at the abode of an officer of the defendant corporation.

In *Brand* v. *Auto Service Co., 75 N. J. L. 230, 233* (*Sup. Ct. 1907*), the Court said:—

> ''Commenting upon the authorities, Chief Justice Depue, in *Goldmark* v. *Magnolia Metal Co.* (*65 N. J. L. 341*) says: 'Following the principle laid down in Perrine *v.* Evans and the opinion of Chief Justice Beasley in that case, the true doctrine is to place a corporation not created or recognized by the laws of this state on the footing of a non-resident individual, exempt from writ of foreign attachment only when it does business in this state and has officers residing in this state upon whom process can be served at their homes'. From these authorities we conclude that a corporation is a resident, irrespective of its domicile, when it does business in this state and its officers reside here upon whom process may be served at their homes.''

Appellant relies on the *Goldmark* v. *Magnolia Metal Co., 65 N. J. L. 341* (*Sup. Ct. 1900*), in support of his contention. In that case the following question was asked of the Supreme Court:

"Will an attachment lie against a foreign corporation owning property in New Jersey and transacting business here, said business not being transacted under legislative authority of this state?"

The Court properly replied in the affirmative, since there was nothing to indicate that service could be made upon an officer and at his abode within this state. It is quite clear that the property of a foreign corporation having no officer residing in New Jersey is the proper subject of attachment. That the *Goldmark* case has never been understood to hold what the appellant contends it holds is apparent from its citation with approval by Mr. Justice Trenchard in the *Brand* case quoted above.

It is respectfully submitted, therefore, that the action of the Supreme Court was proper in holding that a writ of attachment may not lawfully issue against a foreign corporation where service of summons can be made personally and at the abode of a resident officer. In the instant case it was clearly established that the summons could have been served on either of two officers of the defendant corporation resident in this state, and such service could have been effected at the plant of the company located in Jersey City, at their homes, or personally. The appellant was guilty of an abuse of process and the writ was, therefore, properly quashed.

POINT II.

The writ of attachment was issued without warrant since competent evidence disclosed that defendant, Edward V. Hartford, Inc., was recognized as a corporation of this State by the laws of this State.

The respective parties have agreed that a corporation known as the Hartford Suspension Company was recognized as a foreign corporation by the State of New Jersey in 1908 (Judge Cleary's Memorandum, S. C., p. 33). Competent evidence introduced by the defendant clearly displayed that Edward V. Hartford, Inc., is precisely the same corporate entity as the Hartford Suspension Company. The Vice-President of defendant, Edward V. Hartford, Inc., testified from the records of the corporation that Edward V. Hartford, Inc., was the same corporation as the Hartford Suspension Company, except for the change in name (S. C., p. 22). The corporate minute book containing a resolution authorizing a change of name from Hartford Suspension Company to Edward V. Hartford, Inc., was properly received in evidence. It is well settled that corporate minute books are admissible to show corporate resolutions.

3 Cook, Corporations, Section 714;
North River Meadow Company v. *Shrewsbury Church, 22 N. J. L. 424 (Sup. Ct. 1850);*
Fleming v. *Reed, 77 N. J. L. 563, 566 (E. & A. 1908).*

It is equally well established that any officer may supply the necessary proof as to the authen-

ticity of a record. *4 Fletcher, Cyclopedia Corporations, 4062, 4063.* Admittedly the secretary was the proper custodian of the records and the witness Rose, Vice-President of defendant corporation, naturally received them from him (S. C., p. 22, ll. 30-37). Under such circumstances the minute books were presumptively genuine and properly received in evidence. *Schubert Lodge* v. *Schubert Kranken Untersturzen Verein, 56 N. J. E. 78 (Ch. 1897).* At page 79 Vice-Chancellor Pitney said:

> "Objection was made in argument to the sufficiency of the proof of the printed books of the constitution and laws of the order. They were proven to be genuine by the grand secretary of the state lodge who received them in due course of business from the secretary of the supreme lodge for guidance and use by the grand and subordinate lodges of New Jersey. The presumption of their genuineness and accuracy results from their origin and custody."

Mr. Weddle, a mechanical engineer employed by the defendant corporation both before and after its change of name, testified that the change of name took place in 1916 (S. C., p. 29, ll. 20-22). The parties have agreed that on or about February 3, 1916, the Hartford Suspension Company was duly authorized by the Secretary of State of the State of New York to change its name to Edward V. Hartford, Inc. (S. C., p. 41). From the foregoing evidence it is apparent that Edward V. Hartford, Inc., is the same legal entity as Hartford Suspension Company, except for the change in name.

The question, therefore, arises whether the subsequent change of name to Edward V. Hartford, Inc., without filing a certificate of such change of

name in the state of New Jersey, deprives the corporate entity of the recognition or the authorization to do business in this state which it had previously obtained.

Precisely this question was raised in *St. Louis Expanded Metal Fireproofing Co.* v. *Beilharz, 88 S. W. 512 (Texas), 1905.* Appellant's original corporate name was the St. Louis Ornamental Iron Wire & Expanded Metal Company. It was organized under the laws of Missouri. While operating under that name, it filed its articles of incorporation with the Secretary of State of the state of Texas and was granted a permit to do business for a period of ten years. Sometime thereafter it changed its corporate name to the St. Louis Expanded Metal Fireproofing Company. It brought a suit in Texas under its new name, and the defendant raised the objection that it could not sue because it did not have a permit to do business in Texas. But the Court said (p. 514):

> "Clearly, we think, under these circumstances the permit granted to appellant under its old name inured to its benefit under the new name, and authorized it to transact business in Texas in its corporate capacity during the period covered in the performance of the contract with appellee Beilharz."

A similar question was raised in *Cable Co.* v. *Rathgeber, 113 N. W. 88 (S. D.), 1907,* in which the Court said (p. 89):

> "It affirmatively appearing from the recitals of the proposed amended answer that the Chicago Cottage Organ Company, of which Charles N. Harris, residing in Aberdeen, was duly appointed resident agent, was changed to the Cable Company, but has always been the same artificial being that ap-

pointed him and subsequently brought this action in its amended corporate name, it is clear that the alteration did not necessitate the appointment of another agent to accept service of process or upon whom service of process may be had in any action in which the corporation is made a party. Constructive notice of the appointment of an agent, the filing of the articles and the existence of the corporate entity was duly given, and is perpetuated by the public records, and respondent could not avoid the consequences of failing to respond to process accepted by or duly served upon Mr. Harris, on the ground that its name had been changed since his appointment.''

The following authorities also support the principle that a change of name has no effect on the corporate entity where a substantial identity is preserved:

A change of name and of officers does not change the identity of the company:

Carlon v. *City Savings Bank (1908), 82 Neb. 582;*
Trinity Church v. *Hall, 22 Conn. 125.*

Similarly, the identity and rights of a municipal corporation are not affected by a change of its name:

Gerard v. *Phila., 7 Wall. 1.*

A change of name by statute does not affect liability of stockholders to the corporate entity:

So. Carolina Co. v. *Price (1903), 67 S. C. 207.*

A judgment in the new name which a corporation has taken by proceedings under a statute is

valid, although such proceedings to change the name were not regular:

King v. *Ilwaco, 1 Wash. St. 127;*
O'Donnell v. *Johns Co., 76 Tex. 362.*

A creditor of a corporation before a change of name by the corporation, may *after* such change sue it by its new name, on proof of its substantial identity:

Wright v. *Hoen, 105 Va. 327 (1906).*

An assignment by a corporation in a name which it has adopted but not recorded as required by statute is good:

Woodrough v. *Witte, 89 Wisc. 537;*
Smith v. *Tallassee, 30 Ala. 650, 664;*
So. School Dist. v. *Blakeslee, 13 Conn. 227.*

A re-organization, with change of name under a statute, does not affect fixed or running obligations:

Hyatt v. *McMahon, 25 Barb. 457.*

A changed name under a statute is no defense against old liability:

Wilbite v. *Convent, 117 Ky. 251 (1904).*

In the New Jersey case of *Alexander* v. *Berney, 28 N. J. Eq. 90,* it was held that a corporation may acquire a name by usage, as by retaining its original name after a change thereof was authorized by an act of the legislature. The Court held valid an adjudication in bankruptcy made against the corporation by the name acquired by usage. So in the case at bar, it may

be said that the corporate entity known as the Hartford Suspension Company, which was authorized to do business in this State, acquired by usage the name Edward V. Hartford, Inc., and that proceedings against the corporation under its acquired name would have been valid and binding upon the corporation.

It follows from these authorities that the corporation under the name of Edward V. Hartford, Inc., was legally responsible for claims against the corporate entity under its old name of Hartford Suspension Company. It follows also that if prosecutor, Norman Mellor, had begun a suit against Edward V. Hartford, Inc., by serving process on the registered agent named in the Hartford Suspension Company certificate filed in Trenton, or upon the Secretary of State, it would have been valid service. Edward V. Hartford, Inc., could in no way have contested the validity of the service of such process, for the certificate of change of name filed at Albany, conclusively establishes the identity of the corporate entity under the name of Hartford Suspension Company and the corporate entity now known as Edward V. Hartford, Inc.

It is respectfully submitted that a plaintiff in attachment against a foreign corporation assumes the burden of proving that the corporate entity against which he is proceeding is not in fact recognized by the laws of this State. If it is shown, as in this case, that the corporation did comply with the statute and obtained authority to do business in this State, it is clear that the attachment act exempts such a corporation from liability under attachment. It is not the name which is important, but the identity of the corporate entity.

Moreover, Edward V. Hartford, Inc., could not claim that the authority of the agent, appointed

for the service of process under the Hartford Suspension Company certificate, had been withdrawn. An attempt to defeat the service of process in such manner was made in *Groel* v. *United Electric Company of New Jersey, 69 N. J. Eq. 397,* but Vice-Chancellor Garrison said at page 427:

> "But a reading of the cases heretofore cited upon the question of the appointment of agencies under statutes such as we are considering carries conviction that this legal agency is not to be governed by the rules relating to contractual agency, and that the corporation may not defeat the very purpose of the act by discharging the agent
>
> "It is not necessary to enlarge upon the fatuity of legislation which would permit a foreign corporation to come within the state and transact business upon condition that it name an agency upon whom process should be served, and leave it within the power of the corporation to prevent service by discharging the agent and revoking his authority whenever it pleased, leaving suitors within the state powerless to bring the corporation into court."

Under a stipulation between the respective parties (S. C., p. 18), a letter written by Joseph F. S. Fitzpatrick, Secretary of State, is in evidence, and this letter states that the Hartford Suspension Company is still regarded by the Secretary of State's office as in good standing (S. C., p. 20).

It is submitted, therefore, that since the Hartford Suspension Company is recognized as a corporation of this state under the laws of this state and since defendant Edward V. Hartford, Inc., is the same legal entity, defendant Edward V. Hartford, Inc., must be deemed to be recognized under the laws of New Jersey, and accordingly the writ of attachment was properly quashed.

POINT III.

The plaintiff, as a creditor of defendant, Edward V. Hartford, Inc., is not in a position to complain of the failure of the latter to comply with prescribed legislative requirements of this State.

Should this Court decide in accordance with the views of both Courts below that the writ of attachment was improvidently issued because defendant was readily amenable to service in New Jersey, then, of course, it is immaterial whether or not defendant complied with legislative requirements. Appellant contends, however, that the failure of defendant to file a certificate of change of name and an annual report furnishes a basis for attachment. But this contention if upheld would upset the well settled rule in New Jersey that the Attorney General is the only proper person to avail himself of the failure of a corporation to file prescribed papers. The Attorney General may institute proceedings for a penalty or forfeiture, but that remedy is exclusive; a creditor may not claim an additional right because of defendant's default, and accordingly may not cause a writ of attachment to issue if resort to such procedure could not otherwise be had.

An argument similar to that made by appellant in this case was disposed of by the highest court of Texas in *St. Louis Expanded Metal Fireproofing Co.* v. *Beilharz, 88 S. W., 512.* After deciding that the change of name did not deprive the corporation of the recognition it had obtained under its old name, the court turned to an objection that the corporation had not paid taxes.

> "But it is contended that this permit was forfeited as provided by law on account of

appellant's failure to pay the required franchise tax. This contention is not sustained by the record. There is no evidence in contemplation of law found in the record, of such forfeiture. We presume the evidence relied upon for the establishment of the forfeiture claimed is the certificate of the Secretary of State, Curl, to the effect that the permit which was granted appellant under its corporate name of St. Louis Ornamental Iron Wire & Expanded Metal Company was forfeited in May, 1896, for nonpayment of franchise taxes for the year ending May 1, 1897 and said corporation has not revived said permit by payment of back taxes and penalties, etc. (Article 749, C. 17, of the Revised Statutes of 1895)." (After quoting certain portions of the Texas Statutes, the court considers their effect) * * * "In neither of these statutes, nor any other, so far as we are advised, is it provided that the certificate of the Secretary of State declaring that the right of a corporation to do business in this state has been forfeited shall be evidence of such forfeiture. In the absence of such provisions, it must be held that such certificate is no evidence of that fact. It will be observed that the articles quoted expressly provide that a certified copy of a permit to do business by the Secretary of State shall be evidence of compliance with the law requiring such permit, and also that a certificate of the Secretary of State that the corporation has failed to file in his office its articles of incorporation shall be evidence that such corporation has in no particular complied with the law. The Legislature having thus restricted the use of the certificate of the Secretary of State as evidence of matters pertaining to his office, the courts are not at liberty to extend the application of such statute to matters not expressly authorized thereby."

Similarly, our Corporation Act contemplates a certain form of legal procedure by the Secretary

of State or by the Attorney General to deprive a corporation of its recognition, and cannot avail appellant in this attachment action.

It is, moreover, a settled rule that a creditor cannot make a collateral attack on the status of a corporation with which he has dealt, based upon non-compliance with statutes governing the filing of returns, payment of taxes, etc. See *Millikan* v. *Security Trust Co., 118 N. E. 568.* The principle of estoppel is in such cases applied also in favor of foreign corporations. See *Corpus Juris, Volume 14A, Sec. 4044, p. 1333; also U. S. Vinegar Co.* v. *Schlegel, 143 N. Y. 537, at 543.*

It is submitted, therefore, that the defendant's failure to meet certain legislative requirements is no basis for the issuance of a writ of attachment.

POINT IV.

Appellant having dealt with the corporate entity under its old name and later under its new name, and having been cognizant of the fact that the company had its principal place of business within this State, the issuance of the writ of attachment was improvident and an abuse of process which the Court had power to control.

From earliest times it was held by our courts that they had power to "superintend and control the writ by keeping it within the design and intent of the act". *Branson* v. *Shin, 13 N. J. L. 250.* In this case Justice Ford indicated that the attachment act could be turned into "an engine of great oppression and abuse" if it were used improperly against a person "to put a stop to his business, hurt his credit, and embarrass the estate."

Appellant cannot claim that he could not, on searching the records at Trenton, find any authorization to Edward V. Hartford, Inc., to do business in this state. He knew that this corporate entity had previously done business under the name Hartford Suspension Company (S. C., p. 23, l. 30, to 24, l. 30), and if he had looked up the corporation under the latter name he would have discovered, as the letter from the Secretary of State proves (S. C., p. 20), that the corporation is authorized to do business in this State and is still in good standing. He could then have started a suit by service of process on the designated agent or on the Secretary of State, and it was an abuse of the Court's process to sue out a writ of attachment under the circumstances.

We contend also that the writ was improvidently issued because Edward V. Hartford, Inc., at the time had officers at its place of business in this state on whom process could have been served without difficulty. This is established by the fact that three or four days after the rule to show cause why the writ of attachment should not be quashed was obtained, appellant started a suit on the same cause of action on which he had sued out his writ of attachment, and obtained service on an officer of the corporation at its plant in Jersey City (S. C., p. 33; Judge Cleary's memorandum, p. 363, ll. 1-21). Appellant knew before causing the writ of attachment to be levied that the corporation had for years had its plant in Hudson County, that officers were at the plant daily, and that ordinary summons could, therefore, be served.

In the light of these facts, the principle quoted above from *Branson* v. *Shin, 13 N. J. L. 250,* is applicable, and the Circuit Court had the power to superintend and control the writ.

CONCLUSION.

It is respectfully submitted that the judgment of the Supreme Court sustaining the order of the Hudson County Circuit Court quashing the writ of attachment should be affirmed, with costs to the defendant-appellee.

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(6447)

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