

NEW JERSEY
Court of Errors and Appeals.

BETWEEN

CHARLES W. KIMBALL ET AL.,

APPELLANTS,

and

JOHN LEE ET AL.,

RESPONDENTS.

} On Bill, &c.

STATEMENT OF THE CASE.

The North River Construction Company, a corporation of this State, was by this court declared to be insolvent under the act "concerning corporations," and Ashbel Green, Esq., was appointed receiver, January 12th, 1884.

By an order of the Supreme Court of New York, made two days afterwards, he was appointed receiver in that State in aid of his receivership here. Among the claims against the corporation was one of large amount in favor of John Lee, for money due upon a contract between him

and the corporation. Lee sued the company in the Supreme Court of New York for his claim, and in November, 1884, recovered judgment for \$52,304.89. On or about the eighteenth of December, following, he made a general assignment (with preferences) in New York for the benefit of his creditors. His assignee was Thomas B. Rutan. The assets of the construction company consisted almost entirely of the stock and bonds of the New York, West Shore and Buffalo Railway Company. The railroad of that company had at the time of the appointment of the receiver of the construction company, just been opened to Buffalo, but it was in an unfinished condition and the company was in financial embarrassment. In June, 1885, a suit for foreclosure of mortgage was begun against the railway company and receivers were appointed thereunder. Lee and others put in that suit, by their answers, their claims to mechanics' liens against the property of the railway company for their work, &c., under their contract with the construction company. About 200 suits were begun to which the receiver of the construction company was a party. In *July, 1884*, the receiver apprehending total loss of the West Shore bonds and stock held by him, in order to prevent it, entered into and promoted a scheme of reorganization of the West Shore company. To that end he called a meeting of the creditors of the construction company, and they, with but few and comparatively insignificant exceptions, agreed to authorize him to make a compromise, one part of which was that they should accept 50 per cent. of the face value of their respective claims in full thereof, in cash, to be paid *before January 5th, 1886*. He obtained the consent of the stockholders

of the construction company also, and he then effected an arrangement with the mortgage bondholders of the railway company, by which the decree in the foreclosure suit was entered, the property sold and a new railroad corporation organized. He thus obtained securities from which he raised the money necessary to carry out the compromise and pay the creditors of his company in accordance therewith. Among the creditors who consented were *Lee, and Rutan, his assignee*. The latter did so under special permission obtained from the county court of Kings county, New York, by order made September 12th, 1885, by which he was authorized to accept fifty per cent. on the amount found due Lee on his claim against the railway company and the construction company, amounting to \$48,638.33 (the amount at which it was allowed by the receiver) and interest, and to execute the necessary papers to carry the compromise into effect—such payment to be made to the assignee, on or before *January 5th, 1886*. This order was made upon formal petition and upon due *proof of notice to Lee's creditors*. The receiver, very soon after the making of that order, made the agreement of compromise with Lee and Rutan. It appears that an agreement dated New York, *July 13th, 1885*, was signed by the creditors of the construction company, by which they agreed with the receiver and with each other, that they would accept in full payment and satisfaction of their claims against that company and the railway company on that account, 50 per cent. of the face value thereof, as allowed by the receiver, provided notice were given *on or before October 1st, 1885*, that the same would be paid in cash, on or before the *5th of January, 1886*; and they fur-

ther thereby agreed to sign all necessary papers to carry out the agreement. *On the 26th of September, 1885*, the receiver, at his office in the city of New York, gave to the assignee a written notice signed by himself, as receiver, that pursuant to the agreement, 50 per cent. of the face value of the claim of John Lee, without interest, would be paid to the assignee in cash on or before the *fifth of January, 1886*. The assignee has demanded payment of the money, but the receiver had declined to pay because of the stay granted in this cause. On or about *October 27th, 1885*, a writ of attachment was issued out of the Supreme Court of this State at the suit of the Wallis Iron Works, a corporation of this State, against Lee as a non-resident debtor, and by permission of this court it was executed by attaching the money in the receiver's hands for the Lee claim. The attachment was levied upon it as a claim of the said John Lee, defendant, against the North River Construction Company in the hands of Ashbel Green, receiver of the said North River Construction Company, amounting to \$48,638.38. The claim of the Wallis Iron Works was, when the attachment was issued, held by the complainant, Charles W. Kimball (it was assigned to him September 22d, 1884,) and the writ of attachment, though issued in the name of the Wallis Iron Works as plaintiff, was to his use. The bill is filed by Mr. Kimball, who is a resident of this State, and Elias T. Day, of Jersey City, also a creditor of Lee (he has applied and come in under the attachment), suing for themselves and such other creditors as may apply under the attachment; and its object is to obtain an adjudication that the assignment from Lee to Rutan is, by

reason of its giving preferences, invalid as against Lee's creditors residing here, and to get a decree that the receiver pay over the money to the auditor in the attachment. On the filing of the bill an order to show cause why the receiver should not be restrained from paying over the money was granted with an *ad interim* stay.

The whole question presented to this court is, whether the Chancellor should have prohibited the receiver from paying any money to Lee or his assignee, in pursuance of the indebtedness of the North River Construction Company to said Lee.

The order appealed from is found on page 55 of the case. It simply decided that complainants were not entitled to the injunction prayed for by their said bill, and orders that the rule to show cause be discharged. The rule to show cause, page 41, orders the receiver to show cause why he should not be restrained from paying any money to John Lee or Thomas B. Rutan. The portion of the prayer referred to in the order is in these words:

"And that pending the suit, and until the further order of this court in the premises, said Green, as such receiver, may be prohibited by an order of this court from paying any amount that may become payable upon or by reason of said indebtedness, to any person or persons other than said Gilmore, as such auditor."

POINTS OF RESPONDENTS.

POINT I.

The appeal should be dismissed. The appellant is not

aggrieved by the order of February 5th, 1886. This order from which the appeal is taken did not involve the merits of the case, was not an order concluding the rights of either party, but simply an order discharging a rule to show cause why the receiver, pending the suit and until the further order of the court, should not be prohibited from paying any amount that might become payable by reason of the indebtedness of an insolvent corporation to one of its creditors. ~~It was unreasonable and unnecessary to seek such an order.~~

The statute (*Rev. 125, sec. 114,*) provides that all persons aggrieved by any order or decree of the Court of Chancery, may appeal from the same or any part thereof to the Court of Errors and Appeals.

If the case shows that the order was simply the exercise of the discretionary power of the Chancellor in the management of an insolvent corporation, that no rights of the parties are settled by the order, this court will not exercise a supervisory power.

To justify this court in an interference with an interlocutory order of the Chancellor, it is requisite that the decision of the inferior court should be final, and that it has not proceeded from matter *resting in its discretion*.

The decision must have *settled definitely in the suit or proceeding the right of the parties*. See *Eames v. Stiles, 2 Vroom, 491*.

There was no allegation that the construction company had not assets sufficient to pay attaching creditors; their claims were not 30 per cent. of the amount due Lee, and not 50 per cent. of the sum actually paid. There was no allegation that receiver or his bond was irresponsible.

If the receiver had created an obligation to pay by a legal compromise with a large number of creditors, which would have been invalidated by his refusal to comply with the terms thereof, it was within the discretionary power of the Chancellor to refuse to prohibit the payment at the time specified for the purpose of protecting the estate; and such refusal does not necessarily conclude the claim of an attaching creditor. If the attachment is legal the order does not affect the creditor's rights; he will not be aggrieved by the payment. The question of his right to be paid out of the assets comes up on final hearing.

See prayer of bill, page 7.

Rule to show cause, page 41.

Order appealed from, dated February 5th, 1886, page 55.

POINT II.

At the time the writ of attachment was issued, viz., October 27th, 1885, Lee was no longer a creditor of the company. There was nothing in the hands of the receiver which could be attached as a right or credit of his. The obligation of the receiver to pay to the person entitled was changed to an obligation to pay the assignee.

See answer of Judge Green, 34, 35, 36.

The Chancellor says, page 53:

“The assignment to Rutan was on December 18th, six months after the appointment of the receiver. The order of the New York court authorizing the assignee to make the settlement, was made September 12th, 1885, and the settlement was made very shortly thereafter. The attach-

ment was not issued until October 27th, 1885, about a month after the receiver had made the settlement with the assignee."

The Chancellor thus concisely states the case:

"The receiver made the settlement with the assignee without any manner of opposition or objection on the part of the creditors of Lee domiciled here. And that settlement was made in conjunction with other creditors of the construction company and as part of a plan into which they and other persons interested in the railroad and construction companies entered for their mutual benefit, and by which the means were raised by the receiver to pay the amount which the creditors agreed with each other and with him that they would accept in satisfaction of their claims. Not only did the attaching creditor delay issuing the attachment until after the agreement of settlement had been made by the assignee under the sanction of a court, which sanction was specially obtained on notice to the creditors of Lee, but the attachment was not issued until after the receiver had notified the assignee that he would pay him the amount agreed upon between them and had so bound himself to pay it to the assignee. The agreement between the receiver and the assignee must be regarded in equity as a novation of the debt. It was an agreement that in consideration of the assignee's consent to accept the compromise, the receiver would pay him the amount agreed upon. Thenceforward the obligation was a substantially new one between the receiver and the assignee, the consideration of it being the compromise of the old debt, the title to which was, at the time of the compromise, in the assignee."

POINT III.

If it be true as insisted upon by appellants that the assignment was void as to New Jersey creditors and the contract to pay 50 per cent. to him was also void, still the compromise was good as between Lee and the receiver. If Lee had not assigned and his right had not been attached, why was not the contract between the receiver and the creditors (of whom Lee was one) a binding obligation on both parties? Why should the Chancellor prohibit his officer from completing it by paying the 50 per cent.? If under the law of New York Lee passes it to his assignee, it is not from him that appellants should seek payment. This cannot be violating our policy as to preference of creditors. Again, it is only by virtue of the compromise that the indebtedness to Lee was ascertained. Lee's claim on the construction company, as well as that company's claim on West Shore road, was but a *quantum meruit* on an uncompleted contract, involving an uncertain legal status.

See answer of Green, page 32 et seq. ; also, 34, 35.

The compromise of both claims *created the debt*, and was the notice which induced the attachment. Yet the order asked for was one which prohibited the completion of that compromise.

See Green's answer on page 28 and page 36.

The answer says :

“This defendant submits to this honorable court that the complainants have been guilty of laches in the premises, and that in equity they should not now be permitted to interfere and break up a compromise which has resulted in benefit to themselves as well as to the other claimants upon

the fund in the custody of this defendant as receiver ; that if the said compromise agreement had not been made, there would have been no fund from which the said complainants could have been paid anything and that the fund in the hands of this defendant as receiver, is the result of such compromise and should be faithfully applied towards carrying it out."

POINT IV.

It does not appear from the bill that appellants will not receive their claims in full from the assignee. The claim is stated in Class No. 2 of the Schedule as \$10,576.83.

See page 23 and page 20, § 3.

The payment to the assignee by receiver, which the Chancellor by the order refused to prohibit, and which is therefore presumed to be made (as it was in fact), is \$24,319.10.

The appellant is seeking to prohibit the payment to the assignee and yet he appears as a creditor claiming to be paid out of that fund. He seeks to destroy a compromise from which all are to be paid, and without which there would be nothing to pay any one ; the only valuable asset of the company. He claims at the same time to be paid both by the receiver and the assignee, both of whom are in funds, only by reason of the compromise to which his debtor was a party, and which was completed before appellant took any steps to assert his claim. The positions are inconsistent with each other.

POINT V.

The appellants were in laches. It was too late for them to claim the debt as a Jersey asset and attach it in the hands of the receiver after he had paid it by order of the court in New York *on notice to Lee's creditors*. There was a novation of the contract with the consent of appellants. No attachment was issued for more than a month after the compromise and until after the receiver had given the required notice which *bound him to pay the assignee on the day named*. The Chancellor states the case on this point in concluding his opinion, as follows :

“No claim of the complainants, based on the policy of our law, can be of any avail against it now. They have waited too long. They have waited until the receiver has become liable by special agreement to pay the assignee. Before that time the liability was different. It was an obligation to pay the claim or the dividends thereon to the person or persons entitled thereto, and the title of the assignee might have been questioned. But now the obligation has been changed by fair and wholly legitimate means into an obligation on the part of the receiver to pay the assignee. The complainants are barred by their laches and the receiver is, under the circumstances, entitled to the protection of the court against the garnishment. The order to show cause will be discharged, with costs.”

In proceedings in the same court subsequently commenced, the laches was expressly admitted by the Wallis Iron Works and an effort was made by it to hold Kimball responsible for the loss, if any should occur. The following extract from the Chancellor's opinion in the case of The

First National Bank of Jersey City and the Wallis Iron Works *v.* Charles W. Kimball, upon order to show cause, &c., filed on the ninth day of November, 1886, illustrates the inconsistency of the position taken by the appellants, and is an admission of their own laches.

“The bill states that the iron company and Kimball might, with proper diligence, have collected the entire claim against Lee (which was a debt due him from the North River Construction Company, an insolvent corporation of this State,) but that by their negligence they failed to do so.”

JOHN P. STOCKTON,
Solicitor and of Counsel with Respondents.

New Jersey Court of Errors & Appeals.

Between—

CHARLES W. KIMBALL, et als,
Appellants,

and

JOHN LEE, et als,
Respondents.

} On bill, &c.

APPELLANTS' BRIEF.

On the bill filed in this cause and the affidavits thereto attached, an order was made enjoining the defendant Ashbel Green, from paying over moneys to the defendant Rutan, and requiring him to show cause why an injunction should not be issued pending the suit.

On the return day of the order to show cause, and after hearing counsel, the Chancellor denied the motion for an injunction and vacated the stay. From his order to that effect this appeal is taken.

FACTS.

Prior to January, 1884, one John Lee, a resident of Brooklyn, New York, was engaged in the performance of a contract entered into between him and the North River Construction Company, a corporation of this State, (p. 45.) At the same time The Wallis Iron

Works, another corporation of this State had undertaken part of the work included in the Lee contract under a sub-contract between it and Lee (p. 46). Before either contract had been completed, and in the month of January, 1884, the North River Construction Company became insolvent, and the defendant, Ashbel Green, was appointed by the Court of Chancery, of this State, Receiver of its property (p. 28). This appointment was afterwards supplemented by his appointment by the Supreme Court of New York, as an ancillary Receiver in that State.

At this time there was due to Lee from the Construction Company, on account of his said contract with it, the sum of \$52,304.89, for which sum Lee had duly recovered judgment in New York against said Company, in November, 1884 (p. 47). At the same time there was due from Lee to the Wallis Iron Works, upon the contract between them, the sum of \$12,500 (p. 10).

On December 18, 1884, Lee made a general assignment, pursuant to the laws of New York, to Thomas B. Rutan, for the benefit of his creditors, in and by which assignment (p. 19), certain of his creditors were preferred over others, the assignment directing that the claims of these preferred creditors should be fully paid before any payment was made to others. During all this time, the North River Construction Company had large claims against the New York, West Shore & Buffalo Railroad Company; and proceedings having been taken to foreclose a mortgage upon the property of said Railroad Company, a Receiver of it was appointed by the proper Courts in New York (p. 32). Thereupon, for the purpose of securing as much as possible of the debt due to the Construction Company, its Receiver, Green, entered into a scheme for the re-organization of the Railroad Company, by the means of which he was to receive

a large amount of securities in satisfaction of the Construction Company's claims (p. 34.) Before doing this, however, he had called a meeting of the creditors of the Construction Company, at which both Lee and his assignee, Rutan, were present, and it had been agreed by substantially all the creditors of the Construction Company, to accept 50 per cent. in satisfaction of their respective claims against it (pp. 34 and 35.) It is not alleged nor does it anywhere appear, that the settlement with the Railroad Company was dependent in any way upon the settlement by the Construction Company with its creditors, nor does it appear that the amount received by Green under his settlement with the Railroad Company was not sufficient to pay the claims against the Construction Company in full.

Although the Receiver Green has answered in the suit, his answer is silent upon these important points. But it does appear affirmatively (pp. 34 and 35) that Green did have in his hands sufficient to pay the 50 per cent. at which claims against the Construction Company had been compromised.

It was part of the agreement with the creditors of the Construction Company that the 50 per cent. they had agreed to accept should be paid to them on or before January 5, 1886 (p. 34.) On September 22, 1884, The Wallis Iron Works duly assigned to Charles W. Kimball, one of the complainants, the indebtedness due to it from Lee to the extent of \$11,975, and at the same time Lee was further indebted to The Wallis Iron Works in the sum of \$531.95 and to Elias T. Day in the sum of \$6291.15. (pp. 10, 11 and 12).

On September 12, 1885, an application was made by Rutan, as Assignee of Lee, in the proper Court of New York (of which application the creditors in that State had notice) for permission to accept 50 cents on the dollar from Green in full settlement of Rutan's claim against the Construction Company,

and such permission was granted by that Court, (p. 40.) The only notice that the New Jersey creditors had of this application was through a service by mail, (p. 40) and it does not appear that any of them were present in Court when the motion was made by the Assignee. Pursuant to the authority thus granted to the Assignee, the amount of the indebtedness due from the Construction Company to Lee was fixed at \$48,638.38 and the Receiver, Green, thereupon agreed to pay to Rutan as Assignee of Lee 50 per cent. of that amount, which sum Rutan agreed to accept in full satisfaction, provided he was notified before October 1, 1885, that such amount would be paid on or before January 5, 1886 (p. 43.)

To none of these negotiations were the complainants here in any way parties, nor did they have any notice thereof other than the notice mailed pursuant to the order of the New York Court. The notice from Green was given to Rutan as Assignee of Lee September 26, 1885 (page 44.) It does not appear that the settlements made by Green with the creditors of the Construction Company were in any sense dependent one upon the other; on the other hand the documents in the case and the answer of Green, (pp. 34, 35) all show that each settlement was intended to, and did stand by itself; and its acceptance or rejection was in no wise dependent upon a similar settlement being made with any other creditor.

On October 27, 1885, an action was commenced by Kimball, suing in the name of The Wallis Iron Works, against Lee, in the Supreme Court of this State to recover said balance of some \$11,000, and an attachment was issued, which attachment was levied by permission of the Court of Chancery, upon the moneys in Green's hands applicable to the payment of the indebtedness due to Lee from the Construction Company, (pp. 18, 17, 15.) The Wallis Iron Works and Day have regularly become applying

creditors under the attachment, and Gilmore has been regularly appointed auditor in attachment.

The Receiver having refused to recognize the auditor appointed under that attachment and having paid no attention to his demand for the moneys paid to Lee, this suit was commenced to have the assignment from Lee to Rutan adjudged to be fraudulent and void in law as against the complainants, residents of this State and creditors of Lee so far as this sum of money, as assets of Lee in this State, was concerned. The injunction above referred to was obtained to prevent the Receiver Green from paying over this sum to the Assignee Rutan and thus placing it beyond the jurisdiction of the Courts of this State. Upon these facts we insist that the complainants were entitled to their injunctions *penden'e lite* for the following reasons.

POINT I. *This Court has authority to entertain the Appeal, to reverse the order of the Chancellor and to direct that an injunction issue.*

Black vs. Delaware Canal Co., 9 C. E.
Green, page 455.

POINT II. *The complainants, by their attachment, obtained such a lien upon the credits of Lee in this State (being the amount due him from Green, Receiver), as to enable them to maintain a bill to remove obstacles fraudulently interposed, to the enforcement of their lien.*

The attachment act provides that from the time of the levy of the attachment, the goods and chattels,

rights and credits, lands and tenements of the defendant in attachment shall be *bound* by the writ. No more expressive word can be used to create a lien than this one; it is the same word used in the statute relating to executions. The writ *binds* the whole property to respond to the judgment, because in the case of non-residence, the plaintiff would otherwise be remediless. That it creates a lien in the strict technical sense of the term, is plain from the fact that no transfer of attached property after the levy of the attachment, even though made by one non-resident to another and for a full consideration, would be recognized by our Courts.

This proposition is supported by a long and unbroken line of decisions in this State.

Hunt vs. Field, 1 Stockton, 36.

Williams vs. Michenor, 3 Stockton, 520.

Robert vs. Hodges, 1 C. E. Green, 299.

Curry v. Glass, 10 C. E. Green, 108.

Daves vs. Deane, 11 C. E. Green, 436.

Smith vs. Muirhead, 7 Stewart, 4.

POINT III. *The claim of Lee against the Construction Company or Green its Receiver, was a right or credit of Lee's within the meaning of the attachment act, having its situs in the State of New Jersey.*

On the threshold of the discussion of this point it would be well to consider that, as between Lee and Green the Receiver, there was no debt. The Construction Company had been indebted to Lee but there was no contract or other obligation by which the Receiver became indebted to him.

As the officer of the Court he had simply received into his possession certain assets which had belonged to the Construction Company. When they

reached his hands they ceased to be the property of the Construction Company and became the property of the persons for whom he acted as trustee, namely, the creditors of the Construction Company.

The status of the fund was that Green held the legal title, was indebted to nobody by reason thereof, and that Lee and the other creditors of the Construction Company were entitled—not as creditors of Green, but as *cestui que trust*—to receive certain portions of it.

The portion to which each one was entitled was then the equitable property of the creditor and it was in the hands of Green in the State of New Jersey, and, therefore, was an asset of the creditor in the State.

But viewing this as a debt from the Receiver to Lee, can it be said that it had its *situs* at the domicile of Lee in New York?

It is true that, for certain purposes, usually purposes of taxation, by a legal fiction, a chose in action is said to have its *situs* at the domicile of the creditor, but it is a legal *fiction* only, employed in certain specified cases, and yields where ever the necessities of the case or the ends of justice require.

A very cursory consideration of the matter will show that, as a matter of fact, the debt has its *situs* at the domicile of the debtor.

Lee and his assignee claim that it had no *situs* in New Jersey, yet it would be impossible for either of them to collect the debt without coming to New Jersey; in other words they could not find the asset where it *was* and could only reach it by going to where it was *not*. Their insistent leads to a palpable absurdity.

Again, if Lee had died, his administrators in New York, the place of his domicile, would have been utterly unable to reach or collect this asset which Lee claims has its *situs* in New York. He might have

searched the State of New York in vain, he could only find it by coming to New Jersey, where respondent claims it was not and never had been. Even then he could not have realized this New York asset until he had qualified himself under the laws of New Jersey to recover it.

This presents another absurdity of the respondent's position—that an officer in the State where the asset *was* could not reach it, and that, to enable him to collect it, it would be necessary for him to become an officer of the State where the property *was not*.

But not only is the respondent's position on this point an absurdity, but its effect, if sustained by the Court, a virtual repeal of the law of garnishment, which has so long existed in all parts of the world.

The statutes of this State permit an attachment to issue against the rights and credits of a non-resident upon the ground of such non-residence. A debt to a New York creditor by a resident of New Jersey is either in New Jersey or New York, it cannot have any other *situs*; and it cannot be in both places at the same time.

Of course it will be conceded, that the laws of New Jersey and the processes of its Courts can have no extra territorial effect. It is impossible by any process of the Courts of this State to reach property located beyond its border.

If, then, the residence of the creditor draws to itself all his credits, the very fact that made the attachment possible, namely the non-residence of the creditor whose property is to be attached, would remove the property itself from the reach of the attachment, and we would have the anomalous condition, that, in spite of the statute, a credit of a non-resident could never be attached because it could never be within the reach of the Courts in this State.

The question of the *situs* of such an asset has been judicially determined by the highest authority.

It has been held in *Green vs. Van Buskirk*, 7 Wallace, 139, that the fiction that the domicil of the creditor is the *situs* of his choses in action, "yields to the law for attaching the estates of non-residents, because such laws necessarily assume that property has a *situs* entirely different from the owners domicil."

"Stocks and lands are personal property and the domicil of the owner determines the right of succession to said property, though its *situs*, at the time of his death, determines the right of administration."

Case of Foreign held Bonds, 15 Wallace, 316.

Smith vs. Union Bank, 5 Peters, 518.

But, it is objected by the respondent, that, conceding the property to have its *situs* in New Jersey, it is there subject to be disposed of according to the law of its owner's domicil; that the *lex disponendi* and the *lex domicilii* are the same. But by conceding the *situs* of the property to be in New Jersey, this contention ignores the fact, recognized in all the cases, that a foreign law can have no operation within the boundaries of New Jersey and that the Courts of New Jersey will not, as to its own citizens, recognize a foreign transfer contrary to its policy.

"The theory of the case is that the voluntary transfer of personal property is to be governed, everywhere, by the law of the owners domicil, and this theory proceeds on the fiction of law, that the domicil of the owner draws to it the personal estate which he owns, wherever it may happen to be located. But this fiction is by no means of universal application and, as Judge Story says, yields whenever it is necessary for the purpose of justice—that the actual *situs* of the thing shall be examined. * * *

"We do not propose to discuss the question, how far the transfer of personal property in the owner's domicil will be respected in Courts of the country

“ where the property is located and another rule of
 “ transfer prevails. It is a vexed question on which
 “ Courts have differed. But after all, there is no ab-
 “ solute right to have such transfer respected ; and it
 “ is only on a principle of comity that it is ever al-
 “ lowed. And this principle of comity *always yields*
 “ when the laws and policy of the State where the
 “ property is located have prescribed a different rule
 “ of transfer with that of the State where the owner
 “ lives.”

Green vs. Van Buskirk, 7 Wallace, 139.

“ The liability of property to be sold under legal
 “ processes issuing from the Courts of the State
 “ where it is situated must be determined by the
 “ law there, rather than that of the jurisdiction
 “ where the owner lives. These decisions rest
 “ on the ground that every State has the right
 “ to regulate the transfer of property within
 “ its limits, and that, whoever sends property
 “ to it, impliedly submits to the regulations
 “ concerning its transfer in force there, although a
 “ different rule of transfer prevails in the jurisdiction
 “ where he resides. He has no absolute right to have
 “ the transfer of property lawful in that jurisdiction,
 “ respected in the Courts of the State where it is
 “ found, and it is only on a principle of comity that it
 “ is ever allowed. But this principle yields when
 “ the law and policy of the latter State conflict with
 “ those of the former.”

Hervy vs. Locomotive Works, 93 U. S. 664.
 Smith vs. Union Bank, 5 Peters, 118.

It thus appears that this asset of Lee's had its *situs* in New Jersey, and it is to be governed by the laws of that State in relation to its transfer.

But, under the laws of New Jersey, the assignment to Rutan, by which one class of Lee's creditors was preferred above another, is absolutely void in

law as to New Jersey creditors. It is, in effect, a legal fraud, and will never be respected nor enforced by the Courts of this State. Not only is it voidable, but it is absolutely void, and passes no title whatever to the assignee named in it.

Varnum vs. Camp, 1 Green, 326.
 Garretson vs. Brown, 2 Dutcher, 436.
 Moore vs. Bonnell, 2 Vroom, 90.
 Hurd vs. City of Elizabeth, 12 Vroom, 5.
 Fairchild vs. Hunt, 1 McCarter, 371.

And this principle has been recognized by the Courts in the State of New York.

Warner vs. Jeffrey, 96 N. York, 348.
 Easton Bank vs. Hulshizer. Not reported.
 Opinion of Supreme Court attached.

It is, then, demonstrated that no title to or interest in this asset, passed to Rutan by the assignment from Lee. That, in spite of that assignment, it remained the property of Lee liable for his debts in this State due to citizens thereof. All the attaching creditors, the complainants in this suit are citizens of New Jersey.

POINT IV. *There has been no novation as between the Receiver and Rutan the assignee of Lee.*

Of course, if our position in the last point, that there was no debt due from the Receiver to Lee, is correct, and, if the situation of the parties was simply that Green held certain property of Lee's in his hands, a novation would be impossible.

But assuming, for the sake of the argument, that the position of the parties was, that Green was indebted to Lee at the time of Lee's assignment; there was no novation in that case.

The Chancellor, in his opinion, assumes two or three positions which are entirely untenable.

First, he assumes, that the assignee had, under his assignment, a good title to the property thereby assigned; while we have shown, by the decisions both of this State and of the State of New York, that this assumption is not true—that, as to property in the State of New Jersey; the assignment was incompetent to vest any title whatever in the assignee; it was void *ab initio*.

This position also disposes of the next assumption of the Chancellor—that the Receiver made a settlement with the Assignee without any manner of opposition or objection on the part of the creditors of Lee domiciled in New Jersey.

If Rutan had no title to this property the New Jersey creditors had no interest in the proceedings before the New York Court.

But whether they did or no, neither they nor the property was within the jurisdiction of the Courts of New York, and all parties knew that fact.

The orders of the New York Court, therefore, had no effect, as to them. They were entitled to rest upon their rights as they existed under the law of their own domicil and of the *situs* of the property they sought to reach.

Again, the Chancellor assumes that the Receiver's settlement with Rutan was made in conjunction with other creditors of the Construction Company.

This assumption is unfounded. On the contrary, it appears affirmatively that the settlement was made with Rutan without regard to the other creditors of the Construction Company, and, in fact, that some creditors of the Construction Company never made any settlement with Green at all.

As these assumptions were necessary to the conclusion of the Chancellor—that there was a novation of the debt—his conclusions must fall with the premises upon which he founded it.

Outside of this, there was no novation; at least none that would be recognized by the Courts of this State.

A novation exists only where there is a settled intention to create a new debt, and, like every other contract, must be supported by a consideration.

Chandler vs. Herrick, 19 Johnston, 129.

It will be observed, that, in all these proceedings and in the contract with Green, Rutan did not act in his individual capacity but solely as a legal representative of Lee under this void assignment. In fact he did not act at all, until the Court of New York, which had in jurisdiction over the assignment, permitted him to do so.

But as we have shown, Rutan took no interest in this property by reason of his assignment; therefore, as to this property, Green's contract was made with a stranger, with one who had no interest in it or claim to it that would be recognized either in New Jersey or New York.

Nor is the position helped at all by Lee's affidavit.

It does not appear that he either authorized or requested Green to pay this debt or any part of it to Rutan his assignee.

On the contrary, in regard to this compromise with Green, Lee states that he "did agree to and with said receiver to accept the same and did urge his said assignee to accept the same."

But, if the Court should hold, that the allegations of Lee's affidavit were sufficient to support a finding of a novation; then the new contract was just as repugnant to the laws of New Jersey as the original assignment was, because Rutan could receive the asset only in his character as assignee and, having re-

ceived it, would be bound to distribute it according to the terms of his assignment and thereby prefer one class of Lee's creditors to the other.

The Courts of this State would refuse to enforce such a contract as well as the original assignment: both being obnoxious to the policy of the State and both having been made in the State of New York.

Of course, if the assignment to Rutan was invalid and the asset continued to be the property of Lee, there was no novation, but simply an unexecuted accord and satisfaction of the debt.

But the same is true if the assignment did convey a title to Rutan. If it did, then the Receiver was indebted to Rutan, the assignee, in the amount of this claim. The indebtedness was not disputed, it was acknowledged. The amount was not in dispute, for it had been fixed by judgment. The whole arrangement between Lee and Rutan, then, amounted simply to an agreement of Rutan's to accept 50 per cent. of a certain amount (\$48,638), in full discharge of the acknowledged debt; provided it was paid by a certain date.

This agreement was a mere continuance of the original indebtedness.

Parrot vs. Colby, 6 Hun, 55.
Affirmed in 71 New York, 597.

It will be observed that the arrangement does not purport to extinguish the original debt. If the payment agreed upon had not been made at the time fixed, the original debt would have continued unimpaired.

It is then simply an agreement by a creditor to accept payment of part of his debt as payment for the whole, upon condition that the payment should be made at a certain fixed date. Such an agreement, unexecuted, is *nudum pactum* and void.

" An agreement by a creditor to accept part of a

“debt, as payment for the whole is *nudum pactum*
“and void.”

Watts vs. Frenche, 4 C. E. Green, 470.

“An accord executed is a good bar, but an accord
“executory is not.”

Daniels v. Hollenbeck, 19 Wendell, 410.

“An accord and satisfaction must be a satisfaction
“of the entire debt. Here the debt, by express
“agreement, remaining, there can be no accord and
“satisfaction set up.”

Line vs. Nelson, 9 Vroom, 362.

Kromer vs. Hein, 75 New York, 578.

But, if the original debt was not extinguished, of course, in the nature of things, there could be no novation as there was no consideration to support a novation.

Before the contract between Green and Rutan; Green owed Rutan, upon the theory that we are now considering, a certain amount, and, if Rutan was entitled to it at all, Green was bound to pay it so far as the assets in his hands would go.

After the arrangement Green still owed Rutan the same amount, and the judgment remained uncanceled, subject only to the proviso that it might be settled before a certain date by paying a certain sum which was not paid.

The relation of Green to Rutan and of Rutan to Green was, therefore, not changed in a single particular, and could be only changed by an execution of the agreement. But before the time came to have it executed, and before any money had been paid, the attachment was levied.

POINT V. *The order of the Chancellor should be reversed, and the case remitted to the Court of Chancery, with directions to issue an injunction, pendente lite, as prayed in the bill, with costs.*

WALLIS & EDWARDS,
Compt's Solicitors.

HAMILTON WALLIS,
Of Counsel.

GENERAL TERM, }
 FIRST DEPARTMENT, }
 MARCH, 1886. }

JOHN R. BRADY, Presiding Justice.
 CHARLES DANIELS, Justice.

THE EASTERN NATIONAL BANK, }
 Appellant, }
 against }
 JAMES E. HULSHIZER and others }
 Respondents }

Appeal from a judgment recovered on trial before
 the Court.

T. C. CANTINE, for Appellant.
 HAMILTON WALLIS for Respondent.

DANIELS, J.

The plaintiff as a judgment creditor of the firm of James E. Hulshizer and Robert K. Buckman brought this action to set aside a general assignment made by the members of this firm for the benefit of their creditors. The assignment was objected to as fraudulent, and that the inventory so far as it proceeded was not made in conformity with what the statute required for that purpose. It has been objected that the nature of the debts mentioned in the inventory and of their cause and consideration has not been stated, but the inventory itself fails to sustain that objection. The names of the creditors with their residences and the amounts of the debts owing, are set forth in the inventory, and then follows a brief

statement of what the debts were created for. While this statement is very general it is still sufficient to include the cause and consideration of the indebtedness and the nature of the several debts.

The assignment was made to a clerk in the employment of the assignors. He sold a portion of the property and finally disposed of the remainder to the mother of one of the assignors, who has since added to the stock and carried on the business in the same store under the name of R. K. Buckman, Agent. She was a preferred creditor in the assignment and received payments upon her indebtedness from the assignee. It does not, however, appear that the assigned property remained in the possession of the assignor after the assignment, but the evidence renders it probable that it was under the control, management and disposition of the assignee. While the transactions were suspicious through which the mother of one of the assignors acquired the title to the residue of the property and the business was resumed by himself as agent, the facts were not so forcible in themselves as to warrant a determination upon the appeal that the Court had erroneously considered the assignment to have been made in good faith.

The assignors resided in the State of New Jersey, and each of them was the owner of personal property not mentioned in the inventory annexed to the assignment, while the assignment in form assigned all their property whether owned jointly or severally and wheresoever it might be. And in their affidavit verifying the inventory they swore that it contained all their estate both real and personal in law and equity and which they owned either as partners, or individually, at the date of the assignment. This affidavit was untrue so far as it related to their individual property for no account of that property was contained in the inventory. And if the property individually owned by the

assignors had been in the State of New York, it would follow from the failure to make it a part of the inventory, and from the untruthfulness of this affidavit, that the assignment should be set aside as fraudulent.

Viotor vs. Henlein, 34 Hun. 562.

But at the time when the assignment was made and the residue of the estate was in the hands of the assignee, the individual property of the assignors was in the State of New Jersey, and by the statute of that State an assignment containing preferences has been forbidden. This statute was the subject of consideration in *Varnum vs. Camp*, 1 Green, 326, and *Moore vs. Bonnell*, 2 Vroom, 90, where it was held by the Courts of New Jersey that an assignment containing preferences made in the State of New York and valid under its laws, would not transfer to the assignee either real or personal property being at the time in the State of New Jersey.

The assignment which these defendants made for that reason failed to transfer any right, title or interest in the individual property of the assignors to the assignee. And it was not fraudulent for the omission of the assignors either to deliver it to him, or to mention it in the schedule made and filed after the execution of the assignment. It was not property which in any sense the assignee was entitled to receive, and withholding it from him could not invalidate the assignment as it would if the property had been situated in the State of New York. What the assignors did, they had the authority for doing under the statute of the State of New Jersey. And their individual property was liable to be seized and sold, as it afterwards was, under a judgment recovered in that State. While their evidence was greatly discredited by the affidavit which they made, the evidence did not leave the conclusion of the Court at the trial so far unsupported as to permit it

to be set aside on this appeal. The case was a suspicious one, it is true, but a mere suspicion of fraudulent misconduct, on the part of the assignors, is not of itself sufficient to vacate a general assignment. The judgment from which the appeal has been taken, should be affirmed together with the costs of the appeal.

I concur,

J. R. B.

A copy :—

JOHN V. B. LEWIS,
Ass't to Supreme Court Reporter.

In Chancery of New Jersey.

To the Honorable THEODORE RUNYON, Chancellor of the
State of New Jersey :

Humbly complaining, show unto your Honor, your
orators, Charles W. Kimball, of Plainfield, New Jer-¹⁰
sey; the Wallis Iron Works, a corporation of the
State of New Jersey; Elias T. Day, of Jersey City,
New Jersey, suing for themselves and such other
creditors of John Lee as may be lawfully admitted as
applying creditors under the attachment hereinafter
set forth, and Edward D. Gillmore, of Plainfield, New
Jersey :

That on or before the twelfth day of January,
eighteen hundred and eighty-four, one John Lee, of²⁰
the City of Brooklyn, and State of New York, became
and was justly indebted unto your orator, the Wallis
Iron Works, in the sum of eleven thousand nine hun-
dred and seventy-five dollars, being the balance then
unpaid to said corporation of the amount due upon a
certain contract theretofore entered into between it
and said Lee for furnishing labor and material in the
erection of certain shops for the North River Con-
struction Company, a corporation of the State of New
Jersey, at Frankfort, in the State of New York, no³⁰
part of which sum has ever been paid.

And your orators further show, that on or about
the twenty-second day of September, A. D. 1884,
your orator, the Wallis Iron Works, duly assigned
and transferred said indebtedness in paragraph 1
above mentioned unto your orator, Charles W. Kim-
ball, as trustee, who is now entitled under said assign-
ment to receive and collect all sums of money that
may be or become due or payable upon or by reason
of said indebtedness.

And your orators further show, that the said John⁴⁰

Lee is justly indebted unto your orator the Wallis Iron Works in the sum of five hundred and thirty-one dollars and ninety-five cents, upon an account for goods sold and delivered and labor performed for said John Lee prior to July 16th, 1884, no part of which sum has been paid.

And your orators further show, that said John Lee is justly indebted unto your orator Elias T. Day in the sum of six thousand two hundred and ninety-
 10 one dollars and fifteen cents, being the amount due to said Day upon three certain promissory notes of said Lee, one for two thousand nine hundred and seventy-six dollars and twenty-three cents, which became due and payable December 19th, 1884, another for fifteen hundred and thirty-two dollars and nine cents, which became due and payable June 9th, 1885, and another for fifteen hundred and fifty-
 20 four dollars and nine cents, which become due and payable September 19th, 1885, all of which are now held by said Day, no part of which said notes or of the moneys due thereon has ever been paid.

And your orators further show that on and prior to January twelfth, 1884, the said The North River Construction Company, a corporation of New Jersey, was indebted to the said John Lee in the sum of forty-eight thousand six hundred and thirty-eight dollars and thirty-eight cents, no part of which sum has been paid to said Lee by the said company or
 30 the Receiver thereof hereinafter mentioned, or to any one for his use, but the same remains due and wholly unpaid.

And your orators further show, that on the twelfth day of January, 1884, Ashbel Green, of Bergen county, in this State, was appointed Receiver of the said North River Construction Company, by this Honorable Court, with full power and authority to demand, sue for, collect, and receive and take into his possession all the goods and chattels, rights and credits,
 40 moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of

every description belonging to said corporation. And that thereafter and pursuant to said order of appointment, said corporation did, as your orators are informed and believe, make, execute, and deliver to said Ashbel Green as such Receiver, a conveyance of all the real estate and a transfer and assignment of all the personal estate of said corporation not within the State of New Jersey, and that thereupon said Green, as such Receiver, became and is vested and possessed of all the property of every nature and description¹⁰ which was of said The North River Construction Company, to be distributed and divided by him to and among the creditors of said corporation and other persons entitled to receive the same.

And your orators further show, that said Ashbel Green has duly qualified as such Receiver, and has entered upon the discharge of his duties as such Receiver; that as such Receiver he has received, or is about to receive, large sums of money and other property, which is about to be distributed to and among the creditors of said The North River Construction Company, lawfully to receive the same in payment or part payment of their several claims against said Construction Company, including said claim of said John Lee.²⁰

And your orators further show, that on or about the twenty-seventh day of October, A. D. 1885, your orator, Charles W. Kimball, duly commenced an action in the Supreme Court of this State against the said Lee for the recovery of the amount due to him³⁰ as aforesaid, with interest, by the issue of a writ of attachment out of said Court, which writ by permission of this Court has been duly served upon said Ashbel Green as such Receiver, and has been by the Sheriff of Bergen county, in this State, duly levied upon said indebtedness so as aforesaid existing from said Construction Company to said Lee, and upon moneys or other property in the hands or under the control of said Receiver properly applicable to⁴⁰ the payment of said indebtedness, which attachment

has been duly returned by the said Sheriff duly levied as aforesaid, all of which will more fully appear by said attachment and the return and inventory of said Sheriff thereto, a certified copy of which is hereto annexed and made part of this bill.

That subsequently your orators, the Wallis Iron Works and Elias T. Day, duly filed their affidavits in said Supreme Court in the manner prescribed by law, setting up and alleging the said indebtedness of said Lee to them respectively, and that thereupon rules were duly entered in said Supreme Court admitting them, the said Elias T. Day and the Wallis Iron Works, as to such indebtedness as applying creditors under said writ of attachment, and that such proceedings have been regularly had in said Supreme Court under said writ of attachment that on or about the ninth day of November, in the year eighteen hundred and eighty-five, your orator, Edward D. Gilmore, was duly appointed auditor in said action by said Court.

And your orators further show, that on or about the seventeenth day of December, in the year eighteen hundred and eighty-four, said John Lee being then a resident and citizen of the State of New York, residing at Brooklyn in said State, made and executed a general assignment under and pursuant to the laws of the State of New York, wherein and whereby he claims to have assigned and transferred all his property of every nature and description to one Thomas B. Rutan, then and now a resident of the City of Brooklyn and said State of New York, a true copy of which assignment is hereto annexed and made a part of this bill, wherein and whereby it is provided that certain of the creditors of the said John Lee shall first be paid, and shall have a greater proportion in respect to his or her or their claim than the others, such preferred creditors not being mortgage or judgment creditors; which assignment was not for the equal benefit of all creditors of said Lee, as provided by the laws of this

State ; which said assignment said Rutan has accepted and is proceeding to carry into effect.

And your orators further show, that each of your orators is a citizen of this State, and that said assignment from said John Lee to said Thomas B. Rutan, was made for the purpose with the intent of hindering, delaying and defrauding your orators in the collection of their said several demands against said Lee, and that the same does in fact hinder, delay and defraud your orators in such collection ; that said indebtedness so due as aforesaid from The North River Construction Company to said Lee is an asset of the said Lee's in the State of New Jersey and is also the moneys of said Lee in the hands of said Green as such Receiver applicable to the payment of the indebtedness due to your orators as aforesaid, and that said moneys so in the hands of said Green as such Receiver are assets of the said Lee subject to the attachment so as aforesaid issued against the said John Lee and bound thereby and ought lawfully to be paid to your orator the said Gillmore as auditor in attachment for the purpose of settling the claims of said attaching and applying creditors and of such other creditors of said Lee as may be lawfully admitted as applying creditors under said attachment ; but that, as your orators are informed and believe, the said Rutan claims and insists that by virtue of said fraudulent assignment said moneys became and are vested in him and claims to recover the same or such sums as shall be payable thereon by such Receiver from such Receiver.

And that said Receiver although duly notified of said attachment and although said Gillmore has duly demanded from him the payment of all moneys that shall become payable for or on account of said indebtedness from the North River Construction Company to said Lee, has refused to pay the same and is about, as your orators are informed and believe, to pay such moneys to said Rutan ; but your orators allege that they have been advised and therefore in-

sist that, as to the said indebtedness so due from the said The North River Construction Company, a corporation of this State, to said John Lee, said pretended assignment from said Lee to said Rutan, even if lawful under the laws of the State of New York and effectual to vest title to property in that State, was and is fraudulent, void, illegal, invalid and ineffectual to divest the property of said Lee in said indebtedness or to transfer or convey
 10 the same or any available interest therein to the said Rutan; and that notwithstanding said fraudulent assignment, said indebtedness due from the said The North River Construction Company to said John Lee has continued to be and is an asset of said John Lee in this State, and the same was and is subject to and is bound by the writ of attachment issued out of said Supreme Court as hereinbefore set forth; which attachment became and was and is a lien upon said indebtedness from the time the same was levied as afore-
 20 said, but that your orators are prevented from enforcing said lien and from collecting or applying upon said attachment any of the indebtedness so as aforesaid due from said Construction Company or said Receiver by reason of said pretended and fraudulent assignment to said Rutan, and that if said moneys or any of them are paid to or received by said Rutan, they will be removed from the jurisdiction of the Courts of this State and will be by said Rutan distributed under said assignment and in accordance
 30 with the terms thereof, and that thereby the lien of said attachment will be defeated and your orators and other creditors of said Lee will be thereby defrauded of their several demands against him.

To the end therefore that the said Ashbel Green as such Receiver, John Lee and Thomas B. Rutan may, without oath, to the best and utmost of their respective knowledge, remembrance, information and belief
 40 full, true and perfect answers make to all and singular the matters and things hereinbefore set forth

as fully and particularly as though the same were here again repeated, and they and each of them were distinctly interrogated in regard thereto; and that said assignment, so as aforesaid made by said John Lee to said Thomas B. Rutan, may be adjudged and decreed to be fraudulent and void as against your orators, and to be ineffectual to divest the property of said John Lee in the indebtedness so as aforesaid due to him from said The North River Construction Company, or to transfer or convey any available interest therein to the said Rutan; and that the said attachment may be adjudged to be a lien upon said indebtedness, and that by virtue thereof the said indebtedness so due from said The North River Construction Company to said John Lee may be decreed to be charged with the payment of the debts due from said John Lee to the citizens of this State who may be regularly admitted as applying creditors under said attachment; and that said defendant, Green, as such Receiver, may be decreed to pay to the complainant, Gillmore, the auditor appointed as hereinbefore set forth, the said indebtedness so as aforesaid due from said The North River Construction Company to said John Lee, or such part thereof as in the proper administration of his said Receivership shall be payable on account of such indebtedness; and that the said Green, as such Receiver, may be perpetually enjoined by an injunction, issued out of this Court, from paying the same or any part thereof to the said Rutan, or otherwise disposing of the same, than to pay the same to said Gillmore as such auditor; and that pending this suit and until the further order of this Court in the premises said Green, as such Receiver, may be prohibited by an order of this Court from paying any amount that may become payable upon or by reason of said indebtedness to any person or persons other than said Gillmore as such auditor.

And that your orators may have such other and further relief in the premises as the nature of the

case may require, and as shall be agreeable to equity and good conscience,

May it please your Honor, the premises considered, to grant unto your orators herein not only the State's writ of injunction issuing out of and under the seal of this Honorable Court to be directed to the said Ashbel Green as such Receiver, restraining him as hereinbefore specified and prayed, but also the State's writ of subpoena issuing out of and under the seal
 10 of this Honorable Court to be directed to the said Ashbel Green as such Receiver, the said John Lee and the said Thomas B. Rutan commanding them and each of them by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and stand to, abide by and perform such order and decree herein as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.
 20 And your orators as in duty bound will ever pray, &c.

WALLIS & EDWARDS,
 Solicitors for and of Counsel with Complainants.

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

30 CHARLES W. KIMBALL, of full age, being duly sworn, on his oath saith, that he is a resident of the State of New Jersey; that he is a party complainant to the foregoing bill; that he has read the same; that the matters and things therein contained so far as they relate to his own acts are true, and so far as they relate to the acts and deeds of others he believes them to be true; that on or about the twenty-second day of September, 1884, the Wallis Iron Works, assigned, transferred and set over unto deponent as
 40 trustee all indebtedness of John Lee to said Wallis Iron Works, amounting to the sum of eleven thousand

nine hundred and seventy-five dollars, being the balance then unpaid to said corporation of the amount due upon a contract between it and said Lee, no part of which sum has ever been paid to deponent or to anyone for him; that on or about the twenty-seventh day of October, A. D. 1885, deponent commenced a suit in which deponent is attorney of record, in the New Jersey Supreme Court in the name of the Wallis Iron Works, who sue to the use of deponent as trustee against the said John Lee to recover¹⁰ the amount due deponent as aforesaid; that the writ of attachment issued out of said Court has been duly returned therein, served by the Sheriff of Bergen county upon said Ashbel Green, Receiver of the North River Construction Company, permission of this Court to issue an attachment against said claim having been first had and obtained; that deponent has taken such steps in said suit, that on or about the ninth day of November, A. D. 1885, Edward D. Gillmore was appointed auditor by said Court in said²⁰ suit. That the said the Wallis Iron Works and Elias T. Day have filed affidavits and been by rules of said Court admitted as applying creditors in said suit, as deponent is informed and believes.

CHAS. W. KIMBALL.

Sworn and subscribed at New }
 York City, this Dec. 22d, A. }
 D. 1885, before me.

JAS. P. NORTHRUP.

30

Master in Chancery of N. J.

Re-sworn at New York City, }
 New York, this Dec. 26th, }
 1885, before me.

JAMES P. NORTHRUP,

Master in Chancery of New Jersey.

40

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

WILLIAM T. WALLIS, of full age, being duly sworn, on his oath saith, that he is the Secretary and Treasurer of the Wallis Iron Works named as complainant in the foregoing bill. That he has read the same, and that the matters therein contained so far as they relate to the acts of said corporation are true, and that so far as they relate to the acts and deeds of others he believes them to be true. That said corporation is organized under the laws of the State of New Jersey and is located at Jersey City in said State. That previous to January 12th, A. D. 1884, John Lee, of Brooklyn, in the State of New York, was justly indebted to said corporation in the sum of eleven thousand nine hundred and seventy-five dollars, being the balance then unpaid to said corporation of the amount due upon a certain contract theretofore entered into between it and said Lee for furnishing labor and material in the erection of certain shops for the North River Construction Company, a corporation of the State of New Jersey, at Frankfort in the State of New York; that no part of said sum has been paid to said corporation.

That on or about the twenty-second day of September, A. D. 1884, the said The Wallis Iron Works, by assignment under its seal and duly executed, assigned and transferred said indebtedness unto said Charles W. Kimball as trustee, who is now entitled to receive and collect all sums of money that may be or become due and payable upon or by reason of said indebtedness.

That said John Lee is justly indebted to said corporation, the Wallis Iron Works, in the sum of five hundred and thirty-one dollars and ninety-five cents upon an account for goods sold and delivered and labor performed by said corporation for said Lee

prior to July 16th, 1884, no part of which sum has been paid. That said corporation by deponent has caused to be made and filed in the New Jersey Supreme Court in an attachment suit wherein the Wallis Iron Works, who sue to the use of said Charles W. Kimball, is plaintiff, and said John Lee is defendant, an affidavit of the amount due said corporation, and that a rule has been entered in said Court admitting said corporation as an applying creditor in said suit. 10

That there is due to said John Lee from the estate of The North River Construction Company the sum of forty-eight thousand six hundred and thirty-eight dollars, being the balance due on a contract for work done and materials furnished by said John Lee for said The North River Construction Company as the same has been fixed and determined by the Court of Chancery of New Jersey, by and on behalf of Ashbel Green, the Receiver of said Company.

That said the Wallis Iron Works was organized²⁰ and has existed under the laws of New Jersey for more than three years last past; that deponent is the general manager and man of business of said corporation. That on or about the 17th day of December, A. D. 1884, the said John Lee, a resident and citizen of the State of New York, as deponent is informed and believes, made and executed a general assignment to one Thomas B. Rutan, also a citizen of the State of New York, a true copy of which is annexed to the bill herein; that in and by said³⁰ assignment certain of the creditors are preferred before the Wallis Iron Works and the other complainants in this suit. That said assignment purports to convey said indebtedness from said North River Construction Company to said Lee, and that said Thomas B. Rutan has no interest in said indebtedness other than such as is derived from and through such assignment.

WM. T. WALLIS. 40

Sworn and subscribed to at }
 Jersey City, this December }
 22d, 1885, before me.

JAS. P. NORTHROP,
 Master in Chancery of N. J.

Re-sworn to at Jersey City, }
 this December 26th, }
 1885, before me.

10 JAMES P. NORTHROP,
 Master in Chancery of N. J.

STATE OF NEW YORK, }
 COUNTY OF NEW YORK, }

ELIAS T. DAY, being duly sworn, on his oath saith,
 that he is one of the parties complainant mentioned
 20 in the foregoing bill; that he has read the same; that
 the matters and things therein contained, so far as
 they relate to his own acts are true, and so far as
 they relate to the acts and deeds of others, he be-
 lieves them to be true; and deponent further saith
 that he resides in Jersey City, New Jersey, and has
 resided there for more than two years last past; that
 he is the holder of three certain promissory notes of
 said John Lee, made to deponent, one for two thou-
 sand nine hundred and seventy-six dollars and
 30 twenty-three cents, which became due and payable
 December 19th, 1884; another for fifteen hundred and
 thirty-two dollars and nine cents, which became due
 and payable June 19th, 1885; and another for fifteen
 hundred and fifty-four dollars and nine cents, which
 became due and payable September 19th, 1885; that
 the total amount due on said notes is the sum of six
 thousand two hundred and ninety-one dollars and fif-
 teen cents; that no part of said notes or of the
 moneys due thereon has ever been paid; that depo-
 40 nent has made and caused to be filed in the attach-
 ment suit in the New Jersey Supreme Court, wherein

the Wallis Iron Works, who sue to the use of said Charles W. Kimball, is plaintiff, and said John Lee, defendant, an affidavit of the amount due deponent, and that a rule has been entered in the said Court admitting deponent as an applying creditor in said suit.

ELIAS T. DAY.

Sworn and subscribed at New York City, New York, this Dec. 22, 1885, before me.

JAMES P. NORTHROP,
Master in Chancery of N. J.

10

Re-sworn at New York City, New York, this Dec. 26th, 1885, before me.

JAMES P. NORTHROP,
Master in Chancery of N. J.

20

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. }

EDWARD D. GILLMORE, of full age, being duly sworn, on his oath saith, that he has read the foregoing bill, that the matters therein set forth so far as they relate to his own acts are true, and so far as they relate to the acts and deeds of others he believes them to be true. And deponent further saith, that on or about the ninth day of November, A. D. 1885, he was appointed the auditor in an attachment proceeding in the New Jersey Supreme Court wherein the said the Wallis Iron Works who sue to the use of said Charles W. Kimball is plaintiff and said John Lee is defendant—that on the fifteenth day of December, A. D. 1885, deponent personally demanded of Ashbel Green, Receiver of The North River Construction Company the moneys in his hands due the said John Lee from said company—that said Receiver failed and neglected to pay the same to de-

ponent as such auditor in attachment—that deponent resides and has resided in the State of New Jersey for more than three years last past.

E. D. GILLMORE.

Sworn and subscribed before }
me at Jersey City, this 22d }
day of December, A. D. 1885. }

HENRY TRAPHAGEN,

10

Master in Chancery of N. J.

Re-sworn at Jersey City this }
Dec. 26th, 1885, before me. }

JAMES P. NORTHRUP,

Master in Chancery of N. J.

20

30

40

MEW JERSEY SUPREME COURT.

THE WALLIS IRON WORKS, which sues,
&c.

vs.

JOHN LEE.

10

Upon reading and filling the annexed affidavit of Charles W. Kimball, verified December 24th, 1885, and on all the proceedings herein.

It is ordered that the Sheriff of Bergen county amend his return made to the writ of attachment issued in this Court, October 27th, 1885, by describing the property attached by him thereunder as follows: 20
“A claim of the said John Lee, defendant, against The North River Construction Company, in the hands of Ashbel Green, Receiver of the said The North River Construction Company, amounting to forty-eight thousand six hundred and thirty-eight dollars and thirty-eight cents (\$48,638.38).” And that said amendment take effect as of the date of the original return, to wit, October 28th, 1882.

Entered Dec. 26, 1885.

Dec. 24, 1885.

30

JONATHAN DIXON,
Just. Sup. Ct.

On motion of
WALLIS & EDWARDS,
Atty's.

A true copy :
BENJ. F. LEE, Clk.

40

NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">THE WALLIS IRON WORKS, which sues, &c.,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">JOHN LEE.</p>	}
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NEW JERSEY, }
HUDSON COUNTY. } ss.

CHARLES W. KIMBALL, of full age, being duly sworn, on his oath saith, that he is attorney for the plaintiff in this action, in which a writ of attachment was issued out of said Court, October 27th, 1885, directed to the Sheriff of Bergen county; said Sheriff; thereafter and on the 28th day of October, 1885, executed said writ by attaching a claim for money due to said John Lee from The North River Construction Company in the hands of Ashbel Green, Receiver of said Company, as deponent is informed and believes; the Sheriff's return contains the following description of the property attached, "a claim of the said John Lee, defendant, in the hands of Ashbel Green, Receiver, of about fifty thousand dollars or therabouts as is said."

Deponent further saith that from his conversation with and instructions to said Sheriff or his undersheriff, he knows that the said Ashbel Green, Receiver, referred to in said return, is Ashbel Green, Receiver of The North River Construction Company. Deponent further saith that the amount of the claim so attached as aforesaid is \$48,638.38, as deponent is informed and believes; deponent's information is derived from what purports to be a

copy of a sworn petition made by Thomas B. Rutan,
assignee of said John Lee, verified September 10th,
1885.

CHAS. W. KIMBALL.

Sworn to before me at Jersey }
City, this December 2 th, }
A. D. 1885. }

KENT K. STEARNS,

Master in Chancery of New Jersey.

10

By virtue of the annexed writ, issued out of the Supreme Court October 27th, 1885, I, H. G. Herring, with the assistance of a discreet and impartial freeholder, have, on this twenty-eighth day of October, 1885, made a just and true inventory and appraisement of the property and estate of the defendant, by me, the said H. G. Herring aforesaid, attached, to wit :

A claim of the said John Lee, defendant, against the North River Construction Company, in the hands of Ashbel Green, Receiver of the said The North River Construction Company, amounting to forty-eight thousand six hundred and thirty-eight dollars and thirty-eight cents (\$48,638.38), the foregoing being made as an amendment to the original return herein pursuant to the order made by Hon. Jonathan Dixon, Justice of the Supreme Court, dated December 24, 1885.

20

H. C. HERRING,

Under-Sheriff.

30

JOHN A. ZABRISKIE,

Freeholder.

A true copy :

BENJ. F. LEE, Clerk.

40

NEW JERSEY, ss.

The State of New Jersey to our Sheriff of our
[L. S.] *County of Bergen. Greeting:*

We command you to attach the rights and credits,
moneys and effects, goods and chattels, lands and
tenements, of John Lee, wheresoever in your county
10 the same may be found, so that the said John Lee to
be and appear before the Supreme Court of the State
of New Jersey to be held at Trenton, in and for said
State, on the fifth day of November next, to answer
unto The Wallis Iron Works, which sue for the use
of Charles W. Kimball, Trustee, of a plea of trespass
on the case upon promises, to its damage twenty-four
thousand dollars as is said, and have you then and
there this writ.

Witness, Honorable Mercer Beasley, Chief Justice
20 at Trenton aforesaid, the twenty-seventh day of Octo-
ber, A. D. one thousand eight hundred and eighty-
five.

BENJ. F. LEE, Clerk.

CHAS. W. KIMBALL, Att'y.

A true copy:

BENJ. F. LEE, Clk.

By virtue of the within writ of attachment, I, H. G.
Herring, Under-Sheriff of the county, did, on the
30 twenty-eighth day of October, 1885, in the presence
of one creditable person, to wit, John H. Zabriskie,
at the room of Ashbel Green, Receiver, declare that
I attached the rights and credits, moneys and effects,
and lands and tenements of the defendant, John Lee,
at the suit of The Wallis Iron Works.

Oct. 28th, 1885.

H. G. HERRING,
Under-Sheriff.

A true copy:

40 BENJ. F. LEE, Clk.

*The People of the State of New York—By the grace
of God free and independent.*

To all whom these Presents may come, greeting :

KNOW YE: That we have inspected the files
and records of our Supreme Court, at the
[SEAL.] City of Brooklyn, in the County of Kings,
do find a certain 10

GENERAL ASSIGNMENT

remaining there on file of record in the
words and figures following, to wit :

THIS INDENTURE made this 17th day of December,
1884, between John Lee, of the City of Brooklyn,
County of Kings and State of New York, party of
the first part and Thomas B. Rutan, of the same
place, party of the second part. 20

WHEREAS, the party of the first part is indebted
to divers persons in sundry sums of money, which
he is unable to pay in full, and is desirous of providing
for the payment of the same so far as in his power
by an assignment of all his property for that pur-
pose.

NOW, THEREFORE, the said party of the first part
in consideration of the premises and of the sum of
one dollar to him paid by the party of the second
part, the receipt whereof is hereby acknowledged, 30
has granted, bargained, sold, assigned, transferred
and set over, and by these presents does grant, bar-
gain, sell, assign, transfer and set over unto the said
party of the second part, his successors and assigns,
the lands, tenements, hereditaments, appurtenances,
goods, chattels, stocks, promissory notes, claims,
debts, demands of every description belonging to
the party of the first part wherever the same may
be, except such property as is exempt by law from
levy and sale under execution. 40

To HAVE and to hold the same and every part thereof unto the said party of the second part, his successors and assigns.

In trust nevertheless to take possession of the same and to sell the same with all reasonable dispatch, and to convert the same into money, and also to collect all such debts and demands hereby assigned, as may be collectable, and with and out of the proceeds of such sales and collection.

10

1. To pay and discharge all just and reasonable expenses, and charges of executing this assignment and of carrying into effect the trust hereby created, together with a lawful commission to the party of the second part for his services in executing said trust.

20

2. Party of the second part to pay all and singular the debts set forth in the Schedule of debts hereto annexed, and marked Schedule "A" and designated in said Schedule as Class No. 1, the same to be paid in full, if said proceeds shall be sufficient for that purpose, and if the same shall not be sufficient, then the said party of the second part shall apply the net proceeds to and in payment of the said debts ratably and in proportion to their respective amounts.

30

3. After payment of all the debts in full in Schedule A, and designated in said Schedule as Class No. 1, as above directed, then said party of the second part shall pay in full all and singular the debts enumerated and designated in Schedule "A" as Class No. 2, and all other indebtedness due and owing by the said party of the first part, to any person or persons whomsoever, and if there shall not be sufficient to pay the same in full, then said party of the second part shall apply the balance of said proceeds to and in payment of the said debts ratably and in proportion to their respective amounts.

40

4. And, if after the payment of all the said debts and habilites in full, there shall be any remainder or residue of said property or proceeds to repay and return the same to the said party of the first part his executors, administrators and assigns.

And in furtherance of the premises the said party of the first part does hereby make, constitute and appoint the said party of the second part his true and lawful attorney, irrevocable with full power and authority to do all acts and things which may be necessary in the premises to the full execution of the trust herein provided, to ask and demand, recover and receive of and from all person or persons, all property, debts and demands, due, owing and belonging to party of the first part and to give acquittances and discharges for the same, and to execute, acknowledge and deliver all necessary deeds, instruments and conveyances. And the said party of the first part does hereby authorize the said party of the second part to sign the name of the said party of the first part to any check, draft, promissory note or other instrument in writing which is payable to the order of the said party of the first part or to sign the name of the party of the first part to any instrument in writing whenever it shall be necessary so to do, to carry into effect the object, design and purpose of this trust.

The said party of the second part doth hereby accept the trust created and reposed in him by this instrument and covenants and agrees to and with the said party of the first part that he will faithfully and without delay execute the trust created according to the best of his skill, knowledge and ability.

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

JOHN LEE. [L. s.]

THOS. B. RUTAN. [L. s.]

Sealed and delivered }
in presence of }

GEO. V. BROWER.

STATE OF NEW YORK, }
 CITY OF BROOKLYN, } ss.
 COUNTY OF KINGS, }

On this 18th day of December, in the year of our Lord one thousand eight hundred and eighty-four, before me personally came John Lee and Thomas B. Rutan, to me personally known and known to me to be the persons described in and who executed the foregoing instrument, and who severally acknowledged
 10 that they executed the same.

GEO. V. BROWER,
 Notary Public,
 Kings Co.

Schedule A of debts referred to in the foregoing instrument and to be taken as part thereof.

SCHEDULE "A"—CLASS No. 1.

20	S. W. Cornell	\$ 659 68	
	Christopher Lee	375 60	
	T. B. Rutan	31 00	
	P. H. McGratty	118 12	
	Kenyon & Newtin	201 74	
	E. Callahan	173 95	
	C. A. Lindsley	124 73	
	John S. Loomis	969 45	
	D. P. Gardner	1110 75	
30	Brooklyn Roofing Co	390 00	
	James Armstrong	93 00	
	E. & F. Conklin	12 50	
	Nassau Iron Works	12 30	
	George Morris	39 31	
	John McNeil	700 00	
	R. Knox	93 50	
	Conrad Wegman	34 50	
	G. Ross & Son	1729 99	
	Henry Wenner	737 46	
40	A. F. Hawley	531 67	
			\$8,159 30

CLASS No. 2.

Bradley & Currier..	\$ 1,911 98	
P. J. Carlin....	7,317 08	
W. F. Gibson.	918 07	
Wallis Iron Works.	10,576 83	
William Martin.....	4,953 03	
James C. Doty.....	228 57	
	<u> </u>	\$25,905 56
J. H. Hoard.....	\$ 15 51	10
R. W. Russell & Son.....	94 46	
James White & Co	50 24	
William H. Young.....	50 00	
E. T. Day	6,062 41	
	<u> </u>	\$ 6,272 62
		<u> </u>
		\$32,178 18

JOHN LEE.

Endorsed—Recorded Dec. 18, 1884, at 10.15 A. M.

20

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

I, Rodney Thursby, Clerk of the County of Kings and Clerk of the Supreme Court of the State of New York, in and for said County (said Court being a court of record) do hereby certify, that I have compared the annexed with the original record of the general assignment of John Lee to Thomas B. Rutan.

Recorded in my office, Dec. 18, 1884, and that the same is a true transcript thereof, and of the whole of such original record.

In testimony whereof, I have hereunto set my hand and affixed the seal of said county
 [SEAL.] and Court, this 15th day of December,
 1885.

RODNEY THURSBY, Clerk.

40

All which we have caused by these presents to be exemplified and the seal of our said Court for said county to be hereunto affixed.

Witness. HON. JOSEPH F. BARNARD,

Presiding Justice of our Supreme Court, in and for the Second Judicial Department of said State, this 18th day of December, 1885, and in the 110th year of the Independence of the United States.

RODNEY THURSBY, Clerk.

10

I, Joseph F. Barnard, Presiding Justice of the Supreme Court of the State of New York, in and for the Second Judicial Department thereof, do hereby certify that Rodney Thursby, whose name is subscribed to the preceding exemplification, is the Clerk of the County of Kings and Clerk of the Supreme Court, in and for said county, and that full faith and credit are due to his official acts.

20

I further certify, that the seal affixed to said exemplification is the proper seal of said Court for said county, and that the attestation thereof is in due form of law and by the proper officer.

Witness my hand at the City of Brooklyn, this eighteenth day of December in the year 1885.

J. F. BARNARD,

30

Presiding Justice of the Supreme Court of the State of New York, in and for the Second Judicial Department.

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

I, Rodney Thursby, Clerk of the County of Kings, and also Clerk of the Supreme Court of said county, in and for the Second Judicial Department of said State (said Court being a Court of Record) do hereby certify, that Hon. Joseph F. Barnard whose name is subscribed to the preceding certificate is Presiding¹⁰ Justice of the Supreme Court of said State, in and for the Second Judicial Department, duly elected and sworn, and that the signature of said Justice to said certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said county
 [SEAL.] and Court, this eighteenth day of December, in the year 1885.

RODNEY THURSBY, Clerk. 20

IN CHANCERY OF NEW JERSEY.

	CHARLES W. KIMBALL and others, Complainants,	}
	against	
10	JOHN LEE and others, Defendants.	

The answer of Ashbel Green, Receiver of the North River Construction Company, appointed by this Honorable Court, to the complainant's bill of complaint.

20 This defendant as Receiver as aforesaid, submitting himself to the directions of this Honorable Court, whose officer he is, answering, says:

This defendant is not informed save by the bill of complaint, and therefore cannot admit or deny whether on or before the twelfth day of January, 1884, one John Lee became or was justly indebted unto the complainants, the Wallis Iron Works, in the sum of \$11,975, or any other sum, or whether any balance was then unpaid to said corporation to the amount due upon a certain contract alleged to have 30 been theretofore entered into between it and said John Lee for furnishing labor and material in the erection of certain shops for the North River Construction Company, a corporation of the State of New Jersey, at Frankfort, in the State of New York, or whether any part of said sum has ever been paid.

This defendant admits that John Lee is a resident of Brooklyn, in the State of New York, and that he was at one time employed to furnish labor and material by the North River Construction Company, and 40 that the labor and material was to be furnished and done at Frankfort, in the State of New York.

And this defendant further answering says, that he is not informed except by the bill of complaint, and therefore cannot either admit or deny whether the Wallis Iron Works assigned and transferred the alleged indebtedness mentioned in said bill unto Charles W. Kimball, as trustee, or whether the said Charles W. Kimball, as trustee, is entitled, under such assignment, to receive and collect all sums of money that may be or may become due or payable upon or by reason of the said indebtedness, or whether the said John Lee is justly indebted unto the said Wallis Iron Works in the sum of \$531.95 or any other amount upon an account for goods sold and delivered, and labor performed for said John Lee prior to July 10, 1884, or whether the said sum or any part thereof remains due or unpaid, or whether the said John Lee is justly indebted to Elias T. Day in the sums mentioned in said bill of complaint, or in any other sums, or whether he gave the promissory notes as charged in the said bill.

This defendant further answering the portion of the bill which charges that on and prior to January 12, 1884, the said North River Construction Company was indebted to the said John Lee in the sum of \$48,638.38, and that no part of the said sum has been paid to the said Lee by the said company, or the Receiver thereof, or to any one for his use, and that the same remains due and wholly unpaid, says, that on or about the 18th day of June, 1883, the North River Construction Company entered into certain contracts and agreements with the said John Lee, for the construction of certain buildings at Frankfort in the State of New York. That the said Lee, as this defendant is informed and believes, entered upon the execution of the said contracts and did and performed certain work, and furnished certain materials in pursuance thereof, and that on the 12th day of January, 1884, he had received on account of the said contracts divers sums of money from the North River Construction Company.

That the accounts between the said Construction Company and the said John Lee are yet unadjusted, That the contracts entered upon have not been fully performed, and that except by way of compromise and agreement hereinafter mentioned, this defendant, as Receiver as aforesaid, has never agreed to pay the sum of money to the said John Lee or any other person whomsoever, on account of the said claim of the said John Lee against the North River
 10 Construction Company under the contracts aforesaid, and that except as affected by the said compromise agreement, the accounts between the said John Lee and the Construction Company are yet unliquidated and unadjusted; wherefore, this defendant denies that the North River Construction Company was indebted to the said John Lee on or prior to January 12, 1884, in the sum of money mentioned in said bill of complaint, and respectfully answers that until
 20 the said accounts between said John Lee and the Construction Company are settled and adjusted, this defendant, as Receiver as aforesaid, does not acknowledge any liability or indebtedness on the part of the Construction Company to the said John Lee.

And defendant further answering admits that he was appointed Receiver of the North River Construction Company by this Honorable Court at the time and in the manner, and with the power as set forth in said bill, and that he subsequently
 30 entered into possession of the property of the Construction Company as alleged in said bill, and that he was duly qualified as such Receiver, and entered upon the discharge of his duties as such Receiver, and that he has received large sums of money and other property which he has been disbursing, and expects to disburse under the direction of this Honorable Court, to and among the creditors of the said North River Construction Company, entitled lawfully to receive the same in payment or part pay-
 40 ment of their several claims against the said Construction Company, and in regard to the allegation

that the payments of this defendant are to include a payment on the claim of John Lee, this defendant answers that any payment which will be made on account of the alleged claim of said John Lee will either be made in pursuance of the compromise arrangement made with the said John Lee and his assignee, Thomas B. Rutan, and other creditors, or if such compromise shall not be carried out, will be made by the direction of this Honorable Court after the ascertainment of any amount due upon the said claim of the said John Lee by proceedings taken upon appeal to the Chancellor from the disallowance or dispute of the said claim by this defendant as Receiver as aforesaid. 10

And defendant further answering that part of the bill which charges that on or about the 27th day of October, A. D. 1885, Charles W. Kimball commenced an action in the Supreme Court of the State of New Jersey against the said John Lee for the recovery of the amount due to him as aforesaid, with interest by issue of a writ of attachment or to said Court, which writ, by permission of the Chancellor, has been duly served upon said defendant, as such Receiver, and has been, by the Sheriff of Bergen county, in this State, duly levied upon the said indebtedness so as aforesaid existing from said Construction Company to said Lee, and upon all liens or other property in the hands or under the control of said Receiver, properly applicable to the payment of said indebtedness, which attachment has been duly returned by the said Sheriff, duly levied as aforesaid says' that this defendant admits that some proceedings have been had of the character alluded to, but whether they were conducted with the permission of the Chancellor, or whether the writs were issued or served according to law, or whether the return or inventory of said Sheriff is legal or correct, this defendant is not advised, and therefore this defendant submits the question of the regularity and effect of the legal 40

proceedings to this Honorable Court, whose officer this defendant is.

And this defendant makes the same answer in reference to all the legal proceedings alleged in the said bill of complaint to have subsequently taken place on the part of the said complainants, the Wallis Iron Works and Charles T. Day.

This defendant further answering says, that he is informed and believes that on or about the 17th day of December in the year 1884, said John Lee being then a resident and citizen of the State of New York, residing at Brooklyn in said State made a general assignment under and pursuant to the laws of New York, as set out in said bill of complaint, but begs leave to refer to the original or a certified copy of the said assignment for greater certainty in reference to its contents.

And this defendant, in reference to the allegation in said bill of complaint, " that the complainants are citizens of New Jersey, and that the assignment of said Lee was made for the purpose and with the intent of hindering, delaying and defrauding your orators in the collection of said several demands against said Lee, and that the same does in fact hinder, delay and defraud your orators in such collection, and that said indebtedness so due as aforesaid from the North River Construction Company to said Lee is an asset of the said Lee in the State of New Jersey, and is also the moneys of said Lee in the hands of said Green as such Receiver applicable to the payment of the indebtedness due to the complainants aforesaid, and that said moneys as in the hands of said Receiver are assets of the said Lee subject to the attachment as aforesaid issued against the said John Lee, and bound thereby, and ought lawfully to be paid to Gillmore, the auditor in attachment, for the purpose of settling the claims of said attaching and applying creditors of said Lee that may be lawfully admitted as applying creditors under such attachment," answers, that so far as the

said allegations are allegations of matters of fact, he is not informed in regard to the same, or any of them except by the said bill of complaint, and cannot admit or deny any of them, and so far as the same relate to questions of law, this defendant submits the same to the direction and determination of this Honorable Court.

This defendant further answering admits, that the said Rutan claims and insists that by virtue of the assignment to him all moneys which except for the said assignment would have been payable to the said Lee, became and are invested in the said Rutan as assignee as aforesaid, and claims to recover such sums as shall be payable upon such claim from this defendant as such Receiver.

This defendant, further answering, admits that the said Gillmore, on or about the 15th day of December, 1885, served upon this defendant, at the City of New York, a notice and demand in writing, a copy of which is hereto annexed, marked Schedules A and B, but that whether the same is a due demand or what its validity and effect are, this defendant submits to the judgment and direction of this Honorable Court.

This defendant admits that except for the direction of this Honorable Court he should, in pursuance of the compromise hereinafter mentioned, have paid the amount of such compromise to the said Rutan as assignee of said John Lee.

This defendant further answers, that the allegations contained in the bill of complaint that the assignment of the said John Lee to the said Rutan is fraudulent and void, invalid and ineffectual, to transfer any property of the said John Lee to the said Rutan; that the alleged indebtedness of the Construction Company to the said Lee contained, has been or is an asset of the said John Lee, in the State of New Jersey; that the same was or is subject to or is bound by the writ of attachment issued out of the said Supreme Court; that the said attachment became or

was or is a lien upon the said indebtedness from the time the same was levied, as alleged in the bill of complaint; that the alleged lien of the said attachment will be defeated by reason of the payment to the said Rutan of any sum of money under the said compromise agreement as aforesaid; and that the complainants or other creditors of the said Lee will be thereby or otherwise defrauded of any of their demands against the said Lee, are all questions of law
10 which this defendant, as an officer of this Honorable Court submits to the direction and adjudication of this Court.

And this defendant further answers, that the assets of the North River Construction Company, which came into the hands of this defendant as Receiver, consisted almost wholly of the stock and bonds of the New York, West Shore and Buffalo Railway Company and of other corporations connected with the said Railway Company, and of claims against the
20 said corporations; that at the time of the appointment of this defendant as Receiver, the railway of the said New York, West Shore and Buffalo Railway Company was just opened to Buffalo, and was in an unfinished condition; that as this defendant then believed, and as subsequent events fully proved, the sole hope for the creditors of the Construction Company to realize any sum upon their claims was founded upon the affairs of the Railway Company being
30 put upon a solid financial basis; that with this end in view, this defendant made strenuous efforts to effect a compromise and adjustment of the various demands of the bondholders, creditors, and stockholders of the Railway Company, and of the creditors and stockholders of the Construction Company; that the motive of this defendant, in making these efforts, was to avert a long and disastrous litigation, which would only result in a severe loss if not total ruin of all interests; that these efforts, however, failed; that the trustee of mortgage securing bonds of the Railway
40 Company, began foreclosure proceedings and procured the appointment of Receivers of its property in June,

1884. That in consequence of the depression of business and the disastrous railway competition combined with other causes, the operating and other expenses of the railway Receiverships largely exceeded its receipts resulting in a debt of the Receivership amounting to many millions of dollars which was of course a lien upon the property of the Railway Company prior to the lien of the mortgage, but also prior to the liens of the Construction Company¹⁰ and its creditors who were parties to the foreclosure suit; that among such parties were the defendant John Lee, and the complainant the Wallis Iron Company; that the creditors of the Construction Company filed mechanics liens and asserted equitable and statutory liens against the property of the Railway Company; that among the persons so filing and asserting liens were the defendant Lee, who either personally or by his assignee the defendant Rutan served an answer in the foreclosure suit setting up²⁰ his claims and liens; that suits were instituted, numbering about two hundred, to which this defendant was made a party, involving the Receivership in great expense and in probable eventual loss; that in July, 1885, prompted by the demands of bondholders who were alarmed at the increasing debt of the railway receivership, which unchecked, would eventuate in the ultimate disappearance of any practical security for their bonds, the trustee under the mortgage pressed the foreclosure suit to a hearing, and the³⁰ cause was peremptorily set down for trial for a day in the month of September, 1885; that this defendant had foreseen the crisis which was rapidly approaching and was met by the dilemma, either to abandon the defence or to enter upon a tedious and protracted litigation which would be probably barren of practical results as meanwhile the debts of the railway receivership was rapidly increasing, and if this defendant and the creditors of the Construction Company should in the end be successful in enestablish-⁴⁰ing their demands, they would be compelled to pro-

vide for the debts of the railway receivership before obtaining any of the proceeds of the sale of the railway property; that anticipating the hastening of the foreclosure proceedings, this defendant had been engaged for some months in new negotiations, with a view of obtaining the consent of the bondholders to some plan of reorganization which should result in saving the property and distributing its proceeds among those interested in it; that these negotiations had at times given promise of success,¹⁰ but at other times the difficulties arising from the intricate character of the claims and the obstinate demands of the parties in interest seemed insurmountable; this defendant therefore called a meeting of the creditors of the Construction Company and laid the matter before them; that after full consultation, the creditors of the Construction Company with a very few and comparatively insignificant exceptions, agreed to authorize this defendant to make²⁰ a compromise, one part of which was that they should receive fifty per cent. of the face value in cash before the fifth day of January, 1886, and should receive notice that they should so receive it, before October 1st, 1885; that the creditors were to assign or relinquish their several liens and claims and authorize this defendant to abandon their and his defense to the foreclosure proceedings and to execute all necessary papers to carry out the arrangement; that having obtained the consent of the³⁰ creditors, this defendant next consulted the chief shareholders of the Construction Company, and obtained their consent to the arrangement and a promise to assist this defendant in procuring the requisite funds to meet the payment required to be made to the creditors in carrying out the compromise; that this defendant then effected an arrangement with the bondholders by which the decree in the foreclosure suit was entered, the property sold, a new corporation organized, and a delivery made to this⁴⁰ defendant of securities, from which the necessary money

had been raised to carry out the compromise and pay the creditors of the Construction Company; that among the creditors so consenting, was the defendant Lee, and the defendant Rutan, his assignee; that such consent was given under the permission contained in an order, a copy of which is annexed, marked Schedule C; that this defendant, upon such consent, agreed to compromise the claim of the said Rutan as assignee of the said Lee, at forty-eight thousand six hundred and thirty-eight dollars and thirty-eight cents; that the said Lee and the said Rutan agreed with the other creditors of the Construction Company and this defendant, to accept in full payment and discharge of the said claim fifty per cent. of the said sum, and this defendant, as such Receiver, agreed to pay the same to the said Rutan, on or before January 5, 1886—the said Lee and the said Rutan agreeing to abandon their defense to the foreclosure suit and to assign to this defendant their said legal and equitable liens, claims, and demands against the Railway Company and its property; that one of the conditions of the compromise made by this defendant, with the representatives of the bondholders, was, that such liens, claims, and demands should be discharged or assigned to such persons as this defendant might appoint; and that if the bill of complaint herein shall be maintained, this defendant, as Receiver, will be liable to protect the new corporation from any damage occasioned by reason of the failure to carry out the said compromise in its entirety.

This defendant further answering says, that the agreement made between him and the said Lee and Rutan and the other creditors, upon the faith of which the defences to the foreclosure suit were withdrawn, and the compromise carried out by others than the said Lee and Rutan, was made with the said Lee and Rutan, immediately upon the granting of the order of September 12, 1885, by the County Court of Kings County, of New York.

This defendant further answers, that the said compromise has been carried out, except as to creditors whose claims are yet undetermined, or who are absent in distant places, but who are being paid as fast as they can be reached; that the compromise is one in which all creditors are interested, and was in the nature of a composition by agreement; that the same is executed; that unless it is fully and fairly carried out, much damage and loss will accrue to the fund in
 10 the hands of this Honorable Court, and in the custody of this defendant as its Receiver; that unless carried out at once the said Rutan may be compelled to abandon said compromise and seek to enforce his whole claim upon the estate of the Construction Company; that as this defendant is informed and believes the said complainants or their representatives knew of the proposed compromise and application to the Kings County Court on or before the 11th of September, 1885, but served no notice on this defendant,
 20 and took no proceedings in this Honorable Court to prevent this defendant from carrying out the same until the commencement of the suit.

This defendant submits to this Honorable Court that the complainants have been guilty of laches in the premises and that in equity they should not now be permitted to interfere and break up a compromise which has resulted in benefit to themselves as well as to the other claimants upon the fund in the custody of this defendant as Receiver; that if the said
 30 compromise agreement had not been made, there would have been no fund from which the said complainants could have been paid anything and that the fund in the hands of this defendant as Receiver is the result of such compromise and should be faithfully applied towards carrying it out.

This defendant however, recognizing that he is only as Receiver the officer and servant of this Honorable Court, submits himself to its protection and
 40 direction in the premises and prays that, if need be,

this answer may be taken as a report of his proceedings so far as relates to the subject matter thereof and prays the instructions of the Chancellor as to his conduct in relation thereto.

ASHBEL GREEN,

Receiver of the North River Construction Company.

JOHN P. STOCKTON,

Solicitor and of Counsel

with the above named Defendant.

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SCHEDULE "A"

NEW JERSEY SUPREME COURT.

10 THE WALLIS IRON WORKS, who sue
for the use of Charles W. Kimball,
Trustee,

vs.

JOHN LEE.

In attach-
ment.

*Honorable Ashbel Green, Receiver of the North River
Construction Company:*

20

Take notice, that I have been duly appointed audi-
tor in the above entitled action and that I demand
payment to me of all sums due from the North
River Construction Company, or from yourself as its
Receiver, to John Lee, the above named defendant,
or to Thomas B. Rutan claiming to be the assignee of
said Lee under a general assignment alleged to have
been made for the benefit of the creditors, made in
the State of New York, containing preferences in fa-
30 vor of certain creditors of the said John Lee over
the plaintiff and the applying creditors in this ac-
tion.

Dated Dec. 15, 1885.

E. D. GILLMORE,

45 Montgomery street,
Jersey City, N. J.

SCHEDULE "B."

Hon. Ashbel Green, Receiver of the North River Construction Company :

DEAR SIR—I have been appointed auditor in the attachment suit started in the Supreme Court of the State of New Jersey, wherein the Wallis Iron Works, who sue for the use of Charles W. Kimball, trustee, is plaintiff, and John Lee is defendant. The writ of attachment in this action was served on you by the Sheriff of Bergen county, the effect of which was to hold the moneys and claims due said John Lee from the North River Construction Company, whereof you are Receiver.

John Lee some time ago is alleged *some time ago* to have *been* made an assignment in the State of New York, of which State he is a resident, to Thomas B. Rutan, under the general assignment law of the State²⁰ of New York; that assignment contained preferences, and is, as you must well know, under the decisions in the State of New Jersey, ineffectual to vest any title in the assignee to New Jersey assets as against New Jersey creditors.

The plaintiff and the applying creditors are all residents of the State of New Jersey. From the affidavits on file the amounts of their respective claims are as follows :

Charles W. Kimball, trustee, \$11,975.00 and in-³⁰terest.

Wallis Iron Works, \$531.95 and interest.

Elias T. Day, \$6291.15 and interest.

I herewith serve upon you a formal demand in the matter, and request that you will inform me in writing as to your decision at your earliest conveyance.

Dated Dec. 15, 1885.

E. D. GILLMORE,

45 Montgomery street,

Jersey City, N. J.

SCHEDULE "C."

At a special term of the County Court
of Kings county, held at the
Court House, City of Brooklyn,
the 12th day of September, 1885,

10 Present—Hon. H. A. MOORE, County Judge.

In the matter of the general as- }
signment of John Lee for }
the benefit of creditors. }

On reading and filing the annexed petition of
Thomas B. Rutan, and the order to show cause
herein, and on due proof of service by mail upon the
creditors named in the schedules herein, Geo. V.
20 Brower appearing for the assignee, and Ayres &
Walker appearing for Martin and Bleekman, creditors
of said John Lee, no one appearing in opposition
thereto, on motion of Geo. V. Brower, attorney for
assignee herein,

Ordered that the assignee Thomas B. Rutan be
and he is hereby authorized to accept the sum of
fifty per cent. on the amount found due the assignors
herein, on his claim against the West Shore R. R.
30 Co. and the North River Construction Co., amount-
ing to the sum of forty-eight thousand six hundred
and thirty-eight, 38-100 dollars and interest, and to
execute the necessary papers to carry the same into
effect, such payment to be made to the assignee on
or before the 7th day of January, 1886.

A copy.

RODNEY THURSBY,

Clerk.

A true copy.

G. S. DURYEE, Clk.

IN CHANCERY OF NEW JERSEY.

Between—

CHARLES W. KIMBALL et als.,
Complainants,

and

JOHN LEE et als.,
Defendants.On Bills, &c.
Order.

10

Upon reading and filing the bill in this cause and the affidavits and proofs thereto annexed, and on motion of Wallis & Edward, solicitors and of counsel with the complainants, it is on this 26th day of December, A. D. 1885, ordered that Ashbel Green, Receiver of the North River Construction Company, John Lee and Thomas B. Rutan, assignee of said John Lee, show cause before the Chancellor at the Vice Chancellor's Chambers in the City of Newark, on Monday, the eleventh day of January next, if any they have, why the said Ashbel Green, Receiver, should not be restrained by an order or injunction to be issued out of this Court, from paying any money or assets of said North River Construction Company in his hands to said John Lee or Thomas B. Rutan, or any one on their behalf.

And, it is ordered that the said Ashbel Green, Receiver as aforesaid, do desist and refrain from paying³⁰ over any money due or to become due to the said John Lee, Thomas B. Rutan his assignee, or to any one on their behalf until the hearing herein.

And, it is further ordered that a copy of the bill, affidavits and proofs herein, together with a copy of this order, which copies need not be certified, be served upon the said Ashbel Green, Receiver of the North River Construction Company, John Lee and Thomas B. Rutan assignee of said John Lee, within or without this State, within five days from the date⁴⁰ hereof.

THEODORE RUNYON, C.

IN CHANCERY OF NEW JERSEY.

	Between—	
	CHARLES W. KIMBALL et als.,	
		Complts.
	and	
10	JOHN LEE et als.,	
		Defts.

NEW JERSEY }
 ESSEX COUNTY. } ss.

20 THOMAS B. RUTAN, being duly sworn says that he resides in the City of Brooklyn, County of Kings, State of New York; that on the eighteenth day of December, 1884, John Lee, the defendant herein, made a general assignment for the benefit of all his creditors, and assigned all his estate, real and personal to this deponent, and that on or about the 7th day of January, 1885, inventory and schedules were filed therein and deponent duly qualified and duly entered into the discharge of his duties as such assignee.

30 That thereafter this deponent was made party to an action in the Supreme Court of the State of New York, in which the North River Construction Company and others, were defendants for the foreclosure of the first mortgage bonds of the West Shore R. R. Co.; that this deponent by his attorney, Geo. V. Brower, set up a defence to said action and answered therein among other things, that this deponent, as assignee of John Lee had a good and valid lien on the buildings erected at Frankfort in the State of
 40 New York, and which lien was not subordinate to said bonds and mortgage but prior thereto.

That on or about the day of August last past, he saw Ashbel Green, the Receiver of the North River Construction Company, at his office in New York; that said Green was anxious for a settlement of all claims against the Construction Company and a settlement also with the West Shore R. R. Co.; that it could only be obtained by a withdrawal of the answer or to let it go by default, and that in consideration thereof on obtaining the order of the County Court of Kings county, he would agree to pay to deponent as assignee, fifty per cent. upon the sum of forty eight thousand six hundred and thirty-eight dollars; that said Lee was anxious to have him accept said sum, and believing it to be for the best interest of the creditors of said Lee, on or about the 10th day of September, 1885, he petitioned the County Court of Kings county for an order to show cause why he, as assignee, should not be authorized to assign, transfer, and set over the claim against the West Shore R. R. and North River Construction Company, and to execute the necessary paper to carry the same into effect upon payment of the aforesaid sum—payment to be made on or before Jan. 7th, 1886,

That on the same day an order was issued thereon by the County Judge of King's county, directing service upon all creditors to show cause, on the 12th day of December, why the prayer of petition should not be granted.

That on the said 12th day of September, an order was entered, authorizing and empowering this deponent as assignee, as aforesaid, to enter into a contract to accept the sum of fifty per cent. on said sum of \$48,638.²⁸/₁₀₀, and execute the necessary papers to release said West Shore and Buffalo Railroad and Construction Company, a copy of which petition and the orders granted thereon, are hereto annexed and made part of this deponent's affidavit, together with a copy of the agreement signed and to be taken as part thereof, and that thereafter this deponent signed an

agreement to release the said West Shore Railroad Company and North River Construction Company, and let his answer go by default in the suits to foreclose the first mortgage bonds.

Thereafter, to wit, on the 20th day of September, 1885, at his office, 120 Broadway, N. Y. City, the said Ashbel Green signed the following agreement with this deponent, in pursuance of said order and agreement, in words and figures following :

10

Office of ASHBEL GREEN,
RECEIVER OF THE NORTH RIVER CONSTRUCTION COMPANY,
CLAIM No. 95.

120 Broadway, New York, Sept. 26, 1885.

You will please take notice that pursuant to the agreement heretofore signed by you, fifty per cent. of the face value of claim of John Lee, as stated in orders of September 12th and 17, without interest, will be paid to you in cash, on or before the 5th day of January, 1885.

20

ASHBEL GREEN,
Receiver of the North River Construction Company.

To THOMAS B. RUTAN, Esq.

Assignee of John Lee,

Care of Geo. V. Brower, Esq., Att'y,

44 Court Street, Brooklyn, N. Y.

30

That he has demanded payment of said sum due him, pursuant to said agreement. That said Receiver has refused to make payment thereof to him until the hearing and determination of the order to show cause herein.

THOMAS B. RUTAN.

Sworn to before me this }
11th day of Jan'y, 1886, }

RICHARD WAYNE PARKER,

40

Master in Chancery of New Jersey.

IN CHANCERY—STATE OF NEW JERSEY.

Between—

CHARLES W. KIMBALL et al.,
Complts,

against

JOHN LEE et al.,
Deft's.

10

CITY OF NEWARK, }
COUNTY OF ESSEX. } ss.

JOHN LEE, being duly sworn says, that he is the 20
John Lee mentioned and described in the order
herein to show cause dated the 26th day of Decem-
ber, 1885. That he resides in the City of Brooklyn,
County of Kings and State of New York. That on
or about the 18th day of June, 1883, he entered into
a contract or agreement with the North River Con-
struction Company, a corporation of the State of
New Jersey, at the city and county and State of New
York, for the erection of the following structures, to
wit: Main erecting shop, "boiler shop and foundry," 30
all to be erected at Frankfort, in the State of New
York, at a total sum of one hundred and seventy-
nine thousand three hundred and seventy-one dol-
lars (\$179,371) for the West Shore & Buffalo R. R.
Co.

That deponent entered into the performance of
his contract, the time of performance of his said con-
tract by mutual consent of the parties thereto was
indefinitely extended, a copy of which contract is
hereto annexed and made part of this affidavit and 40
marked "Exhibit A." That deponent fully per-

formed all the conditions of said contract on his part in the erection of said buildings and the said North River Construction failed to perform the conditions on their part, and failed and neglected to pay this deponent for his materials and labor upon said buildings to his damage of seventy-five thousand five hundred and fifty $\frac{99}{100}$ dollars. That thereafter to wit, on or about the 12th day of January, 1884, by an order of the Chancellor of New Jersey, Ashbel
 10 Green was appointed Receiver of the said the North River Construction Co., and thereafter, to wit, on or about the 14th day of January, 1884, by an order of the Supreme Court of the State of New York he was also appointed Receiver of the said North River Construction Co., in aid of said appointment, by said Chancellor. That he duly qualified as such Receiver in said Supreme Court of the State of New York, and filed his bonds as provided in said
 20 order of appointment in said Supreme Court, and entered into the discharge of his duties as such Receiver. That on or about the 21st day of June, 1883, this deponent at the City of Brooklyn, State of New York, entered into a contract or agreement with the plaintiff's assignor, the Wallis Iron Works, to furnish certain iron work in the construction of the aforesaid buildings at Frankfort, New York, and in pursuance of said agreement said Wallis Iron Works did enter into the performance of said agreement, but failed in the performance of their said agree-
 30 ment, whereby they hindered and delayed deponent in the completion of his said contract, and to the great damage of deponent in the erection of said buildings. That thereafter, and on or about the 19th day of Jan., 1884, the said Wallis Iron Works filed a notice of mechanic's lien with the Clerk of the County of Herkimer, State of New York, against this deponent as contractor, and the West Shore R. R. Co. owner, upon the buildings and premises aforesaid. That thereafter and on or about the 22d day
 40 of January, 1884, this deponent filed three certain

notices of mechanic's lien with said Clerk of the County of Herkimer, against said buildings and appurtenances, and the said West Shore and Buffalo R. R. Co. as owner, and the North River Construction Co. as contractors. That thereafter and on or about the 24th day of February, 1884, the said Wallis Iron Works commenced an action in the Supreme Court, Herkimer county, in the State of New York, against this deponent the West Shore and Buffalo R. R. Co., and the North River Construction Co. and others defendants, to foreclose said lien, and for judgment of \$24,000 against this deponent. That this deponent duly filed an answer to said complaint, issue was joined therein and the cause duly, noticed for trial in said county, and which action is still pending and undetermined, and is for the same cause of action, and for the same materials and labor as the bill of complaint herein; a copy of the pleadings in said action and notice of lien are hereto annexed and marked "Exhibit B and C," and to which pleadings reference is hereunto made and marked "Exhibit B and C" and are to be taken as part of deponent's affidavit herein.

That on or about the day of November, 1884, this deponent obtained a judgment in the Supreme Court of the State of New York against the North River Construction Company for the sum of \$52,304.89, and said judgment was docketed in said Supreme Court on the 15th day of April, 1885. A certified transcript of said judgment is hereto annexed and marked Exhibit "D," reference being had thereto.

That on or about the 18th day of December, by reason of the failure of said Construction Company to fulfill its contract with this deponent, he was obliged to make a general assignment for the benefit of his creditors, and that said assignment was duly filed in the office of the Clerk of Kings County, in and by which Thomas B. Rutan was duly appointed assignee, and that he duly qualified as such assignee

and entered into the discharge of his duties as such assignee.

That during the month of August last past this deponent has had several interviews with said Receiver Ashbel Green at his office, 120 Broadway, New York City.

10 That said Green has urged him to compromise his said claim against the West Shore R. R. Co. and the North River Construction Company. That he deemed it the best interest for his estate and for his creditors to accept the offer of fifty per cent. of the amount allowed by the said Receiver, to wit, forty-eight thousand six hundred and thirty-eight dollars and $\frac{38}{100}$, amounting to the sum of twenty-four thousand three hundred and nineteen $\frac{9}{100}$ dollars, and did agree to and with said Receiver to accept the same and did urge his said assignee to accept the same, and thereafter an agreement was entered into between said Receiver, Ashbel Green, with his said assignee, Thomas
20 B. Rutan, to accept said sum in full settlement and discharge of all claims and demands, and to execute the necessary papers to release said West Shore Railroad Co. and said North River Construction Co.

This deponent further alleges that the said Ashbel Green, on or about the first day of July, 1884, commenced an action in the Supreme Court of the State of New York, in which this deponent and the said Wallis Iron Works were defendants with others, and which action was brought to restrain said Wallis Iron
30 Works, this deponent and others from prosecuting their said actions, and that all the issues raised in other actions, claims and demands of every nature and kind soever against said Construction Company be settled in said action.

That said action is still pending in the Supreme Court of the State of New York, and that this deponent answered therein. And as this deponent is informed and believes by an order of the Supreme
40 Court of the County of Kings, State of New York, on the 11th day of May, 1885, an order was entered in

said action, amending the same by making his said assignee, Thomas B. Rutan, a party to said action. A copy of the pleadings in said action and the order amending the same are herewith presented to the Court and marked Schedule "G," and are to be taken as part of this deponent's affidavit herein.

JOHN LEE.

Subscribed and sworn to before me this } 10
11th day of January, 1886, at Newark, N. J. }

C. N. WILLIAMS,
M. C. C. of N. J.

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*For summary of Exhibits
attached to this affidavit
see p 59*

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OCTOBER TERM, 1885.

	CHARLES W. KIMBALL & al.,	}
	v.	}
10	JOHN LEE & als.	}

BILL FOR RELIEF.

On order to show cause why injunctions should not issue.

Mr. H. WALLIS for complainant.

Mr. C. PARKER for the assignee.

20 Mr. J. P. STOCKTON for the Receiver.

THE CHANCELLOR.—The North River Construction Company a corporation of this State was by this Court declared to be insolvent under the act “concerning corporations” and Ashbel Green, Esq. was appointed Receiver January 12th, 1884.

By an order of the Supreme Court of New York made two days afterwards, he was appointed Receiver in that State in aid of his receivership here.

30 Among the claims against the corporation was one of large amount in favor of John Lee for money due upon a contract between him and the corporation. Lee sued the Company in the Supreme Court of New York for his claim and in November, 1884, recovered judgment for \$52,304.89. On or about the eighteenth of December following, he made a general assignment (with preferences) in New York for the benefit of his creditors. His assignee was Thomas B. Rutan. The assets of the Con-

40 struction Company consisted almost entirely of the stock and bonds of the New York, West Shore and

Buffalo Railway Company. The railroad of that company had at the time of the appointment of the Receiver of the Construction Company, just been opened to Buffalo, but it was in an unfinished condition and the company was in financial embarrassment. In June, 1885, a suit for foreclosure of mortgage was begun against the railway company and Receivers were appointed thereunder. Lee and others put in in that suit by their answers their claims to mechanic's liens against the property of the railway company for their work, &c, under their contract with the Construction Company. About 200 suits were begun to which the Receiver of the Construction Company was a party. In July, 1884, the Receiver apprehending total loss of the West Shore bonds and stock held by him, in order to prevent it, entered into and promoted a scheme of reorganization of the West Shore Company. To that end he called a meeting of the creditors of the Construction Company and they with but few and comparatively insignificant exceptions, agreed to authorize him to make a compromise, one part of which was that they should accept 50 per cent. of the face value of their respective claims in full thereof, in cash, to be paid before January 5th, 1886. He obtained the consent of the stockholders of the Construction Company also and he then effected an arrangement with the mortgage bondholders of the railway company by which the decree in the foreclosure suit was entered, the property sold and a new railroad corporation organized. He thus obtained securities from which he raised the money necessary to carry out the compromise and pay the creditors of his company in accordance therewith. Among the creditors who consented were Lee and Rutan, his assignee. The latter did so under special permission obtained from the County Court of Kings county, New York, by order made September 12th, 1885, by which he was authorized to accept fifty per cent. on the amount found due Lee on his claim against the Railway Company and

the Construction Company, amounting to \$48,638.33 (the amount at which it was allowed by the Receiver) and interest, and to execute the necessary papers to carry the compromise into effect—such payment to be made to the assignee, on or before January 5th, 1886. This order was made upon formal petition and upon due proof of notice to Lee's creditors. The Receiver, very soon after the making of that order, made the agreement of compromise with Lee and Rutan.

10 It appears that an agreement dated New York, July 13th, 1885, was signed by the creditors of the Construction Company, by which they agreed with the Receiver and with each other, that they would accept in full payment and satisfaction of their claims against that company and the Railway Company on that account, 50 per cent. of the face value thereof, as allowed by the Receiver, provided notice were given on or before October 1st, 1885, that the same would be paid

20 in cash, on or before the 5th of January, 1886; and they further thereby agreed to sign all necessary papers to carry out the agreement. On the 26th of September, 1885, the Receiver, at his office in the City of New York, gave to the assignee a written notice signed by himself, as Receiver, that pursuant to the agreement, 50 per cent. of the face value of the claim of John Lee, without interest, would be paid to the assignee in cash on or before the fifth of January, 1886. The assignee has demanded payment of the money, but the

30 Receiver declined to pay because of the stay granted in this cause. On or about October 27th, 1885, a writ of attachment was issued out of the Supreme Court of this State at the suit of the Wallis Iron Works, a corporation of this State, against Lee as a non-resident debtor, and by permission of this Court it was executed by attaching the money in the Receiver's hands for the Lee claim. The attachment was levied upon it as a claim of the said John Lee, defendant,

40 against the North River Construction Company in the hands of Ashbel Green, Receiver of the said North

River Construction Company, amounting to \$48,638.38. The claim of the Wallis Iron Works was, when the attachment was issued, held by the complainant, Charles W. Kimball (it was assigned to him September 22d, 1884,) and the writ of attachment, though issued in the name of the Wallis Iron Works as plaintiff, was to his use. The bill is filed by Mr. Kimball, who is a resident of this State, and Elias T. Day, of Jersey City, also a creditor of Lee (he has applied and come in under the attachment), suing for themselves and such other creditors as may apply under the attachment; and its object is to obtain an adjudication that the assignment from Lee to Rutan is by reason of its giving preferences, invalid as against Lee's creditors residing here, and to get a decree that the Receiver pay over the money to the auditor in the attachment. On the filing of the bill an order to show cause why the Receiver should not be restrained from paying over the money was granted with an *ad interim* stay.

The assignment to Rutan was made December 18, six months after the appointment of the Receiver. The order of the New York Court authorizing the assignee to make the settlement was made September 12th, 1885, and the settlement was made very soon thereafter. The attachment was not issued until October 27th, 1885, about a month after the Receiver had made the settlement with the assignee. The assignee had under his assignment, a good title to the property thereby assigned, but that title was, as to assets in States whose policy it was not to recognize as against the claims of creditors of the assignor, domiciled there, the validity of general assignments, for the benefit of creditors with preferences liable to be defeated by attachments sued out of the Courts of those States by creditors domiciled therein to recover their debts out of such assets. The Receiver made the settlement with the assignee without any manner of opposition or objection on the part of the creditors of Lee domiciled here. And that settlement was made in conjunction with other

creditors of the Construction Company and as part of a plan into which they and other persons interested in the Railroad and Construction Companies, entered for their mutual benefit, and by which the means were raised by the Receiver to pay the amount which the creditors agreed with each other and with him that they would accept in satisfaction of their claims. Not only did the attaching creditor delay issuing the attachment until after the agreement
 10 of settlement had been made by the assignee under the sanction of a Court which sanction was specially obtained on notice to the creditors of Lee) but the attachment was not issued until after the Receiver had notified the assignee that he would pay him the amount agreed upon between them and had so bound himself to pay it to the assignee. The agreement between the Receiver and the assignee must be regarded in equity as a novation of the debt. It was
 20 an agreement that in consideration of the assignee's consent to accept the compromise, the Receiver would pay him the amount agreed upon. Thenceforward the obligation was a substantially new one between the Receiver and the assignee, the consideration of it being the compromise of the old debt the title to which was at the time of the compromise in the assignee.

No claim of the complainants based on the policy of our law, can be of any avail against it now. They have waited too long. They have waited until the
 30 Receiver has become liable by special agreement to pay the assignee. Before that time the liability was different. It was an obligation to pay the claim or the dividends thereon to the person or persons entitled thereto and the title of the assignee might have been questioned. But now the obligation has been changed by fair and wholly legitimate means into an obligation on the part of the Receiver to pay the assignee. The complainants are barred by their laches and the Receiver is under the circumstances
 40 entitled to the protection of the Court against the garnishment. The order to show cause will be discharged with costs.

IN CHANCERY OF NEW JERSEY.

Between—

CHARLES W. KIMBALL & als.,
Complainants,

and

JOHN LEE & als.,
Defendants.

10

This matter coming on to be heard on an order to show cause heretofore granted herein why an injunction should not issue according to the prayer of the bill of complaint, in the presence of Mr. H. Wallis,²⁰ of counsel for the complainant, of Mr. C. Parker, for the defendant, Thomas B. Rutan, and of John P. Stockton, Esq., of counsel for Ashbel Green, Receiver of the North River Construction Company, and the bill and affidavits annexed having been read and the arguments of the respective counsel heard and considered, and it appearing to the Chancellor that the complainants are not entitled to the injunction prayed for in and by their said bill, it is on this 5th day of February, 1886, on motion on behalf of the said Receiver,³⁰ ordered that the said order to show cause be and the same is hereby discharged, with costs, to be paid by the complainants, and the *ad interim* stay is hereby vacated.

THEODORE RUNYON, C.

A true copy.

G. S. DURYEE, Clk.

IN CHANCERY OF NEW JERSEY.

	Between—	}	On Bill, &c.
	CHARLES W. KIMBALL ET AL., Compl'ts,		
10	and		
	JOHN LEE ET ALS., Def'ts.		

20 The complainants hereby appeal from so much of the order made on the fifth day of February, eighteen hundred and eighty-six, in the above stated cause in this Court as declares "that the complainants are not entitled to the injunction prayed for in and by their said bill," and that orders "that the said order to show cause be and the same is hereby discharged with costs to be paid by the complainants and the ad interim stay is hereby vacated," to the Court of Errors and Appeals in the last resort in all causes.
Dated February 11th, 1886.

WALLIS & EDWARDS,
Solicitors of Complainants.

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

HAMILTON WALLIS,
Of Counsel.

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

<p>Between— CHARLES W. KIMBALL et als., Appellants, and JOHN LEE et als., Respondents.</p>	}	10
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To the Honorable the Court of Errors and Appeals
in the last resort in all causes.

The humble petition of Charles W. Kimball, The
Wallis Iron Works a corporation of the State of New
Jersey, Elias T. Day and Edward D. Gilmore the
appellants in the above stated cause, respectfully
shows that your petitioners find themselves aggrieved
by an order made in the Court of Chancery by his
Honor Theodore Runyon, Chancellor of New Jersey,
bearing date the fifth day of February. A. D. eigh-
teen hundred and eighty-five, wherein your petition-
ers were complainants, and the said John Lee,²⁰
Thomas B. Rutan and Ashbel Green, Receiver of the
North River Construction Company were defendants
in this respect, to wit, that the said order declares
“that the complainants are not entitled to the in-
junction prayed for in and by their said bill” and
that orders “that the said order to show cause be
and the same is hereby discharged with costs to be
paid by the complainants and the ad interim stay is
hereby vacated.”

And you petitioner humbly appeals from that part⁴⁰

of the order of the Chancellor which orders as aforesaid, upon the ground that the same is erroneous, for that the injunction prayed for in said bill should have been granted and that the order to show cause should have been made absolute and the costs thereon held to abide the result of the suit.

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

WALLIS & EDWARDS,
Solicitors of Appellants.

HAMILTON WALLIS,
Of Counsel with Appellants.

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Summary of Exhibits attached to the affidavit of John Lee filed in Chancery (see page 45).

EXHIBIT A.—Agreement between the North River Construction Company and John Lee dated June 18th, 1883.

EXHIBIT B.—The Wallis Iron Works duly commenced proceedings in The Supreme Court of New York to enforce a mechanics lien against the premises so erected, which proceedings are still pending, but in the foreclosure of the mortgage given by the New York, West Shore and Buffalo Railroad Co., to the United States Trust Co., the mortgage has been adjudged to be prior to said lien and the premises covered thereby have been sold.

John Lee also duly filed mechanics liens for the same work, which have also been adjudged to be subordinate to said mortgage.

EXHIBIT C.—Papers and pleadings relative to suits arising under the above claims.

EXHIBIT D.—On April 15th, 1885, John Lee recovered a judgment against the North River Construction Company in the New York Supreme Court for \$52,304.89.



