"If the jury find, that after his death (the death of the husband) she (Mrs. Kohne) returned to her former domicil in Charleston, took possession of the house and servants devised to her, lived in that house six or seven months of every year, calling it her home, spending only a few weeks in the spring and fall in her house here, and the remainder of the summer at watering-places; coming north in the summer for the sake of her health, always intending to return to her house in Charleston; that she was hindered returning the last time from sickness; if she consulted counsel how she might avoid giving any pretence to the tax-gatherers of Pennsylvania to treat her as domiciled here; if she carefully denied at all times her citizenship in Philadelphia, even to erasing it from printed lists of her church donations, as the assertion of a falsehood; if she refused to have some of her furniture removed here, for fear such a fact would be seized upon, after her death, for the purpose of asserting her domicil here; if she called herself, in her will, 'of Charleston;' if, when absent from that place, she always spoke of returning to it as her home, and did return to it as such, till hindered by sickness—if the jury believed this evidence of defendant's witnesses, testimony which has not been contradicted or denied, it would be absurd to say her domicil was not where she asserted it to be, to wit, in the city of Charleston."

Regarding this portion of the charge as tending to confound the powers of the court and the jury, I think that the judgment of the Circuit Court should be reversed, and the case remanded for a new trial.

THE COVINGTON DRAWBRIDGE COMPANY AND RICHARD M. NEBEKER, APPELLANTS, *v.* ALEXANDER O. SHEPHERD AND OTHERS.

The decision of this court in 20 Howard, 227, as to what averment in the declaration is sufficient to give jurisdiction to the courts of the United States, again affirmed.

Where there was a judgment at law against a bridge company, under which the tolls were sold in execution, a court of equity has power to cause possession to be taken of the bridge, to appoint a receiver to collect tolls, and pay them into court, to the end of discharging the judgment at law.

THIS was an appeal from the Circuit Court of the United States for the district of Indiana.

The facts of the case are stated in the opinion of the court.

As the decree of the Circuit Court was affirmed, and directed to be carried into execution, it may be proper to state what that decree was, viz:

"It is therefore ordered, adjudged, and decreed, that John McManaway be, and he is hereby, appointed a receiver of the tolls and revenues of the said Covington Drawbridge Company; that he enter upon, and, by himself, his agents, and servants, possess himself of and control the said bridge, absolutely, and free from all let and hindrance of the said Covington Drawbridge Company, their agents and servants, and other persons whatsoever. And it is further ordered, adjudged, and decreed, that during the time the said John McManaway shall be the receiver of the said tolls and revenues of said bridge, the said company shall in no wise molest or disturb the said receiver in the possession thereof, or in the reception of the tolls and profits thereof, and that said receiver may and shall receive the same tolls provided for in section three of the act of the General Assembly of the State of Indiana, approved January 15th, 1850, incorporating said company. Said receiver shall keep a daily account of his receipts and expenditures, which shall be open to the inspection of the parties. It is further ordered, adjudged, and decreed, that it shall be the duty of the said receiver, by himself and other qualified person or persons, during that time that the Wabash river may be navigable for steamboats, to raise or otherwise remove the draw in said bridge when boats are approaching, by night or day; and it shall be the further duty of said receiver to cause lights to be placed on each side of the draw of said drawbridge, when the said river is so navigable; and it shall be the further duty of the said receiver to keep the said bridge in suitable and necessary repairs, the expenses of which shall be paid and borne by the said receiver out of the tolls and income of said bridge, as well as his own fees and charges for the discharge of his said duty as receiver. And it is further ordered, adjudged, and decreed, that the said receiver shall,

from time to time, at least as often as every three months, pay whatever sum of money there may then have accumulated in his hands of the tolls and income of said bridge, over and above the expenses as aforesaid, to the complainants herein, in a *pro rata* proportion upon their respective judgments in the complaint mentioned; and, further, that the said receiver do, at each succeeding term of this court, report thereto his entire actings and doings in and about his said receivership, provided, that before said receiver shall enter upon his said duties, and take possession of said bridge, he shall take an oath well and faithfully to perform his said duties, to be endorsed on his bond next mentioned, and that he shall, with one or more freehold securities, to be approved by H. C. Newcomb, master in chancery, within thirty days, enter into a penal bond in the sum of ten thousand dollars, payable to the State of Indiana, conditioned for the faithful performance of his duties and trusts imposed upon him by this order, which bond upon breach thereof shall be for the benefit of either party interested."

An appeal from this decree brought the case up to this court, where it was submitted on printed arguments by Mr. *O. H. Smith* for the appellants, and *Mr. Thompson* for the appellees.

The first point raised by *Mr. Smith* was relative to the jurisdiction. Probably his argument was printed before the decision of this court, as reported in 20 Howard, 227, reached him.

The novelty of the question in this court, as to the power of a court of chancery, has induced the reporter to take particular notice of the remaining points in the case.

Mr. Smith contended:

Third. Although the judgments and executions may not have been satisfied by the levy and sale stated in the return at law, still they placed the property of the execution defendants in the custody of the law, sufficient in amount to satisfy the judgment, with ample legal powers to make the money, by process at law, and a court of chan-

cery will not entertain jurisdiction in aid of proceedings in a court of law until the legal remedy is exhausted. The remedy at law is ample, and a court of chancery will not take jurisdiction.

Coe *v.* Turner, 5 Conn. R., 86.
Wisnell *v.* Hall, 3 Paige, 313.
Reese *v.* Parish, 1 McCord, 59.
Bird *v.* Holaboard, 2 Root, 35.
Wolcot *v.* Sullivan, 6 Paige, 117.
Baker *v.* Biddle, Baldwin R., 394.

Fourth. If the following question should be raised by the appellees in their brief, as it was in the Circuit Court, and this court should deem it material to be decided, then I maintain the affirmative as being the law:

Could the bridge be levied upon by the executions at law, the rents and profits appraised and sold, as was *done in this case?* Can there be any doubt about it? By the laws of the State of Indiana, all *property* of the execution defendants is subject to execution, unless especially excepted. The only *legal question is, whether this drawbridge is property of the execution defendants.* That is not questioned, in fact, by either side, but it may be said by the execution plaintiffs, that they could not enjoy the bridge by collecting tolls, without exercising the franchise, which they could not do unless it could be sold with the bridge, and they become the purchaser. To this I answer, that the bridge, with the right to exercise the franchise and take tolls, would unquestionably be worth more than the bridge without that right; but this is only a question for the *appraisers*, before the sale, and does not affect the *main question*, whether the bridge, or the rents and profits, can be levied upon, appraised, and sold, under an execution at law, *for what it is worth.* It may prove injurious to the execution defendants; but so long as they do not complain, who shall be heard in a court of chancery, or in this court, to complain? If the appraisement was too high, or took into consideration rights that did not belong to the *bridge, as property*, the execution plaintiffs could have moved the court at law to set aside the levy or appraisement. But they have not done so, and the *levy and appraisement stand without objection, as a part of the record,*

authorizing the appellees to complete their purchase, or to issue writs of *venditioni exponas*, to sell the property again at law, and satisfy their judgments. *Their remedy at law is complete.*

Fifth. But, as the further question may arise, and be deemed by the court important to be decided, although I cannot so consider it in this case, where the property levied upon is amply sufficient—that is, *whether the franchise can be levied upon with the bridge, and the whole property appraised and sold upon the execution at law.* I maintain the affirmative of this question, which I admit is one of much importance to the credit of corporation securities, as well as to the rights of their creditors. *The question is, substantially, whether the general execution laws of the State of Indiana shall be applied in all cases between debtor and creditor, on judgments at law, including corporations, new cases as they arise, as well as old, or shall an exception, not in the law, exempting from execution certain property of corporations, be made by the court?* At common law, real estate was not subject to sale on execution, and has only been so subjected within the present century. In England, until within the time of the present generation, there were no trading corporations of the sort to require such remedies. At common law, therefore, in England, there are no precedents to which we can refer, but there are principles that must govern the question.

1. *All grants are subject to the law of the land in force at the time the grant is made.*

2. *What is a franchise?* A franchise is a portion of the sovereignty, a part of the eminent domain, granted by the public for the public good, only to be used by the grantees, in the manner prescribed for the object of the grant, but not consecrated and placed as a sovereign above the ordinary laws and remedies of the land, as many seem to suppose. At common law, this franchise was also an exclusive privilege, as in the case of manor, mills, and like cases. All corporations are said to have a franchise, but the ordinary rights of corporations are not parts of the eminent domain—the privilege to have a common name and common seal, a perpetual succession, and by such common name to sue, to contract, to hold real estate, and

to sell the same, or to make by-laws for the government of the members. These privileges are no part of the eminent domain, but only extensions, to individuals collectively, of rights appertaining of common right to each.

Mr. Justice Woodbury, in 6 Howard 539, 540, West River Bridge *v.* Dix, says: The laws of the land are virtually a part and condition of the grant itself, as much as if inserted in it *totidem verbis.*

Town *v.* Smith, 1 Woodb. and Minot, 134.

1 Howard, 319.

2 Howard, 608, 617.

3 Story on Const., 1377, 1378.

It is on this principle that the exercise of the eminent domain over franchises has been sustained; otherwise, such exercise would be a breach of the contract implied in grant of the franchise, and a violation of the Constitution of the United States.

West River Bridge Co. *v.* Dix, 6 Howard, 507.

Enfield Toll Bridge Co. *v.* Harts and N. H. R., 17 Conn., 40 S. C.

2 Amer. R. R. Cases, 69 S. C., 95.

Beekman *v.* Sar. and Schen. R. R. Co., 3 Paige R., 45.

Billings *v.* Prov. Bank, 4 Peters, 514.

In 4 Peters, 514, it is said by Chief Justice Marshall: "The great object of an incorporation is to bestow the character and properties of individuality on a collected and changing body of men; any privilege which may exempt it from the burdens common to individuals do not flow necessarily from the charter, *but must be expressed in it, or they do not exist.*" In other words, corporations, unless expressly exempted, are subject to all the burdens imposed by the laws of the land on individuals. The rule is not to be confined to cases within the eminent domain, or to the taxing powers. It applies to all cases which, in the opinion of the legislative power, its application is necessarily for the public good. A franchise may or may not be a portion of the eminent domain. But a franchise is property: "We are aware of nothing peculiar to a franchise, which can class it higher or render it more sacred than other property.

A franchise is property, and nothing more. It is incorporeal property, and is so defined by Blackstone, 2 Com., chap. 3, p. 20."

West River Bridge Co. *v.* Dix, 6 Howard, 534.

See the opinion of Justice Woodbury, same case, 541, 542.

As property, a franchise may be divided, leased, mortgaged, sold; (Gunning on Tolls, 106, 110; 6 Barn. and Cress., 703, 5, 875; 3 Maule and Sel., 247; 1 Comp. and Jervis, 57;) and it is property by grant, taken subject to the general laws of the land, in force at the time of the grant, at least.

The question now arises: "Is a franchise subject to execution at law by the laws of Indiana?" "The property, rights, credits, and effects, of the defendants, are subject to execution." (2 vol. Rev. Stat. of 1852, sec. 134, 433.) There is only one exception, and that does not exempt a corporation debtor or its franchise. By sec. 438, a debt can be levied upon and sold only when "given up by the defendant;" but no property, either corporeal or individual, is exempted, except a limited amount of personal property, in favor of families; and such has at all times been substantially the law of the State of Indiana. Franchises are not personal property, and of course could not be sold in England by a *fi. fa.* as goods and chattels. But undoubtedly the rents and profits of ferries, and markets, and mills, and the rents and profits of other real estate, have always been subject to seizure in England.

In Indiana, on a judgment against the owner of a ferry, if you sell the land, the ferry right will pass to the purchaser, with the land, as it is appendant thereto, and cannot exist without it. So with the sale of a mill, where the seat has been condemned, the purchaser takes the property with the privileges of keeping up the dam and taking tolls under the State law. But in Indiana there must be an appraisement of the property, and that assessment will be of the real estate and the right to exercise the franchise, the rents and profits being first valued, and first sold, as the franchise held by an individual, in a mill or ferry, is subject to sale with the property, and descends to heirs. Why does not the same principle apply to a toll bridge, held by a corporation, where the legal tolls are fixed by law,

as in this case? The decision of the court in the case of the West River Bridge, (6 How., 533,) is referred to as directly in point.

If it were shown that corporations in Indiana are exempt from the execution laws of the State, and as such protected in their property from levy and sale, and that consequently they form an exception to the general laws that govern other debtors, relieving them from the payment of their debts; there would be an end of the question; but as such is not the case, it is submitted that their property, including the franchise, is subject to appraisement and sale, as was done in this case at law, and therefore the appellees have no equity on that ground alone, and the decree of the Circuit Court should have dismissed the bill at the cost of the complainants below.

I maintain, further, that the appellants, being the execution defendants at law, are the only party that can raise the question, whether this property can be sold at law; and as they *insist* that it shall be so sold, and as it has been so sold, it does not lie with the appellees, the execution plaintiffs, to say that the property in question was not subject to be sold at law. They do not deny but that it has been levied upon *at their instance*, and appraised and sold, and the levy and appraisement returned; nor is it material to the question whether the purchaser shall pay for the property and receive a deed or certificate of purchase, or not, as a *venditioni exponas* can issue upon the return, at any subsequent time, *pending* which, and before another sale, the levy, appraisement, and return, are a *prima facie satisfaction* of the *judgments*. Therefore there can be no equity in the case, and the decree of the Circuit Court should be reversed, with directions to the court to dismiss the bill.

Mr. Thompson's reply to the latter points was as follows:

The fourth assignment of errors, that the court erred in overruling the demurrer to the original bill, in effect raised for the consideration of the court the whole question in the case, viz: Has the court of chancery jurisdiction to appoint a receiver of the rents and profits of a corporation defendant which is insolvent, or has no available real estate except that which is

derived from the use of its franchise? That the court has such power, and that it has at all times been exercised for the advancement of justice, the repeated decisions of the courts will show.

The case of Fripp *v.* The Chard Railway Company, is an authority for all we ask here.

21 Eng. L. and Eq. Rep., 53.

It appears from the bill in this case, and it is not denied, that all the possible ways or means which the complainants have of making their debt or judgments is out of the defendants' bridge. That is all the property the defendants have. They say, "there is the bridge; take it." If it was clear that the plaintiff could regard the bridge as real estate, and sell it under the Indiana execution laws, by exposing the rents and profits to sale, and that the purchaser could enjoy those rents and profits upon the purchase; or, if the purchaser of the bridge could keep it up, and receive the tolls, then the plaintiffs might have an adequate remedy at law.

Nebeker, in his answer, put in under oath, states that the company has no right to the soil upon which the bridge stands; it is at most in the allegation of the bill but a mere easement—nothing that the execution or plaintiffs could make out of it, by sale. If the bridge is real estate, then the rents and profits are to be sold; if personal, then the rents and profits could not be sold. What kind of property is it?

The complainants say that the bridge is valueless, *except in connection with the franchise—the right to take tolls.* Nebeker answers, that he is advised and believes that the franchise cannot be sold nor exercised by third persons, except by consent of the corporation.

The Circuit Court of Indiana has adopted the statute of that State, requiring the appraisement of property upon execution sales. If the property is real estate, the rents and profits have to be appraised as well as the fee; and the fee cannot be offered as long as the rents and profits are sufficient, at two-thirds their appraised value, to pay the debt. If the bridge is personal property, then two-thirds of $70,000 would have to be paid for the bridge, which the purchaser could not lawfully maintain

one hour over or upon that public highway, the Wabash river. So that the court can see that this bridge company has brought the complainants to a "dead lock," and they have no other adequate remedy but a receiver.

The grant in this case being to three persons, if they sell out their bridge, or it is sold out by execution, the bridge becomes the property of a private individual, and the charter of the defendants is forfeited, and the existence of the company will be, by the act, terminated.

In the matter of Highway, 2 New Jersey, 293.

In the case of Macon and Western Railway *v.* Parker, (9 Geo., 377,) it is doubted whether a railroad is subject to levy and sale. It is said it would expose the property to sacrifice, be detrimental to the interests of creditors, and defeat the objects and intentions of the Legislature in granting the charter. In North Carolina (State *v.* Rives, 5 Iredell, 297) it is held, that the tangible property of a railroad could be sold, but that its franchise could not. A turnpike road cannot be sold on execution.

Ammans *v.* New Alexander Turnpike Co., 13 Rawle, 210.

In this case, the grant was to the corporators for the benefit of the public. The public were to use the bridge, and these corporators were intrusted with the important duty of keeping and maintaining it over the navigable waters of the Wabash river, so as not to obstruct the navigation thereof.

There is no equity with the defendants. It is evident they were baffling and trifling with the complainants. They are in the possession of a large annual sum of rents and profits, worth, in the opinion of the appraisers, $7,000 per annum, and sworn by Nebeker to be from $620 to $1,817 per quarter. With these moneys the plaintiffs' judgments could readily be paid, were it not for the unconscientious resistance of the defendants.

The decree of the court, in appointing the receiver, was of the most favorable character to the defendants. It provided for conforming, in every respect, with the charter of the defendants; and by it the complainants were constrained to wait for their pay until it was earned in tolls at the bridge. Not many debtors can impose upon their creditors such delay as that; but

so it is, by their peculiar charter the plaintiffs have no other remedy.

Mr. Justice CATRON delivered the opinion of the court.

In December, 1854, Shepherd and others recovered a judgment against the Covington Drawbridge Company, for upwards of six thousand dollars. At the same time, Davidson recovered a judgment against the same company for upwards of a thousand dollars.

The corporation was created by an act of the Legislature of Indiana, and built a drawbridge over the Wabash river, in that State, pursuant to its charter; was sued for a *tort* in the Circuit Court of the United States for Indiana district, where the recoveries were had. Executions at law were regularly issued, and at March term, 1855, of that court, were returned by the marshal, "nothing found." Alias writs of *fi. fa.* were taken out and levied on the bridge as real estate, and in November, 1855, the marshal proceeded to sell the rents and profits of the same on Davidson's judgment for the term of one year, at the sum of $4,666.62, Davidson, the execution creditor, becoming the purchaser. The agent of Shepherd and others instructed the marshal not to sell the bridge on their judgment, and he returned the special facts. Davidson demanded possession of the bridge from the corporation, so that he might obtain the tolls, but the keeper of the bridge, and a principal owner of the stock, refused to surrender possession. In May, 1856, Shepherd, and those interested in the large judgment jointly with Davidson, filed their bill in equity in the Circuit Court of the United States for the district of Indiana, against the bridge company and Richard M. Nebeker, as keeper, agent, and manager, of the bridge; praying that the court should appoint a suitable receiver to take possession of the same, and receive the tolls and income, and apply them to discharge the judgments at law, after defraying expenses. The court made the decree prayed for, from which the bridge company appealed to this court.

The first objection made to the decree is, that it does not appear by the bill that the defendant is properly described as

incorporated by the State of Indiana. The bill alleges that "The Covington Drawbridge Company, of Covington, is a corporation and citizen of the State of Indiana;" and it is also insisted, that the judgments at law are void, because jurisdiction was not given to the United States courts by the averment of citizenship in either of the declarations. The judgment at law, in Shepherd's case, was brought before this court at the last term, when it was held that the averment of citizenship here objected to was sufficient. (20 Howard, 227.) That decision is conclusive of the two foregoing exceptions.

The consideration whether by a creditor's bill corporate property and franchises can be subjected to pay the debts of the corporation, by taking possession and administering its affairs, and drawing to the court its revenues, is a question of great importance and some difficulty. In advance of this question, it is insisted here that there exists in Indiana an adequate remedy at law; that Davidson's judgment is satisfied by the levy and sale of the tolls of the bridge; and Davidson having obtained a remedy by *fi. fa.*, Shepherd may do the same. To ascertain whether Davidson obtained satisfaction by the marshal's sale, we must inquire what property was sold, and what title to it acquired, that could be made available by possession and the receipts of tolls.

The Covington Drawbridge Company was duly incorporated to build a bridge across the Wabash river where it was navigable for steamboats, and not subject to be bridged by an individual assuming to exercise a mere private right. The corporation had conferred on it a public right of partially obstructing the river, which is a common highway, and which obstruction would have been a nuisance, if done without public authority. This special privilege, conferred on the corporation by the sovereign power, of obstructing the navigation, did not belong to the country generally by common right, and is therefore a franchise; and, secondly, the authority of taking tolls from those who crossed the river on the bridge was also a franchise, and freedom to do that which could not be lawfully done by one without public authority; this franchise could only be conferred by the Legislature directly, or indirectly

through public agents and tribunals, in pursuance of a statute. The bridge is part of a road, and an easement, like the road; and the privilege of making the bridge, and taking tolls for the use of the same, is a franchise in which the public have an interest; the corporation, as owner of the franchise, is liable to answer in damages if it refuses to transport individuals on being paid or tendered the usual fare; the law secured the tolls as a recompense for the duty imposed to provide and maintain facilities for accommodating the public. Whether the timbers and materials of this bridge could be sold at auction by the marshal, by virtue of a *fieri facias* in his hands, as was held could be done by the laws of North Carolina in the case of the State *v.* Rives, 5 N. C. R., 297, we are not called on to decide in this case, as here the annual tolls were sold, and not the bridge itself.

By the laws of Indiana, lands and tenements cannot be sold under execution, until the rents and profits thereof for a term not exceeding seven years shall have been first offered for sale at public auction; and if that term, or a less one, will not satisfy the execution, then the debtor's interest or estate in the land may be sold, provided it brings two-thirds of its appraised value. The tolls, under the idea that they were rents and profits of the bridge, were sold for one year, according to the forms of this law. The tolls of the bridge being a franchise, and sole right in the corporation, and the bridge a mere easement, the corporation not owning the fee in the land at either bank of the river, or under the water, it is difficult to say how an execution could attach to either the franchise or the structure of the bridge as real or personal property. This is a question that this court may well leave to the tribunals of Indiana to decide on their own laws, should it become necessary. One thing, however, is plainly manifest, that the remedy at law of these execution creditors is exceedingly embarrassed, and we do not see how they can obtain satisfaction of their judgments from this corporation, (owning no corporate property but this bridge,) unless equity can afford relief.

By the laws of Indiana, stocks in a corporation may be sold

by virtue of an execution against the owner of the stocks, which the sheriff may transfer to the purchaser; but this law does not help these complainants; they did not proceed against the stocks; their judgment at law did not affect individual property, but corporate property. The question whether a railroad company's property, including the franchises, can be subjected to the debts of the corporation by a decree in equity, is treated very fully by Redfield on Railways, ch. 32, section 2, p. 571; there the substance of the decisions affecting the doctrine is given in cases where there were liens by mortgage. The subject was well examined by the Supreme Court of Georgia in the case of the Macon and Western Railroad Company *v.* Parker, 9 Geo. R., 378. The contest there involved claims of creditors. When speaking of the necessity of equity exercising jurisdiction, the court say "that the whole history of equity jurisprudence does not present a case which made the interposition of its powers not only highly expedient, but so indispensably necessary in adjusting the rights of creditors to an insolvent estate as this did." The road was sold according to the decree; but, to settle the difficulty as to the sale of a franchise without the consent of the power granting it, upon application, an act was passed by the Legislature, creating the purchaser and his associates a body corporate, with the powers and privileges of the old company. In England, the practice is, to order a receiver to be appointed to manage the corporate property, take the proceeds of the franchises, and apply them to pay the creditors filing the bill.

Blanchard *v.* Cawthorn, 4 Simons's R., 566.

Tripp *v.* The Chard Railway Company, 21 E. Law and E. R., 53.

All that we are called on to decide in this case is, that the court below had power to cause possession to be taken of the bridge; to appoint a receiver to collect tolls, and pay them into court, to the end of discharging the judgments at law; and our opinion is, that the power to do so exists, and that it was properly exercised. It is therefore ordered that the decree below be affirmed, and the Circuit Court is directed to proceed to execute its decree.

Mr. Justice DANIEL dissented, for want of jurisdiction of the courts of the United States over corporations.

Marshall *v.* Balt. and Ohio R. R. Co., 16 How. Reports.

EDWARD M. LIVERMORE AND DAVID B. SEXTON, APPELLANTS, *v.* THOMAS A. JENCKES, ALEXANDER FARNUM, AND STEPHEN WATERMAN.

The laws of Rhode Island allow an assignment to be made by a failing debtor, for the benefit of certain preferred creditors, and for the exclusion of those who should refuse to execute releases from their respective claims.

The laws of New York do not permit such assignments.

Where an assignment with the above reservation was made in Rhode Island by a person and to persons residing there, which conveyed to trustees certain property in Rhode Island, and also property in New York, it was proper for the Circuit Court of New York to dismiss a bill filed by creditors residing there, provided there was no fraud in fact in the assignment.

The complainants never acquired nor ever had any lien upon the property in New York, so as to subject it legally or equitably to their demand against the failing debtors, either before or after it was carried into judgment in the Supreme Court of New York.

THIS was an appeal from the Circuit Court of the United States for the southern district of New York, sitting in equity.

Livermore and Sexton, who filed the bill, were citizens of New York, and Jenckes, Farnum, and Waterman, citizens of Rhode Island.

The complainants claimed to set aside an assignment made on the 19th of April, 1854, by Waterman, to Jenckes & Farnum, upon the ground that the assignment was to enure to such of Waterman's creditors who should sign a release. This provision, it was admitted, was valid by the laws of Rhode Island, where the assignment was executed, but invalid by the laws of New York, where the property in question was situated. Livermore and Sexton had become judgment creditors after the assignment was made; and if it could be set aside, the property would be open to execution upon their judgments.