ment. In answer to an interrogatory whether at the time the notes were made there was any agreement that all the cotton shipped or to be shipped by him and R. B. Butler for the year 1867, as well as for subsequent years, was to be sold and the proceeds thereof applied by the complainants to the payment of the notes in preference to any other debts due by him and R. B. Butler, he said there was such an agreement. But in his cross-examination he said the agreement of which he spoke was made in New Orleans on the 19th of February, 1867, after the notes and mortgage were executed. The evidence, then, wholly fails to prove the existence of the agreement made at the time when the suretyship was undertaken, and consequently the subsequent arrangement of February 19th, 1867, as well as the deed of trust for the crop of 1868, had no effect upon the liability of the mortgagors.

DECREE AFFIRMED.

BANK v. COOPER.

After an assignee in bankruptcy, aided by a creditor, has twice contested before the District Court or its referee the claim of a person who has been allowed to prove his claim, and, after all the evidence which could then or afterwards be produced, it has been twice decided that the claim was a valid one, no bill lies in the Circuit Court (either under the general provisions of the Bankrupt Act or under the second section of it, giving to the Circuit Court a general superintendence and jurisdiction of all cases and questions arising under the act) against either the assignee or the person who has been allowed to prove his claim, to have the order allowing it reversed. Such a bill may be demurred to for want of equity.

APPEAL from the Circuit Court for the Northern District of New York; the case being thus:

On the 4th of February, 1870, the Troy Woollen Company was adjudged a bankrupt by the District Court for the Northern District of New York, and on the 11th of March, 1870, one Tappan became the assignee. Soon afterwards Cooper,

Vail & Co. proved a debt against the bankrupt amounting to $67,029, and on the 24th of July, 1870, filed the probate with the assignee. Subsequently, on the 29th of November, on petition of the First National Bank of Troy, which had also proved a debt against the bankrupt, the District Court made an order allowing them and the assignee to contest the validity of the claim of Cooper, Vail & Co. It was then referred to W. Frothingham, Esq., to take the proofs and accounts respecting the claim, to determine its legality and amount, and to report his conclusions to the court. Permission was also given to the assignee, and to any creditor of the bankrupt, if they desired to contest the claim, to attend the proceedings before the referee, and it appears that the bank did attend, that evidence in opposition to the claim was submitted, and that the referee reported the whole of it as due from the bankrupt. To his report joint exceptions were filed on behalf of the bank and the assignee, and argued in the District Court upon the evidence taken before the referee. These exceptions were overruled, and on the 13th of July, 1871, the court made an order allowing the debt as proved by Cooper, Vail & Co., and directing the bank to pay the costs and expenses of the reference.

In this condition of things, the bank filed a bill in the Circuit Court below against Cooper, Vail & Co., and the assignee, to procure a reversal of the order. The bill, after setting forth the facts above stated, made a general averment that Cooper, Vail & Co. had no legal claim against the bankrupt; that they had fraudulently proved their claim; that they knew this when the exceptions were taken to the referee's report as well as when the court made the decree allowing the debt, and that it was thus proved before the District Court. The bill then averred that the decree was erroneous, because there was no legal debt due by the bankrupt to Cooper, Vail & Co.; because the evidence before the court proved that there was no such debt, and because the court should have disallowed it.

This was one aspect of the bill. It further charged that the assets in the hands of the assignee were insufficient to

pay fifty cents on the dollar of the legal debts of the bankrupt, even if the claim of Cooper, Vail & Co. were disallowed, and it averred that the assignee refused to appeal from the decision of the District Court, or to allow the creditors to appeal in his name, stating that he was advised that the bank had a right to have the decree reviewed under section second of the Bankrupt Act, and that if the creditors desired a review they would have to take that course. It then charged that the assignee was guilty of neglect of duty in omitting to appeal from the decree of the District Court, and renewed the averment that the bankrupt was not, and never was, liable for the debt proved against it by Cooper, Vail & Co., or for any part of it.

The prayer of the bill was that the decree made by the District Court might be "reviewed, examined, revised, and annulled, and that the proof of debt filed with the assignee by Cooper, Vail & Co. might be rejected and expunged."

The second section of the Bankrupt Act, through which it was alleged that the assignee had told the creditors if they wished relief they would have to resort, declares that the several Circuit Courts of the United States, within and for the districts where the proceedings in bankruptcy shall be pending, shall have a general superintendence and jurisdiction of all cases and questions arising under the act, and, except when special provision is otherwise made, may, upon bill, petition, or other process of any party aggrieved, hear and determine the case (as) in a court of equity.

Cooper, Vail & Co. demurred:

1. For want of equity.
2. For want of jurisdiction.
3. For want of privity between the complainant and the defendant.
4. That the matters had been adjudicated and that the adjudication was conclusive.
5. That the appeal was not within the time prescribed by law.
6. That the bill showed that the District Court had decided the questions presented by the bill, but that the bill

did not set forth the facts, or the evidence upon which the order or decree of the District Court complained of was made, or any facts or evidence before the court when the order was made, or the grounds upon which that court based its said decision and order or decree.

7. That the bill of complaint did not set forth facts sufficient to enable the court to determine whether or not the District Court erred in making the order or decree complained of.

8. That the bill did not show that the District Court erred in making the order or decree in the bill complained of.

The Circuit Court sustained the demurrer, and the bank took this appeal.

Mr. E. F. Bullard, for the appellants; J. S. Stearns, contra.

Mr. Justice STRONG delivered the opinion of the court.

The demurrer presents the question whether the complainants' bill sets forth any equity sufficient to justify the court in granting the relief sought against the defendants.

No doubt when an executor or administrator colludes with a fraudulent claimant against a decedent's estate, and refuses to take steps to resist the claim, any person interested in the estate may maintain an action against such fraudulent claimant and the executor or administrator for the purpose of contesting the claim. Bills in equity of this nature have been maintained. And if an assignee in bankruptcy, with knowledge, or with reason to believe that one claiming to be a creditor of the bankrupt had proved a debt against the bankrupt's estate which had no existence, or which was tainted with fraud, should neglect or refuse to contest the allowance of such debt, there is no reason why the other creditors, having proved their debts, should not be permitted to interpose and seek the aid of a court of equity to annul the allowance. But the bill before us presents no such case. The assignee has resisted the allowance of the debt claimed by Cooper, Vail & Co. He took part with the appellants in contesting the debt before the referee

to whose consideration it was submitted. He joined with them in filing exceptions to the report allowing the claim. There is no averment of any collusion between him and the claimants. The bill exhibits nothing which ought to cast discredit upon his fidelity to his trust. The referee decided against the appellants after hearing all the evidence they had to submit. The District Court reviewed his decision upon exceptions taken to it, and came to the same conclusion, allowing the debt claimed by Cooper, Vail & Co. Nor is it pretended that any new evidence exists which ought to lead the Circuit Court to any other conclusion than that at which the District Court arrived. In such a state of facts it cannot be maintained that it was the duty of the assignee to enter an appeal to the Circuit Court, or even to allow an appeal in his name. After two trials, in which he was aided by the appellants, after all the evidence had been made use of in opposition to the claim which could then be produced, or which can now be obtained, and after two decisions allowing the claim, he may well have concluded, as he did, that his duty to his trust did not require either expenditure of the bankrupt's estate in further litigation or the delay which might have been consequent upon an appeal. The bill, then, wholly fails in exhibiting any equity against the assignee.

It is equally without equity as against Cooper, Vail & Co. It is true the averment is made that they have no legal or valid claim against the bankrupt, and that their claim was fraudulently proved and made, but there is no allegation wherein the fraud consists, or of any step they have taken in the assertion of their claim which they might not lawfully take. Such a general averment of fraud can be no foundation for an equity. Moreover, it is apparent that the only fraud intended in the averments of the bill is the assertion of a claim which the complainants insist is not sufficiently sustained by evidence. They objected to the claim at the outset. They appealed to the District Court, and they were allowed to contest its validity. It was at their instance a referee was appointed to examine and report upon it. Before that referee they went to trial, without objection. When

defeated they brought the contest into court and renewed it there, but unsuccessfully. And they do not now allege that in either of these trials there was anything unfair, or that Cooper, Vail & Co. were guilty of any fraud in maintaining their claim, other than the assertion of its existence, or that they themselves made any mistake, or that they have any other case now than they had and urged before the referee and the District Court. Their only ground of complaint is that the referee and District Court came to a different conclusion from that which they think should have been adopted. The court thought the evidence established the existence of a debt due Cooper, Vail & Co. They are of a different opinion. They think the evidence did not establish the existence of such a debt, and, therefore, they have filed this bill in the Circuit Court to annul the action of the District Court. In effect they are seeking a new trial of a question of fact which has been decided against them, and this without averring anything more than that the District Court drew a wrong conclusion from the evidence. Very plainly they have made no case for equitable interference. There are some bills in equity which are usually called bills for a new trial. They are sustained when they aver some fact which proves it to be against conscience to execute the judgment obtained, some fact of which the complainant could not have availed himself in the court when the judgment was given against him, if a court of law, or of which he might have availed himself, but was prevented by fraud or accident unmixed with any fault or negligence of his own. But a court of equity will never interfere with a judgment obtained in another court, because it is alleged to have been erroneously given, without more. And such is substantially this case.

But though the bill is destitute of equity, when considered as an original bill, it is contended that it may be regarded as an application for the exercise of the supervisory jurisdiction of the Circuit Court authorized by the second section of the Bankrupt Act. That section declares that "the several Circuit Courts of the United States, within and for the

districts where the proceedings in bankruptcy shall be pending, shall have a general superintendence and jurisdiction of all cases and questions arising under this act, and, except when special provision is otherwise made, may, upon bill, petition, or other process of any party aggrieved, hear and determine the case (as) in a court of equity." The complainants, having proved their debt against the bankrupt, contend that they may be considered parties aggrieved by any order of the District Court allowing the probate of other debts against the same bankrupt, when the assignee refuses to appeal from the order, or allow an appeal to the Circuit Court. It is true their bill was not filed in the Circuit Court until about four months and a half after the order complained of was made. But the act of Congress prescribes no time within which the application for a review must be presented. An appeal is required to be taken within ten days. Not so with a petition or bill for a review. Undoubtedly the application should be made within a reasonable time, in order that the proceedings to settle the bankrupt's estate may not be delayed, but neither the act of Congress nor any rule of this court determines what that time is. At present, therefore, it must be left to depend upon the circumstances of each case. Perhaps, generally, it should be fixed in analogy to the period designated within which appeals must be taken.* It is, however, to be observed that the bill does not charge any fraudulent collusion between the assignee and Cooper, Vail & Co. At most it charges neglect of duty by the assignee in omitting to contest the debt claimed, and in failing to appeal from a decree of the District Court allowing the debt. Whether this presents a proper case for a review under the second section of the Bankrupt Act need not now be decided. For should it be conceded that the complainants had a right to apply to the Circuit Court for a review of the order of the District Court, and conceded also that this bill may be regarded as such an application, the question would still remain whether the court erred in dis-

* Littlefield v. The Delaware and Hudson Canal Co., Bankrupt Register, vol. iv, p. 77.

missing it. Had the court, in the exercise of its superintending jurisdiction, heard the case and decided it, as the District Court did, the decision would have been final, and no appeal could have been taken to this court.* True, if the court had decided that it had no jurisdiction to review, this court might have entertained an appeal, not for the purpose of reviewing, but for the purpose of correcting an erroneous decision respecting the power of the Circuit Court, and enabling the complainants to be heard on their application.† But it does not appear that this bill was dismissed because the court thought it had no power to review the action of the District Court at the suit of these complainants. On the contrary, it rather appears the bill was dismissed because it presented no case that called for the exercise of the superintending jurisdiction of the court. The statute, though conferring the power, does not make it obligatory upon the Circuit Court to retry every decision of the District Court which a creditor supposing himself aggrieved may ask the court to retry. And it may well be that when, as in this case, a question of fact has been twice tried, and twice decided in the same way, when it is not averred that there has been any collusion between the assignee and the creditor who has proved a debt, or that the complaining party has any evidence which he has not already submitted, or that he has been hindered by any accident or fraud from presenting his case as fully in the District Court as he can in another tribunal, when the substance of all he alleges is that, in his opinion, the court should have determined the facts differently, it may well be that the Circuit Court, in the exercise of its discretionary power, looking also at the delay of the application, may properly conclude that no sufficient case is presented calling for a retrial of the facts.

We do not perceive, therefore, in the action of the Circuit Court anything that requires correction, and the

DECREE IS AFFIRMED.

* Morgan *v.* Thornhill, 11 Wallace, 65; Tracey *v.* Altmyer, 46 New York, 598.

† People *v.* New York Central Railroad Co., 29 New York, 418.