case, so far as we can discover, in which law and justice point to the same result, to wit, the exemption of the company.

JUDGMENT AFFIRMED.

Justices CLIFFORD and MILLER dissenting.

SCOTT, ASSIGNEE, *v.* KELLY.

1. When an assignee in bankruptcy voluntarily submits himself to the jurisdiction of a State court, and that court renders judgment against him, it is too late for him to allege that the Federal courts alone have jurisdiction in bankruptcy.
2. When the question in a State court is not whether if the bankrupt had title, it would pass to his assignee under the Bankrupt Act, but whether he had title at all, and the State court decides that he had not, no question of which this court can take jurisdiction under section 709 of the Revised Statutes is presented.

ERROR to the Supreme Court of New York; the case being thus:

In July, 1867, three persons, Shawhan, Mendall, and Palmer, of St. Louis, advertised themselves as copartners, under the firm name of Shawhan & Co., and in the September following purchased in that city, under the name of Shawhan & Co., a quantity of flour of one Stanard, and got possession of it without paying for it. "Shawhan & Co." immediately failed; having shipped the flour to agents of theirs in New York, to be sold under the fictitious name and for the account of E. C. Packard & Co. Stanard thereupon, on the 2d of October, 1867, commenced an action in the Supreme Court of New York against Shawhan & Co., and attached, in the hand of the agents of Shawhan & Co., a portion of the proceeds of the flour.

Shawhan, individually, soon after his failure, and on the 28th of October, 1867, was adjudged a bankrupt in Missouri, and one Scott was appointed his assignee. The attachment was levied on the funds mentioned, on the 28th of March,

1868. The agents applied to the court for leave to pay the money into court and substitute the assignee of Shawhan, the opposing claimants of the fund, as defendant in their stead; and the assignee being summoned came in and defended the case.

On the trial, he showed that there was in reality a secret agreement between the persons composing the firm of "Shawhan & Co.," made when that firm was organized, that they were not to be partners in fact, but that Mendall and Palmer were really to be clerks for Shawhan, and that they received a salary as such.

This secret agreement, it was admitted, was not known to or communicated to Stanard before he sold the flour to Shawhan & Co.

The question presented was this: When Shawhan was declared bankrupt, whose was the property, as between Shawhan and the creditors of Shawhan & Co., and as between Shawhan and the creditors of Shawhan? Did it belong to Shawhan individually, or to Shawhan, Palmer, and Mendall, as copartners?

The position of the defendants was that as between Shawhan and the creditors of Shawhan & Co., the property in question belonged to Shawhan individually, and that therefore it passed to Scott, his assignee in bankruptcy, the same as would have done any other individual property of his, for the reason, as they alleged, that the advertisement by the parties of themselves as copartners was a fraud.

The Supreme Court of New York decided that the attaching creditors, who had attached the proceeds as partnership property, and who were now represented by one Kelly, should prevail.

Its view was that, had the suit been brought before Shawhan was decreed a bankrupt, Shawhan would have been estopped from denying the rights of the attaching creditor, and that this being so, his assignee was also estopped; that he had no other rights than Shawhan himself, and no rights superior to his, and was vested with the property subject to all equities against it in his hands.

Opinion of the court.

From this judgment Scott, the assignee, brought the case here as within section 709 of the Revised Statutes,* his counsel contending that the State courts of New York had no jurisdiction in cases of bankruptcy; that under the Bankrupt Act†—which enacted in terms that "the District Courts of the United States be and *they* hereby are constituted courts of bankruptcy," and which declares that "*they* shall have original jurisdiction in all matters and proceedings in bankruptcy"—the matter belonged to one of those courts, and contending *further* that, as plaintiff in error, he set up a title to the subject of the controversy under an assignment in bankruptcy, under an act of Congress, to wit, the Bankrupt Act, which is a "title" . . . "claimed under" a "statute of" . . . "the United States;" that such title was necessarily "drawn in question" in the decision of the Supreme Court, and that the decision of that court was and is "against the title" so claimed and "set up" by the plaintiff in error.

Mr. G. W. Lubké, for the plaintiff in error; Messrs. J. C. Perry and Lyman Tremain, contra.

The CHIEF JUSTICE delivered the opinion of the court.

The writ of error in this case is dismissed for want of jurisdiction.

The assignee in bankruptcy voluntarily submitted himself and his rights to the jurisdiction of the State court. Being summoned he appeared, without objection, and presented his claim for adjudication by that court. No effort was made to remove the litigation to the courts of the United States. It is now too late to object to the power of the State court to act in the premises and render judgment.‡

The question presented for the decision of the State court was not whether, if the bankrupt had title, it would pass to his assignee by the operation of the Bankrupt Act, but whether he had title at all. The court decided that he had

* See the section in the Appendix.

† 14 Stat. at Large, 517.

‡ Mays *v.* Fritton, 20 Wallace, 414.

not. Such a decision by a State court does not present a question of which this court can take jurisdiction upon a writ of error.

WRIT DISMISSED.

PUTNAM *v.* DAY.

1. On a bill of review in equity nothing can be examined but the pleadings, proceedings and decree, which, in this country, constitute what is called the record in the cause. The proofs cannot be looked into as they can on an appeal.
2. On such a bill filed by a defendant to set aside the decree, he is bound by the answer filed on his behalf by his solicitor, though he did not himself read it, unless he can show mistake or fraud in filing it. The answers of other defendants cannot be read in his favor.
3. Where the defendant, by his answer, admits the claim to be due, and prays contribution from other defendants, without setting up any defence to the demand, he cannot, after a decree, and on a bill of review, ask to have the decree set aside on the ground of laches on the part of the complainant in bringing suit.

APPEAL from the Circuit Court for the District of Indiana; the case being thus:

In January, 1868, Putnam and others, having obtained, in the Floyd County Circuit Court of the State of Indiana, a judgment against the New Albany and Sandusky City Junction Railroad Company, filed in the court below, *the Circuit Court of the United States for the District of Indiana*, a creditor's bill against the city of New Albany, Indiana, one Day, and several other defendants, for the purpose of compelling them as stockholders of the said railroad company, to pay certain amounts alleged in the bill to be due and unpaid by them on their stock subscriptions to the said company, so that the amount of the judgment due to the complainants might be paid and satisfied; it being alleged in the bill that the said company was insolvent, and that all its property had been exhausted in satisfying other claims.

The city of New Albany, in its answer, set up a defence peculiar to itself, to wit, a complete settlement and com-