of New Jersey; that said action was then pending and had not been finally heard or tried; that it involved a sum in dispute more than $5,000, exclusive of costs; that the plaintiff and the defendant corporation were at the commencement of the suit, and still were, citizens of different states—the plaintiff being and having been a citizen of New York, and the defendant a citizen of New Jersey; and that the petitioner had made and filed with the petition a bond with good and sufficient security, as provided by law, for his entering in the circuit court, on the first day of its next session, *a copy of the record* in said suit, and for paying all costs that might be awarded if said court should hold that the suit was wrongfully transferred thereto. No affidavit of prejudice or local influence was filed, but the petition contained the allegation that the petitioner "has reason to believe, and does believe, that from prejudice or local influence he will not be able to secure justice by reason of such prejudice or local influence." To this is appended the affidavit of the petitioner, which, for reasons that will hereafter appear, we quote *verbatim.*

"*State of New York, Rensselaer County—ss.:* William S. Sutherland, being duly sworn, says he is the petitioner named in the above petition, and who signed the same; that he has read the same and knows its contents, and that the facts therein stated are true. WILLIAM S. SUTHERLAND.

"Sworn and subscribed to before me this twenty-second day of July, 1884. [L. S.] "WM. SHAW, Notary Public, Renss. Co., N. Y."

The law does not require that the petition, or any of the facts therein stated, should be verified by oath; but it does require that before any case can be removed on the ground of prejudice or local influence in the state court an affidavit shall be made in said court, affirming the belief of the affiant that it exists. Is such an affidavit, thus taken, and simply swearing that the fats stated in the petition are true, a sufficient compliance with the requirements of the law? We think not.

1. It is taken in a foreign jurisdiction, to be used in a state court of New Jersey, and yet it does not observe the express provisions of the law of New Jersey in such cases. The fifth section of the "Act relative to oaths and affidavits" (Rev. St. N. J. 740) provides, "that any oath, affirmation, or affidavit, required or authorized to be taken in any suit or legal proceeding in this state, when taken out of the state, may be taken before any notary public, * * * and a recital that *he is such notary public in the jurat or certificate* of such oath or affidavit, and his official designation affixed to his signature, and attested under his official seal, shall be sufficient proof that the person before whom the same is taken is such notary." No such recital in the jurat is found here, and the omission has been held to be fatal. See *Bowen* v. *Chase*, 7 Blatchf. 255.

2. But if the affidavit had been so verified that it could be used in the state court, it does not contain what the removal act requires. It merely states that the affiant knows the contents of his petition, and

that the facts therein stated are true. The principal fact upon which the validity of the proceeding depends, to-wit, his belief that prejudice and local influence will hinder his obtaining justice *in the state court*, he does not state in his petition, and hence does not even by implication swear to in his affidavit. He need not state the grounds of his belief, nor in what the prejudice or local influence consists; but the law requires him to swear, and he ought to swear, that he fears the court will not give him justice.

3. The bond, also, is defective—not for the reason assigned in the argument, that it contained no witnesses to the signatures. These are required, not to give the bond validity, but to facilitate the proof of its proper execution. But the condition of the bond is what is required by the act of 1875, and not what is required by the act of 1867. A cursory examination of the two statutes will show that they are quite different, and that the one cannot be substituted for the other. We think that the motion to remand must prevail. But for these defects, the case of *Insurance Co.* v. *Dunn*, 19 Wall. 214, would be sufficient authority for the petitioner to remove the suit after a trial and verdict, which has been set aside by an appellate court, and a *venire de novo* awarded.

SHUFELDT and others *v.* JENKINS and others.

MILL CREEK DISTILLERY CO. *v.* SAME.

(*Circuit Court, E. D. Virginia.* October, 1884.)

FRAUDULENT CONVEYANCE — PREFERENCES — INJUNCTION — LIS PENDENS — VIRGINIA STATUTE.

An insolvent merchant of Richmond, Virginia, in consideration of extensions by a creditor, promises that he will give no preferences against the creditor. The promise is made while a secret deed of preference is already executed. Finally, the insolvent writes to the creditor, who is afterwards complainant, asking the withdrawal from bank of a note about to fall due, and repeats the promise that no preference will be given against him, and the note is withdrawn; yet, in a few days, the insolvent makes a deed giving a large preference against complainant. This deed is not recorded, and the insolvent merchant continues his business with open doors. The complainant, hearing by some means of this deed, filed his bill, charging fraud as to himself on the facts, alleging that the deed is not recorded, and is null and void under the laws of Virginia, as against creditors, until recorded; asking an injunction against all interference with the goods of the insolvent, and that the marshal may take immediate possession of the goods. This order was granted, and at a subsequent date a receiver was appointed. The marshal took possession of the goods, and afterwards, on the same day, the deed was recorded. *Held*, that the deed was fraudulent as to complainant, and as to all creditors, and must be set aside as to the preferred creditor, whether he had a knowledge of the fraud or not. *Held* that, under the statutes of Virginia, the order of injunction and seizure was proper, and that the *lis pendens* of the complainant creditor took precedence of and invalidated the recording of the deed as to defendants.