I am not prepared to say that such assignment did not also carry with it the right to maintain a suit to reform the contract, even if the assignee was then unaware of the alleged mistake, and took the assignment without any special reference thereto. This matter is also reserved until the final hearing. But on the first point the demurrer must be sustained.

A party seeking to have an instrument reformed must show—as well by his pleading as in proof—in what the mistake consists, and that it is mutual. In other words, it must appear that the contract, as reduced to writing, does not contain what both parties intended it should. And to this end it must be shown in what they did agree. A mistake in a contract, resulting from the misunderstanding of the parties, is not a ground for reforming it, although it may be for rescinding it. When each party is laboring under a misapprehension as to the purpose or intent of the other, their minds do not meet, and there is no contract to reform. *Hearne* v. *Marine Ins. Co.* 20 Wall. 490; *Brugger* v. *State Invest. Co.* 5 Sawy. 310; Wood, Ins. 505. The bill in this case does not allege that there was any express agreement between the parties on the subject of insuring this property. It is only stated that Burnell, for himself and co-owners, applied for insurance on the warehouse, with loss payable to Liebe. It is not even explicitly stated whose interest in the property Burnell applied for insurance on, or that he then disclosed the names of any of the owners except that of Liebe. But there is no sort of showing that the defendant accepted Burnell's application or agreed to insure the interest of any one in the warehouse. The allegation goes no further than this: that "thereupon" the defendant issued a policy on the interest of Liebe in the property. But as what the defendant did is the only circumstance tending to show that it agreed to do anything, there is nothing to show that it agreed to do more than it did do—issue a policy on Liebe's interest in the property.

It is true that the bill alleges that the defendant, in issuing the policy, "thereby undertook to insure the Dayton Flouring Mills Company against loss or damage by fire to the amount of $4,000 upon said warehouse," but that by some "misapprehension" of the defendant said policy was issued in the name of Liebe instead of said company. But a reference to the policy, which is made a part of the bill, shows that all the defendant undertook "thereby" to do was to insure Liebe's interest in the property. What other interest, if any, the defendant may have agreed to insure by this policy does not appear. The plaintiff seeks to have the policy reformed so as to cover the interest of each of the joint owners of the property, and to entitle himself to this relief he must show, by clear and explicit statement in his bill, that there was an agreement between the parties to that effect. And in this connection it may be well to suggest that upon this matter the language of the bill is uncertain and inartificial.

Insurance is a contract with the owner of property, or some inter-

est therein, to indemnify him against loss or damage by fire. Colloquially speaking, it is effected in his "name;" but in contemplation of law it is effected on his interest in the property, and cannot, therefore, be effected in the "name" of any one else. It may be done for the benefit of such owner, or any third person whom he may designate. The "Dayton Flouring Mills Company" is not the "name" of any person, either natural or artificial. It can have no interest in this property, and an insurance in that "name" is an insurance in the name of no one. A conveyance to the "Dayton Flouring Mills Company" would be void for want of a grantee. 1 Washb. Real. Prop. 422; 2 Washb. Real. Prop. 565, 568; *Friedman* v. *Goodwin*, 1 McAll. 149. The phrase is a mere arbitrary collocation of words constituting a style, or firm name, or sign under which natural persons, associated together as partners, may do business. But waiving this matter, and assuming that an application was duly made by or on behalf of the individual owners of the warehouse to insure their interests therein, it does not appear from the bill that the defendant ever agreed to insure such interests and issue a policy accordingly, but only that the defendant thereupon issued a policy covering the interest of Liebe alone. That this was the result of a mistake or misapprehension on the part of the defendant may be true; but for aught that appears, and so far as does appear, such mistake or misapprehension may have arisen from the fact that the defendants did not wholly accept, or correctly apprehend, the application of Burnell, rather than that it erred in reducing the contract to writing. And, if so, there was no mutual mistake in the matter. The minds of the parties never met on the proposition contained in the application. They made no contract other than the one which is implied in the issuing by the one and the acceptance by the other of the policy on the interest of Liebe alone. The demurrer is sustained.

BLAIR *v.* ST. LOUIS, H. & K. R. Co. and others.[1]

(Circuit Court, E. D. Missouri. November 3, 1884.)

1. RAILROAD MORTGAGES—RECEIVERS—ANTE-RECEIVERSHIP DEBTS.
   A failure to make the payment of *ante*-receivership debts for current expenses of a railroad—a condition of the appointment of a receiver in a foreclosure suit—is no bar to their subsequent allowance.

2. SAME—FAILURE TO FORECLOSE—AGENCY.
   A mortgagee who fails to take action upon default in the payment of interest on the mortgage debt, does not, by such failure, make the mortgagor his agent to incur debts, nor does he impliedly consent that debts incurred subsequent to the default shall take precedence over the mortgage debt.

[1] Reported by Benj. F. Rex, Esq., of the St. Louis bar.

3. SAME—CLAIMS ENTITLED TO PREFERENCE AS TO INCOME.
Claims for labor and supplies which have accrued within six months of the appointment of a receiver are entitled to be paid out of the net income of the receivership. Ordinarily, older claims are not entitled to any preference.

4. SAME—CORPUS.
Semble, that claims entitled to preference as to income may, in exceptional cases, and where a special equity appears, be made a first lien upon the *corpus* of the mortgaged property.

5. SAME—INTERVENING CLAIMS—EVIDENCE—COMPANY'S BOOKS.
Where the application for a receiver contains no charge of fraud and deceit on the part of the company's officers, a master to whom intervening claims are referred may be authorized to pass upon uncontested claims without any other evidence than the admissions in the company's books, where the facts upon which such claims rest fully appear from the books, and additional evidence appears to him unnecessary.

In Equity. Exceptions to master's report.

Walter C. Larned and *Theo. G. Case*, for Complainant.

John O'Grady, for the receiver.

James D. Carr and *Geo. D. Reynolds*, for the intervenors.

BREWER, J. 1. The first exception runs to a matter of practice. On the twenty-fourth of March, 1884, this court, in its order respecting intervening claims, directed the master as follows:

"It is further ordered, that when an intervening claim, so far as the facts on which it rests, appears from the books of the defendant to be correct, the master may proceed to pass thereon without further evidence, unless, in his opinion, further evidence is needed, or some person in interest appears to contest the same."

The master has acted upon this direction, and its propriety is now challenged. The exception will be overruled. If no receiver had been appointed, the company would settle with its creditors upon the basis disclosed by its own books, and where the application for a receiver contains no charge of fraud and deceit on the part of the officers of the company, there is no impropriety in accepting the admissions contained in its books as *prima facie* a fair basis of settlement with claimants. It would be an unnecessary burden and expense to require extrinsic and independent evidence. Full protection against improper claims is secured by the right given to any party in interest to appear and contest, as well as by the duty imposed on the master to require testimony, if any appears to him necessary.

2. Claims for labor and supplies accruing since the default in payment of interest in 1881, more than two years prior to the appointment of the receiver, have been allowed by the master, and exceptions are taken to such allowance. In the order appointing a receiver no provision for the payment of claims was made, and it is conceded that there is nothing to show that since the default in the payment of interest there has been any diversion of income to permanent improvements. Now, the broad proposition is laid down by counsel that, unless a diversion as stated is shown, or unless the court, as a condition of appointing a receiver, requires the payment of certain claims, none can be preferred to the mortgage debt; that when the