

FOURTH NAT. BANK OF THE CITY OF NEW YORK *v.* AMERICAN MILLS
CO. AND OTHERS.

Circuit Court, S. D. New York.

March 9, 1887.

FACTORS AND BROKERS—DEL CREDERE COMMISSION—LIEN—SET—OFF.

Rehearing denied. See 29 Fed. Rep. 611.

Memorandum on Motion for Rehearing.

David Willcox, for complainant.

Alexander Thain, for defendants Mary J. Graeffe and William H. Garner.

Samuel W. Bower, for defendants the American Mills Co., Albert J. Graeffe, and William H. Bowen.

COXE, J. I have re-examined this cause in the light of the supplemental briefs submitted by counsel, and see no reason to change the views heretofore expressed. The arguments presented at the final hearing are now reasserted, with, perhaps, greater emphasis, but not with greater clearness; for the complainant's position was then most concisely stated. No new theory is advanced; no additional proposition of law is suggested. The former decision was reached after considerable time and thought had been devoted to the subject, and after all the arguments now presented had been fully considered. With every disposition to aid the complainant, the conviction that it was without relief could not be resisted. The complainant is not satisfied with the decision; but, as I understand the moving papers, it is not contended that anything involving the substance of the controversy has been overlooked. The trial court may have taken an erroneous view of the law, but the remedy for such error is an appeal. The case is not brought within the rule which authorizes a reargument. If the Complainant were in a position to invoke the strictest rules of equity against the defendants; if it were able to enforce, for its benefit alone all, the rights which belong to all the creditors, and to each class of creditors; if it could obtain a preference by virtue of a statute designed, to prevent preferences, and divest a lien

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which, For certain purposes, concededly existed; if it could take by this action what it could not have obtained if the acts Complained of had not taken place,—the path of success would be less difficult. But the complainant does not and cannot occupy such a position. The conclusion formerly reached, that the relief prayed for cannot be granted in an action of this character, must be adhered to.

The motion is denied.