31 La. Ann. 729, is authority. There the act showed no mortgage, but did show that the purchase price was due which carried the vendor's privilege. Here the act shows, in connection with the original mortgage, a mortgage claimed to be perempted, but an admittedly existing and assumed privilege. That such an assumption continues, as against the new purchaser and upon the property sold, a vendor's privilege, which outranks that even of the second vendor, is abundantly settled by the decisions of our supreme court, and was not questioned in the argument. As concerns Mrs. Goode, the citizenship of herself and Calder is such that the court has jurisdiction over the cause and the *res*,—the mortgaged premises. This is true of Schwabacher, who is a citizen of Missouri. So far as the Home Insurance Company and the Crescent Insurance Company are concerned, they are citizens of this state, and, therefore, of the same state as Calder; but they are citizens of another state than that of Mrs. Goode. They could not have instituted the suit in the United States circuit court, nor can they have original process. But, the court being in possession of a *res*, in a proceeding over which it had jurisdiction, they have properly intervened to assert their rights in the *res*. In this respect they are like people claiming in an admiralty court liens which spring from state statutes. They cannot bring the *res* into the court, but may assert their privileges after it has been brought there by those having admiralty liens. The injunction is refused so far as relates to Mrs. Goode, Schwabacher, and the marshal, and is allowed so far as relates to the independent executory process of the Home and Crescent Insurance Companies, leaving them full right to enforce whatever rights they have as interveners in this case.

RICHARDSON *v.* WALTON *et al.*

(Circuit Court, D. Delaware. January 28, 1892.)

1. CANCELLATION OF CONTRACT—FRAUD—EVIDENCE.
   A bill to set aside a contract dissolving a partnership alleged that, while plaintiff was confined to his house by illness, his two copartners insisted upon a settlement, and as a basis therefor presented a statement, in which the year's profits were estimated at $50,000. The actual profits were over $100,000; and plaintiff's bookkeeper testified that before the settlement he had made a statement, on request of one of the defendants, showing profits of about that amount. It appeared, however, that shortly after the settlement he made a statement showing profits of $60,000, and defendants both testified that the statement showing $100,000 profits was made at a still later date; that no statement was made before the settlement, and that the estimate was *bona fide*. *Held*, that the charge of fraud was not made out.
2. SAME—FALSE STATEMENTS NOT RELIED ON.
   Plaintiff possessed an intimate knowledge of the firm's affairs, and testified that when the estimate was presented he felt satisfied that it was much too low, but that he accepted it because of his critical physical condition, and upon the advice of his physician to give up business. *Held* that, even if the estimate was knowingly false, he was entitled to no relief, as he was not in fact deceived.
3. SAME—MISCONDUCT OF PLAINTIFF.
   Where a partner raised money on the firm paper to purchase a rival concern for his own benefit, enticed away valued employes, and, under threats of liquidation

by legal proceedings, sought to enforce a sale to himself, he has no equity which will support a bill to set aside a contract of dissolution, made at the instance of his copartners upon discovering his wrongful use of the firm's credit.

4. SAME—LACHES.

Where a bill to set aside an alleged fraudulent contract states that the facts concerning the fraud were communicated to the plaintiff nearly three years prior thereto, and it appears that in the mean time, at intervals of every three months, he had accepted payment on a series of notes given under the contract, the delay is fatal to his right to equitable relief.

In Equity.

Anthony Higgins and *S. S. Hollingsworth*, for complainant.

George Gray and *Benjamin Nields*, for defendants.

ACHESON, Circuit Judge. In the year 1869 the plaintiff, Charles Richardson, and the defendants, Ephraim T. Walton and Francis N. Buck, entered into copartnership in the business of manufacturing superphosphate at Wilmington, Del., under the firm name of Walton, Whann & Co. By their written agreement the term of the partnership was limited to five years, but, without any formal or express renewal or extension thereof, they continued in the business until July 13, 1885, when they executed articles of dissolution, whereby the plaintiff sold and agreed to convey to the defendants all his interest in the partnership business and property (except in certain scheduled claims and accounts) for the sum or price of $123,436.74, payable as follows: $23,436.74 in cash; $60,000 in the defendants' 12 promissory notes, all dated July 6, 1885, each for $5,000, and payable, with interest, the first in three months, and the others respectively at the end of each consecutive three months thereafter; and the balance or sum of $40,000 on July 6, 1890, with interest, payable semi-annually, secured by a bond and mortgage upon real estate. Accordingly the defendants, about the date of the articles of dissolution, paid and delivered to the plaintiff the hand-money and the specified securities, and he executed a conveyance to them. The defendants paid all their promissory notes as they matured, and also the semi-annual interest installments upon the mortgage, down to the filing of the bill in this case, on October 12, 1888.

The substantial purpose of the bill is to put a valuation upon the firm assets beyond the accepted value in the settlement, and to compel the defendants to pay the plaintiff a larger sum for his interest in the firm than the agreed price. The first and principal prayer is as follows:

"(1) That the said articles of dissolution be declared to have been procured by fraud and duress, and that the same be reformed in accordance with the real value of the firm's assets at the time of said dissolution."

The bill charges in substance that in the month of June, 1885, while the plaintiff was ill, and confined to his house, unable personally to attend to business, and at a time when he was "threatened with financial ruin if he was unable to arrange for meeting" commercial paper on which he was indorser, the defendants pressed upon him the dissolution of the copartnership; that in the negotiations which followed between the plaintiff, acting through his counsel, W. C. Spruance, Esq., and the defend-