pense and trouble of compelling such accounting. They have a right to look to their immediate debtors without troubling themselves to pursue parties in other courts who may, in equity, be ultimately liable to account to their debtor. The appellant relies upon the case of Comer v. Polk Co., 27 C. C. A. 1, 81 Fed. 921, recently decided in this court, in which it was held that taxes against a railroad could not be collected from receivers who had the control and management of the property during part of the years for which such taxes were assessed, but whose connection with the road had ceased, except in an equitable proceeding, and upon proof that they have assets of such railroad in their hands, or have diverted its revenues. Comer v. Polk Co. presented an entirely different case from the one in hand. The alleged liability of the receiver in that case was not charged as arising upon any contract, express or implied. The debt sued for was a debt of the property, and not necessarily an obligation of the receivers. The decree appealed from is affirmed, with costs.

CENTRAL TRUST CO. OF NEW YORK v. WORCESTER CYCLE MFG. CO. et al.

(Circuit Court, D. Connecticut. December 5, 1898.)

EQUITY PRACTICE—REHEARING—NEW EVIDENCE.

A court will not grant a rehearing and leave to introduce new evidence which was known to counsel at the time the cause was, at their request, considered and decided on the merits.

On Motion for Rehearing and for Leave to Introduce New Evidence.

For former opinion, see 90 Fed. 584.

C. Walter Artz, for receiver.

Butler, Notman, Joline & Mynderse and Michael H. Cardozo, for complainant.

Parkins & Jackson, for Nash and others, intervening creditors.

Seymour C. Loomis, for Goodrich and others, intervening creditors.

A. L. Teel, for Gilliam Mfg. Co. and others, intervening creditors.

TOWNSEND, District Judge. The motion for leave to introduce new evidence and for a rehearing is denied for the following reasons: The evidence sought to be introduced is not newly-discovered evidence, but must have been actually known to counsel before the final hearing. The question as to whether the mortgage in suit was valid was distinctly raised by the answer and on the argument, and thereupon counsel stated in open court that they wished a final decision upon the evidence then before the court. No sufficient grounds have been shown why this court should violate the settled rule of practice uniformly followed in this circuit.

NASHUA IRON & STEEL CO. v. BRUSH.

(Circuit Court of Appeals, First Circuit. December 22, 1898.)

No. 223.

1. SALES—IMPLIED WARRANTY—EXECUTORY CONTRACTS.
An executory contract to make and deliver an article implies an agreement that it shall be fitly made for the use contemplated by both parties.
2. SAME—ACTION FOR DAMAGES—JUDGMENT AS EVIDENCE.
Where plaintiff, contracting to furnish certain machinery, supplied as a part of it an article manufactured for him by defendant, on account of the defective construction of which plaintiff was subjected to a judgment for damages resulting from the breaking of the machinery, for which he was allowed to recover over against the defendant, *held*, while doubting the rule of damages applied, that, accepting that rule, the judgment against him, if rendered under circumstances indicating good faith and a reasonable amount of resistance on his part, is admissible as at least prima facie evidence of the amount of such damages.
3. APPEAL—REVIEW—NECESSITY OF SPECIFIC OBJECTIONS AND EXCEPTIONS.
The rule repeated that, to entitle a party to the review of a question in the circuit court of appeals, the objections and exceptions must ordinarily be so shaped as to show that the specific question raised on appeal was presented to the trial court.
4. SALES—IMPLIED WARRANTY—MEASURE OF DAMAGES FOR BREACH.
In an action on an implied warranty of the fitness for the use contemplated of an article manufactured by defendant for plaintiff, enhanced damages beyond the difference in value between the article as furnished and as it should have been, are not in any way recoverable if such damages were caused, or contributed to, by the insufficiency of the article in the form or size which were designated by plaintiff.

In Error to the Circuit Court of the United States for the District of New Hampshire.

Isaac W. Smith (Charles W. Hoitt and Henry E. Burnham, on the brief), for plaintiff in error.

John S. H. Frink (Charles H. Burns, on the brief), for defendant in error.

Before PUTNAM, Circuit Judge, and BROWN and LOWELL, District Judges.

PUTNAM, Circuit Judge. The defendant below agreed with the plaintiff below to manufacture and deliver a forged-iron beam strap of the best hammered scrap iron, of the dimensions particularly described, to be used for a beam engine. The contract was executory, and the case, therefore, has no relation to the doctrine of caveat emptor. So far as the words "the best hammered scrap iron" are concerned, the precise meaning of which we have no occasion to define, the contract was express to use that quality; and any failure so to do, whether relating to patent or latent matters, would constitute a breach. The effect of the provision as to the dimensions of the beam strap is laid aside for this part of the case. As for the rest of it, it is an old rule that such an executory contract implies an agreement that the goods to be delivered will be fitly made for the use contemplated by both parties. Benj. Sales (6th Ed.) § 645. In 1887, in Drummond v. Van Ingen, 12 App. Cas. 284, 290, Lord Herschell stated that this view of the law had