although the assignment and releases were to be made to Richard M. Chase, yet when so made they were to be delivered to the complainant Samuel Chase. And further, that on Bryden's delivering those papers to Chase he would give Bryden, "good negotiable notes for the sum of $6,000, payable six months thereafter." Whence it is perfectly clear, that the delivery of the specified papers was that act to be done by Bryden, which was to bind Chase to him unconditionally as his debtor. Consequently, it was the contracting party Samuel Chase, alone, who could insist on the performance of it as a condition precedent. It was he alone who could dispense with it as a preliminary act, or waive it altogether. Does it then appear, that this act has been either performed,
340 *partially dispensed with, or altogether waived so as to make Chase the debtor of Bryden; and when?

From all the pleadings and proofs it is clear, that the complainant acquiesced in the fact, and acted upon the conviction of his having become legally and properly the debtor of Bryden in the sum of $6,000 from the 17th of July, 1812, when the papers were tendered to him. He was right in refusing to give his notes at that time, because of the attachment. It was not, however, the giving of his notes, which alone could fix him as the debtor of Bryden; but the delivery of the papers, or his dispensation with that delivery, either as a condition precedent or altogether. Chase did not reject the performance proffered to him by Bryden; because it was partial, or at all defective in its nature. On the contrary, he expressly said he had no objections to make to it; and rested his non-compliance, on the pendency of the attachment; and nothing more. From the position he then assumed, it manifestly appears, that he waived the delivery of the papers as a condition precedent; and relied upon his contract alone, considering it as an independent agreement, by means of which he might obtain them. He might then have taken the ground, that the delivery was a condition precedent; or he might have offered to deposit the money in Court on those papers being delivered to him; or he might have put that defence upon the record in the attachment case by a special plea, or in answer to the interrogatories propounded to him. But he did not do so. He must therefore, be considered as the debtor of Bryden on the 17th of July, 1812, according to the terms of his contract.

Being perfectly satisfied of these facts, and that Samuel Chase did thus acknowledge and consider himself as the debtor of Bryden on that day; it is unnecessary to determine whether this claim of Bryden's was or was not such a debt as might have been attached in the hands of Chase as his garnishee; since Chase's whole course of conduct in the attachment case amounts to a total and absolute waiver of every objection on that ground. *Louderman* v. *Wilson.* *2 H. & J.* 379.