

## Statement of Facts.

proved, nor did he rely upon any act of fraud, and for that reason he refused to set aside the sale, but permitted, under a new prayer in the bill, the appellee to redeem on payment of the debt, interest and all costs, including fees of counsel. The counsel of appellee in the brief expressly declines to rely upon an actual fraud on the part of Graffam. In our opinion there is no evidence of such misconduct on his part as afforded any ground, in law or equity, to justify appellee in her failure to redeem from the sale. There is no reason why she did not pay the judgment rendered against her, of which she had full notice. Certainly no obstruction was interposed to her exercise of the right of redemption, and no promise made to induce her to forego it. Yet, after Graffam had acquired a complete legal title under judicial proceedings which were unimpeachable, the court treats the case as if the whole matter was still *in fieri*, and gives further time for redemption.

I do not deem it appropriate to enter into the discussion of the evidence in this case, but I dissent from the judgment and the opinion of the court as leading to evil results, in discrediting judicial sales, and embarrassing the due and just exercise of the right of redemption, by turning it into a question of judicial discretion.

JUSTICES WOODS, MATTHEWS and GRAY concur in this opinion.

## AKERS, Executor v. AKERS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
MIDDLE DISTRICT OF TENNESSEE.

Submitted March 1, 1886.—Decided March 8, 1886.

A suit cannot be removed from a State court under the act of March 3, 1875, unless the requisite citizenship for removal existed when the suit was begun, as well as when the application for removal was made.

*Gibson v. Bruce*, 108 U. S. 561 affirmed and applied.

This cause was commenced in a State court of Tennessee in March, 1882. In the following October an order for its re-

## Opinion of the Court.

removal into the Circuit Court of the United States, founded on a petition of defendant's, which averred, among other things, "that the controversy in said suit is between citizens of different States, and that the petitioner is a citizen of the State of Kentucky," was made. The Circuit Court on the 25th October, 1882, made the following order and judgment.

"The petition for the removal of this case from the State court to this court failing to aver that the parties were citizens of different States at the commencement of this suit, and it further appearing from the admission of said parties that both plaintiff and defendant were citizens of Tennessee at the time said suit was commenced, the court entertains the opinion that it is without jurisdiction, and doth thereupon order and adjudge that the cause be remanded to the Circuit Court of Davidson County, the tribunal from which it came; and it is further considered by the court that the plaintiff have and recover of the defendant his costs incurred in this court, for which execution is awarded; to which judgment of the court the defendant then and there excepted."

The defendant sued out this writ of error to review that judgment. On motion of the defendant in error the cause was advanced under Rule 32, and was then submitted.

*Mr. S. Watson* for defendant in error.

No appearance for plaintiff in error.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The order remanding this cause is affirmed on the authority of *Gibson v. Bruce*, 108 U. S. 561, it being admitted that both the plaintiff and the defendant were citizens of Tennessee at the time the suit was brought.

*Affirmed.*