

Counsel for Appellant.

gate and set aside the assignment and to restore to complainant his original contract, on account of the fraud and misrepresentation practised upon him. Having been induced to pay \$15,000 in the transaction, and suffered a large amount of damages, he adds to the relief sought a prayer to have his damages assessed and decreed. This is the case made by the bill. I think it is clearly within the scope of equity jurisdiction, both on account of the fraud, and from the nature of the relief asked by the complainant, namely, the cancellation of an agreement, and the reinstatement of a contract which he had been fraudulently induced to cancel. If the bill had prayed nothing else, it seems to me clear that it would have presented a case for equity. A court of law could not give adequate relief. The existence of the assignment and the cancellation of the first agreement would embarrass the plaintiff in an action at law. It is different from the case of a lost note or bond. Fraud is charged, and documents exist which in equity ought not to exist. I think the complainant is entitled to have the fraudulent transaction wiped out, and to be restored to his original status.

KRAMER v. COHN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF ARKANSAS.

Submitted November 12, 1886. — Decided December 13, 1886.

A bill in equity by an assignee in bankruptcy against the bankrupt and another person, alleging that the bankrupt, with intent to defraud his creditors, concealed and sold his property, and that he invested the proceeds in a business carried on by him in the name of the other defendant, should, upon a failure to prove the latter allegation, be dismissed, without prejudice to an action at law against the bankrupt.

The case is stated in the opinion of the court.

Mr. Morris M. Cohn for appellant.

Opinion of the Court.

Mr. M. H. Sandels (*Mr. J. H. Clendenning* was with him) for appellees.

MR. JUSTICE GRAY delivered the opinion of the court.

This bill in equity was filed by the assignee in bankruptcy of Isaac Cohn, against him and Mark S. Cohn, alleging that Isaac Cohn, before the adjudication of bankruptcy, and with intent to defraud his creditors, concealed his property and sold it for a large sum of money, and, after obtaining his discharge in bankruptcy, invested that money in a stock of goods, with which he had since carried on business in the name of the other defendant; that this stock in fact consisted of the property so kept back from his creditors, with the increase thereof, and that the other defendant had little, if any, interest therein; and praying for an answer, an injunction, a receiver, an account, and, upon failure to answer and account, for a decree vesting in the plaintiff the title in the stock, and for further relief.

The defendants answered separately upon oath, denying these allegations, and alleging that the business was carried on by Isaac Cohn as clerk of the other defendant, and was wholly owned by the latter.

At the hearing upon pleadings and proofs, the court was of opinion that the plaintiff was entitled to recover against Isaac Cohn, for money and assets fraudulently withheld by him from his assignee in bankruptcy, the sum of \$6500, but that the plaintiff had failed to connect the other defendant with the fraudulent withholding of assets; and therefore entered a decree against Isaac Cohn for that sum and costs, but as to the other defendant dismissed the bill with costs.

The plaintiff and Isaac Cohn each filed a petition for a rehearing. The plaintiff's petition was denied. But upon the petition of Isaac Cohn it was ordered that as to him, "it appearing to the court that it is without jurisdiction in this case," the former decree be set aside and the bill be dismissed with costs and without prejudice. The plaintiff appealed to this court.

Statement of Facts.

No reason is shown for sustaining the appeal. So far as the plaintiff's claim was against Isaac Cohn personally, an action at law to recover the value of the property fraudulently concealed and sold by him would afford a full, adequate and complete remedy. The only pretence for resorting to equity was the allegation that the proceeds of that property had been invested in the stock in goods of a business carried on by him in the name of the other defendant, whereby it was sought to affect the latter and the goods with a trust in favor of the creditors of Isaac, and of the plaintiff as representing them. But the proof wholly failed to support that allegation, and showed that the plaintiff had no right of action, except to recover pecuniary damages against Isaac alone. It thus appeared that the plaintiff never had any claim within the cognizance of a court of equity; and the bill was rightly dismissed generally as to the second defendant, and without prejudice to an action at law against the first defendant. *Dowell v. Mitchell*, 105 U. S. 430; *Buzard v. Houston*, ante, 347, just decided.

Decree affirmed.

WILLIAMSPORT BANK v. KNAPP.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF PENNSYLVANIA.

Argued November 23, 24, 1886. — Decided December 13, 1886.

Each question certified to this court upon a division of opinion of the judges in the Circuit Court must be a distinct point of law, clearly stated, and not the whole case, nor whether upon the evidence judgment should be for one party or for the other.

The original action was debt on § 5198 of the Revised Statutes, brought in the Circuit Court of the United States for the Western District of Pennsylvania, against a national banking association established within that district, to recover twice the amount of interest, at the rate of nine per cent., received by the