

Opinion of the Court.

MORRISON *v.* DURR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF CALIFORNIA.

Argued April 27, 28, 1887. — Decided May 27, 1887.

In this case the bill having called for answers under oath, and such answers having been made denying each and every allegation of fraud, and the evidence of two witnesses, or of one witness corroborated by circumstances, being wanting in support of the charges of fraud, this court will not reverse the decree dismissing the bill.

In equity. Decree dismissing the bill. Plaintiff appealed.

Mr. Eppa Hunton for appellants.

Mr. Edward J. Pringle for appellee.

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

This is a suit in equity brought by several judgment creditors of the mercantile firm of Kennedy & Durr, to set aside a sale of the goods of the firm of Charles McDermot, under executions on judgments in his favor, on the ground of fraud, and to have the property and its proceeds in the hands of McDermot subjected to the payment of the amounts due them respectively. The bill called for answers under oath, and McDermot answered accordingly, denying each and all of the allegations of fraud which were made against him. This being responsive to the bill, his denials must be overcome by the satisfactory evidence of two witnesses, or of one witness corroborated by circumstances which are equivalent in weight to another, before the complainants can be granted the relief they ask. No such proof has been made. We have looked carefully through the whole evidence, and, while it is full of circumstances calculated to excite suspicion, there is not enough to justify us in reversing the decree of the court below dismiss-

Argument for Appellant.

ing the bill. The questions involved are principally of fact, which it would serve no useful purpose to consider at length in an opinion.

The decree is affirmed.

TEXAS TRANSPORTATION CO. v. SEELIGSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF TEXAS.

Submitted April 25, 1887. — Decided May 27, 1887.

If a cause pending in a state court against several defendants is removed thence to the Circuit Court of the United States on the petition of one of the defendants under the act of 1875, 18 Stat. 470, on the grounds of a separate cause of action against the petitioning defendant, in which the controversy was wholly between citizens of different states, it should be remanded to the state court if the action is discontinued in the Circuit Court as to the petitioning defendant.

THIS was an appeal from an order remanding a cause to the state court from whence it had been removed. The case is stated in the opinion of the court.

Mr. T. N. Waul for appellants.

I. The case was properly removed from the state court, there being a separable controversy between the plaintiff, a citizen of Texas, on one side, and Huntington, a citizen of New York, on the other side, to which the other defendants were not necessary parties—the only allegation against C. P. Huntington being that he is the owner of the note for \$335,000 and the trust deed to secure the same—and the prayer on the original petition to annul and cancel the note and trust deed.

II. There is a controversy between the defendant, C. P. Huntington, a citizen of New York, on one side, and the plaintiff and the other defendants on the other side, in which the interest of the plaintiff and the Texas Transportation Com-