

Opinion of the Court.

GAGE v. KAUFMAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF ILLINOIS.

No. 189. Submitted January 27, 1890. — Decided March 3, 1890.

In a bill in equity to quiet title, an allegation that the plaintiff is seized in fee simple is a sufficient allegation that he has the possession as well as the title.

In a bill in equity, an allegation that the plaintiff has no adequate remedy at law is dispensed with by Rule 21 in Equity.

A bill in equity to remove a cloud upon title, created by a tax deed, which alleges that no taxes were due upon which the land could be sold, need not offer to pay any taxes as a condition of relief.

By the law of Illinois, a tax deed is no more than *prima facie* evidence in favor of the purchaser, and may be shown to be invalid by proof that there was no advertisement of sale, or no judgment or precept, or no taxes unpaid, or no notice to redeem given or recorded; and a bill to remove a cloud upon title, alleging that the defendant claims under a tax deed valid on its face, but invalid on the grounds aforesaid, is good on demurrer.

IN EQUITY. The defendant demurred to the bill. The demurrer being overruled he elected to stand on the demurrer, and a decree was entered for the complainant, from which the defendant appealed. The case is stated in the opinion.

Mr. Augustus N. Gage for appellant.

Mr. Edward Roby for appellee.

MR. JUSTICE GRAY delivered the opinion of the court.

This was a bill in equity by a citizen of Illinois against a citizen of New Jersey to remove a cloud upon the title of lands in Chicago of the value of \$10,000.

The bill alleged that the plaintiff was seized in fee simple of the lands; that the defendant claimed title to them under two pretended tax deeds to him from the county clerk, recorded in the office of the county recorder, (copies of the records of which were set forth in the bill, showing deeds in the form prescribed

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by § 221 of c. 120 of the Revised Statutes of Illinois of 1874); and further alleged that there was no advertisement of any public sale for non-payment of taxes on the day mentioned in either deed; that there was no judgment or precept on which the lands could have been sold; that there were no taxes unpaid on which the sale could have been made; that no notice to redeem the lands from such pretended sale was given by the holder of any certificate of such sale, as required by the constitution and statutes of Illinois; and that no such notice or evidence thereof was filed or recorded by the county clerk.

The defendant demurred to the bill, because it did not show who was in possession of the lands, or that the defendant was not in possession, or that the plaintiff had not an adequate remedy at law; because the plaintiff did not offer to do equity and to repay the taxes paid by the defendant; because the grounds alleged in the bill for setting aside the defendant's title were insufficient to overcome the *prima facie* evidence of the tax deeds set forth in the bill; and for want of equity.

The court overruled the demurrer, and, the defendant electing to stand by it, entered a decree for the plaintiff. The defendant appealed to this court.

The grounds of demurrer are untenable. The allegation that the plaintiff is seized in fee simple is a sufficient allegation that he has the possession as well as the title. 1 Dan. Ch. Pract. c. 6, § 5. The allegation that he has no adequate remedy at law is dispensed with by Equity Rule 21. If, as the bill alleges, no taxes were due upon which the lands could be sold, he was not bound to pay any taxes as a condition of relief. By the law of Illinois, the deed is no more than *prima facie* evidence in favor of the purchaser, and may be shown to be invalid by proof of either of the facts alleged in the bill and admitted by the demurrer, namely, that there was no advertisement of sale, no judgment or precept, no taxes unpaid, or no notice to redeem given or recorded. Illinois Rev. Stat. of 1874, c. 120, §§ 177, 182, 191, 194, 216, 217, 224; *Senichka v. Lowe*, 74 Illinois, 274; *Bell v. Johnson*, 111 Illinois, 374; *Gage v. Rohrbach*, 56 Illinois, 262; *Williams v. Underhill*, 58 Illinois, 137; *Dalton v. Lucas*, 63 Illinois, 337.

Syllabus.

Upon general principles, and by the Illinois decisions, as the tax deeds appear upon their face to be clouds upon the plaintiff's title, a bill in equity is the proper form of obtaining relief upon the various grounds alleged.

Decree affirmed.

DELAWARE COUNTY COMMISSIONERS *v.* DIEBOLD
SAFE AND LOCK COMPANY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF INDIANA.

No. 39. Submitted April 26, 1889. — Decided March 3, 1890.

Under the act of March 3, 1875, c. 137, the restriction of the original jurisdiction of the Circuit Court of the United States in suits by an assignee whose assignor could not have sued in that court does not apply to a suit removed from a state court.

It is no objection to the exercise of jurisdiction by a Circuit Court of the United States over a suit brought by an assignee of a contract, that the assignor is a citizen of the same State as the defendant, if the assignor was not a party to the suit at the time of its removal from the state court, and, being since made a party, disclaims all interest in the suit, and no further proceedings are had against him, and the complaint alleges that the defendant consented to the assignment.

A claim against a county, heard before the county commissioners, and on appeal from their decision by the circuit court of the county, under the statutes of Indiana, may be removed, at any time before trial in that court, into the Circuit Court of the United States, under Rev. Stat. § 639, cl. 3.

In an action brought against one party to a contract by an assignee, seeking to charge him by virtue of a contract of assignment from the other party and other facts, a complaint stating the same facts, not under oath, and signed by attorney only, in an action by the assignee against his assignor, is incompetent evidence of an admission by the plaintiff that he had no cause of action against this defendant.

In a State whose law allows an assignee of an entire contract, not negotiable at common law, to sue thereon in his own name, and an assignee of part of such a contract to sue thereon jointly with his assignor, or to sue alone if no objection is taken by demurrer or answer to the non-joinder of the assignor, an assignee has the like right to maintain such an action at law in the Circuit Court of the United States.

By a contract for the construction of a jail, under the statutes of Indiana, (which require all such contracts to be let to the lowest responsible