

Colson v. Lewis.

be made upon the last day of grace, and notice of the default of the maker be put into the post-office, early enough to be sent by the mail of the succeeding day.

Decree reversed.

COLSON *et al.* v. LEWIS.*Jurisdiction.*

The jurisdiction of the circuit courts of the United States extends to a case between citizens of Kentucky, claiming lands, exceeding the value of \$500, under different grants, the one issued by the state of Kentucky, and the other by the state of Virginia, but upon warrants issued by Virginia, and locations founded thereon, prior to the separation of Kentucky from Virginia. It is the grant which passes the legal title to the land; and if the controversy is founded upon the conflicting grants of different states, the judicial power of the courts of the United States extends to the case, whatever may have been the equitable title of the parties, prior to the grant.

March 14th, 1817. THE opinion of the court in this cause was delivered by WASHINGTON, Justice.—This suit in equity was removed into the Circuit Court of Kentucky, upon the petition of the defendant, filed in the state court; and upon a motion made in the circuit court, to dismiss the suit from \*378] that jurisdiction, the judges of that court were opposed in opinion, and caused the following facts to be stated, to enable this court to decide the question. Those facts are, that the value of the land in controversy exceeds \$500; that the complainants are citizens of Virginia; and that the grant, under which they claim title, is derived from the state of Kentucky, by virtue of warrants issued from the land-office of Virginia, and locations upon the warrants, before the separation of Kentucky from Virginia: that the defendant's grant is from the state of Virginia, by virtue of a warrant issued from the land-office, and a location made thereon, before the separation of Kentucky.

The question referred to this court is, whether the circuit court for the district of Kentucky can take jurisdiction of the cause, because the grants for the land in controversy, lying in Kentucky, were issued, the one by the state of Virginia, and the other by the state of Kentucky, when both grants purport to be founded upon warrants and locations made under the authority of the laws of Virginia?

It is the opinion of this court, that the question which is referred to us, by the circuit court of Kentucky, is settled by the decision of this court, in the case of the *Town of Pawlet v. Clark and others*, 9 Cranch 292. The only difference between the two cases is, that in the case referred to, both parties claimed immediately under grants, the one from the state of Vermont, and the other from the state of New Hampshire, before the separation, which grants were \*the inception of title; and that, in this case, \*379] both parties claim under grants, the one issued by the state of Kentucky, and the other by the state of Virginia, but upon warrants issued by Virginia, and locations founded thereon, prior to the separation of Kentucky from Virginia. But where the controversy arises upon claims founded upon grants from different states, as the present case is understood to be, the principle decided in the case which has been cited, precisely governs this. The decision in that case is founded on the words of the consti-

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tution of the United States, which extends the judicial power of the United States to controversies between citizens of the same state, claiming lands under grants of different states. It is the grant which passes the legal title to the land, and if the controversy is founded upon the conflicting grants of different states, the judicial power of the courts of the United States extends to the case, whatever may have been the equitable title of the parties, prior to the grant.

Certificate accordingly.

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*Answer in chancery.*

The answer of one defendant to a bill in chancery cannot be used as evidence against his co-defendant; and the answer of an agent is not evidence against his principal; nor are his admissions *in pais*, unless where they are a part of the *res gestæ*.

Where a cause is set down for hearing on the bill, answer and exhibits, without other pleadings, the whole of the answer must be considered as true.<sup>1</sup>

March 14th. THIS cause was argued by *Swann*, for the appellants, and by *Lee*, for the respondents.

March 15th, 1817. The opinion of the court was delivered by WASHINGTON, Justice.—This is a bill filed on the equity side of the circuit court of the district of Columbia, for the county of Alexandria, by the Marine Insurance Company of Alexandria, against Jedediah Leeds, praying for an injunction to a judgment obtained at law in that court, against the said company, by William Hodgson, for the use of George F. Straas and the said Jedediah Leeds. The judgment was obtained by Hodgson, on a policy of insurance, dated the 30th of September 1799, effected by him with the said company on the brig Hope, in his own name, for George F. Straas and others, of Richmond.<sup>1</sup>

The bill states, that in the year 1810, the above judgment was obtained for the use and benefit of \*George F. Straas, and the respondent, [\*381 Jedediah Leeds. That, previous to the said insurance, the said George F. Straas and Jedediah Leeds, being owners of the vessel called the Sophia, did, through the agency of the said William Hodgson, effect an insurance of the said vessel, the Sophia; for the premium on which, amounting to \$2754, Hodgson gave his own note. That Straas paid \$929 in part of the premium-note; and claiming a return of premium to the amount of the residue of the said note, he obtained an injunction in the court of chancery of Virginia, which was finally dissolved.

The ground on which that injunction is prayed, is, that the balance of the premium due upon the insurance of the Sophia ought to be set off, so far as it goes, against the judgment at law upon the policy of the Hope.

The answer of Leeds denies that he had any interest in the Sophia, at the time the insurance mentioned in the bill was effected, or that he was in any manner concerned in that insurance. He states, that within a few months after the insurance on the Hope was effected, and long before the

<sup>1</sup> See 5 Cranch 100; 9 Id. 100; 7 Id. 333.