be remanded to the court from whence it came, with instructions to permit the complainants, upon application for that purpose, to amend their bill, and to make proper parties, and to proceed *de novo* in the cause, from the filing of such amended bill, as law and equity may require.

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*248] *Old Grant, on the demise of Samuel Meredith, Plaintiff in error, *v.* John McKee, for the use of the Bank of the Commonweath of Kentucky.

Jurisdiction in error.

The court will not take jurisdiction of a case, where, although the whole property claimed by the lessor of the plaintiff in error, under a patent, and which was recovered in ejectment, exceeded $2000, the title to a lot of ground, part of the whole tract, which was of less value than $500, was only involved in the case before the court.

Wickliffe moved to dismiss this cause, which was brought by a writ of error from the Circuit Court of the district of Kentucky, on the ground, that the property in controversy was not of the value of $2000; although the whole property owned by the lessor of the plaintiff in error, was under a patent, and which was recovered in the ejectment, is 1000 acres; yet, the title to a lot in the town of Falmouth, of less value than $500, held under the patent, is only involved in this case, and can only be affected by the decision of this court.

Marshall, Ch. J., delivered the opinion of the court.—This is a writ of error to a judgment of the court of the United States for the seventh circuit, and the district of Kentucky, awarding restitution of lot No. 108, in the town of Falmouth, to the defendants in error; who had been turned out of possession, by virtue of a writ of *habere facias possessionem*, issued on a judgment in ejectment, in favor of the plaintiff in error.

Previous to the institution of the suit, the town of Falmouth had been laid out, in pursuance of an act of assembly, and lot No. 108 had been sold and conveyed to George Hendricks. The law establishing the town of Falmouth, directed that the lots should be sold, subject to the condition of making certain improvements thereon, within seven years; on failure to do which, the trustees are empowered to enter on any lot not improved, and sell it again. These improvements were not made on lot No. 108.

The defendant in error moves to quash the writ of error, because the matter in controversy is not of the value of $2000. The motion is resisted, because the whole property which was recovered in the ejectment, may be considered as involved in this motion; since each tenant may move separately for an award of restitution, on the supposition, that the regularity of
*249] the proceeding, under the law by which the town *was established, and the lots sold, may be examined; on this motion, the plaintiff in error has brought that subject into view, and has discussed it fully. But the court is of opinion, that the question of title connot be considered on this writ of error. The town of Falmouth was separated from the tract out of which it was taken, and this lot was sold, before the suit was instituted; neither the trustees of the town, nor the proprietors of the lot, were parties

to that ejectment. The motion to award restitution, therefore, involved nothing further than the lot to which the party prayed to be restored; and as that is not of the value of $2000, the court has no jurisdiction. The writ of error is to be dismissed.

Writ of error dismissed for want of jurisdiction; it not appearing that the value of the premises, in this suit, is $2000.

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*William Konig, an alien, Plaintiff below, *v.* William Bayard, William Bayard, jr., Robert Bayard and Jacob Le Roy, citizens of the state of New York. [*250

Bills of exchange.—Payment supra protest.

A stranger to the drawer and indorser of a non-accepted bill of exchange may intervene *supra* protest, to pay the same for the honor of an indorser or drawer. p. 262.

It is no objection to this intervention, that it has been done, at the request, and under the guarantee, of the drawees of the bill, who had refused to accept or pay the same; the arrangements made by the payee of the dishonored bill, with the drawees, by which he was to be protected from loss, do not affect the liability of the party to the bill, for whose honor it has been paid. p. 262.

If A., at the request of the drawee of a bill of exchange, and under his guarantee, accept and pay the bill, *supra* protest, for the honor of the indorser, the party against whom suit is brought for the amount paid, may avail himself of every defence which he could have had, if the bill had been paid, *supra* protest, for the honor of the indorser, by the drawee, and suit brought for the same.[1] p. 262.

Certificate of Division from the Circuit Court for the Southern District of New York. This was an action of *assumpsit*, instituted in the circuit court of the United States for the southern circuit of New York, by William Konig, a merchant of Amsterdam, carrying on business under the firm of William Konig and Co., against the defendants, merchants in New York, trading under the firm of Le Roy, Bayard & Co.

The action was upon a foreign bill of exchange, and the declaration charged, that the same was drawn at Baltimore, on the 2d day of September 1822, by John C. Delprat, on N. & J. & R. Van Staphorst, of Amsterdam, in Holland, at sixty days sight, for 21,500 florins, in favor of the defendants, and made payable to them, or order. That the defendants, on the 4th of September, in the same year, indorsed the same to L. H. Huder, who indorsed it to Rougemont & Behrends, and that they, on the 25th of November 1822, presented the bill (the same being unaccepted and unpaid) to the drawees, for acceptance, by whom acceptance was refused, and the bill protested for non-acceptance; and that the plaintiff, on the same day, at Amsterdam, to prevent the bill from being sent back to the defendants, did, under that protest, and for the honor and account of the defendants, accept the bill, in writing, and gave notice thereof to the defendants. That the bill was, afterwards, and before payment, indorsed by Rougemont & Behrends to N. M. Rothschild, who indorsed it to M. Rothschild & Sons, who indorsed it to B. J. De Jongh & Fils; and the last indorsees, when the bill became due *and payable, viz., on the 25th of January 1823, at Amsterdam, presented it to the drawees for payment; that payment [*251

[1] See Phillips *v.* Im Thurn, 18 C. B. (N. S.) 694; s. c. 1 L. R., Exch., 463.