all the parties to the contract. Nothing more is affirmed in this charge or verdict.

One general objection was taken in argument to the instruction given, importing a charge of inconsistency, inasmuch as although it admits the note to be a business note, as it is called, and therefore, to be passed to the credit of the last indorser, it permits it to be treated as an accommodation note, in allowing it to be passed to the credit of the maker. But if this were strictly the fact, what defence does it afford to the action, if such were the agreement, and the real understanding, of the parties? In strictness, however, it was not passed to the credit of the maker alone, for in the progress of the ruinous system of loans which prevails over the country, the note discounted as the renewal of an accommodation note, cannot be called a business note, nor can it, in correctness, be predicated of such a note, that it is passed to the credit of the maker alone, when the last indorser has, in effect, an equal relief from the application of the proceeds.

We do not deem it necessary to consider a question commented upon in argument, by the counsel for the bank, and perhaps glanced at by the opposite counsel, whether this note was not void as an accommodation note, under the rules of the bank, because not secured by a deposit of stock. No one of the exceptions raises the question, and we should think it injustice to the counsel for the plaintiffs here, to suppose that he intended to raise it.

Judgment affirmed, with costs.

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*620] *James McDonald, Appellant, *v.* Freeman Smalley and others (in all forty).

Jurisdiction.

Where the record of the court below contained the whole proceedings in the case, and exhibited all the matters either party required for a final disposition of the case, and the counsel for both the appellants and the appellees, were willing to submit, upon argument, the whole case to the final decision of the court; but it appeared, that the circuit court of Ohio had not decided any question but that which had been raised upon the jurisdiction of the court, the counsel were directed by this court to argue the point of jurisdiction only. p. 621.

It cannot be alleged, that a citizen of one state, having title to lands in another state, is disabled from suing for those lands in the courts of the United States, by the fact that he derives his title from a citizen of the state in which the lands lie. p. 623.

M., a citizen of Ohio, apprehensive his title to lands in that state could not be maintained in the state court, and being indebted to the plaintiff, a citizen of Alabama, to the amount of $1110, offered to sell and convey to him the land, in payment of the debt, stating in the letter by which the offer was made, that the title would most probably be maintained in the courts of the United States, but would fail in the courts of the state; the property was estimated at more than the debt, but in consequence of the difficulties attending the title, he was willing to convey it for the debt, which was done; the plaintiff in error, after the land was conveyed to him, gave his bond to make a quit-claim title to the land, on condition of receiving $1100: *Held*, that the title acquired by the purchase, gave jurisdiction to the court of the United States.[1] p. 623.

The motives which induced M. to make the contract for the purchase of the land, can have no influence on its validity; a court cannot enter into the consideration of those motives, when deciding on its jurisdiction. p. 624.

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[1] s. p. Smith *v.* Kernochan, 7 How. 198; Jones *v.* League, 18 Id. 76; Briggs *v.* French, 2 Sumn. 252; Newby *v.* Oregon Central Railway Co., 1 Sawyer 63. But a mere colorable transfer will not confer jurisdiction. Barney *v.* Baltimore, 6 Wall. 280.

McDonald v. Smalley.

In a contract between a mortgagor and mortgagee, being citizens of different states, it cannot be doubted, that an ejectment, or bill to foreclose, may be brought in a court of the United States, by the mortgagee residing in a different state. p. 624.

The rules which govern the practice of the circuit courts in chancery, have been prescribed by this court; and ought to be observed. p. 625.

This was an Appeal from the Circuit Court of Ohio, by the complainant in that court, on a bill filed on the chancery side of the court, the object of which was, through the aid of that court, to obtain a conveyance of a tract of land, situate in the state of Ohio. The complainant, a citizen of the state of Alabama, derived title under a conveyance from Duncan McArthur, a citizen of Ohio; and the only point decided in the circuit court, was upon the question of jurisdiction. The circuit court dismissed the bill, for want of jurisdiction; and the complainant appealed to this court.

*621] *Before the argument commenced, the counsel for both parties asked instructions of the court upon the question, whether, as the record contained the whole of the proceedings in the cause, and exhibited all the matters either party required for a final disposition of the case, in this court, upon all the points in controversy, this court would permit the argument to go to the whole case, so that a decree could be given here upon the whole case; or, whether, an opinion upon the jurisdiction only having been given in the circuit court, the argument should be confined to that question. The court having advised upon the subject, directed the counsel to argue the point of jurisdiction only, as no other than that had been decided in the court from which the appeal had been taken.

In the circuit court of Ohio, the defendant suggested, that McDonald, the complainant in the bill, was not a citizen of Ohio; and according to a practice in the courts of the state of Ohio, under the authority of a law of that state, interrogatories were exhibited to the complainant, to which answers were given. This law was passed subsequent to the act of congress establishing the judiciary system, and was admitted not to be authority in the courts of the United States. The facts stated by the complainant, in answer to those interrogatories, with other testimony, furnished the ground taken against the jurisdiction of the court.

On the 14th November 1823, Duncan McArthur conveyed, by deed of indenture, the land in controversy, to the complainant; the consideration expressed in the deed being $1100, the amount of a debt he owed to the complainant, for land purchased from him. In reply to the interrogatory, "whether he was the beneficial owner, or was prosecuting the suit for the benefit of some resident in Ohio; and whether he is the real prosecutor of the suit, and was so at its commencement, or whether his name was used for the benefit of a citizen of the state of Ohio?" the complainant answered, by referring to a letter from Duncan McArthur to him, dated July 18th, 1823. In that letter, Duncan McArthur offered to give the land in question, 1266 acres, alleged to be worth five dollars per acre, to pay a debt of $1100; suggests that the title is good, if prosecuted in the federal court; "but state judges do not understand land-causes, and a claimant in the military district might as well toss up heads and tails, as sue in a state court." It contained also this suggestion; "should you accept this offer, and not wish to prosecute the claim yourself, you can make something handsome, I have no doubt, by selling it to some of your neighbors;" and it concluded with

offering "any assistance in my power, should *a suit be brought for recovery of the land in the circuit court."

He also stated, in his answer, that the deed under which he claimed, was executed for the purpose of giving jurisdiction to the court of the United States; because he believed that court safer than any other in the state of Ohio; that the contract was made by letter, of which he had not retained a copy; and that at the time the deed was "written," there was no special agreement between him and McArthur, but, perhaps, propositions by letter: "I give my bonds to a third party for a quit-claim title to said lands, on condition of their paying me $1100."

The complainant insisted, that the deed from McArthur conveyed to McDonald such a title as would enable him to sustain the suit in a federal court; that it was sufficient, if he had any interest; that by accepting the deed, McDonald had been paid his debt, and though he might be only mortgagee, he could sue in this court. The respondent contended, that the answer of McDonald showed that he was not the owner of the land; and his manner of answering, left no doubt, but that the owner was a citizen of Ohio, and that the jurisdiction of the court, therefore, could not be maintained.

Baldwin and *Doddridge*, for the complainant.—It is evident, that the complainant held the land, and it was not material, how he held it. He had an interest in the land, and was a citizen of Alabama. It is not necessary, that a party, to sue in the courts of the United States, shall be the sole owner, if he is beneficial owner of a part of the land; if he has any interest in the lands, it is sufficient. The class of cases decided in the circuit court of Pennsylvania, by Mr. Justice WASHINGTON, has established the principle. *Robert Browne's Lessee* v. *Browne*, 1 W. C. C. 429. Here, the interest in the land is certainly to the extent of the debt; and the court will sustain the jurisdiction, although the interest may not be commensurate with the whole of the land. It is important and necessary, and it was in view of the framers of the constitution of the United States, that their tribunals should be opened to those whom prejudice, or unjust and unconstitutional legislation, in the states, might prevent from maintaining their rights in the courts of the states, and the courts of the United States should favor such appeals. Titles may be, and sometimes are, bad in a state, before a state court. which are perfect under the decisions of the national courts. *Huideköper's Lessee* v. *Douglass*, 1 W. C. C. 258. Mr. Doddridge also referred to cases, similar in principle, decided in the courts of Virginia.

Hammond, for the appellees.—*The inference to be drawn from the decisions of the courts of Pennsylvania, is different from that [*623 which the complainant's counsel deduces. The interference of the courts of the United States, in relation to titles to lands, so as to regulate them differently from the laws of the state, is to be deprecated; such property should be held according to the decisions of the courts of the state.

The complainant has nothing but a mortgage interest in the land, and such an interest cannot give jurisdiction to the courts of the United States. The engagement to give a quit-claim deed, coupled with the absence of proof to show that the deed to be made was to another person than McArthur, authorizes the assertion, that the whole arrangement was one intended only

to aid McArthur in bringing his title before a court of the United States; and such a proceeding cannot be sustained.

Marshall, Ch. J., delivered the opinion of the court.—This suit was instituted in the circuit court of the United States for the seventh circuit, and district of Ohio, to obtain a conveyance of a tract of land, lying in what is termed "the military district;" claimed by the complainant under a patent, younger than that under which it is held by the defendants. The complainant is a citizen of Alabama, and claims the land under a conveyance from Duncan McArthur, who is a citizen of Ohio. The defendants objected to the jurisdiction of the court; and after hearing the parties upon this point, the court dismissed the bill, being of opinion, that its jurisdiction could not be sustained. From this decree, the complainant has appealed, and the cause is now before this court on the question of jurisdiction.

The bill states the complainant to be a citizen and resident of the state of Alabama, and the defendants to be citizens and residents of the state of Ohio. It has not been alleged, and certainly cannot be alleged, that a citizen of one state, having title to lands in another, is disabled from suing for those lands in the courts of the United States, by the fact, that he derives his title from a citizen of the state in which the lands lie; consequently, the single inquiry must be, whether the conveyance from McArthur to McDonald was real or fictitious?

The transaction, as laid before the court, appears to be this; McArthur was apprehensive that his title could not be sustained in the courts of the state, in which alone he could sue; and being indebted to McDonald in the sum of $1100, offered to sell and convey to him the land in controversy, in
*624] payment of *this debt. The letter in which this offer was made, expresses the opinion that his title was good, and would most probably be established in the courts of the United States, but would fail in the courts of the state. He estimates the property as being worth much more than the sum he is willing to take for it, but in consequence of the difficulties attending the title, he is willing to convey it in satisfaction of the debt. He suggests, that if McDonald should be disinclined to engage in the controversy himself, he might make an advantageous sale to some of his neighbors, who might be disposed to emigrate to Ohio; and offers to render any service in his power to the proprietor of the land, in the prosecution of the claim in the courts of the United States. The contract was concluded by a letter, written in answer to that which has been stated, of which the said McDonald retained no copy. There was no special agreement between the plaintiff and McArthur when the deed was written, but perhaps some proposition by letter. He gave his bond to a third party for making a quit-claim title to the land, on condition of receiving from him $1100.

This testimony, which is all that was laid before the court, shows, we think, a sale and conveyance to the plaintiff, which was binding on both parties. McDonald could not have maintained an action for his debt, nor McArthur a suit for his land. His title to it was extinguished, and the consideration was received. The motives which induced him to make the contract, whether justifiable or censurable, can have no influence on its validity. They were such as had sufficient influence with himself, and he had a right to act upon them. A court cannot enter into them, when deciding on its

jurisdiction. The conveyance appears to be a real transaction, and the real as well as nominal parties to the suit, are citizens of different states.

The only part of the testimony which can inspire doubt, respecting its being an absolute sale, is the admission that the plaintiff gave his bond to a third party for a quit-claim title to the land, on paying him $1100. We are not informed, who this third party was, nor do we suppose it to be material. The title of McArthur was vested in the plaintiff, and did not pass out of him by this bond. A suspicion may exist, that it was for McArthur. The court cannot act upon this suspicion. But suppose the fact to be avowed, what influence could it have upon the jurisdiction of the court? It would convert the conveyance, which on its face appears to be absolute, into a mortgage. But this would not affect the question. In a contest between the mortgagor and mortgagee, being citizens of different states, it cannot be doubted, that an ejectment, or a bill *to foreclose, may be brought by the mortgagee, residing in a different state, in a court of the [*625 United States. Why then may he not sustain a suit in the same court, against any other person being a citizen of the same state with the mortgagor? We can perceive no reason why he should not. The case depends, we think, on the question, whether the transaction between McArthur and McDonald was real or fictitious; and we perceive no reason to doubt its reality, whether the deed be considered as absolute or as a mortgage.

A question has been made, whether the circuit court ought to have noticed the testimony on the conveyance under which the plaintiff claims, because it was brought irregularly before them. By a law of the state, interrogatories may be propounded by the defendant in his answer, which the plaintiff is compelled to answer, as if they had been propounded in a cross-bill. Although this point has become unimportant in this cause, the court thinks it proper to say, that the rules which govern the practice of the circuit courts in chancery, have been prescribed by this court, and ought to be observed.

We think there is error in the decree of the circuit court, dismissing the complainant's bill, and that the same ought to be reversed, and the cause remanded for further proceedings, according to law.

This cause came on, &c., and was argued on the point of jurisdiction: On consideration whereof, this court is of opinion, that there is error in the decree of the said circuit court, dismissing the complainant's bill. It is, therefore, decreed and ordered by this court, that the decree of the said circuit court in this cause be and the same is hereby reversed and annulled; and it is further ordered, that the cause be remanded to the said circuit court for further proceedings to be had therein, according to law and justice.