

CASES DETERMINED
IN THE
SUPREME COURT OF THE UNITED STATES.

JANUARY TERM, 1834.

WALTER DUNN *et al.*, Appellants, *v.* HENRY CLARKE *et al.*

Jurisdiction.

The complainants filed their bill in the circuit court of Ohio, praying for an injunction to a judgment in an ejectment, and for a conveyance of the premises; all the complainants were residents in the state of Ohio, and so were the defendants; the judgment was obtained in the circuit court by G., a citizen of Virginia, and the defendant Clarke held the land recovered, under the will of G., in trust.

No doubt is entertained, that jurisdiction may be sustained, so far as to stay execution at law against D.; he is the representative of Graham, and although he is a citizen of Ohio, yet this fact, under the circumstances, will not deprive this court of an equitable control over the judgment; but beyond this, the decree of this court cannot extend.¹

Of the action at law, the circuit court had jurisdiction, and no change in the residence or condition of the parties can take away a jurisdiction which has once attached. If G. had lived, the circuit court might have issued an injunction to his judgment at law, without a personal service of process, except on his counsel; and as D. is his representative, the court may do the same thing, as against him. The injunction bill is not considered an original bill between the same parties, as at law; but, if other parties are made in the bill, and different interests involved, it must be considered, to that extent at least, an original bill; and the jurisdiction of [*2 the circuit court must depend upon the citizenship of the parties.

Several persons are made defendants who were not parties or privies to the suit at law, and no jurisdiction as to them can be exercised, by this or the circuit court; but as there appear to be matters of equity in the case, which may be investigated by a state court, it would be reasonable and just, to stay all proceedings on the judgment, until the complainants shall have time to seek relief from a state court.

APPEAL from the Circuit Court of Ohio. This case was submitted to the court as a question whether the court had jurisdiction in the same; and was also argued at large upon the merits and the law, by *Stanberry* and *Ewing*, for the appellants; and by *Corwin*, for the appellees.

The only question decided by the court was upon the jurisdiction; and the arguments on the law and facts of the case are, therefore, necessarily, omitted.

¹ S. P. Freeman *v.* Howe, 24 How. 451; Dunlap *v.* Stetson, 4 Mason 349; St. Luke's Hospital *v.*

Barclay, 3 Bl. C. C. 250; Jones *v.* Andrews, 10 Wall. 327; Williams *v.* Byrne, Hempst. 472.

Dunn v. Clarke.

McLEAN, Justice, delivered the opinion of the court.—This suit was brought into this court, by an appeal from the decree of the circuit court of the United States for the district of Ohio. The complainants in the court below filed their bill praying for an injunction to a judgment recovered against them in an action of ejectment, and to obtain a decree for a conveyance of the land in controversy. All the complainants are residents of the state of Ohio, and so are the defendants. The judgment at law was obtained by Graham, a citizen of Virginia, but who has since deceased ; and the defendant, Walter Dunn, holds the land recovered, in trust, under the will of Graham. On this state of facts, a question is raised, whether this court has jurisdiction of the cause. This question seems not to have been made in the circuit court.

No doubt is entertained by the court, that jurisdiction of the case may be sustained, so far as to stay execution on the judgment at law against Dunn. He is the representative of Graham ; and although he is a citizen of Ohio, yet this fact, under the circumstances, will not deprive this court of *3] an equitable control over the judgment. *But beyond this, the decree of this court cannot extend.

Of the action at law, the circuit court had jurisdiction ; and no change in the residence or condition of the parties can take away a jurisdiction which has once attached. If Graham had lived, the circuit court might have issued an injunction to his judgment at law, without a personal service of process, except on his counsel ; and as Dunn is his representative, the court may do the same thing, as against him. The injunction bill is not considered an original bill between the same parties, as at law : but if other parties are made in the bill, and different interests involved, it must be considered, to that extent at least, an original bill ; and the jurisdiction of the circuit court must depend upon the citizenship of the parties.

In the present case, several persons are made defendants who were not parties or privies to the suit at law, and no jurisdiction as to them can be exercised, by this or the circuit court. But, as there appear to be matters of equity in the case, which may be investigated by a state court, this court think it would be reasonable and just, to stay all proceedings on the judgment, until the complainants shall have time to seek relief from a state court. And the court direct that all proceedings be thus stayed, and that the decree of the circuit court be modified so as to conform to this view of the case.

THIS cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Ohio, and was argued by counsel : On consideration whereof, it is the opinion of this court, that in the present case several persons are made defendants who were not parties or privies to the suit at law, and that no jurisdiction can be exercised by this or the circuit court ; but as there appear to be matters of equity in the case, which may be investigated by a state court, this court think it would be reasonable and just, to stay all proceedings on the judgment, until the complainants shall have time to seek relief from a state court, and they so order and decree. And the court further order, that the decree of the circuit court be reformed, so as to conform to the opinion of this court.