

Jackson v. Ashton.

the situation in which he would have been, if that decree had not been executed." "A supplemental bill may likewise be added, if any event has happened which requires it." In addition to these general principles which sustain the rule laid down by Cooper, circumstances exist, which require, in an eminent degree, its application to this particular case. The decree itself was disregarded by the trustee, in executing the conveyance. It directed him to receive one-fourth of the purchase-money in cash, and the residue in four equal instalments. The first payment is to be brought into court, and he is to make the conveyance, on receiving the last. He is not authorized to pay the money to the creditors. The court has not intrusted to him the right of deciding on the debts, and disposing of the purchase-money. He is only to receive it before he conveys; and, consequently, should hold it subject to the order of the court. It does not appear, that he has ever received a cent. He undertakes to settle the account of Mr. Ritchie, the purchaser, and to convey the property to him, in violation of the decree; *on [*147 being satisfied by him that he had paid all the debts, and was himself a creditor to an amount exceeding the purchase-money. He had no right to be satisfied of these facts. The court had not empowered him to inquire into or decide on them. He has transcended his powers; and with the knowledge of the purchaser, and in combination with him, has executed to him a deed which the law did not authorize. The whole proceeding was irregular, and ought to be set aside. The plaintiffs in the original suit will then be at liberty to prosecute their claims according to law. The court is of opinion, that there is no error in the decree of the circuit court, and that it be affirmed with costs.

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 Columbia, holden in and for the county of Washington, and was argued by counsel: On consideration whereof, it is ordered, adjudged and decreed by this court, that the decree of the said circuit court in this cause be and the same is hereby affirmed, with costs.

*THOMAS JACKSON *et al.*, Appellants, v. WILLIAM E. ASHTON. [*148

Averment of citizenship.

The caption of the bill was in the following terms, "Thomas Jackson, a citizen of the state of Virginia, William Goodwin Jackson and Maria Congreve Jackson, citizens of Virginia, infants, by their father and next friend, the said Thomas Jackson v. The Reverend William E. Ashton, a citizen of the state of Pennsylvania: In equity." In the body of the bill, it was stated that "the defendant is of Philadelphia."

The title or caption of the bill is no part of the bill, and does not remove the objection to the defects in the pleadings; the bill and proceedings should state the citizenship of the parties, to give the court jurisdiction of the case.

The only difficulty which could arise to the dismissal of the bill, presents itself upon the statement, "that the defendant is of Philadelphia;" if this were a new question, the court might decide otherwise; but the decisions of the court, in cases which have heretofore been before it, have been express upon the point.

APPEAL from the Circuit Court for the Eastern District of Pennsylvania.

Jackson v. Ashton.

After the argument was commenced by Mr. *Key*, for the appellant, the court stated, that an objection to the jurisdiction of this case, arose from the omission to state the citizenship of the defendant, William E. Ashton, in the bill, as filed in the circuit court, and appearing upon the printed copy of the record. The caption of the bill was in the following terms.

"Thomas Jackson, a citizen of the state of Virginia, William Goodwin Jackson and Maria Congreve Jackson, citizens of Virginia, infants, by their father and next friend, the said Thomas Jackson v. The Reverend William E. Ashton, a citizen of the state of Pennsylvania : In equity."

The bill proceeded to state that the complainants and the appellants were citizens of the state of Virginia. The only description of the defendant was, "William E. Ashton, of the city of Philadelphia," which was in the body of the bill.

Peters, for the appellee, stated, that although aware of the objection to the jurisdiction, in consequence of there being an omission to state the citizenship of the appellee, yet he was *not disposed to urge the exception. If the court could take jurisdiction of the case, the appellee was entirely willing ; indeed, he was anxious that the court should hear and determine the cause. He wished it to be understood, that the appellee made no objection to the court's proceeding in the case.

Key contended, that the caption of the bill was part of it, and that taken with the bill, the citizenship of the defendant was sufficiently shown. The disposition of this court has been manifested in many cases, to get rid of technical difficulties of this kind.

MARSHALL, Ch. J., delivered the opinion of the court.—The title or caption of the bill is no part of the bill, and does not remove the objection to the defects in the pleadings. The bill and proceedings should state the citizenship of the parties, to give the court jurisdiction of the case. The only difficulty which could arise to the dismissal of the bill, presents itself upon the statement, "that the defendant is of Philadelphia." This, it might be answered, shows that he is a citizen of Pennsylvania. If this were a new question, the court might decide otherwise ; but the decision of the court, in cases which have heretofore been before it, has been express upon the point ; and the bill must be dismissed for want of jurisdiction.

THIS cause came on to be heard, on the transcript of the record from the circuit court of the United States, for the eastern district of Pennsylvania, and was argued by counsel : On consideration whereof, it is the opinion of this court, that the said circuit court could not entertain jurisdiction of this cause, and that, consequently, this court has not jurisdiction in this cause, but for the purpose of reversing the decree of the said circuit court, entertaining said jurisdiction : whereupon, it is ordered, adjudged and decreed by this court, that the decree of the said circuit court be and the same is hereby reversed, and that this appeal be and the same is hereby dismissed. All of which is hereby ordered to be certified to the said circuit court, under the seal of this court.