

Jackson v. Ashton.

transferring real estate by judicial process. On the broadest ground, therefore, which has been taken in any of the specified objections to the proceedings of the court of common pleas in the attachment-suit, we are most clearly of opinion, that none of them can be sustained, without the violation of principles which ought to remain inviolable.

The remaining objection is, that the auditors did not make their [*479 deed to the person who purchased at the sale under the order of the court. This is a matter entirely between such person and those to whom the deed was made ; to Cutter, it is immaterial, to whom the conveyance was made ; his right was extinguished by the sale and confirmation. It is equally immaterial to those who claim under Cutter, who received the deed ; Stanley, the purchaser, or Foster, the plaintiff ; it was a matter between themselves, which can have no effect on the validity of the sale, were it unexplained. But connecting the record with the deeds, their inspection removes the objection, for the reasons stated in the argument of counsel. Samuel Foster was the principal creditor, and plaintiff in the suit ; Stanley purchased, but took his deed from Foster and Woodward, with their covenants of seisin, warranty and title ; had he taken a deed directly from the auditors, it must have been without any covenants. The object was evidently to have an assurance of the title ; for both deeds were executed and acknowledged on the same day, and the consideration of both was the same. The judgment of the circuit court is affirmed.

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 ordered and adjudged by this court, that the judgment 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. [*480

Amendment in error.

After a case has been dismissed for want of jurisdiction, the pleadings having been technically defective, the court will not, at a subsequent term, allow them to be amended, and the case to be reinstated on the docket ; it would be, in effect, a reversal of the former decree, after the case had been finally disposed of in this court.¹

There will be no difficulty in making the amendment in the circuit court, in such a case, if that court shall see fit, in its discretion, to allow it to be done, and the cause may then be reheard there ; and on a decree, newly rendered, may be brought up on appeal to this court ; or a decree may be there rendered, by consent of parties, in order to bring up the case without delay.

THIS case was before the court at January term 1834, on an appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania, and was dismissed for want of jurisdiction ; the complainants, Thomas Jackson and others, in the circuit court, having omitted to state in the body of the bill, filed on the equity side of the court, that the defendant was a citizen of the state of Pennsylvania. (8 Pet. 148.)

¹ Schell v. Dodge, 107 U. S. 630.

Lee v. Dick.

Key and *Peters* now applied to the court for liberty to amend the record, by stating the citizenship of the defendant, and to reinstate the cause on the docket.

STORY, Justice, delivered the opinion of the court.—A motion has been made to allow an amendment of the record of this case, by inserting an allegation of the citizenship of the parties, and to reinstate this cause on the docket, under the following circumstances: The cause came before this court at the January term 1834, and, as will be found in 8 Pet. 148-9, was then reversed for want of jurisdiction of the circuit court, by reason of the omission to allege, that the parties were citizens of different states, the appeal to this court was dismissed; and the decree of this court was ordered to be certified to the circuit court.

We are of opinion, that under these circumstances, the record cannot be amended, or the cause reinstated in this court. It would, in effect, be a reversal of the former decree of this court. We have no power over the decrees *481] rendered by this court, after the term has *passed, and the cause has been dismissed, or otherwise finally disposed of here.

But in our opinion, there is no difficulty in making the proposed amendment in the circuit court, if that court shall see fit, in its discretion, to allow it to be done. The cause may then be reheard there; and upon the decree newly rendered, an appeal can then be taken to this court; or a decree may be there rendered, by consent of the parties, in order to bring the cause, without any delay, to this court.

This court, in rendering its former decree, had no authority (not having any jurisdiction, but to reverse for the want of jurisdiction of the circuit court) to send the cause back for further proceedings, with liberty to amend the bill. But the mandate was not understood by us to apply, except to the record in its then state; and we entertain no doubt, that notwithstanding any thing in the former decree of reversal, it is entirely competent for the circuit court, in their discretion, to allow the amendment now proposed to be made, and to reinstate the cause in that court. But we have no authority in the matter. The motion is, therefore, overruled.

Motion overruled.

*482] *SAMUEL B. LEE, Plaintiff in error, v. NATHANIEL DICK and others.

Commercial guarantee.

L., at Memphis, Tennessee, addressed a letter to D. & Co., at New Orleans, stating that N. & D. wished to draw on them for \$2000, saying, "Please accept their draft, and I hereby guaranty the punctual payment of it." In a letter of the same date, to one of the firm of N. & D., he said, "I send a guarantee for \$2000; the balance, I have no doubt, your friend W. will do for you. N. & D. drew a bill on D. & Co. for \$4250, which they accepted; and after having paid the draft, they gave notice to L. that they looked to him for the money; no notice was given by D. & Co. to L., that they intended to accept, or had accepted, and acted upon the guarantee, before they paid the draft; the drawers of the bill did not reimburse D. & Co. for any part of it. Action was instituted to recover \$2000 from L., being part of the bill for \$4250: *Held*, that although the bill was drawn for \$4250, the guarantee would have operated to bind L. for the sum of \$2000 included in it, if notice of the acceptance of it had been given