

Atkins v. Dick.

the accident, in such sense as to render the defendants liable therefor upon this policy.

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 Massachusetts, and on the point and question on which the judges of the said circuit court were opposed in opinion, and which was certified to this court for its opinion, agreeable to the act of congress in such cases made and provided, and was argued by counsel: On consideration whereof, it is the opinion of this court, that, "in this case, the contributory amount paid by the Paragon, on account of the collision, was a direct, positive and proximate effect from the accident, in such sense as to render the defendants liable therefor upon this policy." Whereupon, it is ordered and adjudged by this court, that it be so certified to the said circuit court.

*JAMES ATKINS, Appellant, *v.* N. & J. DICK & COMPANY, [*114
Appellees.

Injunction.—Parties.

A bill for an injunction was filed, alleging that the parties who had obtained a judgment at law for the amount of a bill of exchange, of which the complainant was indorser, had, before the suit was instituted, obtained payment of the bill from a subsequent indorser, out of funds of the drawer of the bill, obtained, by the subsequent indorser, from one of the drawers. It was held, that it was not necessary to make the subsequent indorser, who was alleged to have made the payment, a party to the injunction bill.

In such a bill, an allegation that the amount due on the bill of exchange was paid, is sufficient; without stating the value or nature of the effects out of which the payment was made.

If there be any one ground upon which a court of equity affords relief, it is an allegation of fraud, proved or admitted.

APPEAL from the Circuit Court for the Southern District of Mississippi. On the 24th June 1834, Cain & Lusk, merchants of Alabama, drew a bill of exchange for \$2405, on Martin Pleasants & Company, of New Orleans, in favor of the appellant, James Atkins. This bill was indorsed by James Atkins to Parham N. Booker, and was afterwards indorsed to N. & J. Dick & Company, the appellees. The bill was protested, and the appellees brought a suit against James Atkins, in the circuit court of the United States for the district of Mississippi, to May term 1838, and recovered a judgment for \$3225. Execution was issued on the judgment, and a levy was made on the property of James Atkins; who, in redemption of the same, gave a forthcoming bond, with sureties, for the delivery of the property to the marshal on the day of sale. The property not having been delivered according to the provisions of the bond, the marshal returned the bond as forfeited; whereby, according to the laws of the state of Mississippi, it became, in force and effect, a judgment against the obligor and his sureties. The appellant, in order to stay execution on the bond against himself and the sureties, filed a bill on the equity side of the court, and obtained an injunction against the obligees in the bond.

The bill stated, that since the giving of the forthcoming bond by the appellant, and his sureties, he had ascertained, and did verily believe, that N. & J. Dick & Company had been paid the money mentioned in the bill of

Atkins v. Dick.

exchange, before the institution of the suit on the same ; but that he had no knowledge of this, on the giving on the forthcoming bond and its forfeiture ; that he was advised and believed, that the bill of exchange was paid to N. & J. Dick & Company, by Parham N. Booker, before the action was brought against him on the bill ; and that the same was paid, because of *effects placed in the hands of Booker, by Lusk, one of the drawers *115] of the bill. That he was advised and believed, that he would have had a good and meritorious defence against Booker, on account of the effects placed in the hands of Booker by Lusk, had Booker brought an action against him in his own name ; and he charged, that the names of N. & J. Dick & Company had been used to defeat him in such a defence.

The defendants, the appellees, demurred to the bill, and alleged the following causes of demurrer. 1. It is alleged in the bill, as a substantive, and the original, ground for injunction of the statutory judgment therein named, that one Parham N. Booker, is the actual, and not the nominal plaintiff in said judgment ; that as indorser of the bill of exchange (the basis of the judgment), next after the complainant as the first indorser, having paid the amount of the bill to the holders, received certain effects of the drawers, whose amount ought to be credited to complainant ; and yet the said Booker is not impleaded as a defendant. 2. Nor is the amount, or value, or nature of the effects, so charged to have been paid to the second indorser, specified in said bill ; nor what part or portion was discharged, nor whether any of such effects proved productive. 3. The said bill contains no matter or grounds whereon the court can grant the relief prayed therein.

The court ordered, adjudged and decreed, that the demurrer to the bill be sustained, and that the complainant have leave to amend his bill. It was further ordered, adjudged and decreed, that the injunction be dissolved. The complainant declined making any amendment to the bill, and put the cause down for a further hearing upon the bill and demurrer ; and after argument heard, it appearing to the satisfaction of the court, that Parham N. Booker was materially interested in the issue of said cause, and that the said Booker had not been made a party to the same, it was, therefore, ordered, adjudged and decreed, that the said bill be dismissed for want of proper parties to the same, &c.

The case was argued by *Cocke*, for the appellants ; and by *Crittenden*, for the appellees.

For the appellants, it was contended—1. That this being an injunction bill, and Booker being no party to the proceedings at law, he was not a necessary or proper party to the injunction bill. 2. That the fraud charged should have been denied by answer ; and that the court below, in sustaining the demurrer and dismissing the bill, was guilty of manifest error. 3. That Booker's rights and remedies, whatever they might be, were separate and independent, and purely legal. 4. On sustaining the demurrer, *116] the injunction ought not to have *been dissolved ; but leave given to bring the other parties before the court.

Cocke stated, that he was aware, that it is a rule in equity, that all persons materially interested in a suit ought to be made parties. But the court will always look to the object of the suit, in determining the question of the

Atkins v. Dick.

necessary parties to it. 49 Law Library, 6, 7. It is no part of the object of this bill to affect the liability of Atkins to Booker, on Atkins's indorsement to him. Booker's rights and remedies would remain unaffected by a decree of perpetual injunction of N. & J. Dick & Company. On the subject of the rule of proper parties to a bill, a court of equity will not suffer it to be applied, to defeat the purposes of justice; if the case can be disposed of without prejudice to the rights or interests of persons who are not made parties. A court of equity will not require persons to be made parties, where the circumstances of the case do not warrant it. Story's Equity Pleadings 78, and the authorities there stated.

This is not an original bill. In an injunction suit, no objection can be taken on the ground that absent persons are not made parties. 49 Law Library 53. Whatever rights Booker may have, either at law or in equity, are predicated upon the liabilities of Atkins to Booker, on Atkins's indorsement to him. Each indorsement is in the nature of a new bill; it constitutes a paramount, separate, distinct and independent contract. Intermediate indorsers or indorsees are not necessary parties in equity: their remedies are on the bills of exchange, or promissory notes, and at law. 50 Law Library 151; *Ward v. Van Bokkelen*, 2 Paige 289; *McCarty v. Graham*, 2 Simons 285; 2 Atk. 235. The merits of the case between Atkins and N. & J. Dick & Company can be determined, without affecting the interest of Booker; and it is the duty of the court to decree between the parties before them. *Russell v. Clarke's Executor*, 7 Cranch 69. Booker's rights could not be affected by the decree of perpetual injunction against N. & J. Dick & Company. *Wendell v. Van Rensselaer*, 1 Johns. Ch. 341; 7 Conn. 427; *Joy v. Wirtz*, 1 W. C. C. 517. He was not named as a party defendant, nor was process prayed against him, or his interest to be affected. He was, therefore, no proper party. *Verplanck v. Mercantile Insurance Company*, 2 Paige 438; *Executors of Brasher v. Van Cortlandt*, 2 Johns. Ch. 245; *Lucas v. Bank of Darien*, 2 Stew. (Ala.) 280; *Lyle v. Bradford*, 7 T. B. Monr. 113. There was nothing demanded of Booker, and therefore, he should not be made a party. *Kerr v. Watts*, 6 Wheat. 550.

Had Booker been made a party in equity, he could have claimed that he was not a party in the suit at law. That his rights were purely legal, distinct, separate and independent, confined *alone to Atkins's indorsement to him, and have claimed to be restored to his remedy at law; [*117 and it would have been allowed to him. 2 Story's Equity Pleading, p. 172, § 885; p. 173, § 887; *Marine Insurance Company v. Hodgson*, 7 Cranch 336. If the suit at law of N. & J. Dick & Company against Atkins, was really for the use of Booker, his name should have been placed on the record as the *cestui que use*; by concealing his connection with the suit, he has no right to shift the *onus probandi* as to the matters in litigation, or to have the advantages which his situation, as a defendant in chancery, would give him. This would be a fraud on Atkins's defence against Booker, at law. Courts of equity would never allow the success of such a fraud. The demurrer is in bad grace; and it may be worthy of inquiry, upon what principles do N. & J. Dick & Company demur? It would be against conscience to execute a judgment at law, thus situated. *Marine Insurance Company v. Hodgson*, 7 Cranch 332. The fact is, Booker can only be

Atkins v. Dick.

used in the injunction case, as a witness. *Fenton v. Hughes*, 7 Ves. 287; 1 S. C. 73-4.

The bill insinuates that Booker is the instigator, and it may be, that he may be an unwilling witness; but Atkins is entitled to the answer of N. & J. Dick & Company, and the testimony of Booker. If it be true, as charged, that the bill of exchange has in fact been paid; it matters not by whom, or how; the right of N. & J. Dick & Company to have an action against for the money, was gone, both at law and in equity. They have no right to be paid twice. If they could have no action for themselves, it is difficult to perceive, upon what principle they could have an action for another. By the payment of the bill of exchange, it was cancelled by law. It is time enough for Atkins to litigate his rights with Booker, both at law and in equity, when Booker shall sue Atkins, on Atkins's indorsement to Booker. It is, therefore, claimed, that the decree of the court below should be reversed; the demurrer be overruled; and leave granted to N. & J. Dick & Company to answer the bill.

Crittenden, for the appellees, contended, that the bill of the appellants was properly dismissed by the circuit court, for want of proper parties, and for want of equity. The circuit court allowed the complainant to add proper parties; but this he refused, and went on, notwithstanding this permission. According to the allegations of the bill, not only Parham N. Booker, but all the sureties in the forthcoming bond given to the marshal, should have been made parties to the suit, according to their interest in relation to the matters alleged in it; and in order to enable the court to settle at once the whole controversy. *McIntire v. Hughes*, 4 Bibb 187; 3 T. B. Monr. 398; 4 Ibid. 386; 3 J. J. Marsh. 44; *Macey v. Brooks*, 4 Bibb 238; *Turner v. Cox*, 5 Litt. 175; *Cummins v. Boyle*, 1 J. J. Marsh. 481.

*The whole equity asserted by the appellants grows out of the *118] acts of others than those of N. & J. Dick & Company. It is alleged, that Booker is now prosecuting the suit on the bill of exchange, in the name of N. & J. Dick & Company; and yet he is not made a party. The assignor of a judgment, when a bill is filed against the parties to the judgment, must be made party to the bill. The proceeding here is against an alleged nominal party; and yet the real party is not allowed an opportunity to be heard. If the appellant is successful in this proceeding, Booker will not be prevented suing on the bill of exchange, if he gets possession of it. Thus, the controversy between the parties to the bill of exchange will not be settled by the present proceeding.

BARBOUR, Justice, delivered the opinion of the court.—This is an appeal from a decree of the circuit court of the United States for the southern district of Mississippi. The appellant was the payee of a bill of exchange drawn by Cain & Lusk, which he indorsed to Parham N. Booker, who indorsed it to N. & J. Dick & Company. The bill having been dishonored, Dick & Company brought suit thereon, and recovered a judgment against Atkins, the first indorser. Upon this judgment an execution was issued, a forthcoming bond was taken and forfeited; by reason whereof, the bond, according to a statute of Mississippi, had the force of a judgment, on which execution was issued. Atkins thereupon filed his bill in equity, in which he alleged, that he had ascertained, and verily believed, that Dick & Company

Atkins v. Dick.

had been paid the amount of the bill of exchange, before the institution of their suit against him ; but that he had no knowledge of it, at the time of the giving and forfeiture of the forthcoming bond. That he was advised, and verily believed, that the bill of exchange was paid to Dick & Company, by Parham N. Booker, before the suit was brought ; and that it was paid, because of effects placed in the hands of said Booker by Lusk, one of the drawers of the bill of exchange. That he was advised and believed, that he would have had a good defence against Booker, on account of said effects received by him from Lusk, with which to pay the bill, in case said Booker had sued in his own name thereon. That the names of Dick & Company were used, with the intent to defeat him of that defence, in case he became advised that said effects had been placed in the hands of Booker by Lusk, with which to pay and satisfy the bill. The bill charged, that in these proceedings the appellant had been most palpably defrauded ; and that in order to consummate the fraud, Dick & Company had caused execution to issue on the judgment created by the forfeited forthcoming bond, which was then in the hands of the marshal ; and it prayed an injunction, a perpetuation thereof, and for general relief. An injunction was granted. The defendants demurred *to the bill, assigning three causes of demurrer, [*119 to wit : 1. That Booker was not made a party. 2. That neither the amount, nor the value, nor the nature of the effects, charged in the bill to have been paid to the second indorser, were specified ; and that it was not stated what part or portion was discharged, nor whether any of such effects proved to be productive. 3. That the bill contained no matter or ground on which the court could grant the relief prayed for. The court sustained the demurrer, and gave the plaintiff leave to amend his bill ; and he declining to make any amendment, they dissolved the injunction, and dismissed the bill for want of proper parties. From this decree, this appeal was taken.

The defendants having demurred to the bill, in the consideration of the case, we are to take all its allegations to be true. The bill is somewhat artificially drawn ; but it substantially alleges, that before the institution of the suit at law against the plaintiff, the amount of the bill of exchange in question had been paid to Dick & Company, by means of effects furnished by one of the drawers. The particular language of the allegation is, that it was paid to them, because of effects placed in the hands of Parham N. Booker, by Lusk, one of the drawers. Now, we understand the import of this to be, that these effects constituted the means by which the payment was effected ; whether Booker sold the effects, and paid the bill out of the proceeds of the sale, or detained them himself, and in their stead advanced their value in money, is an inquiry of no moment ; because, in either aspect of the case, the effect would be, that the bill was paid, by means furnished by one of the drawers. And upon this state of facts, it is clear, that the same operation which satisfied the claim of Dick & Company, at the same time, extinguished all the rights as well as liabilities growing out of the bill of exchange ; because they, being the last indorsees, were the persons entitled to receive the amount of the bill ; and the drawers being liable to every other party, and the funds by which the payment was effected being furnished by them, there was no longer any person who could have a claim against any other, founded upon a bill thus paid.

Atkins v. Dick.

Upon this view of the subject, the question is, whether a party who has received payment of his debt, shall be permitted by a court of equity to avail himself of a judgment at law, to enforce a second payment; and that too, against a party who did not know of that payment, until after the judgment was obtained. To state such a proposition, is to answer it.

The bill further charges the defendants with fraud, and this, too, is admitted by the demurrer. If there be any one ground upon which a court of equity affords relief with more unvarying uniformity than on any other, it is an allegation of fraud, whether proved or admitted. Whilst, therefore, a case stands before us upon such a bill and demurrer, we cannot hesitate to say, it must be considered as entitling the party to the aid of a court of equity.

*It is contended, that Booker ought to have been made a party.
*120] And the ground taken is (and this is the first cause of demurrer assigned), that every person ought to be made a party who has an interest in the subject of controversy; and it is said, that Booker is in that situation. We think that he has no interest in the object of this suit; in other words, that he is not interested in the question between these parties. The ground of equity is, that Dick & Company, the plaintiffs in the judgment at law, received payment of the amount recovered by them, before they brought their suit. Now, if he were made a party at all, it must be as defendant. But the plaintiff neither sought, nor could he obtain, any decree against him. He only asked a perpetual injunction against Dick & Company, on the ground of an equity attaching upon them personally. If the plaintiff should prevail against them, it would be upon the ground, that the amount of the bill had been paid to them by the drawers; supposing that to be the case, then Booker would not be liable to them as indorser. If, on the contrary, the plaintiff should fail, Booker's rights would in nowise be concluded or affected; but if, as indorser, he should be made liable to Dick & Company, then, as indorsee, he could recover against the plaintiff, Atkins, as indorser to him.

But again, Booker's right and liability upon the bill are at law. We cannot, therefore, perceive any ground upon which, in a contest between two parties to a bill, founded upon an allegation of equity attaching personally to one of them, a third party can be brought into a court of equity to mingle in that litigation, when the attitude in which he stands is purely legal. If the equity attached to him, then he ought to be made a party; but as it does not, a court of equity is not the *forum* in which to discuss or to decide either his right or liability. A very familiar case will illustrate this principle. Suppose, an obligee to assign a bond, on which the assignee recovers a judgment, where, by statute, he may sue in his own name; and that the obligor thereupon files his bill in equity, praying for a perpetual injunction, on the ground of some equity attaching upon the obligee, before the assignment. In such a case, the assignor must be made a party, because he is directly interested in deraigning the equity alleged to exist against him. But if, on the contrary, the bill were filed upon the ground of some equity not existing against the assignor, but arising between the obligor and assignee, after the assignment, then there would be no pretence for saying, that the assignor ought to be a party; plainly, because, in that particular question, he has no interest whatsoever. Which-

Runyan v. Coster.

ever way that question may be decided, the relation between the assignor and assignee, and the liability of the former to the latter, growing out of the assignment, are purely questions of law; wholly unaffected by the decision of the case in equity.

The second ground of demurrer is, that neither the amount, nor value, nor nature of the effects charged to have been paid, is specified; nor is it stated what portion of the debt was discharged, nor whether any of such effects proved to be productive. This cause ^{*}of demurrer we consider altogether untenable. The allegation in the bill is, that the money mentioned in the bill of exchange was paid to Dick & Company. This allegation covers the whole equity of the case; because it asserts that there was a payment, and that, a payment of the money mentioned in the bill; that is, the whole amount of the bill.

The third cause of demurrer, that there is no ground laid in the bill for relief, has been already discussed; and we have shown that the bill does contain sufficient allegations to entitle the complainant to the aid of a court of equity.

We are of opinion, that the circuit court, instead of sustaining the demurrer, ought to have overruled it; and ordered the defendants to answer. The decree is therefore reversed, and the cause remanded to the circuit court, to be proceeded in, in conformity with this opinion, and as to equity and justice shall pertain.

Decree reversed.

*GEORGE RUNYAN, Plaintiff in error, *v.* The Lessee of JOHN G. COSTER and THOMAS K. MERCEN, who survived JOHN HONE, Defendant in error. ^[*122]

Power of corporation to hold lands in another state.

The legislature of the state of New York, on the 18th of April 1823, incorporated "The New York and Schuylkill Coal Company;" the act of incorporation was granted for the purpose of supplying the city of New York and its vicinity with coal; and the company having, at great expense, secured, by purchase, valuable and extensive coal lands, in Pennsylvania, the legislature of New York, to promote the supply of coal as fuel, granted the incorporation, with the usual powers of a body corporate, giving to it the power to purchase and hold lands, to promote and attain the objects of the incorporation; the recitals in the act of incorporation showed, that this power was granted with special reference to the purchase of lands in the state of Pennsylvania. The right to hold the lands so purchased depends on the assent or permission, express or implied, of the state of Pennsylvania.¹

The policy of the state of Pennsylvania, on the subject of holding lands in the state by corporations, is clearly indicated by the act of its legislature of April 6th, 1833. Lands held by corporations of the state, or of any other state, without license from the commonwealth of Pennsylvania, are subject to forfeiture to the commonwealth; but every such corporation, its feoffee or feoffees, hold and retain the same, to be divested or dispossessed by the commonwealth, by due course of law. The plain interpretation of this statute is, that until the claim to a forfeiture is asserted by the state, the land is held subject to be divested by due course of law, instituted by the commonwealth alone, and for its own use.²

¹ In harmony with the general law of comity among the states composing the Union, the presumption is to be indulged, that a corporation, if not forbidden by its charter, may exercise the powers thereby granted, within other states, including the power of acquiring lands, unless prohibited therefrom, either in their

enactments, or by their public policy, to be deduced from the general course of legislation, or the settled adjudications of their highest courts. *Christian Union v. Yount*, 101 U. S. 353.

² Restrictions imposed by the charter of a corporation upon the amount of property that