dismissed for the want of jurisdiction, on the ground that the amount in controversy in each of the said cases is less than $2,000; and it is also the opinion of this court that the steamer St. Charles was in fault, and that the decree of the said Circuit Court in the cases of E. G. Rogers & Co., and Pooley, Nicoll, & Co., should be reversed, and the cause remanded for an apportionment of the loss on these two appeals. Whereupon, it is now here ordered, adjudged, and decreed, by this court, that the appeals of Brooks & Randolph, and of Hurley & Co., be and the same are hereby dismissed for the want of jurisdiction; and that the decreee of the said Circuit Court in the cases of E. G. Rogers & Co., and Pooley, Nicoll, & Co., be and the same are hereby reversed with costs; and that this cause be and the same is hereby remanded to the said Circuit Court for further proceedings to be had therein in conformity to the opinion of this court, and as to law and justice shall appertain.

PIERRE FELIX COIRON AND MARIE J. T. COIRON, A MINOR, BY HER NEXT FRIEND, PIERRE FELIX COIRON, APPELLANTS, *v.* LAURENT MILLAUDON, EDWARD SHIFF, SYNDICS, &C., OF ALEXANDER LESSEPS, ET AL.

Where a sale of mortgaged property in Louisiana was made under proceedings in insolvency, and the heirs of the insolvent filed a bill to set aside the sale on the ground of irregularity, it was necessary to make the mortgagees parties. They had been paid their share of the purchase money, and had an interest in upholding the sale.

The fact that such persons are beyond the jurisdiction of the court is not a sufficient reason for omitting to make them parties.

Neither the act of Congress nor the 47th rule of this court enables the Circuit Court to make a decree in a suit in the absence of a party whose rights must necessarily be affected by such decree, and the objection may be taken at any time upon the hearing or in the appellate court.

THIS was an appeal from the Circuit Court of the United States for the eastern district of Louisiana, sitting as a court of equity.

The facts are sufficiently stated in the opinion of the court.

It was submitted on a printed argument by *Mr. Hunt* and *Mr. Ogden* for the appellants, and argued by *Mr. Benjamin* for the appellees.

The point upon which the case was decided was thus stated by *Mr. Benjamin:*

I. There is an absence of the parties indispensable in the suit. The complainants seek to set aside a sale made by the

creditors of Coiron, through the agency of their syndic, to Millaudon and Lesseps.

In order to do this, both vendor and vendees must be parties. Shields *v.* Barrow, 17 Howard, 131.

It is obvious, that if the sale complained of be set aside, the effect would be to entitle the defendants to recover back their money from the syndic or the creditors, and to entitle the creditors to take back the property, and have it regularly sold in satisfaction of their claims.

Mr. Justice NELSON delivered the opinion of the court.

This is an appeal from a decree of the district judge, sitting in the Circuit Court of the United States for the eastern district of Louisiana.

The bill was filed in the court below, by two of the heirs of J. J. Coiron, against Alexander Lesseps, Laurent Millaudon, and others, to set aside a sale of a plantation and slaves to the two defendants named, in 1834, in pursuance of proceedings in a case of insolvency before a parish court in the city of New Orleans.

The father of the complainants, having become insolvent in 1833, applied to the court for liberty to surrender his property for the benefit of his creditors, and that in the mean time all proceedings against his person or property might be stayed, which application was granted, and the surrender of his property accepted.

Theodore Nicolet was appointed syndic of the creditors, and such proceedings were had, that a sale of the plantation and slaves was directed in March, 1834, when the two defendants became the purchasers. The inventory of the debts of the insolvent, which accompanied his application to the parish court, exceeded $177,000, and of his assets, $137,000. The assets sold for some $77,000; and after satisfying the charges and expenses of the proceedings, the balance was distributed among the creditors under the direction of the court. This amount, some $60,000, fell short of satisfying the claims of the two principal creditors, Van Brugh Livingston, and Harriet, his wife, of New York, and the firm of Nicolet & Co., of New Orleans, which were secured upon the estate by mortgages.

The object of this suit is to set aside the sale on the ground of irregularities in the insolvent proceedings, which are set forth in detail in the bill.

The court below, after hearing the case upon the pleadings and proofs, decreed against the complainants and dismissed the bill.

The record is quite voluminous, but we have stated enough

of the facts to present the questions upon which we shall dispose of the case.

According to the law of Louisiana, on a surrender by the insolvent of his property for the benefit of creditors, the estate vests in the latter sub modo, and is disposed of by them through the agency of the syndic, under the supervision and control of the court before whom the proceedings take place. 2 Rob. R., 193, 194.

They appoint the syndic and fix the terms and conditions of the sale, and have the charge of the estate in the mean time between the surrender and final disposition.

The creditors, therefore, are the parties chiefly concerned in these proceedings; and as it respects those to whom the proceeds of the estate have been distributed, they are directly interested in upholding the sale; for, if it is set aside, and the proceedings declared a nullity, they would be liable to refund the share of the purchase money each one had received in the distribution.

A court of equity, in setting aside a deed of a purchaser upon grounds other than positive fraud on his part, sets it aside upon terms, and requires a return of the purchase money, or that the conveyance stand as a security for its payment. 1 J. Ch. R., 478; 4 J. R., 536, 598, 599.

This constitutes the essential difference between relief in equity and that afforded in a court of law. A court of law can hold no middle course. The entire claim of each party must rest, and be determined at law, on the single point of the validity of the deed; but it is the ordinary case in the former court, that a deed not absolutely void, yet, under the circumstances, inequitable as between the parties, may be set aside upon terms.

Nicolet & Co., and Van Brugh Livingston and wife, the mortgage creditors, or their legal representatives, were therefore necessary parties to the bill, as any decree made in the case disturbing the sale may seriously affect their interests.

This objection has been anticipated in the bill, and an averment made that these parties were out of the jurisdiction of the court. But it is well settled, that neither the act of Congress of 1839, (5 U. S. Stat. at Large, 321, sec. 1,) nor the 47th rule of this court, enables the Circuit Court to make a decree in a suit in the absence of a party whose rights must necessarily be affected by such decree, and that the objection may be taken at any time upon the hearing, or in the appellate court. 17 How., 130; 1 Peters, 299.

We think the decision of the court below was right in dismissing the bill, and therefore affirm the decree.