MARGARET MCREA AND BRACY MCREA, ADMINISTRATORS OF JOHN D. BRACY, APPELLANTS, *v.* THE BRANCH OF THE BANK OF THE STATE OF ALABAMA AT MOBILE.

Where money was borrowed from a bank upon a promissory note, signed by the principal and two sureties, and the principal debtor, by way of counter security, conveyed certain property to a trustee, for the purpose of indemnifying his sureties, it was necessary to make the trustee and the cestui que trust parties to a bill filed by the bank, asserting a special lien upon the property thus conveyed.

But where the principal debtor had made a fraudulent conveyance of the property, which had continued in his possession, after the execution of the first deed, and then died, a bill was good, which was filed by the bank against the administrators, for the purpose of setting aside the fraudulent conveyance, and bringing the property into the assets of the deceased, for the benefit of all creditors who might apply.

THIS was an appeal from the Circuit Court of the United States for the eastern district of Arkansas, sitting in equity.

The bill was filed by the Branch Bank of Alabama, under the circumstances which are stated in the opinion of the court. It had a double aspect; first, setting up a lien upon the slaves, by virtue of the deed of trust to Gale; and secondly, as a creditor in common with others, to set aside the bill of sale to Margaret McRea, as fraudulent and void, as against creditors.

The Circuit Court decreed that the bill of sale from John D. Bracy to Margaret McRea was fraudulent and void, made for the purpose of hindering, delaying, and defrauding the creditors of Bracy, and especially the complainants. They therefore decreed that it should be set aside, and in case the administrators did not pay the account of the Bank, which had been presented to them, that the marshal should sell the slaves for the benefit of all the creditors of Bracy who should signify their willingness to come in and bear their share in the costs and expenses incurred, in the mode which is customary in a creditor's bill.

From this decree the administrators appealed to this court.

The case was argued by *Mr. Lawrence* for the appellee, no counsel appearing for the appellants.

Mr. Justice CURTIS delivered the opinion of the court.

This is an appeal from a decree of the Circuit Court of the United States for the eastern district of Arkansas.

It appears from the allegations of the bill, which are supported by the proofs, that in December, 1843, John D. Bracy, then a resident of Alabama, borrowed of the Branch of the Bank of the State of Alabama at Mobile (the appellees in this

case) the sum of $9,065, and that Maria Matheson, who was his mother, and another person, joined in the promissory note which was given to the bank for the loan. To indemnify Mrs. Matheson, Bracy conveyed certain negro slaves to one Gale, in trust, to save her harmless. The debt not being paid at maturity, the bank recovered a judgment on it in November, 1845. The trustee afterwards sold some of the slaves, and their price was applied to reduce the debt; but some time in the year 1846, Bracy privately left the State of Alabama, and carried away with him the residue of the slaves, and some other property, not leaving, so far as appears, any other property in that State, out of which the judgment in favor of the bank could be satisfied. He appears to have been for a time in the State of Mississippi. Sometime in 1847 he went to Louisiana; and in the year 1848 he removed with these slaves to White county, in the State of Arkansas, where he employed them in making some improvements on a tract of Government land, where he and they resided. In September, 1849, Bracy went to Louisiana, where Margaret McRea, his sister, one of the appellants, then resided, and there made a bill of sale of all the slaves to her. She sent one of her sons to take possession of them; and Bracy also returned to their place of residence, in White county, where he continued to reside until the spring of 1850, when Mrs. McRea moved thither; and from that time they resided together, she having entered the land on which the plantation was, and taken a title in her own name. Bracy continued to reside there, having the principal ostensible management of the business of the plantation, until about a year before his decease, in April, 1852, when he removed to the county town, about six miles distant, to practise his profession as an attorney. He died deeply insolvent, the debts proved against his estate being upwards of fourteen thousand dollars; the sales of all his inventoried effects amounting only to the sum of $345.90. The bill asserts a lien on these slaves by virtue of the trust-deed, of which it avers Mrs. McRea had notice when she purchased. But our opinion is, that Gale, the trustee, and Mrs. Matheson, the *cestui que trust*, are indispensable parties to a bill for the subjection of this property to the claim of the bank, by virtue of the trust-deed. Upon that footing the bill cannot be maintained.

But we are all of opinion, that the sale to Mrs. McRae was in fraud of creditors, and especially of the bank. Without detailing the evidence, we think it enough to say, that the removal of the property from Alabama by Bracy, leaving the judgment of the bank unsatisfied, his insolvency, the relation between the parties, their subsequent residence together, the

manner in which the property was held and managed, are causes of very grave suspicion. The bill charges, that if this property was conveyed to her, "it was so conveyed with intent and for the purpose of hindering, delaying, and defrauding the creditors of the said John D. Bracy." The answer of Mrs. McRae does not deny this allegation.

In the course of responding to the claim of the bill founded on the trust-deed, her answer says: "She therefore charges, that there was no encumbrance whatever on the said slaves, or any of them, at the time she purchased them; and avers that she purchased them in good faith, and without any notice or knowledge whatever of a subsisting lien upon them by virtue of said deed of trust." We understand this averment of good faith on her part to relate simply to her ignorance of a lien by the trust-deed, and that it does not meet the explicit allegation in the bill, that the purpose of the sale was to conceal the property from creditors; and though the failure of the answer to meet this charge in the bill does not operate as a technical confession of its truth, it does lay a foundation for the belief that if the defendant could have truly denied it, she would not have foregone the decided advantage of such a denial in an answer which puts the complainant on proof of the contested fact by more than one witness.

The answer alleges, that the agreed price of the sale was $3,500, payable in instalments of $875 each, in five, six, seven, and eight years; and that four promissory notes were executed accordingly. It does not say what was done with the notes, after they were executed. No such notes were found among the effects of Bracy, to be inventoried. Neither of these notes, if in existence, had become payable when this bill was filed, and we think the attempt to show that something had been paid on account of them by the delivery of some cotton is not successful.

In our opinion, the charge in the bill, that the sale was fraudulent as to creditors, is made out in proof, and this is sufficient to sustain the decree of the Circuit Court.

The decree of the Circuit Court is affirmed with costs.

THE MICHIGAN CENTRAL RAILROAD COMPANY, PLAINTIFFS IN ERROR, *v.* THE MICHIGAN SOUTHERN RAILROAD COMPANY ET AL.

Where a case is brought up to this court by a writ of error issued to the Supreme Court of a State, under the twenty-fifth section of the judiciary act, if it appears