

Statement of the case.

GAYLORDS v. KELSHAW ET AL.

1. In a bill to set aside a conveyance as made without consideration and in fraud of creditors, the alleged fraudulent grantor is a necessary defendant in the bill; and if being made defendant his citizenship is not set forth on the record, the bill must be remanded or dismissed.
2. In such cases of remandment or dismissal, costs are allowed to a co-defendant, being the person charged with having received the fraudulent conveyance.

THE Gaylords, appellants here, had filed their bill in chancery in the Circuit Court for the District of Indiana, against the defendants Kelshaw and Butterworth, charging that they had an unsatisfied judgment at law in one of the Indiana courts against Kelshaw, and that some short time before the judgment was recovered, Kelshaw conveyed to Butterworth a valuable piece of real estate without any consideration; and with an intent fraudulently to hinder and delay them, the said Gaylords, in the collection of their debt. The bill prayed that the conveyance might be set aside, and the property sold in satisfaction of their debt.

The complainants alleged themselves to be citizens of Ohio, and *Butterworth to be a citizen of Indiana, but no allegation was made in any part of the record as to the citizenship of Kelshaw.* The record showed, however, that he was found within the district, and had appeared and answered. The court below dismissed the bill *on merits.*

Coming here, the case was argued by *Mr. Henderson for the complainants*, who asked a reversal *on merits*, which he argued had been misunderstood below, and by *Messrs. Ketcham and Dunn, contra.* The arguments need not be given, since the court considered the question not a question of merits but one

1. Whether, there being no allegation of Kelshaw's citizenship, jurisdiction existed under that clause of the Judiciary Act which gives the Federal courts jurisdiction in suits between citizens of different States? and,
2. If jurisdiction did not exist, what was proper to be

Opinion of the court.

done; that is to say, whether the decree was to be reversed, or the bill dismissed, or the case remanded with directions, &c.?

Mr. Justice MILLER, after stating the case, delivered the opinion of the court:

It is clear, that neither the court below, nor this court, has jurisdiction of the case as between plaintiffs and Kelshaw.

But as the court might, under some circumstances, proceed to adjudicate on the rights of the parties properly before it, we must look into the case, so far as to see if it is one in which relief may be decreed, as between plaintiffs and Butterworth, without regard to Kelshaw.

Without referring to the numerous cases in this court and others, on the necessity of having all the proper parties before the court, in a suit in equity, and the circumstances under which the court will proceed in some cases, without persons who might well be made parties, it is sufficient to say that, in the present case, we think Kelshaw is properly made a defendant to this suit. It is a debt which he owes which is sought to be collected. It is his insolvency which is to be established, and it is his fraudulent conduct that requires investigation.

If the conveyance to Butterworth shall be decreed to be set aside, and the property conveyed to him, subjected to the payment of plaintiffs' debt, it is proper that Kelshaw should be bound by the decree; and to that end he ought to be a party.

It is not necessary to decide in this case, whether if Kelshaw were, in the language of the act of February 28, 1839, "not an inhabitant of, or found within the district where the suit is brought," the court could proceed without him; for the record shows that he was found within the district, and served there with process, and has answered the bill. Nor is it necessary, for the same reason, to inquire if the court could dispense with him as a party under the 47th rule prescribed by this court for the courts of equity of the United States. It is simply the case of a person made a defendant by the bill, who is also a proper defendant, according to the principles which govern courts of chancery as to parties, and who has been served with process within the district and

Statement of the case.

answered the bill; but whose citizenship is not made to appear in such a manner that the court can take jurisdiction of the case as to him.

Under these circumstances, the court is of opinion that instead of a decree dismissing the bill on the merits, it should have been dismissed without prejudice for want of jurisdiction. The case will be remanded to the court below with leave to plaintiffs to amend their bill generally, and if they shall fail to do this it shall be dismissed without prejudice. Butterworth is entitled to his costs in this court.

DECREE ACCORDINGLY.

MERCER COUNTY *v.* HACKET.

1. Where a county issues its bonds payable to bearer, and solemnly pledges the faith, credit and property of the county, under the authority of an act of Assembly, referred to on the face of the bonds by date, for their payment, and those bonds pass, *bonâ fide*, into the hands of holders for value, the county is bound to pay them. It is no defence to the claim of such a holder that the act of Assembly, referred to on the face of the bonds, authorized the county to issue the bonds only and subject to certain "restrictions, limitations, and conditions," which have not been formally complied with; nor that the bonds were sold at less than par, when the act authorizing their issue and referred to by date on the face of the instrument, declared that they should, "in no case," nor "under any pretence," be so sold.
2. Corporation bonds payable to bearer, have, in this day, the qualities of negotiable instruments. The corporate seal upon them does not change the case.
3. *Commissioners of Knox County v. Aspinwall* (21 Howard, 539), and *Woods v. Lawrence County* (1 Black, 386), affirmed. *Diamond v. Lawrence County* (37 Pennsylvania State, 358), denied.

By act of Assembly, passed in 1852, the legislature of Pennsylvania authorized the commissioners of Mercer County in that State to subscribe to the stock of the Pittsburg and Erie Railroad, which road, if built, would pass through their county and benefit it. The act, however, contained this proviso:

"Provided, that the subscription shall be made *subject to the following restrictions, limitations, and conditions, and in no other manner*