

Opinion of the court.

In this case the tax sought to be avoided was assessed against the Chicago, Rock Island, and Pacific Railroad Company, and the decree rendered discharges the company from the payment of this tax. The corporation, therefore, should have been made a party to the suit, and as it was not, the demurrer should have been sustained.

DECREE REVERSED, and the cause remanded for further proceedings,

IN CONFORMITY WITH THIS OPINION.

ST. CLAIR COUNTY *v.* LOVINGSTON.

No judgment is final which does not terminate the litigation between the parties. A judgment reversing the judgment of an inferior court, and remanding the cause for such other and further proceedings as to law and justice shall appertain, does not do this. A writ of error to such a judgment dismissed, on the authority of *Moore v. Robbins, supra*, p. 588.

ERROR to the Supreme Court of Illinois.

The county of St. Clair, in Illinois, sued Lovington in the Circuit Court of the county, and got judgment against him. The Supreme Court of Illinois reversed this judgment, and remanded the cause "for such other and further proceedings as to law and justice shall appertain." To that judgment the county took this writ of error.

Mr. G. Koerner, for the plaintiff in error; Mr. W. H. Underwood, contra.

Mr. Justice STRONG delivered the opinion of the court.

The writ of error in this case must be dismissed on the authority of *Moore v. Robbins*, decided at this term. The judgment of the Supreme Court of the State cannot be regarded as a final judgment in the sense in which the term was used in the Judiciary Acts. No judgment is final which does not terminate the litigation between the parties to the

Statement of the case.

suit. The issue between the parties may be again tried in the Circuit Court, and another judgment may be recovered which may be removed to the Supreme Court for revision. Consequently, then, there has been no final determination of the case.

WRIT DISMISSED.

GRAY v. ROLLO.

1. Set-off is enforced in equity only where there are mutual debts or mutual credits, or where there exists some equitable consideration or agreement between the parties which would render it unjust not to allow a set-off.
2. Where a bankrupt owes a debt to two persons jointly, and holds a joint note given by one of them and a third person, the two claims are not subject to set-off under the Bankrupt Act, being neither mutual debts nor (without more) mutual credits.
3. Where one of two *joint debtors* becomes bankrupt, it seems that the creditor may set-off the debt against his separate indebtedness to the bankrupt, because each joint debtor is liable to him *in solido* for the whole debt; but, if this be conceded, it does not follow that if one of two *joint creditors* becomes bankrupt, the common debtor may set-off against the debt a separate claim which he has against the bankrupt, for this would be unjust to the other joint creditor.
4. A. and B. were joint makers of certain notes, which were transferred to an insurance company. B. and C. held policies in this company which became due in consequence of loss by fire. The company being bankrupt, its assignee claimed the full amount of the notes from A. and B. B. sought to set-off against his half of the liability the claim due to him and C. on the policies of insurance, the latter consenting thereto. Held, that this was not a case for set-off within the Bankrupt Act, the two obligations having been contracted without any reference to each other.

APPEAL from the Circuit Court for the Northern District of Illinois; the case being thus:

The Bankrupt Act enacts:*

"That in all cases of *mutual debts* or *mutual credits* between the parties, the account between them shall be stated, and one

* 14 Stat. at Large, 526, § 20.