

Case No. 1,035. BARNES ET AL. V. OMALLY ET AL.
[4 McLean, 576.]¹

Circuit Court, D. Michigan.

June Term, 1849.

EQUITY PRACTICE—DISMISSAL OF BILL WITH COSTS.

1. A bill filed which the complainant can not sustain will be dismissed, at his costs.
2. No grounds of equity, real or supposed, at the filing of the bill can authorize the court to tax the costs against the defendant.

[In equity. Creditors' bill by Barnes & Pharo against C. M. Omally and others. Bill dismissed.]

Barstow & Lockwood, for complainants.

Mr. Abbott, for defendant.

OPINION OF THE COURT. This was a creditors' bill alleging fraud against the defendant, in covering, by assignment, the property of C. M. Omally, against whom a judgment was obtained and execution returned, nulla bona. The answer denies the material allegations of the bill; and the plaintiff declines a further prosecution of the suit, and is willing that the bill shall be dismissed; but he insists that under the circumstances, the bill should be dismissed at the costs of the defendant. That there was reasonable ground for the creditors' bill. The court held that this could not be distinguished from an ordinary bill, where the plaintiff could not sustain it; and that it must be dismissed at plaintiff's costs.

¹ [Reported by Hon. John McLean, Circuit Justice.]