

28FED.CAS.—74

Case No. 16,925.

VERSELIUS V. VERSELIUS ET AL.

[9 Blatchf. 189.]¹

Circuit Court, N. D. New York.

Oct. 10, 1871.

BANKRUPTCY—EQUITY JURISDICTION—BILL BY ASSIGNEE FOR
ACCOUNTING—FRAUD—DISCOVERY—PARTIES.

1. A bill in equity was filed by an assignee in bankruptcy against the bankrupt and another, to set aside a conveyance of property made by the bankrupt to the other defendant, and to compel an account of the same, and payment to the plaintiff, and for a discovery. The bankrupt demurred to the bill for want of equity. *Held*, the jurisdiction to entertain such a bill is clear. Independent of the question, whether the assignee may not always, if he sees fit, seek the aid of a court of chancery, to set aside a fraudulent conveyance or illegal transfer, instead of proceeding by various actions at law, the right to call for an account is not questionable.

[Cited in *Schrenkeisen v. Miller*, Case No. 12,480.]

2. Although the charge, in the bill, of fraud and illegality, is in the alternative, either ground is sufficient
3. The assignee has the right as ancillary to the principal relief, to have a discovery from the defendants; and the need of such discovery also excuses the want, in the bill, of a more precise specification of the particular fraud alleged.
4. The bankrupt is a proper party to the bill.

This was a bill in equity [by George W. Verselius, assignee in bankruptcy of William S. Verselius, against William S. Verselius and George A. Verselius] to set aside a conveyance of real estate and personal property, book accounts, choses in action, &c, and to compel an account of the same, and the proceeds thereof, and payment to the complainant, and for a discovery, &c. There was a demurrer to the bill, by the bankrupt William S. Verselius, for want of equity.

C. W. Smitn, for plaintiff.

Q. Van Voorhis, for defendants.

WOODRUFF, District Judge. This demurrer is submitted to me for decision upon the brief of the counsel for the defendant only. I have considered the objections, and am of opinion:

(1.) The jurisdiction to entertain such a bill is clear. Independent of the question, whether the assignee may not always, If he sees fit, seek the aid of a court of chancery, to set aside a fraudulent conveyance or illegal transfer, instead of proceeding by various actions at law, the right to call for an account is not questionable.

(2.) Although the charge of fraud and illegality is in the alternative, either ground is sufficient The transaction is alleged to have taken place in November, 1869. That is less than four months before the adjudication which declared the demurrant a bankrupt, namely, February 1st, 1870.

VERSELIUS v. VERSELIUS et al.

(3.) The assignee has the right, as ancillary to the principal relief, to have a discovery from the defendants, and he properly seeks it, to supply the deficiency in his own knowledge; and his ignorance of the particulars sought not only entitles him to the discovery, but excuses the want of more precise specification of the particular fraud alleged.

(4.) The bankrupt has a direct interest in the question whether the property shall be taken from the other defendant, and is, therefore, a proper party.

The demurrer is overruled, with costs, and the demurrant has leave to answer, on payment of the costs of the demurrer, and of the proceedings thereon.

¹ [Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.]