

Case No. 17,417.

{4 McLean, 79.}¹

WESCOTT ET AL. V. COLE ET AL.

Circuit Court, D. Indiana.

May Term, 1846.

EQUITY JURISDICTION—SALE OF EQUITABLE INTERESTS—TITLE BONDS.

1. A court of equity may direct an equity to be sold, but in such case the interest sold should be ascertained, and made known at the time of the sale.
2. In Indiana a title bond is assignable.

{This was a bill by Wescott and Comblos against Cole and Shelby.}

Fletcher & Butler, for complainants.

Mr. Dunn, for defendants.

MCLEAN, Circuit Justice. Cole gave his note to complainants 17th June, 1842, for—dollars, and at the same time executed a mortgage to secure the payment of the note, on land in Clarke county. He also transferred a title bond held by him and given by Shelby and Shelby, for a piece of property in the same county, “conditioned” for making a deed on payment of eighteen hundred dollars. A title bond is assignable by the statute of Indiana. The bill prays for a sale of the mortgaged premises, and also of the interest assigned in the title bond. There was no answer filed by the defendant, and a decree pro confesso was taken against him.

The defendant objected, that there was no averment in the bill of the payment of the eighteen hundred dollars. There is no evidence of the payment of this sum, still in chancery whatever interest the assignor may have can be sold. The court will provide in the decree, that the purchaser at the sale of the master shall know what he buys.

It is also objected that unless Cole could sue in this court, his assignee can not sue. This is undoubted. But there is nothing in the bill to show that Cole was a citizen of Indiana at the time he made the assignment, and, consequently, the defendant being in default, is not in a condition to raise the question.

The court will direct a sale of the mortgaged property, and also of the equitable interest of Cole, under the title bond, giving special directions, etc.

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