of his interests as a shareholder. The defendants contend that by admitting him as a party plaintiff the jurisdiction of the court was ousted. Assuming that the joinder as co-plaintiff of an alien and a citizen of the same state with some of the defendants would be fatal to the jurisdiction, the answer to the objection is that jurisdiction once having attached, it could not be defeated by the action of the court, without the consent or concurrence of the plaintiff. The plaintiff, as an alien, being personally qualified to bring the suit, the jurisdiction is not defeated by the fact that the parties whom he represents may be disqualified. *Coal Co.* v. *Blatchford*, 11 Wall. 172. The admission of Kelly, by leave of court, did not, in a jurisdictional sense, make him a plaintiff. He acquired thereby no control over the suit; Graham still remains the real plaintiff and *dominus litis*, and the suit must stand or fall on the case which he makes. Perhaps the court erred in admitting Kelly as a party. But that should not prejudice Graham, as it was not done at his instance.

As the court is of opinion, for the reasons already stated, that the demurrer, for want of equity and for laches, must be sustained, it becomes unnecessary to consider many other objections to the bill raised by the demurrers which were argued by counsel.

Demurrer for want of jurisdiction overruled; demurrer for want of equity and laches sustained.

NEBRASKA CITY NAT. BANK and others *v.* NEBRASKA CITY HYDRAULIC GAS-LIGHT & COKE CO. and others.

(*Circuit Court, D. Nebraska.* January, 1883.)

1. RESULTING TRUST—VENDEE.

   Where the vendee of property assumes the payment of indebtedness due from the vendor to a stranger, and deducts the amount thereof from the purchase price, he does not thereby become a trustee for such stranger for the amount of such indebtedness.

2. LIMITATIONS—CORPORATION BONDS.

   The fact that the failure to pay coupons within six months from maturity gave the bondholders the option to sue for both principal and interest, does not of itself cause the bonds to mature at the date of such default, or at the expiration of the six months, so as to cause the statute of limitations to begin to run.

3. JURISDICTION—CITIZENSHIP OF PARTIES.

   That one of the complainants is a citizen of the state where suit is brought, does not present a question of jurisdiction which can be raised on demurrer to the whole bill.

In Equity.

This is a demurrer to a bill in equity. The facts alleged in the bill are briefly and in substance as follows:

The plaintiff bank is organized under the national banking act. The other plaintiffs are all citizens of states other than Nebraska except James Sweet, who is a citizen of that state. The defendants are all citizens of Nebraska. On the first of October, 1872, the gas company issued 28 bonds for $1,000 each, payable on the first of October, 1882, with interest at the rate of 10 per cent. per annum, payable semi-annually, as provided by coupons attached to the bonds. There was a further provision that if any installment of interest falling due remained unpaid for six months, the whole debt should become due. To secure these bonds the gas company executed its mortgage to J. Sterling Morton and George W. Meeker, as trustees, conveying all property and works of the company. On the first of October, 1876, the company made default in payment of its interest coupons falling due on that day. The plaintiffs respectively hold some of the bonds secured by said mortgage, and in the aggregate they are the owners of 25 of them. The trustees refuse to execute the trust. Upon these allegations complainants pray for a decree for the foreclosure of the mortgage and sale of the mortgaged premises. The bill further alleges as follows: In 1874 the firm of Connor & Son were the owners of $86,000 of the gas company's stock, and by virtue of such ownership had control of its affairs. They sold said stock to Metcalf, Hill, Morrison, Morton, and the Pinneys, (who will hereafter be referred to as Metcalf and associates,) for $43,000, but "in carrying out said agreement the said co-respondents required of the said Connor & Son to deduct from the said sum of $43,000 the entire indebtedness of the said Hydraulic Gas-light & Coke Company, including the above-described bonds, and that the said Connor & Son, in order to dispose of their said stock, they being at that time financially embarrassed, and being pressed by their creditors, consented to such appropriation of the purchase money of and for the said stock then owned by them, and that in truth and in fact the above-named co-respondents only paid to the said Connor & Son for $28,000 worth of stock in said company, which they then received, and have ever since held the difference between the total indebtedness of said company, (or what the same could be discounted for,) and the said sum of $43,000, the agreed price thereof; that the balance of said agreed price remained in the hands of the above-named co-respondents as a trust fund, from which to discharge said indebtedness of said company, and especially the above-mentioned indebtedness of your orators, and, so far as the above-mentioned bonds are concerned, the same still remains in their hands."

The prayer is that the alleged trust fund be brought into court and be distributed among the bondholders, and that the usual decree of foreclosure and sale be entered, and for any deficiency remaining after the sale of the mortgaged premises and the application of the proceeds thereof to the mortgage debt, judgment be rendered against said confederates. There is a demurrer filed on behalf of Metcalf and as-

sociates, and also a separate demurrer by Nelson Pinney, one of the said associates, which, taken together, raise the following questions:

First, whether the allegations of the bill, taken as true, show that the complainants are entitled to the relief prayed as against Metcalf and associates; *second*, whether the court is deprived of its jurisdiction by reason of the fact that Sweet, one of the complainants, is a citizen of Nebraska; *third*, whether the bill is multifarious; *fourth*, whether the suit is barred by the statute of limitations of Nebraska.

S. H. Calhoun, for complainants.

J. M. Woolworth and *C. W. Seymour*, for respondents.

McCRARY, C. J. 1. The allegations of the bill, taken as true, show that complainants are entitled to decree of foreclosure as prayed.

2. If the bill fairly construed charges that respondents Metcalf and associates, who purchased the stock of the gas company, have in their hands a fund set apart by agreement as a trust fund, to be paid to complainants on account of the sum due on their bonds and mortgage, then a court of equity has jurisdiction to compel said Metcalf and associates to make such payment to the extent of the fund so in their hands. If, however, the allegation is that the said Metcalf and associates agreed with Connor & Son to pay the sum due on the bonds of complainants as a part of the purchase price of said stock, then the bill is demurrable, upon the ground that there is no privity of contract between Metcalf and associates, on the one side, and the complainants on the other. *Nat. Bank* v. *Grand Lodge*, 98 U. S. 123.

The allegations of the bill are not as clear and distinct as they should be; and it is, therefore, not surprising that counsel should differ as to whether the creation of a trust fund for complainants' benefit, or the assumption of a debt, is alleged. If the complainants intend to rely upon the claim stated in their brief, that Metcalf and associates received from Connor & Son, a sum certain to be held in trust for the use of complainants, they should so allege with distinctness and certainty. It is not sufficient to allege this as a conclusion arising from the fact that said Metcalf and associates retained from the price of the stock a sum sufficient to discharge the debts of the gas company, including the bonds now in suit.

The conclusion would result from this, not that Metcalf and associates became trustees, but that they became liable to answer to Connor & Son in damages, upon their failure to pay the bonds and discharge the mortgage. As the bill stands, it does not sufficiently charge that Metcalf and associates held in their hands a fund that

is, in equity, the property of complainants. They stand, under the allegations of the bill, in a contract relation to Connor & Son, and not in the relation of trustees for complainants. It is not alleged that any particular sum of money was placed as a trust fund in their hands, to be paid by them to complainants or to the bondholders. The allegation, in substance, is that they owed Connor & Son $43,000 for stock purchased, and that they did not pay the whole debt, but paid that sum, less the sum retained to meet the debts of the gas company, including the debts now held by complainants. This is the fact alleged. The conclusion derived by the pleader from this fact is that the balance of the said agreed price remained in the hands of Metcalf and associates a trust fund, from which to discharge the said indebtedness of the gas company. I understand this allegation to mean that the portion of the purchase price of the stock not paid over, and which was retained by Metcalf to meet the debts of the gas company, became, *as a matter of law*, a trust fund in their hands, for which complainants are entitled to proceed against them. It has never, so far as I know, been held, and I think it cannot be maintained upon sound principles, that where the vendee of property assumes the payment of indebtedness due from the vendor to a stranger, and deducts the amount thereof from the purchase price, he thereby becomes a trustee for such stranger for the amount of such indebtedness. To make him a trustee there must be a deposit with him of a sum of money to be held by him for the creditor, or an express agreement on his part to assume the duties and the responsibilities of a trustee. There is no resulting trust in such a case as this.

3. The plea of the statute of limitations must be overruled. The bonds sued on were not due until 1882, and the fact that the failure to pay the coupons within six months from maturity gave the bondholder the option to sue for both principal and interest, did not of itself cause the bonds to mature at the date of such default, or at the expiration of said six months, so as to cause the statute of limitations to begin to run.

4. The fact that one of the complainants is a citizen of Nebraska does not present a question of jurisdiction which would go to the whole case, and which can be raised upon a demurrer to the whole bill. If, upon further argument and consideration at the final trial, the court shall be of the opinion that complainant Sweet cannot recover because of his citizenship, the bill as to him may be dismissed without prejudice.

5. The view above expressed with regard to so much of the bill as seeks relief against respondents Metcalf and associates, renders it unnecessary to consider the question whether the bill is multifarious.

The demurrer of Metcalf and associates, in so far as it raises the question that there is no privity of contract between the complainants and the said Metcalf and associates, is sustained. In other respects the demurrer is overruled.

UNITED STATES v. NEALE.

(Circuit Court, E. D. Virginia. January Term, 1883.)

1. PERJURY—WHO MAY ADMINISTER OATH.
   A notary public of the city of Alexandria is authorized to administer the oath required by law to be taken by a director of the first national bank of that city as to his ownership of the capital stock of such bank.
2. SAME—ACT, WHEN COMPLETE.
   When the oath is taken and subscribed by the accused it is complete, so far as the accused can make it, and if the notary, in certifying the fact of the oath having been taken, erroneously used the term "county" instead of "city," and used the seal of said bank instead of his own official seal, such error did not affect the oath taken.
3. SAME—BANK DIRECTOR—OATH TO OWNERSHIP OF STOCK.
   If accused took an oath in which he stated that he was *bona fide* owner in his own right of the number of shares of stock then standing in his name on the books of the bank, and that the said shares were not hypothecated or in any way pledged as security for any loan or debt; and if he took it willfully, and not believing that he was stating the truth,—it is perjury, if in point of fact he was not the owner of said stock, or had pledged the same for a loan or debt.
4. PLEDGE—BY POWER OF ATTORNEY.
   An irrevocable power of attorney given by the accused, wherein he constituted and appointed a third party his attorney for the purposes therein set forth, being a general power covering any indebtedness of accused to said third party, is a pledge of the shares of stock owned by accused mentioned therein, as long as there was any debt due by the accused to such third party.

The indictment was under the perjury act (section 5392 of the Revised Statutes) of the United States. It charged the accused with having willfully and contrary to what he believed to be true sworn falsely, in having, in taking the oath as a director of a national bank of the United States, stated and said that he was the owner in his own right of the number of shares of the capital stock of the First National Bank of Alexandria standing in his name on its books, and that he had not hypothecated or pledged them for any loan or debt;