

## LAND COMPANY OF NEW MEXICO, (Limited,) v. ELKINS and others.

(Circuit Court, S. D. New York. June 7, 1884.)

## 1. JURISDICTION OF CIRCUIT COURT—CITIZEN OF THE DISTRICT OF COLUMBIA.

The jurisdiction of the circuit court does not extend to a controversy between an alien and a citizen of the District of Columbia, the latter not being a citizen of a state within the meaning of the acts conferring jurisdiction upon the circuit courts.

## 2. SAME—WANT OF JURISDICTION AS TO ONE DEFENDANT.

Where a bill must be dismissed as to one defendant for want of jurisdiction as to him, and as to the other defendants no relief can be awarded without injuriously affecting the interests of the one over whom the court does not have jurisdiction, the court will not decree, and in such a case will refuse, a preliminary injunction.

## 3. SAME—ACTION BY ASSIGNEE—EQUITABLE TITLE.

In a suit by the assignee of an equitable title to obtain a conveyance of the legal title, the assignor is not an indispensable party if the assignment is an absolute one. But where the assignee founds his right on an executory agreement, the assignor is a necessary party.

## 4. PRACTICE—AMENDMENT OF BILL.

An amendment cannot be allowed which would, in effect, amount to the institution of a new and materially different suit, either as to parties or cause of action.

Motion to Dismiss.

*Sterne & Thompson*, for complainant.

*Shipman, Barlow, Laroque & Choate*, for Elkins.

*R. A. Prior*, for Butler and Smoot.

WALLACE, J. The complainant, a British corporation, has filed this bill against Elkins, a resident of New York, Smoot, a resident of the District of Columbia, Butler, a resident of Massachusetts, and three other defendants,—alleging, in substance, that Elkins, Smoot, and three others entered into an agreement for the joint purchase of a tract of land in New Mexico; that the land was purchased, and the title taken in the name of Elkins; that Smoot advanced his share of the purchase money, and under the terms of the agreement became entitled to a conveyance of an undivided fifth part of the land; that the complainant has acquired Smoot's interest by a purchase; that Elkins has recognized the purchase by complainant of Smoot's interest; that Smoot has assumed to assign and convey the interest acquired of him by complainant to the defendant Butler; and that Elkins refuses to convey the same to complainant, and threatens to convey the same to Butler.

The bill prays for a conveyance by Elkins of Smoot's interest to the complainant, and for an injunction against Elkins, Smoot, and Butler from interfering with complainant's interests.

The defendant Smoot moves to dismiss the bill as to him for want of jurisdiction. This motion must prevail, because it is well settled that a citizen of the District of Columbia is not a citizen of a state within the meaning of the judiciary act and the subsequent acts con-

ferring jurisdiction upon the circuit courts of the United States, and the jurisdiction of this court does not extend to a controversy between an alien and a citizen of the United States who is not a citizen of a state. *Hepburn v. Elzey*, 2 Cranch, 445; *Barney v. Baltimore City*, 6 Wall. 280; *New Orleans v. Winter*, 1 Wheat. 91.

The complainant moves for a preliminary injunction against Elkins, and he resists the motion upon the ground that no relief can be decreed against him upon the bill. His contention is that Smoot is an indispensable party to the suit, and as there can be no decree against Smoot there can be none against him. If Smoot's interest in the controversy is such that a final decree could not be made against Elkins without affecting that interest, or leaving the controversy in such condition that its final determination may be inconsistent with justice, the court will not proceed in his absence. *Williams v. Bankhead*, 19 Wall. 563; *Florence Co. v. Singer Co.* 8 Blatchf. 113; *Mallow v. Hinde*, 12 Wheat. 193; *Bank v. Carrollton Railroad*, 11 Wall. 624. If the complainant had acquired Smoot's interest in the lands by a transfer, absolute and fully executed, the latter would not be a necessary party to the controversy. *Blake v. Jones*, 3 Anst. 651. An assignor who has made an absolute assignment of his interest need not be a party to a suit by the assignee to enforce the equitable title acquired by the transfer against a third party, even when the former retains the legal title. *Barb. Parties*, 463; *Trecothick v. Austin*, 4 Mason, 41; *Ward v. Van Bokkelen*, 2 Paige, 289-295. But the agreement under which the complainant acquired Smoot's interest in the land is executory, and Smoot is now asserting a right to transfer the same interest to Butler. A decree cannot be made without affecting his rights. If Elkins is adjudged to convey to complainant, Smoot's interest in the lands will be divested. Not being bound by the decree, he might still contest with Elkins and insist that he account for the value of the interest conveyed to complainant under the decree; but this might be a barren remedy. As Smoot cannot be made a party, no decree can be obtained by the complainant for the relief prayed in the bill. The motion for an injunction must therefore be denied.

The complainant cannot be permitted to amend its bill, as is suggested in its behalf, by omitting all the parties but Elkins, and proceeding against him upon the theory that complainant has acquired Smoot's interest by an absolute and unconditional transfer. An amendment cannot be allowed which would, in effect, amount to the institution of a new and materially different suit, either as to parties or to cause of action. *Goodyear v. Bourn*, 3 Blatchf. 266; *Oglesby v. Attrill*, 14 FED. REP. 214.

## FLEISHER and others v. GREENWALD and others.

*(Circuit Court, N. D. Iowa, W. D. June 23, 1884.)*

## 1. JURISDICTION OF FEDERAL COURTS—DEEDS OF ASSIGNMENT.

A United States circuit court may entertain jurisdiction of a bill to set aside as fraudulent a deed of assignment at suit of a resident of a state other than that of the assignor and assignee, when the amount involved exceeds \$500.

## 2. SAME—ADJUDICATION OF STATE COURT—EFFECT IN OTHER STATE.

One who is not resident in the same state with a certain mortgagor, is not bound by an order of the state court adjudicating the validity of the mortgage as against his equities.

## In Equity.

*J. H. Struble, J. H. Swan, and A. J. Taylor, for complainants.*

*Joy & Wright and Lake & Harmon, for defendants.*

SHIRAS, J. From the averments of the bill filed in this cause it appears that during the year 1882, and for some time previous thereto, Samuel Greenwald was engaged in the mercantile business at Le Mars, Iowa. On the twenty-seventh of November, 1882, he executed a chattel mortgage on his entire stock in trade, and store furniture and fixtures, to the First National Bank of Le Mars, to secure the payment of four promissory notes of \$1,000 each, two of which were then past due, but which were, by the provisions of the mortgage, extended to December 10, 1882. This mortgage was recorded December 5, 1882. On the fourth of December, 1882, said Greenwald executed four other mortgages on the same property to secure four notes of \$1,000 each held by the First National Bank of Independence,—one note of \$1,000 due Jane Myers, one note of \$500 due August Myers, and one note of \$2,000 due Jennie Greenwald; and on the fifth of December, 1882, he executed two mortgages on said property to O'Brien Bros. and August Myers to secure the sums of \$800 and \$1,347.25; and on the sixth of December, 1882, he executed a further mortgage on the same property to James Hopkins & Co. to secure payment of the sum of \$2,500. On the seventh of December, 1882, C. Gotzian & Co., of St. Paul, brought an action in attachment, in the district court of Plymouth county, Iowa, against Greenwald, the attachment being levied on the stock of goods described in the mortgages. Thereupon the First National Bank of Le Mars brought an action in replevin in the circuit court of Plymouth county, Iowa, against the sheriff of said county, claiming the right to the possession of the goods seized under the attachment by virtue of the chattel mortgage above described. The goods were taken upon the writ of replevin, and delivered to the First National Bank of Le Mars. On the eleventh day of December, 1882, said Greenwald executed a general deed of assignment, for the benefit of his creditors, to Pitt A. Seaman. In the mean time John V. Farwell & Co., A. L. Singer & Co., and David Adler & Sons, creditors of Greenwald,