

v.30F, no.11-51

SHAVER *v.* HARDIN AND OTHERS.

*Circuit Court, N. D. Iowa, C. D.*

May 2, 1887.

REMOVAL OF CAUSE—CITIZENSHIP—FORECLOSURE.

S., a citizen of Iowa, filed a petition in an Iowa court against H. & Sons, one of whom was a citizen of Iowa, and the sheriff, to enjoin foreclosure of a chattel mortgage. The sale having been enjoined, H.&Sons filed a cross-petition for the foreclosure of the mortgage, making defendants the Iowa corporation that had executed the mortgage, and an Indiana corporation, and an Illinois company that had garnished the mortgagee. The Indiana, and Illinois companies removed the case to the United States court. *Held* that, the real subject be litigation being the right to foreclose the mortgage, no separable controversy existed, and, as one of the complainants was a citizen of the same state as some of the defendants, the suit was not removable.

In Equity. On motion to remand.

*G. E. Albroke*, for complainant.

*G. L. Johnson and Bills & Block*, for intervenors.

*J. F. Duncombe*, for defendants.

SHIRAS, J. The complainant, W. T. Shaver, at the June term, 1886, of the circuit court of Hardin county, filed a petition for an injunction against C. Hardin & Sons and W. C. Wilcox, for the purpose of restraining a sale of personal property covered by three mortgages, which had been placed in the hands of Wilcox as sheriff, for the purpose of having the property sold on behalf of C. Hardin & Sons. Of these parties W. T. Shaver, the complainant, and J. D. K. Smith, one of the firm of Hardin & Sons, as well as the sheriff, were citizens of Iowa. The sale of the mortgaged property by the sheriff having been enjoined, the mortgagees, Hardin & Sons, filed a cross-bill praying a decree for the foreclosure of the mortgages, and to this bill the Shaver Wagon Company, by whom the mortgages were executed, the Indianapolis Wheel Company, Kelly, Maus & Co., and others were made defendants. The Indianapolis Wheel Company, the members of which were citizens of the state of Indiana, and Kelly, Maus & Co., who were citizens' of the state of Illinois, filed petition for removal of the cause into the federal court; and, the state court having granted the order of removal, the named defendants have in this court filed cross-bills, attacking the validity of the several chattel mortgages held by C. Hardin & Sons. A motion to remand, filed by C. Hardin & Sons, now presents the question whether this court has jurisdiction of the cause.

The real subject of litigation is the question of the right to foreclose the chattel mortgages held by C. Hardin & Sons. Upon this issue the affirmative is upon C. Hardin & Sons, of which firm one member, J. D. K. Smith, was when the suit was commenced and when the petition for removal was filed, a citizen of the state of Iowa. Of the defendants, W. T. Shaver and the mortgagees the Shaver Wagon Company, are and were, when the

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suit was brought, citizens of Iowa. As between these parties, it is clear that the cause was not removable, because one of the

complainants was and is a citizen of the same state with the defendants named. The other defendants were made parties because they had garnished C: Hardin & Sons, and were questioning the validity of the mortgages as against creditors. The object and purpose of the cross-petition filed by C. Hardin & Sons was to establish the validity of the chattel mortgages, and their right to foreclose the same against all the defendants. The cause of action in favor of C. Hardin & Sons is one and indivisible, and the fact that the defendants may have several and distinct defenses does not import into the case separable controversies. The case falls within the principle recognized in *Fidelity Ins. Co. v. Huntington*, 117 U. S. 280, 6 Sup. Ct. Rep, 733, and, following the rule therein announced, it must be held that this court has not jurisdiction, and the motion to remand must be sustained.

Love, J., concurs.